

1 Marc J. Randazza, Esq. SBN 269535
2 RANDAZZA LEGAL GROUP, PLLC
3 4035 S. El Captain Way
4 Las Vegas, NV 89147
5 (702) 420-2001
6 (305) 437-7662 fax
7 ecf@randazza.com

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10
11 **FOR THE COUNTY OF SAN FRANCISCO**

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

17 Plaintiffs,

18 vs.

19 TWITTER, INC., a California corporation

20 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

21 Plaintiffs, Jared Taylor and New Century Foundation (“Plaintiffs”), on behalf of themselves,
22 others similarly situated, and the general public, hereby file this Complaint for Violation of Article I,
23 sections 2 and 3 of the California Constitution, Violation of the Unruh Civil Rights Act (Civ. Code
24 § 51 et seq.), and Violation of the Unfair Competition Law (Bus. & Prof. Code § 17200 et seq.), against
25 Defendant, Twitter, Inc. (“Twitter”), and would show as follows:

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

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

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

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

23 17. Twitter is the platform in which important political debates take place in the modern
 24 world. The U.S. Supreme Court has described social media sites such as Twitter as the “modern public
 25 square.” *Packingham v. North Carolina* (2017) 582 U.S. __ [137 S. Ct. 1730, 1737]. It is used by
 26 politicians, public intellectuals, and ordinary citizens the world over, expressing every conceivable
 27

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>>

1 and crassness—and sometimes even participate in real back-and-forth dialogue. This
 2 open dialogue . . . has also bolstered accountability and has caused the downfall of
 3 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.**

4 *Id.* (emphasis added).

5 The article continues:

6 **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
 7 most aspirational and even the most base, social media offers a platform for common
 8 thread with other likeminded people. Over the past decade, the bounds of geography
 9 and group have been pulled back to reveal the sinews of a system that now promises
 10 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.

11 *Id.* (emphasis added).

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

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

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

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

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

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

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

21 23. Twitter has no free speech or expressive interest whatsoever in banning users from its
22 open platform. The U.S. Supreme Court has **expressly rejected** the argument that privately-owned
23 public forums (such as Twitter) have “a First Amendment right not to be forced by the State to use his
24 property as a forum for the speech of others.” *Pruneyard Shopping Ctr. v. Robins* (1980) 447 U.S. 74,
25 85 [100 S. Ct. 2035]. The Court held that a privately-owned public forum lacked such First
26 Amendment rights primarily because it was unlikely that the views expressed by members of the
27 general public would be identified as those of the property’s owner. *Id.* at p. 87. So too in this case,

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

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

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

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

9 26. To fully appreciate the ridiculousness of the argument that Twitter’s attempts to censor
 10 its users is nothing more than an act of self-expression by Twitter, recall that the government’s own
 11 speech is not subject to the First Amendment under the “government speech” doctrine. *Matal v. Tam*
 12 (2017) 582 U. S. ___, 137 S. Ct. 1744, 1757-1758. Under the logic that Twitter’s attempts to ban others
 13 from speaking in its public forum is simply Twitter’s own act of self-expression, the government’s
 14 acts in banning the speech of Communists, civil rights protestors, Jehovah’s Witnesses and other
 15 unpopular groups in public spaces would be considered nothing more than the government’s
 16 expression of its belief that the views of such individuals are so amoral and repugnant, and so
 17 threatening to the welfare of their fellow citizens, that they should not be permitted to participate in
 18 public debate. Of course, that is not how the law works. Just as the government’s acts in banning
 19 disfavored speakers are not shielded under the “government speech” doctrine as its own act of self-
 20 expression, *despite the fact that the government’s decision to censor such speakers may be intended*
 21 *to express the government’s strong disapproval of their message*, so Twitter’s attempts to ban
 22 individuals from speaking freely on its open forum due to dislike of their viewpoints and affiliations
 23 is not its own act of self-expression. A contrary holding would render the cherished free speech
 24 protections of the federal and California constitutions meaningless.

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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

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

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

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

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

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

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

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

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

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

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

- 20 • Impersonation: You may not impersonate others through the Twitter service in a
21 manner that does or is intended to mislead, confuse, or deceive others
- 22 • Trademark: We reserve the right to reclaim user names on behalf of businesses
23 or individuals that hold legal claim or trademark on those user names. Accounts
24 using business names and/or logos to mislead others will be permanently suspended.
- 25 • Privacy: You may not publish or post other people’s private and confidential
26 information, such as credit card numbers, street address or Social Security/National
27 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.

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

8 *Id.* Thus, Twitter’s rules have banned “direct, specific threats of violence against others” since at least
9 2011. Plaintiffs have never violated this rule.

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

20 42. The Twitter rules on “Violent Extremist Groups,” first announced on December 18,
21 2017, provide: “You may not make specific threats of violence or wish for the serious physical harm,
22 death, or disease of an individual or group of people. This includes, but is not limited to, threatening
23 or promoting terrorism. You also may not affiliate with organizations that – whether by their own
24 statements or activity both on and off the platform – use or promote violence against civilians to further
25 their causes.” (Exh. O). They go on to state: “We take pride in Twitter being a platform where a
26 diverse range of opinions can be held and discussed, but we will not tolerate groups or individuals
27 associated with them who engage in and promote violence against civilians both on and off the
28 platform. Accounts affiliated with groups in which violence is a component of advancing their cause

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

3 43. With respect to “When this applies,” Twitter states:

4 We prohibit the use of Twitter’s services by violent extremist groups – i.e., identified
 5 groups subscribing to the use of violence as a means to advance their cause, whether
 6 political, religious, or social.

