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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

JARED TAYLOR, an individual; NEW CENTURY FOUNDATION, a Kentucky not-for-profit trust, on behalf of themselves, those similarly situated, and the general public,

Plaintiffs,

vs.

TWITTER, INC., a California corporation

Defendant.

No. CGC-18-564460

FIRST AMENDED COMPLAINT

(1) Violation of California Constitution
(2) Violation of Unruh Civil Rights Act
(3) Violation of Unfair Competition Law

Plaintiffs, Jared Taylor and New Century Foundation ("Plaintiffs"), on behalf of themselves, others similarly situated, and the general public, hereby file this Complaint for Violation of Article I, sections 2 and 3 of the California Constitution, Violation of the Unruh Civil Rights Act (Civ. Code § 51 et seq.), and Violation of the Unfair Competition Law (Bus. & Prof. Code § 17200 et seq.), against Defendant, Twitter, Inc. ("Twitter"), and would show as follows:

INTRODUCTION

1. Twitter once proudly proclaimed that it was "the free speech wing of the free speech party." Under this banner, Twitter transformed itself into an unprecedented public forum for national and global communication. Its success grew as its user-base grew, and this promise of freedom of expression was what attracted a critical mass of users to the now-censorious platform.

This lawsuit involves Twitter's attempt to impose a regime of viewpoint-based censorship on this forum. Twitter's attempt to control speech and debate represents a dangerous break with our cherished constitutional heritage of allowing even unpopular and controversial speaker access to the public square. It is directly at odds with Article I, § 2 of the California Constitution, which guarantees that "every person may freely speak, write and publish his or her sentiments on all subjects."

2. On its "Values" page, Twitter states: "We believe in free expression and believe every voice has the power to impact the world." (Exh. A). Twitter states that its mission is to "[g]ive everyone the power to create and share ideas instantly, without barriers." (Exh. B). However, in defiance of California law, as well as its own founding principles and terms of service, Twitter has decided that it will not allow Mr. Taylor, his publication, American Renaissance, and hundreds of other similarly-situated users to respectfully share their views on its open platform. Mr. Taylor's Twitter account, the Twitter account of American Renaissance, and the accounts of hundreds of other "right wing" users were permanently suspended by Twitter on December 18, 2017 based solely on their viewpoints and perceived political affiliations.

3. Twitter has not banned Plaintiffs or other similarly-situated users because they have engaged in disrespectful, harassing or abusive behavior. On the contrary, during their over six years on the platform, Mr. Taylor and American Renaissance have treated other users with the utmost respect and courtesy, and Twitter has never alleged otherwise. Indeed, Mr. Taylor had used his Twitter accounts to caution against the use of Twitter to harass other users.

4. Thus, this lawsuit does not implicate Twitter's right to regulate its public forum to prevent legitimate instances of obscenity, harassment, threats, and abuse, so long as these rules are written and enforced in a viewpoint-neutral manner. Instead, it raises the issue of whether Twitter can create an online public forum, and then once the public forum becomes near ubiquitous, arbitrarily and discriminatorily ban users from its platform due to Twitter's disagreement with a speaker's viewpoint, political beliefs, and perceived political affiliations. The answer compelled by the California Constitution and the Unruh Act is clear: it cannot.

5. In unilaterally removing Mr. Taylor, American Renaissance and hundreds of similar users from its open, public platform Twitter seeks to censor these users solely based on their viewpoints and perceived affiliations, and to chill the speech of every one of its hundreds of millions of users. Giving Twitter the power to ban speakers due to the controversial nature of their speech and affiliations would nullify the guarantee of Article I, sections 2 and 3 of the California Constitution that "every person may freely speak, write and publish his or her sentiments on all subjects." In the words of the late Supreme Court justice Oliver Wendell Holmes, Jr., "if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate." *United States v. Schwimmer* (1929) 279 U.S. 644, 654-655 [49 S. Ct. 448] (dis. opn. of Holmes, J.). The California Constitution embodies these same principles.

6. Twitter banned the accounts of Mr. Taylor, American Renaissance and hundreds of similarly-situated users as part of a new regime of viewpoint-based censorship that was intended to chill the speech and debate of the public at large. On December 18, 2017, Twitter enacted a new, overbroad policy that supposedly targeted "Violent Extremist Groups." That same day, Twitter banned hundreds of "right wing" accounts (including those of Plaintiffs) pursuant to this policy that had not actually done anything to violate it. The only thing the accounts that Twitter banned appear to have had in common is a conservative political outlook. Twitter has enacted and enforced this new policy in a transparent effort to silence those who would express conservative viewpoints on its platform.

7. The loss of their accounts is a crippling blow to Plaintiffs and the hundreds, if not thousands, of other users whose accounts have been banned since Twitter embarked on its campaign of seeking to censor conservatives who use its open platform. There is no public forum comparable to Twitter that would allow Mr. Taylor, American Renaissance, and other similarly-situated users to express their views, petition their representatives, and participate in public debate. Access to Twitter's open public forum is nothing short of essential to participate as citizens in public affairs in today's America.

8. Accordingly, Plaintiffs, on behalf of themselves, similarly situated users, and the general public, seek an injunction to prevent Twitter from banning users based on its viewpoint discriminatory and facially overbroad "Violent Extremist Group" policy, to restore accounts of those who have been banned based on this policy, and to enjoin Twitter from engaging in censorship of speakers based on their political beliefs and affiliations in the future.

JURISDICTION AND VENUE

9. Twitter is headquartered in San Francisco County, regularly does business in San Francisco County and, upon information and belief, committed the acts complained of in San Francisco County. Accordingly, jurisdiction and venue are proper in San Francisco County pursuant to Code of Civil Procedure sections 395, subdivision (a), and 395.5. (See Exhs. B and F). In addition, Twitter's Terms of Service specify San Francisco County, CA as the proper venue for all actions against Twitter. (See Exh. G).

10. Because Twitter has engaged in ongoing business activities in San Francisco County and directed to San Francisco County, and has committed tortious acts within this district, this Court has personal jurisdiction over Twitter.

THE PARTIES

11. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth fully herein.

12. Plaintiff Jared Taylor is, and at all relevant times was, a natural person residing in the Commonwealth of Virginia. In 1990, Mr. Taylor started the monthly publication, *American Renaissance*, which was produced continuously until January 2012, when all content was shifted to the Internet at www.AmRen.com.

13. Plaintiff New Century Foundation was founded by Mr. Taylor in 1994. It is a 501(c)(3) tax-exempt, educational institution which conducts all the activities of American Renaissance. New Century's purpose is to "disseminate facts about race and race relations so that policies and public awareness can be founded as much as possible upon realistic assessments rather than intuition or ideology. Racial harmony, reduction of violence, elimination of prejudice, and mutual understanding

between the races can be achieved only through better knowledge of all aspects—historical, cultural, biological, sociological—of the role race plays in the lives of Americans." It also seeks to "study the effect that immigration is likely to have on the changing demographic character of the nation. The consequences of a more diverse population are little understood, and the institute will attempt to throw light on this question." (See Exh. E). Since 1994, American Renaissance has put on 15 conferences at which academics, politicians, clergy, and activists have discussed these questions.

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.

GENERAL ALLEGATIONS

I. Twitter is an Open Public Forum Dedicated Entirely to Serving as a Platform for the Speech of the General Public

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

16. Twitter is the world's largest microblogging site, with an average of 330 million active users per month from all over the globe. (Exh. S). Its self-proclaimed mission is to "[g]ive everyone the power to create and share ideas instantly, without barriers." (Exh. B). On its "Values" page, Twitter states: "We believe in free expression and believe every voice has the power to impact the world." (Exh. A). Twitter describes itself as "the live public square, the public space - a forum where conversations happen." (Exh. H). Twitter's CEO, Jack Dorsey, has stated, "Twitter is a communication utility." (Exh. I). It allows users who have established accounts to post short messages, called Tweets, as well as photos or short videos. Anyone can join and set up an account on Twitter at any time.

17. Twitter is the platform in which important political debates take place in the modern world. The U.S. Supreme Court has described social media sites such as Twitter as the "modern public square." *Packingham v. North Carolina* (2017) 582 U.S. __ [137 S. Ct. 1730, 1737]. It is used by politicians, public intellectuals, and ordinary citizens the world over, expressing every conceivable

viewpoint known to man. Unique among social media sites, Twitter allows ordinary citizens to interact directly with famous and prominent individuals in a wide variety of different fields. It has become an important communications channel for governments and heads of state. As the U.S. Supreme Court noted in *Packingham*, "[O]n Twitter, users can petition their elected representatives and otherwise engage with them in a direct manner. Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this purpose. In short, social media users employ these websites to engage in a wide array of protected First Amendment activity on topics as diverse as human thought." 137 S. Ct. at pp. 1735–36 (internal citations and quotations omitted).[1] The Court in *Packingham* went on to state, in regard to social media sites like Twitter: "These websites can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard. They allow a person with an Internet connection to 'become a town crier with a voice that resonates farther than it could from any soapbox.'" *Id*. at p. 1737 (citation omitted) (quoting *Reno v. American Civil Liberties Union* (1997) 521 U. S. 844, 870 [117 S.Ct. 2329]).

18. Access to Twitter is essential for meaningful participation in modern-day American democracy. In a March 2016 article in *The Atlantic*, Adam Sharp, Twitter's head of news, government and public affairs, stated: "Twitter's impact in politics and political movements became very clear very early on," noting that Twitter serves as "as a platform to communicate and to organize effectively without a lot of the costs historically associated with that." (Exh. R). As the article notes, Twitter has been essential to the rise of every major American political movement it was founded: the Tea Party, Occupy Wall Street, Black Lives Matter, and the presidential candidacies of Barack Obama, Ted Cruz and Donald Trump. *Id*. Twitter has created the unprecedented level of political engagement of the last decade because it has "shift[ed] much of the power once hoarded by political establishments back into the hands—or voices—of people." *Id*. By 2016,

> Twitter's early promise as a political tool has become ingrained as a political reality. **A candidate without Twitter is a losing candidate**. . . Commentators and voters engage with the highest officeholders in the world with candor, frankness—and often meanness

[1] Today, every Member of Congress has a Twitter account. *See* <https://twitter.com/cspan/lists/members-of-congress?lang=en>

> and crassness—and sometimes even participate in real back-and-forth dialogue. This open dialogue . . . has also bolstered accountability and has caused the downfall of several politicians who were not so mindful of the new rules in play. **The amount of discursive access to politicians [facilitated by Twitter] is unprecedented in the past century of American politics**.

