

INTRODUCTION

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2 As the Supreme Court held in *Packingham v. North Carolina*, Twitter and other social media
3 giants are “the modern public square.” 137 S. Ct. 1730, 1732, 198 L. Ed. 2d 273 (U.S. 2017). Like the
4 company towns of old, it is a privately-owned public square. And therein lies the danger.

5 Our First Amendment forums for the exercise of our First Amendment freedoms continue to
6 shift as technology transforms the venue and vernacular of the public forum for public expression. Our
7 contractual assumptions and equitable expectations also vary as Americans use new technologies to
8 enable the development of both their businesses and their ideas, which occasionally merge in the world
9 of new media. As the public square moved to the public sidewalk, and then the public sidewalk moved
10 to the company town, the First Amendment followed. Today, Twitter is the new company town,
11 shifting the public sidewalks of cyberspace to its monopolized public square of the twitter feed.

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13 In order to facilitate this freedom of expression, Congress authorized immunity for “Interactive
14 Computer Services” like Twitter to exclude only a circumscribed set of speech: illicit speech such as
15 obscenity, offensive speech, harassment, and similar speech of the same kind. Even then, Twitter could
16 only enjoy the immunity for such speech exclusions as long as, and if, it acted voluntarily and, most
17 importantly, in “good faith.” Censoring plaintiffs’ speech because of their political viewpoint is not in
18 good faith. In fact, Congress explicitly premised this immunity on the grounds that these services
19 provided “a forum for a true diversity of political discourse.” 47 U.S.C. § 230(a)(3).
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21 Twitter induced the public to partake in its “free speech forum,” defining and describing itself
22 as the “free speech wing of the free speech party.” Twitter contractually promised, equitably assured,
23 and publicly advertised its forum for free speech as Twitter’s entire profitability depended upon mass
24 usage of its site as a means of public expression and participation in order to induce advertising dollars
25 and gather marketable information about its constituent users it could then sell to potential marketers
26 and advertisers.
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1 In reliance thereupon, many people, like the Plaintiff, depended upon, relied upon, and trusted
2 Twitter, promoting themselves and Twitter through their use of it, bringing millions of people to
3 Twitter through their public expression, and building up commercially marketable equity in their
4 Twitter accounts (as courts recognize in everything from business disputes to familial property law).
5 Then, at a whim, Twitter pulled the rug out from underneath people like the Plaintiff, suddenly, and
6 often without any notice, suspending their account. Plaintiff experienced this annually, with the only
7 explanation given for the repeated suspensions and deletions of his Twitter accounts being often
8 unidentified “objectionable” conduct. Despite multiple and myriad efforts to rebuild his Twitter
9 account, each time as his efforts built success, Twitter summarily suspended Plaintiff’s accounts. Then,
10 in December of 2017, Plaintiff discovered the truth from internal Twitter emails leaked to BuzzFeed:
11 the Plaintiff had been secretly, permanently banned from Twitter, any business associated with him had
12 been secretly, permanently banned from Twitter, and this ban was not based on any violation of
13 Twitter’s terms.
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15 As internal emails disclosed, the ban was permanent, not temporary; admittedly not due to any
16 “direct” violation of any Twitter rule; but was just a “policy” decision, e.g. a political hit job on a
17 politically disfavored individual who had outed the bad conduct of a friend of the owner of Twitter. In
18 another twist of irony, the original source of this ban concerned the Plaintiff exposing the criminal-
19 assisting, riot-inducing, violence-welcoming conduct of a political fraud, yet it was the Plaintiff who
20 was publicly accused in its stead, in order to cover for Twitter’s intention to use the exclusion of the
21 Plaintiff from Twitter and the destruction of the equity he built for his businesses, as a model to target
22 and discriminate against other political adversaries of the Twitter owner, and their political bedfellows.
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25 This case will decide more than the fate of one man and one of the modern monopolies of social
26 media. This case will decide whether Twitter can, like the monopolists before them, lie with impunity
27 and discriminate with immunity? Or will our foundational freedoms once again protect the public from
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1 the crushing power of these modern age monopolists?

2 **PRELIMINARY STATEMENT**

3 1. Founded in 2006, Twitter now operates one of the world’s largest online communication
4 forums available to the general public, with 330 million monthly active users in 2017. Twitter works
5 by allowing its users in California, the United States, and the world to share speech, including
6 photograph and video speech, in real time through short 280 character messages called “tweets”.¹
7 Twitter describes itself as allowing its users to discover and share what is happening right now, and has
8 grown to become one of the primary means for the distribution of news, and for Californians and
9 people across the United States to interact with celebrities and their elected officials. “[O]n Twitter,
10 users can petition their elected representatives and otherwise engage with them in a direct manner.
11 Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this
12 purpose.” *Packingham*, 137 S. Ct. at 1735. Both executive and legislative branch officials host “Twitter
13 Town Halls” events whereby users are able to have their questions answered by their government
14 representatives via Twitter in real time. Twitter has a “Government and Elections Team” to encourage
15 and facilitate state involvement, such as these Town Halls.² Both former President Barack Obama, and
16 current President Donald Trump have used Twitter extensively to communicate with the American
17 public, using both personal accounts and an official White House account. President Obama even held
18 a Twitter Town Hall. On the day of the 2016 U.S. presidential election, Twitter was one of the largest
19 sources of breaking news, with 40 million election-related tweets sent by 10 p.m. EST.

