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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
**COUNTY OF FRESNO**

CHARLES JOHNSON

Plaintiff,

v.

TWITTER, INC.,

Defendant.

) Case No.: \_\_\_\_\_

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## INTRODUCTION

Twitter is today's public square; it is, like the company towns of old, a privately-owned public square. And therein lies the danger.

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

Twitter induced the public to partake in its "free speech forum," defining and describing itself as the "free speech wing of the free speech party." In order to facilitate this freedom of expression, Congress authorized immunity for ISP's like Twitter to exclude only a circumscribed set of speech: illicit speech such as obscenity, offensive speech, harassment, and even then, Twitter could only enjoy the immunity for such speech exclusions as long as, and if, it acted voluntarily and, most importantly, in "good faith." Twitter contractually promised, equitably assured, and publicly advertised its forum for free speech as Twitter's entire profitability depended upon mass usage of its site as a means of public expression and participation in order to induce advertising dollars and gather marketable information about its constituent users it could then sell to potential marketers and advertisers.

In reliance thereupon, many people, like the plaintiff, depended upon, relied upon, and trusted Twitter, promoting themselves and Twitter through their use of it, bringing millions of people to Twitter through their public expression, and building up commercially marketable equity in their twitter accounts (as courts recognize in everything from business disputes to familial property law). Then, at a whim, Twitter pulled the rug out from underneath people like the plaintiff, suddenly, and often without

1 any notice, suspending their account. Plaintiff experienced this annually, with the only explanation  
2 given for the repeated suspensions and deletions of his Twitter accounts being often unidentified  
3 “objectionable” conduct. Despite multiple and myriad efforts to rebuild his Twitter account, each time  
4 as his efforts built success, Twitter summarily suspended plaintiff’s accounts. Then, in December of  
5 2017, plaintiff discovered the truth from internal Twitter emails leaked to BuzzFeed: the plaintiff had  
6 been secretly, permanently banned from Twitter, any business associated with him had been secretly,  
7 permanently banned from Twitter, and this ban was not based on any violation of Twitter’s terms.  
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9 As internal emails disclosed, the ban was permanent, not temporary; admittedly not due to any  
10 “direct” violation of any Twitter rule; but was just a “policy” decision, e.g. a political hit job on a  
11 politically disfavored individual who had outed the bad conduct of a close friend of the owner of  
12 Twitter. In another twist of irony, the original source of this ban concerned the plaintiff exposing the  
13 criminal-assisting, riot-inducing, violence-welcoming conduct of a political fraud, yet it was the  
14 plaintiff who was publicly accused in its stead, in order to cover for Twitter’s intention to use the  
15 exclusion of the plaintiff from Twitter and the destruction of the equity he built for his businesses, as a  
16 model to target and discriminate against other political adversaries of the Twitter owner, and their  
17 political bedfellows.  
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19 This case will decide more than the fate of one man and one of the modern monopolies of social  
20 media. This case will decide whether Twitter can, like the monopolists before them, lie with impunity  
21 and discriminate with immunity? Or will our foundational freedoms once again protect the public from  
22 the crushing power of these modern age monopolists?  
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## 24 PRELIMINARY STATEMENT

- 25
- 26 1. Founded in 2006, Twitter now operates one of the world’s largest online communication  
27 forums available to the general public, with 330 million monthly active users in 2017. Twitter  
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1 works by allowing its users in California, the United States, and the world to share speech,  
2 including photo and video speech, in real time through short 280 character messages called  
3 “tweets”.<sup>1</sup> Twitter describes itself as allowing its users to discover and share what is happening  
4 right now, and has grown to become one of the primary means for the distribution of news, and  
5 for Californians and people across the United States to interact with celebrities and their elected  
6 officials. Currently, over 500 current and former members of Congress maintain a Twitter  
7 account as a means of communicating with their constituents and the public at large. Many  
8 members of Congress do so by hosting a “town hall” event whereby users are able to have their  
9 questions answered by their congressional representative via Twitter in real time. Both former  
10 President Barack Obama, and current President Donald Trump have used Twitter extensively to  
11 communicate with the American public, using both personal accounts and an official White  
12 House account. On the day of the 2016 U.S. presidential election, Twitter was one of the largest  
13 sources of breaking news, with 40 million election-related tweets sent by 10 p.m. EST.  
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- 16 2. Twitter holds itself out to the public as a forum intended to defend and protect free  
17 speech where members of the public may speak, express, and exchange their ideas. Twitter  
18 plays the role of a public forum in that based on the number of re-tweets (sharing of one user’s  
19 tweet by another) and number of subscribers (users who have subscribed to see one’s tweets on  
20 their homepage) new ideas, political causes, and celebrities can emerge. Indeed, political  
21 protests across the world have been sparked or fueled on Twitter, including the Occupy  
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25 <sup>1</sup> At the time Plaintiffs were active on Twitter, tweets were limited to a maximum length of 140  
26 characters.  
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1 movement in the United States, the 2011 revolution in Egypt, and the 2011 Wisconsin labor  
2 protests, just to name a few.