Id. (emphasis added).

The article continues:

> **It is difficult to fully describe how Twitter has helped change the way Americans participate in exchanges of ideas over the last decade** … For any belief, even the most aspirational and even the most base, social media offers a platform for common thread with other likeminded people. Over the past decade, the bounds of geography and group have been pulled back to reveal the sinews of a system that now promises that no person will ever have to be alone again. Twitter allows users to turn that solitude into coalitions, and it gives them the tools to sometimes even accomplish what the ballot box can't.

Id. (emphasis added).

The ability to use Twitter is a vital part of modern citizenship. A presence on Twitter is essential for an individual to run for office or engage in any level of political organizing in modern America. That is because it is not merely a website: it is the modern town square. Even Twitter has described itself as such. *See* Exh. H. The conflict of interest that is created by Twitter's role as an essential open platform for aspiring politicians, on the one hand, and its new role as a censor of viewpoints and affiliations, on the other, is quite evident. If Twitter is allowed to act as a viewpoint censor, it could effectively shut down the nascent political campaigns of those who disagree with its corporate policies by banning them – or to simply pick and choose who it will support. Twitter clearly can not be trusted with such arbitrary control over the marketplace of ideas.

19. Twitter has actively promoted itself as an open platform for individuals who seek to petition their elected leaders and participate in public affairs. Twitter published a "Twitter Government and Elections Handbook" ("Handbook") with the express purpose of helping elected officials and government agencies "tap into the power of Twitter to connect with your constituents." (Exh. Q). According to the Handbook, "**Twitter is a free platform for all voices to be heard and to organize**." *Id*. (emphasis added). Twitter instructed officials in agencies on how to host "Twitter Town Halls," where constituents can ask questions via Twitter and petition their representatives for

redress of grievances. *Id*. Twitter explained that "[t]hese forums are exceedingly necessary and important" and are among the "best opportunities for community expression and dialogue using the platform." *Id*. Indeed, many government agencies and elected officials now hold important public meetings on Twitter, meetings that are inaccessible to users that Twitter has banned. Twitter's decision to ban users based on their controversial viewpoints and affiliations means that they are excluded from basic rights to petition their representatives under Article I, Section 3 of the California Constitution. The dangers that would result from Twitter being able to act as a platform for individuals to communicate with their representatives and government agencies in official "Town Hall" forums, on one hand, while allowing Twitter to ban users from participating on its forum if it disagrees with their viewpoints, on the other, are self-evident. Individuals could be deprived of their most essential speech and petition rights for totally arbitrary or discriminatory reasons.

II. Twitter Has No Right Under the Federal or California Constitution to Ban Speakers from Its Open Public Forum Based on Their Viewpoints or Affiliations

20. It is universally understood that Tweets reflect the viewpoints of the user who posted the Tweet, and not Twitter itself. All Tweets are unmistakably identified with the user who posted the Tweet. Indeed, Twitter clearly states in its Terms of Service: "You are responsible for your use of the Services and for any Content you provide, including compliance with applicable laws, rules, and regulations." (Exh. G). It goes on to state: "You retain your rights to any Content you submit, post or display on or through the Services. What's yours is yours — you own your Content (and your photos and videos are part of the Content)." *Id*. Twitter and its executives have numerous accounts which they use to publish their own viewpoints on the platform. Indeed, federal law expressly states that Twitter is not the "publisher or speaker" of the Tweets of others. 47 U.S.C. § 230(c)(1). Tweets are published by individual users, not Twitter. This lawsuit thus does not involve any claim that Twitter acts as a "publisher" of the content of its users, or any attempt to hold Twitter liable as such. Instead, this lawsuit seeks to hold Twitter liable for its own unlawful actions in interfering with the rights of the public to freely speak and petition on its open public platform.

21. The reality is that Twitter is not the publisher of the speech of its users. Instead, Twitter is equivalent to the private owner of a public forum who has fully opened its property to the general public for purposes of permitting the public's free expression and debate. That is, in fact, what Twitter has always claimed to be: its stated mission is to "[g]ive everyone the power to create and share ideas instantly, without barriers" (Exh. B); its self-proclaimed guiding principle is that "[w]e believe in free expression and believe every voice has the power to impact the world" (Exh. A), and it has referred to itself as "the live public square, the public space - a forum where conversations happen." (Exh. H). To say that a private entity that owns a public forum is the "publisher" of speech that takes place in that forum is utter nonsense—equivalent to saying that the government "publishes" the speech of protestors marching in street demonstration, or "publishes" leaflets distributed by citizens on a public sidewalk.

22. Twitter has consistently marketed itself as an open forum for members of the public to express themselves. Having made this choice, Twitter must obey the laws that protect the public's free speech rights in such forums. It cannot hide behind the fiction that the Tweets of hundreds of millions users across the globe are its own expression: it is universally acknowledged that they are not. As the Supreme Court noted in *Packingham*, "social media users employ these websites to engage in a wide array of protected First Amendment activity on topics as diverse as human thought." 137 S. Ct. at pp. 1735-1736 (internal quotation marks omitted). All content posted by Twitter users is clearly associated with their own accounts, and users retain ownership over what they post. Twitter freely acknowledges that it is "the public square," not a platform for its own corporate speech. (Exh. H).

23. Twitter has no free speech or expressive interest whatsoever in banning users from its open platform. The U.S. Supreme Court has **expressly rejected** the argument that privately-owned public forums (such as Twitter) have "a First Amendment right not to be forced by the State to use his property as a forum for the speech of others." *Pruneyard Shopping Ctr. v. Robins* (1980) 447 U.S. 74, 85 [100 S. Ct. 2035]. The Court held that a privately-owned public forum lacked such First Amendment rights primarily because it was unlikely that the views expressed by members of the general public would be identified as those of the property's owner. *Id*. at p. 87. So too in this case,

all Tweets from individual users are clearly identified with that user, and it is universally understood that Tweets reflect the viewpoints of the user who posted the Tweet, and not Twitter itself. When Twitter wishes to speak as a corporate entity, it knows how to do so—its executives all have their own accounts, and Twitter has its own corporate blog.

24. Because it is, and is universally understood to be, a public forum that is open to all comers, Twitter expresses no viewpoint whatsoever in allowing its public forum to be used by Plaintiffs or any other member of the public to express their own viewpoints. As such, its actions in banning members of the public who freely express their viewpoints does not amount to Twitter expressing its own viewpoints, any more than the shopping center in *Pruneyard* expressed its viewpoints that "silence is golden" and members of the public should be let alone while they shop in banning expressive activity on its public forum. Cf. *Robins v. Pruneyard Shopping Center* (1979) 23 Cal. 3d 899, 902 [153 Cal. Rptr. 854] (noting that the shopping center's policy had been "not to permit any tenant or visitor to engage in publicly expressive activity, including the circulating of petitions, that is not directly related to the commercial purposes."). Just as Twitter does not itself speak through the speech of users on its platform, Twitter does not further its own right to self-expression when it interferes with the rights of the public to freely share their views. The idea that Twitter furthers its own speech by seeking to censor the general public's speech is nothing more than an empty play on words, a mockery of the entire concept of free speech rights.

25. Twitter's acts in banning individuals from its forum based on their viewpoints and affiliations are not Twitter's exercise of its right "not to speak." Since the speech of Twitter's users is not Twitter's own speech, its acts in banning users from speaking on its forum are not Twitter's own silence. Nor are these actions an exercise of Twitter's supposed right as a "publisher" of the content of other users on its platform. As noted above, both Twitter's own rules and federal law prohibit it from being treated as a "publisher" of content posted by its users, and the private owner of a public forum is no more the "publisher" of speech that occurs in the forum than the government is the "publisher" of a protest march that occurs on a public street. Instead, Twitter's actions in banning users based on their viewpoints and affiliations are nothing more than an attempt to restrict the rights

of members of the public to "freely speak, write and publish [their] sentiments on all subjects" and impose a regime of viewpoint censorship on public debate. Cal. Const., art. I, section 2. Twitter's acts in banning Plaintiffs and other users based on their controversial viewpoints and perceived affiliations do not further its own rights under the United State or California constitutions. Instead, the clear law for decades has been that the private owners of public forums act directly contrary to the California Constitution's free speech and petition clauses in seeking to censor the viewpoints that members of the public may express in such forums, and that the First Amendment does not shield such efforts to restrict the speech of the public.

26. To fully appreciate the ridiculousness of the argument that Twitter's attempts to censor its users is nothing more than an act of self-expression by Twitter, recall that the government's own speech is not subject to the First Amendment under the "government speech" doctrine. *Matal v. Tam* (2017) 582 U. S. __, 137 S. Ct. 1744, 1757-1758. Under the logic that Twitter's attempts to ban others from speaking in its public forum is simply Twitter's own act of self-expression, the government's acts in banning the speech of Communists, civil rights protestors, Jehovah's Witnesses and other unpopular groups in public spaces would be considered nothing more than the government's expression of its belief that the views of such individuals are so amoral and repugnant, and so threatening to the welfare of their fellow citizens, that they should not be permitted to participate in public debate. Of course, that is not how the law works. Just as the government's acts in banning disfavored speakers are not shielded under the "government speech" doctrine as its own act of self-expression, *despite the fact that the government's decision to censor such speakers may be intended to express the government's strong disapproval of their message*, so Twitter's attempts to ban individuals from speaking freely on its open forum due to dislike of their viewpoints and affiliations is not its own act of self-expression. A contrary holding would render the cherished free speech protections of the federal and California constitutions meaningless.