20 2. Twitter holds itself out to the public as a forum intended to defend and protect free
21 speech where members of the public may speak, express, and exchange their ideas. Twitter plays the
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24 ¹ At the time Plaintiff were active on Twitter, tweets were limited to a maximum length of 140
25 characters.

26 ² Twitter Government, Twitter, <https://twitter.com/TwitterGov> (last accessed, Jan. 7, 2018).
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1 role of a public forum in that based on the number of re-tweets (sharing of one user's tweet by another)
2 and number of subscribers (users who have subscribed to see one's tweets on their own homepage),
3 new ideas, political causes, and celebrities can emerge. Indeed, political protests across the world have
4 been sparked or fueled on Twitter, including the Occupy movement in the United States, the 2011
5 revolution in Egypt, and the 2011 Wisconsin labor protests, just to name a few.

6 3. As for Plaintiff Charles ("Chuck") Johnson, Twitter has used its vague and subjective
7 rules, known as "The Twitter Rules", which include Twitter's Privacy Policy and Terms of Service, as
8 a political gag mechanism to silence Chuck Johnson and prevent him from promoting his political
9 views. Twitter has even admitted as much, with its VP of user services stating, "We perma suspended
10 Chuck Johnson even though it wasn't direct violent threats. It was just a call that the policy team made."
11 As set forth below, Twitter's public comments and actions towards other conservative figures are
12 demonstrative of its political biases. This is blatant speech discrimination: censorship based entirely on
13 the perceived identity and viewpoint of the speaker, not on the content of the speech. Twitter's
14 enforcement of its vague and subjective Twitter Rules violated Chuck Johnson's fundamental free
15 speech rights under the California Constitution, constitutes unlawful discrimination under California
16 law, is a misleading and unfair business practice, and breaches the warranty of good faith and fair
17 dealing implied in the Twitter Rules.

18 4. Furthermore, Twitter's purported use of vague, overbroad, and subjective criteria,
19 including its Twitter Rules, to justify censorship decisions constitute facially invalid restrictions on
20 speech that lack objective criteria, are misleading, and/or are discriminatory, and, as a result, allow
21 Twitter to censor or restrict political speech at their whim based purely upon its subjective beliefs,
22 political animus, and unfettered and unbridled discretion in violation of state law.

23 5. Plaintiff Chuck Johnson is an award-winning independent journalist who has written for,
24 among others, The Wall Street Journal, The Los Angeles Times, and National Review Online. Plaintiff
25 specializes in investigative journalism, creating donor-funded websites that "transform journalism by
26 empowering everyday people, experts and sources to break news and get rewarded for their effort."
27 Plaintiff's websites include Gotnews.com ("Gotnews"), a news outlet that publishes his work and that

1 of other independent journalists, and Wesearchr.com (“Wesearchr”), a site that allows users with
2 newsworthy questions to raise crowd-funded “bounties” that encourage independent researchers to
3 investigate and answer the user asked questions.

4 6. Plaintiff Chuck Johnson, induced by Twitter’s public promises to remain an impartial
5 forum for ideas, created a Twitter account, @chuckejohnson, in March of 2009. Between that date and
6 when his account was deactivated by Twitter, Johnson worked to build his investigative journalism
7 brand on Twitter, greatly increasing his followers, and in turn benefitting Twitter by bringing users to
8 its site. Similarly, Plaintiff created both @wesearchr and @gotnewsdotcom for similar reasons and both
9 have since been deactivated. Plaintiff’s relationship with Twitter was mutually beneficial—Plaintiff
10 used Twitter to gain new customers, spread their work, and increase traffic flow to Gotnews and
11 Wesearchr, while Twitter increased its advertising revenue and user base as a result of Plaintiff’s
12 account and the labor put therein. Throughout the time that he operated his Twitter accounts, Chuck
13 Johnson adhered to the Twitter Rules—to the extent that they could reasonably interpreted.

14 7. When entering into his business relationship with Twitter, Plaintiff reasonably expected
15 that Twitter would abide by its own Twitter Rules. Namely, that Twitter would not delete Plaintiff’s
16 accounts on the basis of his political viewpoint, destroying years of work and accrued value in the name
17 of speech censorship.

18 8. On May 18, 2015, Twitter unilaterally revised its Terms of Service to state: “We may
19 suspend or terminate your accounts or cease providing you with all or part of the Services at any time
20 for any or no reason,” attempting to further insulate itself from any accountability.³

21 9. Twitter has no valid business reason for terminating Plaintiff’s access, and Plaintiff has
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24 ³ Twitter Terms of Service, Version 9. (effective May 18, 2015),
25 https://twitter.com/en/tos/previous/version_9. Twitter had previously revised its rule to give it authority
26 to cancel an account for “any reason” in 2012. Twitter Terms of Service, Version 6. (effective May 17,
27 2012), https://twitter.com/en/tos/previous/version_6.

1 not breached any of Twitter's terms of service. Based on actions taken by Twitter against others with
2 similar viewpoints to Plaintiff, Plaintiff now believes his accounts were banned for posting ideas from
3 conservative and independent viewpoints.