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

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

22 5. Plaintiff Chuck Johnson is an award winning independent journalist who has written for,  
23 among others, The Wall Street Journal, The Los Angeles Times, and National Review Online.  
24 Plaintiff specializes in investigative journalism, creating donor-funded websites that “transform  
25 journalism by empowering everyday people, experts and sources to break news and get  
26 rewarded for their effort.” Plaintiff’s websites include Gotnews.com (“Gotnews”), a news outlet  
27 that publishes his work and that of other independent journalists, and Weseachr.com  
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1 (“Wesearchr”), a site that allows users with newsworthy questions to raise crowd-funded  
2 “bounties” that encourage independent researchers to investigate and answer the user asked  
3 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  
6 date and when his account was deactivated by Twitter, Johnson worked to build his  
7 investigative journalism brand on Twitter, greatly increasing his followers, and in turn  
8 benefitting Twitter by bringing users to its site. Similarly, Plaintiff created both @wesearchr  
9 and @gotnewsdotcom for similar reasons and both have since been deactivated. Plaintiffs’  
10 relationship with Twitter was mutually beneficial –Plaintiffs used Twitter to gain new  
11 customers, spread their work, and increase traffic flow to Gotnews and Wesearchr, while  
12 Twitter increased its advertising revenue and user base as a result of Johnson’s account and the  
13 labor put therein. Throughout the time that he operated his Twitter accounts, Chuck Johnson  
14 adhered to the Twitter Rules –to the extent that they could reasonably interpreted.

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

19 8. Twitter has no valid business reason for terminating Plaintiffs’ access, and Plaintiffs  
20 have not breached any of the Twitter Rules. Based on actions taken by Twitter against others  
21 with similar viewpoints to Plaintiffs, Plaintiffs now believe their accounts were banned for  
22 posting ideas from conservative and independent viewpoints.

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

10. Without judicial intervention, Plaintiffs will lose access to their client base on Twitter, the traffic generated to Gotnews and Weseachr, and their business will be devastated. Ending Plaintiffs' business is an irreparable injury that cannot be compensated by an ordinary damages award.

11. Accordingly, Plaintiffs seek a preliminary and a permanent injunction to enjoin Twitter from unfairly and unreasonably terminating Plaintiffs' access, and restricting Plaintiffs' speech in violation of the California Constitution.

### **PARTIES**

12. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth in full herein.

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

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

### **JURISDICTION AND VENUE**

15. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth in full herein.

16. Jurisdiction and venue are proper in this judicial district. Venue is proper pursuant to California Code of Civil Procedure ("CCP") Sections 395, subdivision (a), and 395.5. The contract was formed in, and the breach and injury occurred in, the County of Fresno, State of California. Defendants are within the jurisdiction of this Court for purposes of service of process.