III. Mr. Taylor and American Renaissance Use Twitter to Respectfully Share their Views With the General Public

27. For several decades, Mr. Taylor has been a well-known author and public intellectual, primarily in the areas of race relations and immigration. He is a graduate of Yale University and the Paris Institute of Political Studies. He is author or editor of seven books. His writing has appeared in the *Wall Street Journal*, *Los Angeles Times*, *Chicago Tribune*, *Baltimore Sun*, *Boston Globe*, *National Review*, *Washington Post*, and *San Francisco Chronicle*. Mr. Taylor has been interviewed countless times by national and international print and electronic media on immigration and race relations.

28. Mr. Taylor takes the view that race is a biological reality and is part of individual and group identity. He argues that the evidence shows that despite a large amount of commonality, the different races are not—as groups—identical or equivalent, and that there is a genetic component to those differences. He believes that people of all races and nations have the right to choose a destiny for themselves that includes remaining the majority in their nation, region, municipality, neighborhood, or institution. He has always proposed such a choice as an expression of freedom of association, and has never argued for forcible separation of racial groups.

29. Mr. Taylor joined Twitter in March 2011.

30. At some point before June 2017, Mr. Taylor was granted Twitter's blue check mark or "verification badge." Twitter informed Mr. Taylor by email on November 15, 2017 that it had "permanently removed" his verification badge.

31. At the time Mr. Taylor's account was permanently suspended on December 18, 2017, it had 40,900 followers.

32. In June 2011, American Renaissance established its own account, which was operated by its staff. In April 2017, American Renaissance was granted Twitter's "verification badge," which it kept until the account was permanently suspended on December 18, 2017. At the time American Renaissance's account was permanently suspended, it had 32,700 followers.

33. These accounts were an essential part of the advocacy and educational mission of Mr. Taylor and American Renaissance. They permitted Mr. Taylor and American Renaissance to

communicate instantly with a broad base of supporters, donors, journalists, and readers. Mr. Taylor and American Renaissance used their accounts to alert their followers to their recent publications, forthcoming conferences, public appearances, articles, videos, podcasts, and their commentary on the news of the day. This drove traffic to Plaintiffs' websites and kept their ideas constantly before the public. The accounts allowed Mr. Taylor and American Renaissance to share and disseminate articles and posts expressing their views on race relations, immigration, and other important national issues, and to have a voice in public debates.

34. Mr. Taylor has always expressed his views with respect and civility towards those who disagree. He has never engaged in vituperation or name-calling, on Twitter or elsewhere.

35. Neither Mr. Taylor nor American Renaissance has ever promoted or advocated violence, on Twitter or anywhere else. Indeed, they have urged their followers to maintain a dignified and respectful tone towards those who disagree with them. Neither Mr. Taylor nor American Renaissance is affiliated with any groups that promote or practice violence.

36. At no time did either Mr. Taylor's or American Renaissance's accounts engage in insults, threats, or harassment, nor did they ever encourage anyone else to do such things. Nor did Mr. Taylor or American Renaissance ever post pornography, graphic violence or obscenity, or anything remotely similar.

37. Even Mr. Taylor's critics have recognized that he promotes respectful, polite debate and shuns name-calling. The Southern Poverty Law Center, which takes sharp issue with the views expressed by Mr. Taylor and American Renaissance, has written: "In his personal bearing and tone, Jared Taylor projects himself as a courtly presenter of ideas . . . ." It also noted that American Renaissance magazine "scrupulously avoided racist epithets [and] employed the language of academic journals," and was "bringing a measure of intellectualism and seriousness" to dissident critiques of mainstream thinking on race. It has called its conferences "decidedly genteel affairs." *Slate* magazine has referred to Mr. Taylor's "Ivy League education and 'polite manners.'"

38. Mr. Taylor is well known, even among his detractors, for taking a positive attitude toward Jews and for repudiating Nazism. The *Jewish Daily Forward* wrote this about Mr. Taylor:

"From the start, he has been trying to de-Nazify the movement and draw the white nationalist circle wider to include Jews of European descent."

39. Mr. Taylor and American Renaissance have encouraged people who share their views to maintain a dignified tone. An article in American Renaissance published on June 10, 2016 urged members of the "Alt-Right" to avoid "personal attacks and harsh rhetoric" on Twitter and other social media platforms. It added that those who use intemperate language should ask themselves: "Do you drive away Americans who might be sympathetic to Donald Trump and/or race realism?" For these stands, Mr. Taylor and American Renaissance drew considerable backlash and controversy. Many commenters expressed vehement disagreement with Mr. Taylor's and American Renaissance's stands in favor of temperate language and against harassment of other Twitter users.

IV. Twitter Bans Taylor, American Renaissance and Hundreds of Other Users from Its Open Public Forum Based on their Viewpoints and Perceived Affiliations

40. The Twitter Rules, as they existed when Mr. Taylor and American Renaissance joined the platform, stated: "Our goal is to provide a service that allows you to discover and receive content from sources that interest you as well as to share your content with others. We respect the ownership of the content that users share and each user is responsible for the content he or she provides. Because of these principles, we do not actively monitor user's content and will not censor user content, except in limited circumstances described below." (Exh. D). Those "limited circumstances" set forth in the Twitter Rules were:

- Impersonation: You may not impersonate others through the Twitter service in a manner that does or is intended to mislead, confuse, or deceive others
- Trademark: We reserve the right to reclaim user names on behalf of businesses or individuals that hold legal claim or trademark on those user names. Accounts using business names and/or logos to mislead others will be permanently suspended.
- Privacy: You may not publish or post other people's private and confidential information, such as credit card numbers, street address or Social Security/National Identity numbers, without their express authorization and permission.
- Violence and Threats: You may not publish or post direct, specific threats of violence against others.
- Copyright: We will respond to clear and complete notices of alleged copyright infringement. Our copyright procedures are set forth in the Terms of Service.

- Unlawful Use: You may not use our service for any unlawful purposes or for promotion of illegal activities. International users agree to comply with all local laws regarding online conduct and acceptable content.
- Misuse of Twitter Badges: You may not use a Verified Account badge or Promoted Products badge unless it is provided by Twitter. Accounts using these badges as part of profile pictures, background images, or in a way that falsely implies affiliation with Twitter will be suspended.

Id. Thus, Twitter's rules have banned "direct, specific threats of violence against others" since at least 2011. Plaintiffs have never violated this rule.

41. On December 18, 2017, Twitter announced it was enacting "New Rules on Violence and Physical Harm." In a blog post announcing these changes, Twitter stated: "Specific threats of violence or wishing for serious physical harm, death, or disease to an individual or group of people is in violation of our policies." (Exh. N). However, as noted above, Twitter's policies already banned direct, specific threats of violence against others." (Exh. D). Twitter included within the scope of its ban "[a]ccounts that affiliate with organizations that use or promote violence against civilians to further their causes." It defined such groups as follows: "Groups included in this policy will be those that identify as such or engage in activity — both on and off the platform — that promotes violence. This policy does not apply to military or government entities and we will consider exceptions for groups that are currently engaging in (or have engaged in) peaceful resolution." (Exh. N).

42. The Twitter rules on "Violent Extremist Groups," first announced on December 18, 2017, provide: "You may not make specific threats of violence or wish for the serious physical harm, death, or disease of an individual or group of people. This includes, but is not limited to, threatening or promoting terrorism. You also may not affiliate with organizations that – whether by their own statements or activity both on and off the platform – use or promote violence against civilians to further their causes." (Exh. O). They go on to state: "We take pride in Twitter being a platform where a diverse range of opinions can be held and discussed, but we will not tolerate groups or individuals associated with them who engage in and promote violence against civilians both on and off the platform. Accounts affiliated with groups in which violence is a component of advancing their cause

risk having a chilling effect on opponents and bystanders. The violence that such groups promote could also have dangerous consequences offline, jeopardizing their targets' physical safety." *Id*.

43. With respect to "When this applies," Twitter states:

> We prohibit the use of Twitter's services by violent extremist groups – i.e., identified groups subscribing to the use of violence as a means to advance their cause, whether political, religious, or social.
>
> We consider violent extremist groups to be those which meet all of the below criteria:
>
> - identify through their stated purpose, publications, or actions, as an extremist group
> - have engaged in, or currently engage in, violence (and/or the promotion of violence) as a means to further their cause
> - target civilians in their acts (and/or promotion) of violence
>
> Exceptions will be considered for groups that have reformed or are currently engaging in a peaceful resolution process, as well as groups with representatives elected to public office through democratic elections. This policy does not apply to military or government entities.
>
> Behavior we look for when determining whether an account is affiliated with a violent extremist group includes:
>
> - stating or suggesting that an account represents or is part of a violent extremist group
> - providing or distributing services (e.g., financial, media/propaganda) in furtherance of progressing a violent extremist group's stated goals
> - engaging in or promoting acts for the violent extremist group
> - recruiting for the violent extremist group

Id.

44. By targeting only users who are affiliated with organizations that use or promote violence to further a cause, the "Violent Extremist Group" policy discriminates on the basis of viewpoint on its face. It bans such accounts regardless of whether the account has actually threatened violence against anyone in particular: mere promotion of violence in the abstract is prohibited. Moreover, the policy prohibits users who agree with the "stated goals" of a violent extremist group but sincerely seek to achieve such goals through non-violent means.

45. On December 18, 2017, Twitter suspended both of the Plaintiffs' accounts without explanation. Mr. Taylor and American Renaissance immediately appealed the suspensions. Twitter

replied via email that the suspensions were permanent because the accounts were "found to be violating Twitter's Terms of Service, specifically the Twitter Rules against being affiliated with a violent extremist group." (Exh. M). Twitter did not specify the "violent extremist group" with which Mr. Taylor or American Renaissance was supposedly affiliated. Mr. Taylor and American Renaissance immediately sent emails to Twitter expressing astonishment at the reason given for the permanent suspensions and seeking clarification, but Twitter did not reply. All of these exchanges took place on December 18, 2017.