4 10. In essence, Twitter induced Chuck Johnson to build up the value of Twitter by
5 promoting his news organization and political groups on Twitter, aligning his contacts on Twitter so
6 they, too, could build up the value of Twitter, and then, once obtained, revoked Johnson's access,
7 terminated his account without compensation, banned him from ever using Twitter, and did so without
8 abiding by any of its promised policies and procedures of fair application and equal enforcement
9 without regard to political viewpoint.

10 11. Without judicial intervention, Plaintiff will lose access to his client base on Twitter, the
11 traffic generated to Gotnews and Wesearchr, and his business will be devastated. Ending Plaintiff's
12 business is an irreparable injury that cannot be compensated by an ordinary damages award.

13 12. Accordingly, Plaintiff seeks a preliminary and a permanent injunction to enjoin Twitter
14 from unfairly and unreasonably terminating Plaintiff's access and restricting Plaintiff's speech in
15 violation of the California Constitution.

16
17 **PARTIES**

18 13. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as
19 though set forth in full herein.

20 14. Plaintiff Chuck Johnson is, and at all relevant times was, a natural person residing in
21 Fresno, California.

22 15. Defendant Twitter, Inc. is, and at all relevant times was, a corporation duly organized
23 under the laws of the State of Delaware with its principal place of business in San Francisco,
24 California.

25 **JURISDICTION AND VENUE**

26 16. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as
27 though set forth in full herein.

1 He is finding loopholes in policy which is almost worse than the people who blatantly have violations.”
2 In another email published by BuzzFeed, former Twitter CEO, Dick Costolo, confirms that Twitter’s
3 decision to permanently ban Johnson was not based on a perceived rule violation, but bias against
4 Johnson: “To be very clear, I don't want to find out we unsuspended this Chuck Johnson troll later on . .
5 . . . That account is permanently suspended and nobody for no reason may reactivate it. Period. The
6 press is reporting it as temporarily suspended. It is not temporarily suspended it is permanently
7 suspended. I'm not sure why they're mistakenly reporting it as temporarily suspended but that's not the
8 case here...don't let anybody unsuspend it.”⁵

9 22. Plaintiff made substantial investment of time and effort to improve the accounts, had
10 built more than 29,000 followers, and the accounts were a key chain in Plaintiffs’ information
11 distribution business. Since being banned from Twitter, Plaintiff Chuck Johnson’s businesses have been
12 cut off from tens of thousands of fans and lost the potential to gain hundreds of thousands more.
13 Twitter values each follower at \$2.50-\$3.50 in its promotional materials for advertisers.⁶

14 23. Based on actions Twitter has taken against others similarly situated, the apparent motive
15 behind Twitter’s decision to ban Plaintiff’s accounts is the censoring of conservative political ideas,
16 interference with any businesses of Plaintiff, and may be personal in character, due to apparent
17 friendships between the founder of Twitter and those exposed by Plaintiff’s investigative efforts.

18 24. Twitter’s bias against those who espouse conservative political ideas is well known.⁷
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21 ⁵ <https://www.buzzfeed.com/charliwarzel/internal-emails-show-twitter-struggled-to-interpret-its-own>

22 ⁶ See *Create a followers campaign*, Twitter Business, [https://business.twitter.com/en/help/campaign-](https://business.twitter.com/en/help/campaign-setup/create-a-followers-campaign.html)
23 [setup/create-a-followers-campaign.html](https://business.twitter.com/en/help/campaign-setup/create-a-followers-campaign.html) (accessed January 6, 2018) ("The cost per follower on Twitter
24 is set by a second price auction among other advertisers – you’ll only ever pay just slightly more than
25 the next highest bidder. A bid of \$2.50 - \$3.50 is recommended based on historical averages.").

26 ⁷ <https://gizmodo.com/fcc-chair-says-twitter-and-youtubes-political-biases-ar-1820813796>;
27 [http://www.nationalreview.com/article/436797/social-media-facebook-twitter-google-lean-left-](http://www.nationalreview.com/article/436797/social-media-facebook-twitter-google-lean-left-conservatives-have-build-better)
28 [conservatives-have-build-better](http://www.wnd.com/2016/08/twitter-stock-plunges-as-conservatives-purged/); [http://www.wnd.com/2016/08/twitter-stock-plunges-as-conservatives-](http://www.wnd.com/2016/08/twitter-stock-plunges-as-conservatives-purged/)
[purged/](https://www.washingtontimes.com/news/2016/jul/20/milo-yiannopoulos-twitter-ban-reignites-); <https://www.washingtontimes.com/news/2016/jul/20/milo-yiannopoulos-twitter-ban-reignites->

1 Twitter has repeatedly banned conservative users under the guise of stopping harassment, but fails do
2 the same when the harassers have a liberal viewpoint.⁸ As such, and because Twitter has admitted that
3 Plaintiff did not violate its Twitter Rules, Plaintiff has reason to and does believe that his accounts were
4 banned as a result of Twitter’s bias against those who promote conservative political views.

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6 **FIRST CAUSE OF ACTION**

7 **(California Constitution Article I, section 2)**

8 26. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as
9 though set forth in full herein.