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20. On or about December 19, 2017, when BuzzFeed News published internal emails between Twitter's staff, Plaintiff Chuck Johnson was finally provided proof that his account had in fact been permanently banned, and not for any actual rule violation. Amongst the emails published by BuzzFeed, was one from former Twitter Operations VP, Tina Bhatnagar, stating "We perma suspended Chuck Johnson even though it wasn't direct violent threats. It was just a call that the policy team made. He is finding loopholes in policy which is almost worse than the people who blatantly have violations." In another email published by BuzzFeed, former Twitter CEO, Dick Costolo, confirms that Twitter's decision to permanently ban Johnson was not based on a perceived rule violation, but bias against Johnson: "To be very clear, I don't want to find

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1 out we unsuspended this Chuck Johnson troll later on,” “That account is permanently suspended  
2 and nobody for no reason may reactivate it. Period. The press is reporting it as temporarily  
3 suspended. It is not temporarily suspended it is permanently suspended. I'm not sure why they're  
4 mistakenly reporting it as temporarily suspended but that's not the case here...don't let anybody  
5 unsuspend it.”<sup>3</sup>

6 21. Plaintiffs’ accounts resulted from substantial investment of time and effort, had built  
7 more than 29,000 followers, and were a key chain in Plaintiffs’ information distribution  
8 business. Since being banned from Twitter, Plaintiff Chuck Johnson’s businesses have been cut  
9 off from tens of thousands of fans and lost the potential to gain hundreds of thousands more.

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

17 23. Twitter’s bias against those who espouse conservative political ideas is well known.<sup>4</sup>  
18 Twitter has repeatedly banned conservative users under the guise of stopping harassment, but  
19 fails do the same when the harassers have a liberal viewpoint.<sup>5</sup> As such, and because Twitter has  
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22 <sup>3</sup> <https://www.buzzfeed.com/charliewarzel/internal-emails-show-twitter-struggled-to-interpret-its-own>

23 <sup>4</sup> <http://thehill.com/blogs/pundits-blog/media/303295-how-facebook-twitter-are-systematically-silencing-conservative>

24 <sup>5</sup> <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-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/>;

1 admitted that Plaintiffs did not violate their Twitter Rules, Plaintiffs have reason to and do  
2 believe that their accounts were banned as a result of Twitter's bias against those who promote  
3 conservative political views.

4 **FIRST CAUSE OF ACTION**

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

6 26. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as  
7 though set forth in full herein.

8  
9 27. Article I, section 2 of the California Constitution protects the liberty of speech and  
10 association, especially in public, quasi-public, and limited public spaces.

11 28. In Twitter, Defendant created and maintains a public forum or its functional equivalent  
12 for the public to express and exchange views and ideas, or in the alternative at least a quasi- or  
13 limited public forum. Defendant further acts as a state actor because Defendant performs an  
14 exclusively and traditionally public function by regulating free speech within a public forum.  
15 Accordingly, speech cannot be arbitrarily, unreasonably, or discriminatorily excluded,  
16 regulated, or restricted on the basis of viewpoint or the identity of the speaker.

17  
18 29. Plaintiffs' Twitter accounts promoted independent journalism, typically from a  
19 politically conservative point of view, and constituted expressive speech and activity protected  
20 by Article I, section 2 of the California constitution.

21 30. Defendant has restricted Plaintiffs' speech and expressive conduct based on subjective,  
22 vague, and overbroad criteria that gives Defendant unfettered and unbridled discretion to censor  
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24  
25 [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/)  
26 [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 speech for any or no reason, no matter how arbitrary or capricious. Those criteria further fail to  
2 convey a sufficiently definite warning to Plaintiffs and the public as to what is prohibited or  
3 restricted. Defendant's adoption and application of those criteria on its face violates Plaintiffs'  
4 right to free speech as guaranteed by Article I, section 2 of the California Constitution. Further,  
5 that invidious potential has been borne out and evidenced by Defendant's application of those  
6 policies and procedures to censor Plaintiffs.

7  
8 31. Defendant also applies their censorship criteria, including the Twitter Rules, as a pretext  
9 to censor and restrict Plaintiffs' speech, based not on the content of the speech but because of  
10 Plaintiffs' identity and political viewpoints. Defendant has repeatedly banned accounts held by  
11 those who promote conservative beliefs under the guise of enforcing its Twitter Rules, while  
12 repeatedly ignoring the same "violations" when committed by accounts that promote liberal  
13 viewpoints. Defendant's application of criteria and corresponding restraints on Plaintiffs'  
14 speech is arbitrary and capricious and/or is based on political, religious, or other animus towards  
15 the identity and viewpoints of the speaker, not the actual content of the speech.  
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17 32. Further, Defendant's actions also violate Plaintiffs' right to free association and  
18 assembly by blocking Plaintiffs' fans and subscribers from accessing Plaintiffs' tweets, and thus  
19 preventing Plaintiffs' from engaging in a dialogue with their Twitter based fans and subscribers.