46. Twitter enacted its new rules regarding "Violent Extremist Groups," on December 18, 2017, the same day it banned Plaintiffs' accounts. It purported to apply these new rules retroactively, in violation of its Terms of Service. It made no attempt to notify Plaintiffs of its new rules before permanently banning them, also in violation of its Terms of Service. At the same time it banned Plaintiffs' accounts, Twitter banned hundreds of other users. The only thing all the banned accounts had in common was that they were "affiliated with the alt-right or far right." (Exh. P) ("As predicted, nearly every account that was banned by Twitter [on December 18, 2017] was affiliated with the alt-right or far right."). Beyond that, accounts appear to have been banned at random, without any nexus to the actual terms of the "Violent Extremist Group" policy or any other Twitter policy. *Id*.

47. Indeed, Twitter's reason for announcing the new "Violent Extremist Groups" policy and banning the accounts of Plaintiffs and hundreds of other users (purportedly based on the new policy) had nothing to do with the stated goals of the "Violent Extremist Groups" policy. All, or nearly all, of the banned accounts were not, in fact, associated with a "violent extremist group" and had done nothing to violate the new policy. Instead, Twitter's motive for banning of hundreds of accounts was to chill the speech of users of Twitter's platform (particularly conservative speech) by making clear that Twitter would hereafter censor disfavored viewpoints. This was an about-face from Twitter's previous consistent practice of permitting users with unpopular viewpoints to use its platform, just as it allows any other member of the public to speak and share content on its platform.

48. Twitter has allowed accounts affiliated with left-wing groups that promote violence to remain on Twitter, and has made no effort to apply its "Violent Extremist Group" policy fairly or

consistently among different viewpoints. (See Exhs. C and X). Instead, Twitter has chosen to single out conservative viewpoints for censorship under its new policy.

49. For their part, neither Mr. Taylor nor American Renaissance has ever engaged in any conduct that runs afoul of Twitter's new rules on "Violent Extremist Groups." They have never "made specific threats of violence or wished for the serious physical harm, death, or disease of an individual or group of people." They have never "affiliated with organizations that use or promote violence against civilians to further their causes." They have never "engaged in violence (and/or the promotion of violence) as a means to further their cause," or affiliated with any such group. They have never "stated or suggested that an account represents or is part of a violent extremist group"; "provided or distributed services (e.g., financial, media/propaganda) in furtherance of progressing a violent extremist group's stated goals"; "engaged in or promoted acts for [a] violent extremist group"; or "recruit[ed] for [a] violent extremist group." In fact, Mr. Taylor and American Renaissance have denounced the use of Twitter to harass or threaten other users. Any construction of Twitter's policy on "Violent Extremist Groups" that would cast Mr. Taylor and American Renaissance as being in violation would indicate a hopelessly vague and incomprehensible standard.

50. Twitter has made no written or oral statement in any place open to the public or any public forum regarding its decision to ban Plaintiffs or other similarly-situated users. Twitter's statements notifying Mr. Taylor and American Renaissance of their bans and explaining its purported reasons for the bans were communicated privately to Plaintiffs. Twitter has never made any communication in any place open to the public or in any public forum regarding its permanent ban of Mr. Taylor, American Renaissance, or any other similarly-situated user.

51. Mr. Taylor, American Renaissance, and similarly-situated users were targeted for permanent suspension for reasons having nothing to do with advocating violence, but because of their controversial views on race and immigration—the subjective perception that they are "racist" and "extremist."

V. Twitter's Unconstitutional and Discriminatory Actions Chill Public Debate and Violate the Free Speech Rights of All Twitter Users

52. Twitter's actions threaten the free speech of all users on its platform. Twitter asserts the unilateral right to deprive anyone, at any time, of the ability to speak on its forum, if it disagrees with the user's viewpoint or perceived political affiliations. This will have, and has had, a chilling effect on the public at large. Twitter's actions in playing the role of a viewpoint censor, and banning hundreds of accounts (including Plaintiffs'), poses a direct threat to our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 270 [84 S. Ct. 710]. It is a direct break with California's long and cherished tradition of protecting the rights of Communists, radicals, religious minorities, and other speakers with controversial or unpopular views to freely speak and petition in the public square. As noted by one of our greatest jurists, the late Supreme Court justice and lead Nuremberg prosecutor Robert Jackson, in a 1950 opinion: "The priceless heritage of our society is the unrestricted constitutional right of each member to think as he will." *American Communications Ass'n v. Douds* (1950) 339 U.S. 382, 442 [70 S. Ct. 674] (conc. op. of Jackson, J.). And freedom of thought, in our tradition, means "not free thought for those who agree with us but freedom for the thought that we hate." *Schwimmer*, 279 U.S. at pp. 654-655 [49 S. Ct. 448] (dis. opn. of Holmes, J.).

53. California, and the nation as a whole, has a supremely important interest in ensuring that our national dialogue remains uninhibited and robust, and that the traditional freedom of individuals with unpopular views to speak in public forums is upheld. Bans on individuals who are perceived as having controversial views, an unsavory past, or undesirable associations from speaking in the public square (such as those enforced by Twitter in this case) are completely antithetical to the constitutional heritage of California and the nation as a whole. "Thought control is a copyright of totalitarianism, and we have no claim to it." *American Communications Ass'n*, 339 U.S. at p. 442 (conc. op. of Jackson, J.)

54. As a result of Twitter's actions, Plaintiffs and other users who have been banned under Twitter's new censorship regime have suffered and will continue to suffer irreparable harm. There is no public platform comparable to Twitter that would allow Mr. Taylor, American Renaissance, and

other similarly-situated users to express their views and participate in the marketplace of ideas. Unique among social media platforms, Twitter facilitates direct interaction between ordinary individuals and public figures. It has 330 million regular users (Exh. S), and is of unmatched importance in influencing public debate and news coverage of current affairs. Over 96% of journalists use Twitter, and 70% view it as the most useful social media platform for their profession. (Exhs. T, U and V). By banning their accounts, Twitter has deprived Mr. Taylor, American Renaissance, and other similarly-situated users of an essential mechanism to speak and engage in public discussion and debate.

55. Moreover, Twitter's actions were intended to have and have had a chilling effect on public discussion and debate generally on the hundreds of millions of users who use Twitter to speak out on public issues each day. Twitter's decision to single out users with particular viewpoints for permanent bans, and Twitter's practice of discriminatory enforcement of its policies to ban "right wing" accounts, has inhibited the constitutionally protected speech and expression of users of Twitter's forum. The banning of Plaintiffs and other similar users sent a clear message that users must avoid expressing certain opinions on hot-button issues like immigration and race relations (even if they were to do so in a polite and respectful manner) and that offering controversial viewpoints on such issues would no longer be tolerated on Twitter's open public forum. This chilling effect runs directly counter to the guarantee of Article I, section 2 of the California Constitution that "every person may freely speak, write and publish his or her sentiments on all subjects."

56. Private enforcement of the free speech, petition and anti-discrimination rights protected by the California Constitution and the Unruh Act is necessary. Our important free speech precedents have invariably involved speakers who were widely reviled: Communists, draft dodgers, religious minorities, and the like. Freedom of speech is important precisely because it protects the right of controversial speakers to share controversial viewpoints. The government cannot be expected to enforce the right of unpopular speakers to speak in traditional public forums. The tradition in our country has been that free speech rights are protected through private lawsuits on behalf of speakers who have had their rights curtailed, not suits by the government. Private enforcement of the UCL's prohibitions on false and deceptive advertising and unfair business practices is also necessary. The

UCL specifically contemplates that it will be enforced through lawsuits brought by injured citizens seeking injunctive relief on behalf of a class of similarly-situated persons and the general public. Plaintiffs' UCL claim also seeks to enforce the speech and petition rights of the general public and the obligation of Twitter to live up to the promises it has made that it would uphold free speech rights on its open public forum. It also seeks to protect the rights of the public to have their economic investments in their Twitter accounts protected. Moreover, the financial burden placed on Plaintiffs is disproportionate in relation to the Plaintiffs' stake in the matter. Plaintiffs are shouldering the entire burden of financing this lawsuit, and they seek no monetary relief other than their attorney's fees. Instead, they seek injunctive relief that is identical to that sought on behalf of other similarly-situated persons and the general public.

57. There is an actual controversy between the parties regarding whether Twitter's decision to ban Plaintiffs and others similarly situated from Twitter's public forum based on their viewpoints and perceived affiliations violated the California Constitution and Unruh Act, as well as whether Twitter's conduct in inserting unconscionable terms in its Terms of Service and Rules and deceptively advertising itself as a forum for free speech violated the UCL. A declaratory judgment would confer a significant benefit on the general public and all users of Twitter by establishing that members of the public enjoy the right to freely speak, petition, and be free from viewpoint discrimination when they speak on Twitter, that Twitter's attempts to ban and censor users based on their viewpoints and affiliations are unlawful, and that Twitter may not insert unconscionable terms in its Terms of Service or Rules that would allow it to ban individuals arbitrarily or destroy the economic investment they have made in their accounts.

FIRST CAUSE OF ACTION
(Violation of Article I, Sections 2 and 3 of the California Constitution)

58. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth fully herein.

59. Article I, section 2 of the California Constitution guarantees that "every person may freely speak, write and publish his or her sentiments on all subjects." Article I, section 3 of the

California Constitution states, "The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good." Under California law, privately-owned spaces are subject to these protections where they serve as "as a place for large groups of citizens to congregate"; where the public is "induced to congregate daily" at such places; and the property-owner has "fully opened his property to the public." *Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3d 899, 910-911 & n. 5 [153 Cal.Rptr. 854] (hereafter *Pruneyard*). Under *Pruneyard*, "when private property is generally open to the public and functions as the equivalent of a traditional public forum, then the California Constitution protect[s] speech, reasonably exercised, on the property, even though the property [i]s privately owned." *Allred v. Harris* (1993) 14 Cal. App. 4th 1386, 1390 [18 Cal. Rptr. 2d 530]. "Unlike the United States Constitution, which couches the right to free speech as a limit on congressional power, the California Constitution gives '[e]very person' an affirmative right to free speech. Accordingly, [the California Supreme Court has] held that our free speech clause is more definitive and inclusive than the First Amendment." *Golden Gateway Center v. Golden Gateway Tenants Assn*. (2001) 26 Cal. 4th 1013, 1019 [111 Cal. Rptr. 2d 336] (internal quotation marks and citations omitted). Such privately-owned public forums "may no more exclude individuals who wear long hair . . . who are black, who are members of the John Birch Society, or who belong to the American Civil Liberties Union, merely because of these characteristics or associations, than may the City of San Rafael." *Pruneyard*, 23 Cal.3d at p. 909 (quoting *In Re Cox* (1970) 3 Cal.3d 205, 217-218 [90 Cal. Rptr. 24])).