10 27. Article I, section 2 of the California Constitution protects the liberty of speech and
11 association, especially in public, quasi-public, and limited public spaces. Under California law,
12 privately owned spaces are subject to these protections when citizens “are induced to congregate daily”
13 and the plaintiff can “assure that these activities do not interfere with normal business operations
14 [citation] would not markedly dilute defendant's property rights.” *Ralphs Grocery Co. v. United Food*
15 *& Commercial Workers Union Local 8*, 55 Cal. 4th 1083, 1091–92, 290 P.3d 1116, 1120 (2012) (citing
16 *Robins v. Pruneyard Shopping Center* 23 Cal.3d 899, 910-11, 153 Cal.Rptr. 854, 592 P.2d 341 (1979)).

17 28. In Twitter, Defendant created and maintains a public forum or its functional equivalent
18 for the public to express and exchange views and ideas, or in the alternative at least a quasi- or limited
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21 accusation/; [http://thehill.com/blogs/pundits-blog/media/303295-how-facebook-twitter-are-](http://thehill.com/blogs/pundits-blog/media/303295-how-facebook-twitter-are-systematically-silencing-conservative)
22 [systematically-silencing-conservative](http://thehill.com/blogs/pundits-blog/media/303295-how-facebook-twitter-are-systematically-silencing-conservative);

23 ⁸ [https://www.usatoday.com/story/tech/news/2016/11/18/conservatives-accuse-twitter-of-liberal-](https://www.usatoday.com/story/tech/news/2016/11/18/conservatives-accuse-twitter-of-liberal-bias/94037802/)
24 [bias/94037802/](https://www.usatoday.com/story/tech/news/2016/11/18/conservatives-accuse-twitter-of-liberal-bias/94037802/); [http://www.theblaze.com/news/2016/07/25/conservative-writer-posts-same-tweet-as-](http://www.theblaze.com/news/2016/07/25/conservative-writer-posts-same-tweet-as-ghostbusters-actress-to-see-if-twitter-has-bias-see-what-happened/)
25 [ghostbusters-actress-to-see-if-twitter-has-bias-see-what-happened](http://www.theblaze.com/news/2016/07/25/conservative-writer-posts-same-tweet-as-ghostbusters-actress-to-see-if-twitter-has-bias-see-what-happened/);
26 <http://www.breitbart.com/tech/2016/01/26/5-ways-to-succeed-on-twitter/>;
27 [http://www.breitbart.com/big-hollywood/2016/07/20/rapper-talib-kweli-attacks-breitbart-jerome-](http://www.breitbart.com/big-hollywood/2016/07/20/rapper-talib-kweli-attacks-breitbart-jerome-hudson-calls-coon-twitter-not-banned-platform/)
28 [hudson-calls-coon-twitter-not-banned-platform/](http://www.breitbart.com/big-hollywood/2016/07/20/rapper-talib-kweli-attacks-breitbart-jerome-hudson-calls-coon-twitter-not-banned-platform/).

1 public forum. Defendant views itself as such a forum, with the stated mission: “Give everyone the
2 power to create and share ideas and information instantly, without barriers.”⁹ Thus, no reasonable
3 person would think Twitter was promoting or endorsing plaintiffs’ speech by not censoring it.
4 Plaintiffs’ speech imposes virtually no cost to Twitter’s business and no burdens on its property rights.

5 29. Defendant further engages in state action. Defendant performs an exclusively and
6 traditionally public function by regulating free speech within a public forum. Twitter’s Government and
7 Elections Team encourages state cooperation by publishing “The Twitter Government and Elections
8 Handbook.” The Handbook promotes Twitter as a public forum for the government by suggesting
9 agencies and officials use it as “THE TOWN HALL MEETING... IN YOUR POCKET.”¹⁰ See
10 *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 296, (2001) (finding state
11 action “[w]hen a private actor operates as a ‘willful participant in joint activity with the State or its
12 agents’”) (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941 (1982)). Accordingly, speech cannot
13 be arbitrarily, unreasonably, or discriminatorily excluded, regulated, or restricted on the basis of
14 viewpoint or the identity of the speaker.

15 30. Plaintiff’s Twitter accounts promoted independent journalism, typically from a
16 politically conservative point of view, and constituted expressive speech and activity protected by
17 Article I, section 2 of the California Constitution.

18 31. The Twitter Rules are content-based and represent a systematic and continuing
19 viewpoint discriminatory system. Specifically the section on “hateful conduct” prohibits certain speech
20 connected with opinions on “race, ethnicity, national origin, sexual orientation, gender, gender identity,
21 religious affiliation, age, disability, or disease.”¹¹ When acknowledging Twitter’s position on free
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24 ⁹ Company, Twitter, <https://about.twitter.com/company> (last accessed Jan 6, 2018).

25 ¹⁰ Twitter Government and Elections Team, *The Twitter Government Elections Handbook 10* (2014),
<https://g.twimg.com/elections/files/2014/09/16/TwitterGovElectionsHandbook.pdf> (ellipsis in original).

26 ¹¹ *The Twitter Rules*, Twitter (last accessed January 6, 2018), <https://support.twitter.com/articles/18311>.