20 33. No compelling, significant, or legitimate reason justifies Defendant's actions. Even if  
21 such interests did exist to justify Defendant's Twitter Rules generally, the restrictions imposed  
22 on Plaintiffs' speech are not narrowly or reasonably tailored to further such interests, because  
23 Defendant's permanent ban also blocks out Plaintiffs' inoffensive speech, journalism work, and  
24 prevents the Plaintiffs' from posting any speech whatsoever on the forum, regardless of  
25 perceived offensiveness. Given Twitter's almost monopolistic presence in the online forum  
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1 market, Plaintiffs have no alternative affording them a reasonable opportunity to reach their full  
2 intended audience.

3 34. Twitter's discriminatory policies and application of those policies are not viewpoint  
4 neutral, are unreasonable in time, place, and manner, and are unreasonable in relation to the  
5 nature, purpose, and use of the forum. They impose an unreasonable prior restraint on Plaintiffs'  
6 protected political speech, motivated by impermissible discrimination against Plaintiffs'  
7 identities and viewpoints.

8 35. Defendant's wrongful actions were taken with oppression, fraud, malice and/or are  
9 arbitrary and capricious, and as part of Defendant's normal course of business, effectuated  
10 through both Twitter's algorithms as well as human agents. And Defendant's actions were done  
11 with the intent to deprive Plaintiffs and their viewers of their rights under the California  
12 constitution.

13 36. As a direct and proximate result of Defendant's violations of clearly established law  
14 regarding public fora, Plaintiffs have suffered, and continue to suffer, immediate and irreparable  
15 injury in fact, including lost income, reduced customer base, and damage to brand, reputation,  
16 and goodwill, for which there exists no adequate remedy at law.

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19 **SECOND CAUSE OF ACTION**

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

21 37. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as  
22 though set forth in full herein.

23 38. Defendant hosts a business establishment under the Unruh Civil Rights Act, California  
24 Civil Code § 51 et seq. Defendant grants the public unrestricted access to Twitter for  
25 commercial reasons that are at the core of their business model and the source of virtually all of  
26 their revenue.  
27

1 39. Despite its promises of neutrality and a diversity of viewpoints, Defendant engages in a  
2 pattern and practice of intentional discrimination in the provision of its services, including  
3 discriminating against and censoring Plaintiffs' speech based not on the content of speech but  
4 on its political identity and viewpoint. Through the acts complained of herein, Defendant  
5 intentionally denied, and aided or incited in denying, Plaintiffs full and equal accommodations,  
6 advantages, privileges, and services by discriminating against Plaintiffs for their political  
7 beliefs, and permanently banning any account associated with Plaintiffs.  
8

9 40. A substantial motivating reason for Defendant's conduct is Defendant's subjective  
10 perception of Plaintiffs' political viewpoints as well as those of others with whom Plaintiffs  
11 have associated. Defendant's discrimination against Plaintiffs is arbitrary, capricious,  
12 pretextual, and discriminatory. It is also wholly without any legitimate, reasonable business  
13 interest, as Defendant has admitted that Plaintiffs did not violate Defendant's Twitter Rules, and  
14 Defendant's relationship with Plaintiffs was mutually beneficial economically. Twitter is  
15 censoring and treating Plaintiffs and its tweets differently out of animus towards Plaintiffs'  
16 identities and views.  
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18 41. Defendant's wrongful actions were taken with oppression, fraud and/or malice, as part  
19 of Defendant's normal course of business, effectuated through both Twitter's algorithms as well  
20 as human agents. Plaintiffs' have repeatedly attempted to remedy the situation, and Defendant  
21 has repeatedly refused to unban Plaintiffs' accounts. And not once has Defendant articulated  
22 any good faith reason for Plaintiffs' differential treatment.  
23

24 42. As a direct and proximate result of Defendant's unlawful discriminatory actions,  
25 Plaintiffs have suffered, and continue to suffer, immediate and irreparable injury in fact,  
26 including lost income, reduced customer base, and damage to brand, reputation, and goodwill,  
27 for which there exists no adequate remedy at law.  
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1 43. Defendant's violations of the Unruh Act further entitles Plaintiffs to recover statutory  
2 damages of up to three times the amount of actual damages in an amount to be proven at trial, or  
3 a minimum of \$4,000 per violation.  
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5 **THIRD CAUSE OF ACTION**

6 **(Violations of Business & Professions Code § 17200)**

7 44. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as  
8 though set forth in full herein.