60. The test for whether a privately-owned space constitutes a public forum under Pruneyard is whether the space is "the functional equivalent of a traditional public forum." *Golden Gateway Center*, 26 Cal. 4th at p. 1033; see also *id*. at p. 1039 (conc. opn. of George, C. J.); *Ralphs Grocery Co. v. United Food & Commercial Workers Union Local 8* (2012), 55 Cal. 4th 1083, 1092 [150 Cal. Rptr. 3d 501] ("Our reasoning in Pruneyard determines the scope of that decision's application."); *International Society for Krishna Consciousness of California, Inc. v. City of Los Angeles* (2010) 48 Cal. 4th 446, 461 [106 Cal. Rptr. 3d 834] (conc. opn. of Kennard, J.) ("To determine whether particular areas are public forums for purposes of the California Constitution's liberty of

speech clause, this court has generally proceeded by asking whether, in relevant ways, the area in question is similar or dissimilar to areas that have already been determined to be public forums.").

61. Twitter is a public forum that exists to "[g]ive everyone the power to create and share ideas instantly, without barriers." (Exh. B). The U.S. Supreme Court has described social media sites such as Twitter as the "modern public square." *Packingham*, *supra*, 137 S. Ct. at p. 1737. Twitter too has described itself as "the live public square, the public space - a forum where conversations happen." (Exh. H). Twitter is the paradigmatic example of a privately-owned space that meets all of the requirements for a *Pruneyard* claim under the California Constitution: Twitter allows anyone to join and set up an account at any time; it serves as a place for large groups of citizens to congregate; it seeks to induce as many people as possible to actively use its platform to post their views and discuss issues, as it "believe[s] in free expression and believe[s] every voice has the power to impact the world" (Exh. A); Twitter's entire business purpose is to allow the public to freely share and disseminate their views, and no reasonable person would think Twitter was promoting or endorsing the speech of Plaintiffs or similarly-situated users by not censoring it—no more than a reasonable person would think Twitter was promoting or endorsing President Trump's speech or Kim Jong Un's speech by allowing it to exist on their platform. Thus, the speech of Plaintiffs and similarly situated banned users imposes no cost on Twitter's business and no burdens on its property rights. Serving as a place where "everyone [has] the power to create and share ideas instantly, without barriers" and "every voice has the power to impact the world" is Twitter's very reason for existence. By adding to the variety of views available to the public, Plaintiffs and other similarly-situated users are acting on Twitter's "belief in free speech" and fulfilling Twitter's stated mission of "sharing ideas instantly."

62. Twitter is given over to public discussion and debate to a far greater extent than the shopping center in *Pruneyard* or the "streets, sidewalks and parks" that "[f]rom time immemorial . . . have been held in trust for the use of the public and have been used for purposes of assembly, communicating thoughts and discussing public questions." *In re Hoffman* (1967) 67 Cal.2d 845, 849 [64 Cal.Rptr. 97] (Traynor, C.J.) (paraphrasing *Hague v. C.I.O.* (1939) 307 U.S. 496, 515 [59 S. Ct. 954]). Unlike shopping centers, streets, sidewalks and parks, which are mostly used for functional,

non-expressive purposes such as purchasing consumer goods, transportation, and private recreation, Twitter's primary purpose is to enable members of the public to engage in speech, self-expression and the communication of ideas. See *Packingham*, *supra*, 137 S. Ct. at pp. 1735-1736 (noting that "[s]ocial media offers relatively unlimited, low-cost capacity for communication of all kinds" and that "social media users employ these websites to engage in a wide array of protected First Amendment activity on topics as diverse as human thought.") (internal quotation marks omitted). In analysis that cuts to the heart of the *Pruneyard* public forum inquiry, the *Packingham* Court stated: "**While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the 'vast democratic forums of the Internet' in general, and social media in particular**." *Id*. at p. 1735 (emphasis added) (quoting *Reno*, *supra*, 521 U.S. at p. 868).

63. While the *Pruneyard* court placed great significance in the fact that "25,000 persons [we]re induced to congregate daily" at the shopping center, *Pruneyard*, *supra*, 23 Cal. 3d at p. 910, *330 million people from all over the world* are "induced to congregate daily" on Twitter. While *Pruneyard* described shopping malls as having "growing importance" as places for large groups of citizens to congregate, *id*. at pp. 907, 910 & n. 5, the U.S. Supreme Court described Twitter as *one of the most important places in the world for the exchange of ideas* and *perhaps the most powerful mechanism available to a private citizen to make his or her voice heard*. *Packingham*, *supra*, 137 S. Ct. at pp. 1735, 1737. And it held that banning individuals from social media (and Twitter in particular) imposes "unprecedented burdens" on their free speech rights. *Id*. at 1737.

64. The question of whether Twitter is a public forum under *Pruneyard* is not a close one: it is similar in every relevant respect to the areas previously recognized as privately-owned public forums under California law. The major differences are that Twitter's purpose is *entirely* to facilitate expression, whereas shopping centers, streets, parks and sidewalks exist primarily for functional purposes; and Twitter has openly acknowledged its role as a public forum for speech, petition and assembly, whereas the shopping center in *Pruneyard* strictly enforced a policy "not to permit any

tenant or visitor to engage in publicly expressive activity, including the circulating of petitions, that is not directly related to the commercial purposes." *Pruneyard*, *supra*, 23 Cal. 3d at p. 899.

65. Twitter is thus the "functional equivalent of a traditional public forum" under California law. As such, Twitter may not selectively ban speakers from participating in its public forum based on disagreement with the speaker's viewpoint, just as the government may not selectively ban speech that expresses a viewpoint it disagrees with.

66. Because Twitter is "freely and openly accessible to the public," its actions in banning Plaintiffs and other similarly-situated users constitutes "state action" for purposes of Article I, sections 2 and 3 of the California Constitution. *Golden Gateway Center v. Golden Gateway Tenants Assn.* (2001), 26 Cal. 4th 1013, 1033 [111 Cal. Rptr. 2d 336].

67. Mr. Taylor, American Renaissance, and other similarly-situated users used Twitter to engage in expressive speech and activity protected by Article I, section 2 of the California Constitution. For example, Mr. Taylor and American Renaissance used their accounts to share and promote their recent publications, forthcoming conferences, public appearances, articles, videos, podcasts, and commentary on the news of the day; to have a voice in public debates on current events and political issues; to express their views on race relations, immigration, and other issues; to communicate with readers, supporters and donors; and to seek to generate new followers and readers. These activities were similar to the uses made of Twitter by other users banned pursuant to the "Violent Extremist Group" policy.

68. In banning Mr. Taylor, American Renaissance, and similarly-situated users, Twitter exacted an exceedingly heavy toll on their rights to speech and petition under article I, section 2 of the California Constitution. In *Packingham*, the U.S. Supreme Court considered a North Carolina statute that prohibited registered sex offenders from "accessing a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages." *Packingham*, *supra*, 137 S. Ct. at p. 1733 (quoting N. C. Gen. Stat. Ann. §§14-202.5(a), (e) (2015)). The *Packingham* Court noted expressly that the North Carolina statute banned sex offenders from using Twitter. *Id*. at p. 1737 ("It is enough to assume that the law

applies (as the State concedes it does) to social networking sites 'as commonly understood'—that is, websites like Facebook, LinkedIn, and Twitter.").

The Court in *Packingham* held that the North Carolina statute "enact[ed] a prohibition **unprecedented in the scope of First Amendment speech it burdens**." *Id*. (emphasis added). It noted,

> Social media allows users to gain access to information and communicate with one another about it on any subject that might come to mind. By prohibiting sex offenders from using those websites, North Carolina with one broad stroke bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge. **These websites can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard. They allow a person with an Internet connection to 'become a town crier with a voice that resonates farther than it could from any soapbox**.'

Id. (emphasis added, citation omitted) (quoting *Reno*, *supra*, 521 U. S. at 870).

69. In addition to the heavy burden on the right to "freely speak, write and publish" placed on a speaker who is excluded from Twitter, Cal. Const., art. I, § 2, such a ban also burdens the individual's "right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good." Cal. Const., art. I, § 3. As the U.S. Supreme Court noted in *Packingham*, "[O]n Twitter, users can petition their elected representatives and otherwise engage with them in a direct manner. Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this purpose." *Packingham*, *supra*, 137 S.Ct. at pp. 1735–36.

70. Further, Twitter's actions also violate Plaintiffs' right to free association and assembly by blocking readers and supporters of American Renaissance and followers of the Plaintiffs' accounts from accessing Mr. Taylor and American Renaissance's tweets, and thus preventing Plaintiffs from engaging in a dialogue with their Twitter-based followers, readers, supporters and donors. Twitter's actions have had a similar effect on other users whose accounts have been blocked by Twitter based on its overbroad "Violent Extremist Group" policy.

71. Twitter's exclusion of Mr. Taylor, American Renaissance, and other users targeted by Twitter for bans from its public forum pursuant to its "Violent Extremist Group" policy amounts to

viewpoint discrimination in violation of Article I, Section 2 of the California Constitution. Under *Pruneyard*, privately-owned public forums may adopt "reasonable regulations of the time, place or manner of" speech in order to ensure that expressive activities "do not interfere with normal business operations." *Fashion Valley Mall, LLC v. National Labor Relations Bd.* (2007) 42 Cal. 4th 850, 870[69 Cal.Rptr.3d 288]. Thus, Plaintiffs do not dispute Twitter's ability to regulate its public forum to prevent the posting of material that is obscene, lewd, lascivious, filthy, excessively violent, harassing and similar material, so long as it is done even-handedly and without regard to the content of the speech or the viewpoint of the speaker. However, privately-owned public forums may not enact content- or viewpoint-based restrictions on speech. *Fashion Valley Mall, LLC*., 42 Cal. 4th at p. 870.