1 speech had changed, one of its executives explained “we've realized it's no longer possible to stand up
2 for all speech in the hopes society will become a better place because racism will be challenged, or
3 homophobia challenged.”¹² While Plaintiff strongly rejects “racism” and “homophobia,” speech
4 restrictions to fight perceived bias against protected groups are content-based. See *R.A.V. v. City of St.*
5 *Paul, Minn*, 505 U.S. 377 (1992) (holding that a ban on bias motivated fighting words was a content-
6 based), *Glendale Associates, Ltd. v. N.L.R.B.*, 347 F.3d 1145, 1155 (9th Cir. 2003) (“California state
7 courts borrow from federal First Amendment jurisprudence to analyze whether a rule is content-based
8 or content-neutral.”).

9 32. Defendant has restricted Plaintiff’s speech and expressive conduct based on subjective,
10 vague, and overbroad, and expanding criteria that gives Defendant unfettered and unbridled discretion
11 to censor speech for any or no reason, no matter how arbitrary or capricious. Those criteria further fail
12 to convey a sufficiently definite warning to Plaintiff and the public as to what is prohibited or restricted.
13 Defendant’s adoption and application of those criteria on its face violates Plaintiff’s right to free speech
14 as guaranteed by Article I, section 2 of the California Constitution. Further, that invidious potential has
15 been borne out and evidenced by Defendant’s application of those policies and procedures to censor
16 Plaintiff.

17 33. Defendant also applies its censorship criteria, including the Twitter Rules, as a pretext to
18 censor and restrict Plaintiff’s speech, based not on the content of the speech but because of Plaintiff’s
19 identity and political viewpoints. Defendant has repeatedly banned accounts held by those who promote
20 conservative beliefs under the guise of enforcing its Twitter Rules, while repeatedly ignoring the same
21 “violations” when committed by accounts that promote liberal viewpoints. Defendant’s application of
22 criteria and corresponding restraints on Plaintiff’s speech is arbitrary and capricious and/or is based on

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25 ¹² Shona Ghosh, *Twitter was once a bastion of free speech but now says it's 'no longer possible to stand*
26 *up for all speech'*, *Bus. Insider* (Dec. 19, 2017), <http://www.businessinsider.com/twitter-no-longer-possible-to-stand-up-for-all-speech-2017-12>.

1 political, religious, or other animus towards the identity and viewpoints of the speaker, not the actual
2 content of the speech.

3 34. Further, Defendant's actions also violate Plaintiff's right to free association and
4 assembly by blocking Plaintiff's fans and subscribers from accessing Plaintiff's tweets, and thus
5 preventing Plaintiff from engaging in a dialogue with his Twitter based fans and subscribers.

6 35. No compelling, significant, or legitimate reason justifies Defendant's actions. Even if
7 such interests did exist to justify Defendant's Twitter Rules generally, the restrictions imposed on
8 Plaintiff's speech are not narrowly or reasonably tailored to further such interests, because Defendant's
9 permanent ban also blocks out Plaintiff's inoffensive speech, journalism work, and prevents the
10 Plaintiff from posting any speech whatsoever on the forum, regardless of perceived offensiveness.
11 Given Twitter's almost monopolistic presence in the online forum market, Plaintiff has no alternative
12 affording a reasonable opportunity to reach his full-intended audience.

13 36. Twitter's discriminatory policies and application of those policies are not viewpoint
14 neutral, are unreasonable in time, place, and manner, and are unreasonable in relation to the nature,
15 purpose, and use of the forum. They impose an unreasonable prior restraint on Plaintiff's protected
16 political speech, motivated by impermissible discrimination against Plaintiff's identities and
17 viewpoints.

18 37. Defendant's wrongful actions were taken with oppression, fraud, malice and/or are
19 arbitrary and capricious, and as part of Defendant's normal course of business, effectuated through
20 Twitter's staff. And Defendant's actions were done with the intent to deprive Plaintiff and his followers
21 of their rights under the California Constitution.

22 38. As a direct and proximate result of Defendant's violations of clearly established law
23 regarding public fora, Plaintiff has suffered, and continues to suffer, immediate and irreparable injury
24 in fact, including lost income, reduced customer base, and damage to brand, reputation, and goodwill,
25 for which there exists no adequate remedy at law.

1 **SECOND CAUSE OF ACTION**

2 **(California Unruh Civil Rights Act – Civil Code §§ 51, *et seq.*)**

3 39. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as
4 though set forth in full herein.

5 40. Defendant hosts a business establishment under the Unruh Civil Rights Act, California
6 Civil Code §§ 51 *et seq.* Defendant grants the public unrestricted access to Twitter for commercial
7 reasons that are at the core of their business model and the source of virtually all of their revenue.

8 41. Despite its promises of neutrality and a diversity of viewpoints, Defendant engages in a
9 pattern and practice of intentional discrimination in the provision of its services, including
10 discriminating against and censoring Plaintiff’s speech based not on the content of the speech but on its
11 political identity and viewpoint. Through the acts complained of herein, Defendant intentionally
12 denied, and aided or incited in denying, Plaintiff full and equal accommodations, advantages,
13 privileges, and services by discriminating against Plaintiff for his political beliefs and permanently
14 banning any account associated with Plaintiff.