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

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

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

25 48. Further, Plaintiffs participate in the journalism business, with a focus on independent  
26 citizen journalism. This makes services like those provided by Defendant crucial for gaining  
27 business via exposure and word of mouth. This also puts Defendant in the unique position of  
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being able to curate which news providers, and which particular viewpoints, and consumed by its users. Defendant is abusing its unique position in the journalism market to prevent particular viewpoints, or news providers from reaching its users, and therefore preventing them from gaining the public exposure necessary for a news provider to succeed. In Plaintiffs' case, Defendant is using its unique position to prevent a start-up news outlet from gaining the readership necessary to compete with the so-called "legacy" news providers, such as The New York Times or Washington Post.

49. Defendant's actions are unreasonable and anticompetitive. Plaintiffs' relationship with Defendant was one of mutual benefit, and Plaintiffs' did not violate Defendant's Twitter Rules nor commit any other offense that would justify the banning of their accounts. Defendant's actions are also anticompetitive in that they have the effect of harming smaller start-up businesses such as Plaintiffs', to the benefit of more established businesses.

50. By banning Plaintiffs' accounts, Defendant has significantly harmed one of the few start-up providers of news and commentary with a conservative viewpoint, and has significantly harmed one of, if not the only, business which currently allows individuals to crowd fund investigative journalism. Plaintiffs have suffered, and continue to suffer, immediate and irreparable injury in fact, including lost income, reduced customer base, and damage to brand, reputation, and goodwill, for which there exists no adequate remedy at law.

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

52. Defendant's wrongful actions were taken with oppression, fraud and/or malice.

53. Plaintiffs seek a preliminary and permanent injunction to prevent Defendant from interfering with Plaintiffs' contracts and prospective business relationships, and from

eliminating Plaintiffs as a competitor through its acts of unfair competition, including its unfair banning of Plaintiffs' Twitter accounts.

#### **FOURTH CAUSE OF ACTION**

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

54. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth in full herein.

55. Plaintiffs and Defendant entered into written contracts in which Defendant agreed to provide Twitter's services to Plaintiffs. Those contracts give Twitter vague, unfettered, and unilateral discretion to remove, restrict, de-emphasize, or ban content as Defendant sees fit.

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

57. Plaintiffs did all or substantially all of the significant things required of them under their agreements with Defendant. As admitted by Defendant, none of Plaintiffs' tweets violated the letter or spirit of any term in Plaintiffs' contracts with Defendant.

58. Defendant was bound by the implied covenant of good faith and fair dealing in its agreements, terms, and policies, not to engage in any acts, conduct, or omissions that would impair or diminish Plaintiffs' rights and benefits of the parties' agreements. Pursuant to the terms of those agreements, Plaintiffs were supposed to have equal access to a wide audience to promote their messages, and it was in reliance on Defendant's representations that Twitter would "amplify every voice" and be "free to every voice" that they chose Twitter as the platform on which to promote their businesses. Defendant has, by the acts and omissions complained of herein, intentionally and tortiously breached the implied covenant of good faith and fair dealing by unfairly interfering with Plaintiffs' rights to receive the benefits of its

contracts with Defendant.

59. The foregoing acts and omissions were engaged in by Defendant with the knowledge that it was bound to act consistently with the covenant of good faith and fair dealing. Those acts and omissions were not only failures to act fairly and in good faith, but they were acts of oppression, fraud, and malice.

60. As a direct and proximate result of the aforementioned conduct of Defendant, Plaintiffs have suffered, and continue to suffer, immediate and irreparable injury in fact, including lost income, reduced customer base, and damage to brand, reputation, and goodwill, for which there exists no adequate remedy at law.