72. To withstand constitutional scrutiny, time, place and manner restrictions must be "justified without reference to the content of the regulated speech, narrowly tailored, and leave open ample alternative channels for communication of the information." *Golden Gateway Center*, *supra*, 26 Cal. 4th at p. 1013 (formatting and internal quotation marks omitted). "Restrictions upon speech that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based." *Fashion Valley Mall, LLC*, 42 Cal. 4th at p. 866 (internal quotation marks omitted); see also *Glendale Associates, Ltd. v. National Labor Relations Bd.* (9th Cir. 2003) 347 F.3d 1145, 1155 ("California state courts borrow from federal First Amendment jurisprudence to analyze whether a rule is content-based or content-neutral.").

73. Thus, Twitter may not, consistent with the California Constitution, "grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." *Police Dep't of Chicago v. Mosley* (1972) 408 U.S. 92, 96 [92 S. Ct. 2286]; *see also Danskin v. San Diego Unified School Dist.* (1946) 28 Cal. 2d 536, 548 [171 P.2d 885] (Traynor, J.) ("The very purpose of a forum is the interchange of ideas, and that purpose cannot be frustrated by a censorship that would label certain convictions and affiliations suspect, denying the privilege of assembly to those who hold them, but granting it to those whose convictions and affiliations happen to be acceptable."). Privately-owned public forums "may no more exclude individuals who wear long hair . . . who are black, who are members of the John Birch Society, or who

belong to the American Civil Liberties Union, merely because of these characteristics or associations, than may the City of San Rafael." *Pruneyard*, *supra*, 23 Cal.3d at p. 909 (quoting *In Re Cox*, *supra*, Cal.3d at pp. 217-218 [90 Cal.Rptr. 24]). Bans on individuals who are perceived as having controversial views, an unsavory past, or undesirable associations from speaking in public spaces are squarely forbidden by the California Constitution.

74. In this case, Twitter cited its policy regarding "Violent Extremist Groups" (Exh. O) as its sole ground for permanently banning the accounts of Plaintiffs and other similarly-situated users. However, this stated justification cannot withstand scrutiny.

75. *First*, Twitter's "Violent Extremist Groups" policy is content-based on its face. It identifies several forms of disfavored speech based on the ideas and viewpoints expressed. It goes well beyond prohibiting specific threats of violence (which were already prohibited under Twitter's existing policies). Instead, it broadly targets groups that "identify through their stated purpose [and] publications . . . as an extremist group," and that "promote violence" "as a means to further their cause." An account may be deemed to be "affiliated with a violent extremist group" if the owner of that account suggests he or she "is part of a violent extremist group," posts "media/propaganda" "in furtherance of progressing a violent extremist group's stated goals," "promotes acts for the violent extremist group," or engages in behavior Twitter deems to be "recruiting for the violent extremist group." Because the "Violent Extremist Group" policy is content-based, it is subject to strict scrutiny. *Fashion Valley Mall, LLC*, *supra*, 42 Cal. 4th at p. 865. To survive strict scrutiny, "a content-based speech restriction must be necessary to serve a compelling state interest and narrowly drawn to achieve that end." *Id*. at p. 869. No compelling interest justifies the "Violent Extremist Group" policy, and (as explained below) it is severely overbroad.

76. *Second*, Twitter's "Violent Extremist Groups" policy facially discriminates on the basis of viewpoint. It applies only to groups that self-identify as "extremist," while excluding groups that identify as "moderate," or any other label, even if they habitually engage in violence. It targets users who post "media/propaganda" "in furtherance of progressing a violent extremist group's stated goals" (but not users who post media or propaganda in opposition to the "stated goals" of a 'violent extremist

group'), as well as users who "promote acts for the violent extremist group" (but not those who denounce such acts). And the policy targets speakers who advocate "the use of violence as a means to advance [a] cause, whether political religious, or social," but not those who reject or are neutral regarding the use of violence to advance such causes. Thus, the policy targets "particular views taken by speakers on a subject," which constitutes a "blatant" First Amendment violation. *Rosenberger v. Rector & Visitors of the Univ. of Va.* (1995) 515 U.S. 819, 829 [115 S. Ct. 2510].

77. *Third*, Twitter's policy on "Violent Extremist Groups" is substantially overbroad on its face because it bans speakers for mere "affiliation" with a "violent extremist group," without any requirement that the speaker share the group's violent or illegal aims. As the U.S. Supreme Court noted in *Elfbrandt v. Russell*, "Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees." (1966) 384 U.S. 11, 17 [86 S. Ct. 1238]. *Elfbrandt* held that "[a] law which applies to membership without the 'specific intent' to further the illegal aims of the organization" violates the First Amendment. *Id*. at p. 19. So too, in *Healy v. James*, the U.S. Supreme Court held that a state college's decision to deny recognition to a group of students who wished to form a local chapter of Students for a Democratic Society violated the students' First Amendment rights. (1972) 408 U.S. 169, 170-171 [92 S. Ct. 2338]. The Court noted that it "has consistently disapproved governmental action imposing criminal sanctions or denying rights and privileges solely because of a citizen's association with an unpopular organization." *Id*. at pp. 185-186. The Court declared that "guilt by association alone, without establishing that an individual's association poses the threat feared by the Government, is an impermissible basis upon which to deny First Amendment rights." *Id*. at p. 186 (internal quotation marks omitted). "The government has the burden of establishing a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims." *Id*. at p. 186. And the "mere disagreement of the President with the group's philosophy," even what the college's President characterized as the group's philosophy as one "of violence and disruption," did not afford the college a ground to deny recognition. *Id*. at p. 187. Whether the students "did in fact advocate a philosophy of 'destruction'" was "immaterial," because

the college could not "restrict speech or association simply because it finds the views expressed by any group to be abhorrent." *Id*. at pp. 187-188.

78. Indeed, under Twitter's "Violent Extremist Groups" policy, an individual may be deemed to be "affiliated with a violent extremist group" if that person posts "media/propaganda" that Twitter deems to be "in furtherance of progressing a violent extremist group's stated goals." Thus, the policy would allow Twitter to ban an individual who agrees with the stated goals of a "violent extremist group," *even if the individual sincerely wishes to achieve those goals through peaceful means*. Say a Twitter user wants to ban abortion, and shares a post about the viability of fetuses. If there is a group that wishes to ban abortion through violent means (such as assassinating doctors who perform abortions), then Twitter could deem the user to be "affiliated with a violent extremist group" because the user has posted "media/propaganda" that is "in furtherance of progressing a violent extremist group's stated goals." So too with any position held by any violent group anywhere in the world: Basque independence, animal rights, support for government by a worker's collective, opposition to the regime of Bashar al-Assad (to name just a few examples). The "Violent Extremist Group" policy chills the speech of all users of Twitter's platform, allowing Twitter to act as an unaccountable censor of viewpoints and on- and off-platform affiliations.

79. *Fourth*, Twitter's "Violent Extremist Groups" policy is substantially overbroad on its face because it prohibits mere advocacy of "the use of violence as a means to advance [a] cause, whether political religious, or social." The First Amendment "protects speech that advocates violence, so long as the speech is not directed to inciting or producing imminent lawless action and is not likely to incite or produce such action." *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coalition of Life Activists* (9th Cir. 2002) 290 F.3d 1058, 1071 (citing *Brandenburg v. Ohio* (1969) 395 U.S. 444, 447 [89 S. Ct. 1827] [per curiam]). The California Constitution contains the same protections. *Siegel v. Committee of Bar Examiners* (1973) 10 Cal. 3d 156, 174 n. 18 [110 Cal. Rptr. 15]. *Brandenburg* struck down, as facially overbroad, an Ohio statute that punished persons who "'advocate or teach the duty, necessity, or propriety' of violence 'as a means of accomplishing industrial or political reform'; or who publish or circulate or display any book or paper containing

such advocacy; or who 'justify' the commission of violent acts 'with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism'; or who 'voluntarily assemble' with a group formed 'to teach or advocate the doctrines of criminal syndicalism.'" *Brandenburg*, 395 U.S. at p. 448. It did so because the statute failed to distinguish "mere advocacy" of violence from "incitement to imminent lawless action" *Id*.

80. Twitter's policy on "Violent Extremist Groups" is remarkably similar to the statute struck down in *Brandenburg*: it defines "violent extremist groups" as nothing more than "extremist groups" that engage in the "promotion of violence." The policy's prohibition is not limited to accounts that post specific threats of violence or seek to incite imminent lawless action. Instead, it would ban speech that merely "promotes violence" in an abstract sense.

81. *Fifth*, Twitter has enforced its policy on "Violent Extremist Groups" in a discriminatory manner that blatantly targets users based on their political beliefs and demonstrates a failure of good faith. Many years ago, the U.S. Supreme Court stated that it would violate the First Amendment for the government "to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules." *R.A.V. v. St. Paul* (1992) 505 U.S. 377, 392 [112 S. Ct. 2538]. Yet that is precisely what Twitter has done: it has allowed left-wing speakers to violate its rules with impunity, while selectively enforcing its rules against those with conservative viewpoints. *See* (Exh. P) ("As predicted, nearly every account that was banned by Twitter [on December 18, 2017] was affiliated with the alt-right or far right."). Twitter has freely allowed accounts affiliated with left-wing groups that promote violence to remain on Twitter. (See Exhs. C and X). And it has arbitrarily and unreasonably construed its newly-minted policy on "Violent Extremist Groups" in such a way as to exclude Mr. Taylor, American Renaissance and other similarly-situated users from its public forum based on their viewpoint. Like hundreds of other users purged by Twitter, Mr. Taylor and American Renaissance have never advocated violence against any group, nor are they affiliated with any groups that do. Plaintiffs have used their Twitter accounts to urge their followers to be respectful of other users and to not use offensive language or imagery, garnering considerable opposition in the process. However, Twitter has used its new "Violent Extremist Group" policy as an empty pretext to ban

hundreds of user (including Plaintiffs) due to nothing more than dislike of their viewpoints and perceived affiliations—that is, the perception that they were "affiliated with the alt-right or far right." (Exh. P). The accounts banned by Twitter were banned based solely on their viewpoint and political affiliation, without any nexus to the actual terms of the "Violent Extremist Group" policy or any other Twitter policy. *Id*. Twitter's decision to ban Plaintiffs and other similarly-situated users from its forum, using the "Violent Extremist Group" policy as a pretext, was unsupported by any substantial justification. Instead, Mr. Taylor, American Renaissance, and other similarly-situated users were targeted for permanent suspension from Twitter due to nothing more than their controversial views on race and immigration, as well as their perceived political affiliations and political identity.