15 42. A substantial motivating reason for Defendant’s conduct is Defendant’s subjective
16 perception of Plaintiff’s political viewpoints, as well as those of others with whom Plaintiff has
17 associated. Defendant’s discrimination against Plaintiff is arbitrary, capricious, pretextual, and
18 discriminatory. It is also wholly without any legitimate, reasonable business interest, as Defendant has
19 admitted that Plaintiff did not violate its Twitter Rules, and Defendant’s relationship with Plaintiff was
20 mutually beneficial economically. Twitter is censoring and treating Plaintiff and its tweets differently
21 out of animus towards Plaintiff’s identity and political views.

22 43. Defendant’s wrongful actions were taken with oppression, fraud, and/or malice, as part
23 of Defendant’s normal course of business, effectuated through Twitter’s staff. Plaintiff has repeatedly
24 attempted to remedy the situation, and Defendant has repeatedly refused to restore Plaintiff’s accounts.
25 And not once has Defendant articulated any good faith reason for Plaintiff’s differential treatment.

26 44. As a direct and proximate result of Defendant’s unlawful discriminatory actions,
27 Plaintiff has suffered, and continues to suffer, immediate and irreparable injury in fact, including lost

1 income, reduced customer base, and damage to brand, reputation, and goodwill, for which there exists
2 no adequate remedy at law.

3 45. Defendant's violations of the Unruh Act further entitle Plaintiff to recover statutory
4 damages of up to three times the amount of actual damages in an amount to be proven at trial, or a
5 minimum of \$4,000 per violation.

6 **THIRD CAUSE OF ACTION**

7 **(Violations of Business & Professions Code §§ 17200, *et seq.*)**

8 46. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as
9 though set forth in full herein.

10 47. Defendant has violated California's Unfair Competition Law, Business and Professions
11 Code §§ 17200, *et seq.* (the "UCL") by committing acts of unfair competition as described above.

12 48. Defendant has committed unlawful acts through its intentional interference with
13 Plaintiff's existing contracts and prospective business relations. Banning Plaintiff's accounts will
14 interfere with his existing contracts and prospective business relations, in violation of California
15 common law.

16 49. Defendant's policies and practices, and its application of the same to Plaintiff, constitute
17 unlawful, unfair or fraudulent business acts or practices within the meaning of Business and
18 Professions Code § 17200. Defendant's policies, as well as its application, violate the policy and spirit
19 of the Unruh Act, the California Constitution, and prior court decisions. Those actions are likely to
20 mislead the public, and do mislead the public, about Twitter, Plaintiff, and Plaintiff's tweets and
21 businesses. Content creators, advertisers, and Twitter users/subscribers trust and rely on Defendant for
22 an open marketplace of ideas and expression, and trust that when accounts are banned it is done so
23 because an account truly violated the Twitter Rules.

24 50. Further, Plaintiff participates in the journalism business, with a focus on independent
25 citizen journalism. This makes services like those provided by Defendant crucial for gaining business
26 via exposure and word of mouth. This also puts Defendant in the unique position of being able to curate
27 which news providers, and which particular viewpoints, are consumed by its users. Defendant is

1 abusing its unique position in the journalism market to prevent particular viewpoints, or news providers
2 from reaching its users, and therefore preventing them from gaining the public exposure necessary for a
3 news provider to succeed. In Plaintiff’s case, Defendant is using its unique position to prevent a start-up
4 news outlet from gaining the readership necessary to compete with the so-called “legacy” news
5 providers, such as The New York Times or Washington Post.

6 51. Defendant’s actions are unreasonable and anticompetitive. Plaintiff’s relationship with
7 Defendant was one of mutual benefit, and Plaintiff did not violate Defendant’s Twitter Rules or commit
8 any other offense that would justify the banning of his accounts. Defendant’s actions are also
9 anticompetitive in that they have the effect of harming smaller start-up businesses, such as Plaintiff’s,
10 to the benefit of more established businesses.

11 52. By banning Plaintiff’s accounts, Defendant has significantly harmed one of the few
12 start-up providers of news and commentary with a conservative viewpoint, and has significantly
13 harmed one of, if not the only, business which currently allows individuals to crowd fund investigative
14 journalism. Plaintiff has suffered, and continues to suffer, immediate and irreparable injury in fact,
15 including lost income, reduced customer base, and damage to brand, reputation, and goodwill, for
16 which there exists no adequate remedy at law.

17 53. As a direct result of Defendant’s actions, competition in the market for journalism has
18 been significantly harmed. Customers have lost access to Plaintiff’s unique news and commentary, and
19 Gotnews and Wesearchr have been diminished as competitors, thus harming innovation in the
20 journalism market. Likewise, as a result of Defendant’s actions, established news outlets will gain
21 greater market power, allowing them to dictate terms and limit consumer options.

22 54. Defendant’s wrongful actions were taken with oppression, fraud, and/or malice.

23 55. Plaintiff seeks a preliminary and permanent injunction to prevent Defendant from
24 interfering with Plaintiff’s contracts and prospective business relationships, and from eliminating
25 Plaintiff as a competitor through its acts of unfair competition, including its unfair banning of
26 Plaintiff’s Twitter accounts.

1 **FOURTH CAUSE OF ACTION**

2 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

3 56. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as
4 though set forth in full herein.

5 57. Plaintiff and Defendant entered into written contracts in which Defendant agreed to
6 provide Twitter’s services to Plaintiff. Those contracts give Twitter vague, unfettered, and unilateral
7 discretion to remove, restrict, de-emphasize, or ban content as Defendant sees fit.