### **FIFTH CAUSE OF ACTION**

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

61. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth in full herein.

62. Plaintiffs had contracts with those that contributed to and donated to his investigative journalistic efforts.

63. Defendant knew about these contracts, and emails disclosed their intent to prevent plaintiff from using twitter to perform these contracts, after inducing plaintiff to use Twitter as the platform to perform these contracts, including fundraise for independent journalism.

64. Defendant's repeated banning of Plaintiffs' accounts has prevented Plaintiffs from performing under their contracts with, and has made Plaintiffs' attempts to perform under their contracts more expensive and difficult.

65. Defendant knew of the importance of Plaintiffs' Twitter accounts to their ability to perform under their contracts and by banning Plaintiffs' accounts Defendant intended to disrupt Plaintiffs' performance of their contracts.

66. Plaintiffs were significantly harmed by Defendant's intentional interference with their contractual relations.

67. Defendant's act of banning Plaintiffs' accounts was a substantial factor in causing

1 Plaintiffs' harm.

2 **SIXTH CAUSE OF ACTION**

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

4 68. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as  
5 though set forth in full herein.

6 69. Plaintiffs and over 55,000 followers of Gotnews and Wesearchr, and countless others  
7 exposed to the content via retweet, were in an economic relationship that undoubtedly would  
8 have resulted in an economic benefit to Plaintiffs.

9 70. Defendant knew of Plaintiffs relationship with over 55,000 followers of Gotnews and  
10 Wesearchr, and countless others exposed to the content via retweet and knew of Plaintiffs'  
11 relationships with the customers of Gotnews and Wesearchr.

12 71. Defendant repeatedly banned Plaintiffs accounts, knowing and admitting that doing so  
13 was wrongful.

14 72. Defendant knew that banning Plaintiffs' accounts would disrupt Plaintiffs' economic  
15 relationships and intended to disrupt those relationships.

16 73. Plaintiffs' economic relationships with over 55,000 followers of Gotnews and  
17 Wesearchr, and countless others exposed to the content via retweet were disrupted.

18 74. Plaintiffs' have been harmed as a result of Defendants' intentional interference with  
19 their economic relationships.

20 75. Defendants' act of banning Plaintiffs' accounts was a substantial factor in causing  
21 Plaintiffs' harm.

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24 **SEVENTH CAUSE OF ACTION**

25 **(Promissory Estoppel)**

26 76. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as  
27 though set forth in full herein.

1 77. Defendant represented to Plaintiffs and the public at large that it would enforce its terms  
2 of service with impartiality as to any social, political, or religious viewpoint. Defendants have  
3 repeatedly assured its customers that their accounts would not be banned on the basis of a  
4 political disagreement between Defendant's management and its users.

5 78. In reliance on Defendant's repeated promises that it would remain politically neutral,  
6 Plaintiffs' invested significant time, energy, and money into growing their business on  
7 Defendant's platform.

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

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

18 **EIGHTH CAUSE OF ACTION**

19 **(Declaratory Relief)**

20 81. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as  
21 though set forth in full herein.

22 82. An actual controversy exists between Plaintiffs and Defendant as to whether  
23 Defendant's policies and procedures, and their application thereof, violate the Unruh Civil  
24 Rights Act and the California Constitution. The correct interpretation is that Defendant's  
25 policies and procedures, facially and as applied, violate the Unruh Act and violate Plaintiff's  
26 speech and association rights under the California Constitution.

27 83. Unless the court issues an appropriate declaration of rights, the parties will not know  
28

whether Defendant's policies and procedures, and Defendant's application of its policies and procedures, comply with the law, including the federal and state constitutions, and there will continue to be disputes and controversy surrounding Defendant's policies and procedures and application thereof.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully pray for judgment as follows:

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

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

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

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

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

F. For restitution of financial losses or harm caused by Defendants conduct and in an amount to be proven at trial;

G. For prejudgment and post-judgment interest;

H. For costs of suit incurred herein;

I. For reasonable attorney's fees; and

J. For such other and further relief as this Court deems just and proper.

1 DATED: January 8, 2018

2 Respectfully submitted,  
3 BARNES LAW

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6 Robert E. Barnes, Esq.  
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