82. Any unstated policy that allows Twitter to ban users based on its subjective perception that they are "racist," "extremist" or "far right" is intolerably vague, subjective and overbroad, in violation of Article I, section 2 of the California Constitution. Such a policy also impermissibly discriminates based on the content of the speech (whether the speech is "racist," "extremist" or "far right") and the speaker's viewpoint. *Fashion Valley Mall, LLC*, *supra*, 42 Cal. 4th at pp. 864-870. It also chills the speech of the general public on matters of public concern. Article I, section 2 of the California Constitution guarantees that even people with unpopular viewpoints may speak out on public affairs in traditional public forums, be they publicly or privately owned.

83. The substantial overbreadth of Twitter's "Violent Extremist Group" policy, its singling out of particular viewpoints for punishment, and Twitter's practice of discriminatory enforcement of this and other policies to ban "right wing" accounts based on their viewpoint, has a chilling effect on the constitutionally protected speech and expression of users of Twitter's forum. This policy, and Twitter's discriminatory enforcement of it, inhibits a substantial amount of constitutionally-protected speech without any compelling or legitimate justification. The banning of Plaintiffs and other similar users sent a clear message that users must avoid expressing certain opinions on hot-button issues like immigration and race relations, even if they were to do so in a polite and respectful manner, and that frank discussions of such issues would no longer be tolerated on Twitter's open public forum. This chilling effect runs directly counter to the guarantee of Article I, section 2 of the California

Constitution that "every person may freely speak, write and publish his or her sentiments on all subjects."

84. As a direct and proximate result of Twitter's violations of Article I, Section 2 of the California Constitution, Plaintiffs and other similarly situated have suffered, and will continue to suffer, immediate and irreparable injury in fact. There is no public platform comparable to Twitter that would allow Mr. Taylor, American Renaissance, and other similarly-situated users to express their views, speak on issues of public concern, and petition their elected representatives. By banning their accounts, Twitter has deprived Mr. Taylor, American Renaissance and hundreds of other users of an essential mechanism to speak and engage in public discussion and debate. Courts have held repeatedly that the loss of important free speech rights, standing alone, is enough to show irreparable harm. *Elrod v. Burns* (1976) 427 U.S. 347, 373 [96 S. Ct. 2673]; *Smith v. Novato Unified School Dist*. (2007) 150 Cal. App. 4th 1439, 1465 [59 Cal. Rptr. 3d 508] (free speech claim under California Constitution); *S.O.C., Inc. v. County of Clark* (9th Cir. 1998) 152 F.3d 1136, 1148 (finding that civil liberties group that had demonstrated probable success on merits of challenge to canvassing ordinance had thereby shown irreparable harm); *Ketchens v. Reiner* (1987) 194 Cal. App. 3d 470, 480 [239 Cal. Rptr. 549]. And by enforcing its facially viewpoint discriminatory and overbroad "Violent Extremist Group" policy in a discriminatory manner, and asserting the right to arbitrarily ban members of the public whose viewpoints it dislikes, Twitter has violated the free speech rights of the public at large, who rely on Twitter to speak and participate in discussion of public issues.

SECOND CAUSE OF ACTION
(Violation of Unruh Civil Rights Act – Civil Code § 51, *et seq.*)

85. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth fully herein.

86. Twitter hosts a business establishment under the Unruh Civil Rights Act, California Civil Code § 51 *et seq*. The Act prohibits discrimination against "persons of unusual political views." *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal. 3d 721, 730 [180 Cal.Rptr. 496]. It also prohibits "all arbitrary discrimination by business establishments." *Id*. at p. 725. Thus, the Unruh Act requires all

business establishments in California to provide full and equal service to all customers without arbitrary discrimination and regardless of customers' political and social views.

87. Those who hold unpopular views have "protected status" under the Unruh Act. The California Supreme Court has stated that the Unruh Act prohibits business establishments from excluding individuals merely on the basis of their "characteristics or associations," such as those "who wear long hair or unconventional dress, who are black, who are members of the John Birch Society, or who belong to the American Civil Liberties Union, merely because of these characteristics or associations." *In re Cox*, *supra*, 3 Cal. 3d at pp. 217–18.

88. Under the Unruh Act, therefore, Twitter cannot deny service to Mr. Taylor, American Renaissance or similarly-situated users on the basis of their political views. The Unruh Act prohibits businesses from imposing any arbitrary exclusionary policy if such policy "rests on the alleged undesirable propensities of those of a particular . . . political affiliation." *Marina Point, Ltd.*, *supra*, 30 Cal. 3d at p. 736.

89. In this case, Twitter has permanently banned Mr. Taylor, American Renaissance and hundreds of other similarly-situated users due to their political views and perceived political associations, in violation of the Unruh Act. Twitter has discriminated against and censored these users based on their views on race relations and immigration. Twitter has denied Plaintiffs and similarly-situated users full and equal accommodations, advantages, privileges, and services by permanently banning these users from Twitter due to their political beliefs and perceived political affiliations.

90. Twitter's discrimination against Plaintiffs and other similarly-situated users based on their political views was intentional. That is, Twitter intentionally targeted Plaintiffs and similarly-situated users for bans due to their controversial political views (particularly on race and immigration), and based on their perceived political affiliations (*e.g.*, as "far right," "alt right," and "extremist"). *See* (Exh. P) ("As predicted, nearly every account that was banned by Twitter [on December 18, 2017] was affiliated with the alt-right or far right."). Twitter has intentionally allowed left-wing speakers to violate its rules with impunity, while selectively enforcing its rules against those with right-wing viewpoints, out of animus and spite towards individuals who hold such views. Twitter censored and

discriminated against Mr. Taylor, American Renaissance and other similarly-situated users out of nothing more than animus towards the political identity, political views, and perceived political affiliations of these users.

91. Twitter's discrimination against Plaintiffs and other similarly-situated users is arbitrary, capricious, pretextual, and without any legitimate, reasonable business interest. By adding to the variety of views available to the public, freely expressing their viewpoints, and adding to the numbers of users on the platform (and hence Twitter's own revenue), Plaintiffs and other similarly-situated users were acting on Twitter's "belief in free speech," fulfilling Twitter's stated mission of "sharing ideas instantly," and contributing to the success, popularity, and commercial value of Twitter.

92. Twitter's wrongful actions were taken with oppression, fraud, and malice. Twitter enforced its new policy on "Violent Extremist Groups" in an arbitrary and discriminatory manner with the intent of targeting conservative users who had never advocated violence, solely due to their viewpoints. Twitter had long advertised itself as a forum for the free self-expression of the public. Moreover, Twitter's Terms of Service state that any changes "**will not be retroactive**," and that it will attempt to notify users of "material revisions" to its Terms of Service. (Exh. G) (emphasis added). Nonetheless, Twitter purported to apply its new rule on "Violent Extremist Groups" retroactively to permanently ban Mr. Taylor, American Renaissance, and hundreds of other similarly-situated users the same day the new rule was promulgated, without giving Mr. Taylor and American Renaissance any advance notice or opportunity to demonstrate their compliance with this new policy. Twitter removed Mr. Taylor, American Renaissance and other hundreds of other "right wing" users based on the false allegation that they advocated violence (or were associated with groups that did), but gave these users no opportunity whatsoever to prove their compliance with Twitter's new policy.

93. Even more fundamentally, Twitter "offers to the public to carry . . . messages" and is, therefore, a common carrier under California law. Civ. Code § 2168. The California Supreme Court has recognized that the Unruh Act derives its protection from "the early common law right of equal access to the services of innkeepers or common carriers" *Marina Point, Ltd.*, *supra*, 30 Cal. 3d at 725. The "basic characteristic" of common carriage is the "requirement [to] hold[ ] oneself out to serve the

public indiscriminately." *Verizon v. FCC* (D.C. Cir. 2014) 740 F.3d 623, 651; *Doe v. Uber Techs., Inc.* (N.D. Cal. 2016) 184 F. Supp.3d 774, 787. In the communications context, common carriers "make[ ] a public offering to provide communications facilities whereby all members of the public who choose to employ such facilities may communicate or transmit intelligence of their own design and choosing." *FCC v. Midwest Video Corp.* (1979) 440 U.S. 689, 701 [99 S.Ct. 1435]. Thus, following the Unruh Act's purpose and history, common carriers in particular may not discriminate against customers on the basis of their messages' political content.

94. As a direct and proximate result of Twitter's unlawful and discriminatory actions, Plaintiffs and other similarly-situated users who have had their accounts banned based on their controversial viewpoints and affiliations have suffered, and will continue to suffer, immediate and irreparable injury in fact. There is simply no public platform comparable to Twitter that would allow Mr. Taylor, American Renaissance, and other similarly-situated users to express their views and participate in the marketplace of ideas.

THIRD CAUSE OF ACTION
(Violation of Unfair Competition Law – Bus. & Prof. Code § 17200, *et seq.*)

95. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth fully herein.

96. Under the Unfair Competition Law (UCL), "[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction." Civ. Code § 17203. Unfair competition is defined as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Civ. Code § 17200.

97. Twitter amended its Terms of Service on May 17, 2012, to read, *inter alia*: "We may suspend or terminate your accounts or cease providing you with all or part of the Services at any time for any reason, including, but not limited to, if we reasonably believe: (i) you have violated these Terms or the Twitter Rules. . . ." (Exh. K). On May 17, 2015, Twitter again amended its Terms of Service to read: "We may suspend or terminate your accounts or cease providing you with all or part of the Services at any time for any or no reason, including, but not limited to, if we reasonably believe:

(i) you have violated these Terms or the Twitter Rules . . .” (Exh. L). Twitter’s current Terms of Service include this same language. (See Exh. G).