8 58. Implied in those contracts is the implied covenant of good faith and fair dealing. This is
9 particularly true because, in those contracts, Defendant assumed for itself unilateral and unfettered
10 discretionary control over virtually every aspect of its relationship with Plaintiff—control that
11 Defendant has exercised at its whim, repeatedly and without notice to Plaintiff and without an
12 opportunity for meaningful discussion or appeal. To the extent that those discretionary powers are
13 valid, Defendant is obligated to exercise them fairly and in good faith.

14 59. Plaintiff substantially complied with all of Twitter’s Rules and Terms of Service. As
15 admitted by Defendant, none of Plaintiffs’ tweets violated the letter or spirit of any term in Plaintiff’s
16 contracts with Defendant.

17 60. Defendant was bound by the implied covenant of good faith and fair dealing in its
18 agreements, terms, and policies, not to engage in any acts, conduct, or omissions that would impair or
19 diminish Plaintiff’s rights and benefits of the parties’ agreements. Pursuant to the terms of those
20 agreements, Plaintiff was supposed to have equal access to a wide audience to promote his messages,
21 and was in reliance on Defendant’s representations that Twitter would “amplify every voice” and be
22 “free to every voice” that chose Twitter as the platform on which to promote their businesses.
23 Defendant has, by the acts and omissions complained of herein, intentionally and tortiously breached
24 the implied covenant of good faith and fair dealing by unfairly interfering with Plaintiff’s rights to
25 receive the benefits of its contracts with Defendant.

26 61. The foregoing acts and omissions were engaged in by Defendant with the knowledge
27 that it was bound to act consistently with the covenant of good faith and fair dealing. Those acts and
28

1 omissions were not only failures to act fairly and in good faith, but they were acts of oppression, fraud,
2 and malice.

3 62. As a direct and proximate result of the aforementioned conduct of Defendant, Plaintiff
4 has suffered, and continues to suffer, immediate and irreparable injury in fact, including lost income,
5 reduced customer base, and damage to brand, reputation, and goodwill, for which there exists no
6 adequate remedy at law.

7 **FIFTH CAUSE OF ACTION**

8 **(Intentional Interference with Contractual Relations)**

9 63. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as
10 though set forth in full herein.

11 64. Plaintiff had contracts with those that contributed to and donated to his investigative
12 journalistic efforts.

13 65. Defendant knew about these contracts, and emails disclosed their intent to prevent
14 plaintiff from using Twitter to perform these contracts, after inducing Plaintiff to use Twitter as the
15 platform to perform these contracts, including fundraising for independent journalism that exposed
16 malfeasance and misdeeds of political patrons and bedfellows of Twitter owners.

17 66. Defendant's repeated banning of Plaintiff's accounts has prevented Plaintiff from
18 performing under their contracts, and has made Plaintiff's attempts to perform under their contracts
19 more expensive and more difficult.

20 67. Defendant knew of the importance of Plaintiff's Twitter accounts to his ability to
21 perform under his contracts and by banning Plaintiff's accounts Defendant intended to disrupt
22 Plaintiff's performance of his contracts.

23 68. Plaintiff was significantly harmed by Defendant's intentional interference with his
24 contractual relations.

25 69. Defendant's act of banning Plaintiff's accounts was a substantial factor in causing
26 Plaintiff's harm.

1 **SIXTH CAUSE OF ACTION**

2 **(Intentional Interference with Prospective Economic Advantage)**

3 70. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as
4 though set forth in full herein.

5 71. Plaintiff and over 55,000 followers of Gotnews and Wesearchr, and countless others
6 exposed to the content via re-tweet, were in an economic relationship that undoubtedly would have
7 resulted in an economic benefit to Plaintiff.

8 72. Defendant knew of Plaintiff's relationship with over 55,000 followers of Gotnews and
9 Wesearchr, and countless others exposed to the content via re-tweet and knew of Plaintiff's
10 relationships with the customers of Gotnews and Wesearchr.

11 73. Defendant repeatedly banned Plaintiff's accounts under false pretenses, knowing and
12 admitting that doing so was wrongful, in contravention of its express promises to Plaintiff.

13 74. Defendant knew that banning Plaintiff's accounts would disrupt Plaintiff's economic
14 relationships and intended to disrupt those relationships.

15 75. Plaintiff's economic relationships with over 55,000 followers of Gotnews and
16 Wesearchr, and countless others exposed to the content via re-tweet were significantly disrupted by
17 Defendant's act of banning Plaintiff's accounts.

18 76. Plaintiff has been significantly harmed as a result of Defendant's intentional interference
19 with his economic relationships.

20 77. Defendant's act of banning Plaintiff's accounts was the substantial factor in causing
21 Plaintiff's harm.

22 **SEVENTH CAUSE OF ACTION**

23 **(Promissory Estoppel)**

24 78. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as
25 though set forth in full herein.

26 79. Defendant represented to Plaintiff, and the public at large, that it would enforce its terms
27

1 of service with impartiality as to any social, political, or religious viewpoint. Defendant has repeatedly
2 assured its customers that their accounts would not be banned on the basis of a political disagreement
3 between Defendant’s management and its users.

4 80. In reliance on Defendant’s repeated promises that it would remain politically neutral,
5 Plaintiff invested significant time, energy, and money into growing his business on Defendant’s
6 platform.

7 81. Plaintiff’s reliance on Defendant’s promises and assurances was reasonable and
8 foreseeable. Defendant routinely holds itself out as a platform for its users to create and grow their
9 business by connecting with other users who have similar viewpoints, interests, or hobbies. In order to
10 use Defendant’s service, users must agree to the Twitter Rules that sets out rules regarding what actions
11 could cause Defendant to ban an account. Defendant knew that its users would rely on the rules set
12 forth in its terms of service.

13 82. Defendant’s decision to ban all of Plaintiff’s accounts has significantly damaged
14 Plaintiff’s business by causing it to lose customers, word of mouth, and all of the work put into to
15 building up Plaintiff’s presence on Twitter. Enforcing Defendant’s promise to not terminate access to
16 its service on the basis of political viewpoint will avoid injustice.

17
18 **EIGHTH CAUSE OF ACTION**

19 **(Consumers Legal Remedies Act, § 1750 et seq)**

20 83. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as
21 though set forth in full herein.

22 84. Under the Consumer Legal Remedies Act (CLRA), businesses are proscribed from
23 “unfair methods of competition and unfair or deceptive acts,” including “[i]nserting an
24 unconscionable provision in the contract.” Cal.Civ.Code § 1770(a)(19). Twitter’s Terms of
25 Service, which give it the right to suspend or ban an account “for any or no reason” and
26 “without liability to you,” are procedurally and substantively unconscionable.
27

1 85. The Terms were procedurally unconscionable because Plaintiff was presented with the
2 Terms of Service Agreement by drafting-party Twitter without any opportunity to negotiate, nor
3 any bargaining power vis-à-vis the Company. Defendant had extremely oppressive bargaining
4 power, because using the platform was essential for the Plaintiff's businesses. While there are
5 other social networks, Twitter is unique as the main platform for breaking news and political
6 discussion, giving Plaintiff no reasonable alternatives to choose from. The Terms also
7 presented a surprise to the Plaintiff. Until May 17, 2012, the Terms of Service implied that
8 Twitter would not suspend an account that did not violate the Twitter Rules. The Rules did not
9 prohibit so-called "hateful conduct" until December 28, 2015.¹³ By the company's own
10 admission, its views on free speech have undergone a dramatic shift.
11

12 86. Twitter's Terms of Service are substantively unconscionable. By Twitter's own
13 valuation of \$2.50-3.50 per follower, Plaintiff's accounts were each worth tens to hundreds of
14 thousands of dollars. Twitter's Terms allow it take away this valuable asset for any or no reason
15 without any compensation. Such terms are so one-sided and oppressive that they shock the
16 conscience.
17

18 **NINTH CAUSE OF ACTION**

19 **(Declaratory Relief)**

20 87. Plaintiff re-alleges and incorporates by reference each and every preceding paragraph as
21 though set forth in full herein.

22 88. An actual controversy exists between Plaintiff and Defendant as to whether Defendant's
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24

25 ¹³ Matt Burgess, *Twitter changes its rules to ban 'hateful conduct'*, Wired (Dec. 30, 2015),
26 <http://www.wired.co.uk/article/twitter-rules-hate-speech>.
27

1 policies and procedures, and their application thereof, violate the Unruh Civil Rights Act and the
2 California Constitution. The correct interpretation is that Defendant's policies and procedures, facially
3 and as applied, violate the Unruh Act and violate Plaintiff's speech and association rights under the
4 California Constitution.

5 89. Unless the court issues an appropriate declaration of rights, the parties will not know
6 whether Defendant's policies and procedures, and Defendant's application of its policies and
7 procedures, comply with the law, including the California Constitution, and there will continue to be
8 disputes and controversy surrounding Defendant's policies and procedures and application thereof.

9
10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff respectfully prays for judgment as follows:

12 A. For a declaratory judgment that Defendant has violated and continues to violate
13 Plaintiff's free speech rights, both facially and as applied, under Article I, section 2 of the California
14 Constitution;

15 B. For an injunction requiring Defendant to (i) cease and desist from banning Plaintiff's
16 Twitter accounts (ii) from censoring or otherwise restricting speech based on their unfettered discretion
17 or the use or application of arbitrary, capricious, vague, unspecified, or subjective criteria guidelines;

18 C. For compensatory, special, and statutory damages in an amount to be proven at trial,
19 including statutory damages pursuant to, *inter alia*, Civil Code §§ 51, 51.5, 52, and Civil Procedure
20 Code § 1021.5;

21 D. A civil penalty of \$2,500 for each violation pursuant to Business and Professions Code
22 §§ 17200, 17206, and 17536;

23 E. For punitive damages and exemplary damages in an amount to be proved at trial;

24 F. For restitution of financial losses or harm caused by Defendant's conduct and in an
25 amount to be proven at trial;

26 G. For prejudgment and post-judgment interest;


27 H. For costs of suit incurred herein;

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- I. For reasonable attorney's fees; and
- J. For such other and further relief as this Court deems just and proper.

DATED: January 8, 2018

Respectfully submitted,
BARNES LAW



Robert E. Barnes, Esq.
Counsel for Plaintiff Charles Johnson