98. On January 27, 2016, Twitter revised its Terms of Service to read, *inter alia*: “We reserve the right at all times (but will not have an obligation) to remove or refuse to distribute any Content on the Services, to suspend or terminate users, and to reclaim usernames without liability to you.” (Exh. M). This provision was amended on October 2, 2017 to read: “We may also remove or refuse to distribute any Content on the Services, suspend or terminate users, and reclaim usernames without liability to you.” (Exh. G).

99. Under the Consumer Legal Remedies Act (CLRA), businesses are proscribed from “unfair methods of competition and unfair or deceptive acts,” including “[i]nserting an unconscionable provision in the contract.” Civ. Code § 1770(a)(19).

100. The portions of Twitter’s Terms of Service purporting to give Twitter the right to suspend or ban an account “at any time for any or no reason” and “without liability to you,” along with its newly-minted policy on “Violent Extremist Groups,” are procedurally and substantively unconscionable, in violation of the CLRA.

101. These terms are procedurally unconscionable because they were inserted unilaterally by Twitter into its Terms of Service without any opportunity for individual users to negotiate them. Twitter’s Terms of Service did not include any provision allowing it to suspend or ban accounts “at any time for any reason” until May 17, 2012, did not include the “without liability to you” language until even later, January 27, 2016. The idea that Twitter would use this language to create content- and viewpoint-based restrictions around use of the platform would have come as a complete surprise, as the Twitter Rules in effect previously stated “we do not actively monitor user’s content and will not censor user content,” except in limited circumstances such as impersonation, violation of trademark or copyright, or “direct, specific threats of violence against others” (Exh. D), and Twitter has consistently listed “free expression” and the power of “every voice” among its core values. So too, Twitter’s enactment of the “Violent Extremist Group” policy required it to engage in active content monitoring and censorship, something its Rules had previously **expressly eschewed**. Moreover, the

new "Violent Extremist Group" policy is viewpoint discriminatory on its face and was promulgated with the specific intention of censoring the speech of its users and banning users with unpopular viewpoints, in violation of Twitter's previous promises that it would not engage in content monitoring, would not censor user content, and would uphold the rights of its users to speak freely, including their expression of unpopular or controversial viewpoints. Moreover, Twitter purported to enforce its new "Violent Extremist Group" policy retroactively to permanently ban Mr. Taylor, American Renaissance, and hundreds of other similarly-situated users the same day the new rule was promulgated, without giving Mr. Taylor and American Renaissance any advance notice or opportunity to demonstrate their compliance with this new policy. Twitter removed Mr. Taylor, American Renaissance and other hundreds of similarly-situated users based on the false allegation that they advocated violence (or were associated with groups that did), but gave these users no opportunity whatsoever to prove their compliance with Twitter's new policy.

102. These portions of Twitter's Terms of Service are also substantively unconscionable. That is because they are "unreasonably favorable to the more powerful party" and "unfairly one-sided." *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal. 4th 899, 911 [190 Cal. Rptr. 3d 812] (internal quotation marks omitted). The terms purporting to give Twitter the right to suspend or ban an account "at any time for any or no reason" and "without liability to you," along with its newly-minted policy on "Violent Extremist Groups," each "contravene the public interest or public policy," "attempt to alter in an impermissible manner fundamental duties otherwise imposed by the law," "seek to negate the reasonable expectations of the nondrafting party," and impose "unreasonably and unexpectedly harsh terms having to do with . . . central aspects of the transaction." *Id.* (internal quotation marks omitted).

103. With respect to the provisions purporting to give Twitter the right to suspend or ban an account "at any time for any or no reason" and "without liability to you," Twitter employees could, using these provisions, engage in active content monitoring and threaten to shut down any account at any time for posting something an employee disliked. Twitter employees could ban accounts for the most petty and self-interested of reasons—they belong to an ex-girlfriend or ex-boyfriend; the

employee had a bad experience with a particular company that has an account on Twitter; the employee is a fan of a certain sports team and thus bans all accounts associated with a rival team. Such terms are so one-sided and oppressive that they shock the conscience. They also contravene the public interest and public policy by allowing Twitter to engage in such arbitrary censorship of speakers.

104. In addition, Twitter recognizes followers on its platform as assets that have a monetary value. *See* Exh. J ("The cost per follower on Twitter is set by a second price auction among other advertisers – you'll only ever pay just slightly more than the next highest bidder. A bid of $2.50 - $3.50 is recommended based on historical averages."). It also recognizes that accounts are assets owned solely by their owners, which account owners may sell or assign to others. However, the provisions of the Terms of Service purporting to give Twitter the right to suspend or ban an account "at any time for any or no reason" and "without liability to you" would allow Twitter to take away this valuable asset at any time, for any or no reason, without any compensation.

105. The policy on "Violent Extremist Groups" contravenes the public interest and public policy. It does so by allowing Twitter, a public forum under the Article I, Sections 2 and 3 of California Constitution that is required to respect the free speech rights of the public, to censor and ban users based solely on their political beliefs and affiliations. The policy also seeks to negate the reasonable expectations of the nondrafting party, because Twitter's Rules explicitly stated that it would not engage in content monitoring and would not censor its users, and Twitter's advertising had repeatedly stated that it was the "public square" and a forum that protected and encouraged the free expression of its users, including their right to express unpopular or controversial viewpoints.

106. Twitter is essential to the ability of Plaintiffs and similarly-situated users to communicate, engage in public debate, petition their representatives, and exercise their political rights as citizens. Given Twitter's unique role as an open public forum for public speech, debate and petition, they had and have no suitable alternative platform to move to if they were unhappy with Twitter's unfair terms. Even if they did, they would be unable to transfer the tens of thousands of followers they accrued to the new platform.

107. Under the UCL, a fraudulent business practice is "one that is likely to deceive members of the public." *Morgan v. AT&T Wireless Servs., Inc.* (2009) 177 Cal. App. 4th 1235, 1255, [99 Cal. Rptr. 3d 768]. Unlike common law fraud, it does not require "allegations actual falsity and reasonable reliance pleaded with specificity." *Id.* at 1256.

108. Twitter's practices are fraudulent because it held itself out to be a free speech platform—the "free speech wing of the free speech party," as one of its executives stated in 2012. (Exh. W). Its advertisements describe it as "the live public square," and a "public forum." (Exh. H). Its "Values" page states: "We believe in free expression and believe every voice has the power to impact the world" (Exh. A), and Twitter proclaims that its mission is to "[g]ive everyone the power to create and share ideas instantly, without barriers." (Exh. B).

109. Relying on these statements, Plaintiffs and other similarly-situated users reasonably assumed that Twitter would allow them to use the forums to freely express their opinions on all subjects, without engaging in censorship based on their political views and affiliations, so long as they did not threaten or harass others. Based on Twitter's advertising, they reasonably expected that it was and would continue to be a public forum for the speech of its users. Twitter specifically stated that it would not "actively monitor user's content and will not censor user content," except in limited circumstances such as impersonation, violation of trademark or copyright, or "direct, specific threats of violence against others." (Exh. D). Moreover, Twitter's Terms of Service state that any changes "**will not be retroactive**," and that it will attempt to notify users of "material revisions" to its Terms of Service. (Exh. G) (emphasis added). Twitter's false and misleading representations that Twitter would respect the free speech rights of its users, that it would not engage in content monitoring or censorship, and that it would not apply any changes to its policies retroactively were material to the decision of Plaintiffs and other similarly-situated users with controversial "right wing" viewpoints on political issues to join the forum. However, in violation of its previous representations, Twitter has censored Plaintiffs and hundreds of other similarly-situated users based on their political beliefs and affiliations and purported to apply its new rule on "Violent Extremist Groups" retroactively in order to ban them.

110. As a result of Twitter's violations of the UCL, Plaintiffs and similarly-situated users and other similarly-situated users who have had their accounts banned based on their controversial viewpoints and affiliations have suffered, and will continue to suffer, immediate and irreparable injury in fact. These users have lost a tangible property interest in their accounts and the followers they had accumulated.

111. Enjoining Twitter's aforementioned violations of UCL will benefit the hundreds of millions of Twitter users who have also been subject to its unconscionable terms of service. Millions of Twitter users who have spent time, money, and effort to gain followers could all have their accounts terminated for any or no reason, or could lose their valuable economic interest in access to their Twitter account and the followers based on Twitter's disagreement with their political beliefs, viewpoints or affiliations. Moreover, Twitter's revisions to its Terms of Service and Rules, noted above, have chilled free and uninhibited public debate on important issues. Holding Twitter accountable for its stated beliefs in free expression and the power of each individual voice advances important public interests in being able to speak freely on matters of public concern on social media—a public interest of compelling importance. Moreover, these rules and terms threaten all of Twitters users, regardless of their political views, or even if they do not post on controversial issues. Twitter employees could, using these provisions, engage in active content monitoring and threaten to shut down any account at any time for posting something an employee disliked. Twitter employees could ban accounts for the most petty and self-interested of reasons—they belong to an ex-girlfriend or ex-boyfriend; the employee had a bad experience with a particular company that has an account on Twitter; or the employee is a fan of a certain sports team and thus bans all accounts associated with a rival team.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully pray for a judgment as follows:

1. For an injunction ordering (i) that Twitter cease and desist from enforcing its facially overbroad policy on "Violent Extremist Groups"; (ii) with respect to any accounts Twitter has purported to suspend or ban pursuant to this policy, that Twitter lift any such suspension or ban, and restore access to these accounts immediately; and (iii) that Twitter cease and desist from any efforts

to suspend or ban user accounts based on the user's viewpoint or perceived political affiliations, and restore any accounts so suspended or banned;

2. For a declaratory judgment that Twitter has violated and continues to violate the rights of Plaintiffs and other similarly-situated users under Article I, sections 2 and 3 of the California Constitution; the Unruh Civil Rights Act (Civ. Code, § 51 *et seq.*); and the UCL;

3. For costs of suit incurred herein;

4. For reasonable attorney's fees; and

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

DATED: March 14, 2018

Respectfully submitted,

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