7 We consider violent extremist groups to be those which meet all of the below criteria:

- 8 • identify through their stated purpose, publications, or actions, as an extremist
 9 group
- 10 • have engaged in, or currently engage in, violence (and/or the promotion of
 11 violence) as a means to further their cause
- 12 • target civilians in their acts (and/or promotion) of violence

13 Exceptions will be considered for groups that have reformed or are currently engaging
 14 in a peaceful resolution process, as well as groups with representatives elected to public
 15 office through democratic elections. This policy does not apply to military or
 16 government entities.

17 Behavior we look for when determining whether an account is affiliated with a violent
 18 extremist group includes:

- 19 • stating or suggesting that an account represents or is part of a violent extremist
 20 group
- 21 • providing or distributing services (e.g., financial, media/propaganda) in
 22 furtherance of progressing a violent extremist group’s stated goals
- 23 • engaging in or promoting acts for the violent extremist group
- 24 • recruiting for the violent extremist group

25 *Id.*

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

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

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

8 46. Twitter enacted its new rules regarding “Violent Extremist Groups,” on December 18,
9 2017, the same day it banned Plaintiffs’ accounts. It purported to apply these new rules retroactively,
10 in violation of its Terms of Service. It made no attempt to notify Plaintiffs of its new rules before
11 permanently banning them, also in violation of its Terms of Service. At the same time it banned
12 Plaintiffs’ accounts, Twitter banned hundreds of other users. The only thing all the banned accounts
13 had in common was that they were “affiliated with the alt-right or far right.” (Exh. P) (“As predicted,
14 nearly every account that was banned by Twitter [on December 18, 2017] was affiliated with the alt-
15 right or far right.”). Beyond that, accounts appear to have been banned at random, without any nexus
16 to the actual terms of the “Violent Extremist Group” policy or any other Twitter policy. *Id.*

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

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

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

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

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

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

26 **V. Twitter’s Unconstitutional and Discriminatory Actions Chill Public Debate and**
27 **Violate the Free Speech Rights of All Twitter Users**

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

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

25 54. As a result of Twitter’s actions, Plaintiffs and other users who have been banned under
26 Twitter’s new censorship regime have suffered and will continue to suffer irreparable harm. There is
27 no public platform comparable to Twitter that would allow Mr. Taylor, American Renaissance, and
28

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

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

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

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

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

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

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

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

1 California Constitution states, “The people have the right to instruct their representatives, petition
 2 government for redress of grievances, and assemble freely to consult for the common good.” Under
 3 California law, privately-owned spaces are subject to these protections where they serve as “as a place
 4 for large groups of citizens to congregate”; where the public is “induced to congregate daily” at such
 5 places; and the property-owner has “fully opened his property to the public.” *Robins v. Pruneyard*
 6 *Shopping Center* (1979) 23 Cal.3d 899, 910-911 & n. 5 [153 Cal.Rptr. 854] (hereafter *Pruneyard*).
 7 Under *Pruneyard*, “when private property is generally open to the public and functions as the
 8 equivalent of a traditional public forum, then the California Constitution protect[s] speech, reasonably
 9 exercised, on the property, even though the property [i]s privately owned.” *Allred v. Harris* (1993) 14
 10 Cal. App. 4th 1386, 1390 [18 Cal. Rptr. 2d 530]. “Unlike the United States Constitution, which
 11 couches the right to free speech as a limit on congressional power, the California Constitution gives
 12 ‘[e]very person’ an affirmative right to free speech. Accordingly, [the California Supreme Court has]
 13 held that our free speech clause is more definitive and inclusive than the First Amendment.” *Golden*
 14 *Gateway Center v. Golden Gateway Tenants Assn.* (2001) 26 Cal. 4th 1013, 1019 [111 Cal. Rptr. 2d
 15 336] (internal quotation marks and citations omitted). Such privately-owned public forums “may no
 16 more exclude individuals who wear long hair . . . who are black, who are members of the John Birch
 17 Society, or who belong to the American Civil Liberties Union, merely because of these characteristics
 18 or associations, than may the City of San Rafael.” *Pruneyard*, 23 Cal.3d at p. 909 (quoting *In Re Cox*
 19 (1970) 3 Cal.3d 205, 217-218 [90 Cal. Rptr. 24])).

20 60. The test for whether a privately-owned space constitutes a public forum under
 21 *Pruneyard* is whether the space is “the functional equivalent of a traditional public forum.” *Golden*
 22 *Gateway Center*, 26 Cal. 4th at p. 1033; see also *id.* at p. 1039 (conc. opn. of George, C. J.); *Ralphs*
 23 *Grocery Co. v. United Food & Commercial Workers Union Local 8* (2012), 55 Cal. 4th 1083, 1092
 24 [150 Cal. Rptr. 3d 501] (“Our reasoning in *Pruneyard* determines the scope of that decision’s
 25 application.”); *International Society for Krishna Consciousness of California, Inc. v. City of Los*
 26 *Angeles* (2010) 48 Cal. 4th 446, 461 [106 Cal. Rptr. 3d 834] (conc. opn. of Kennard, J.) (“To determine
 27 whether particular areas are public forums for purposes of the California Constitution’s liberty of

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

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

22 62. Twitter is given over to public discussion and debate to a far greater extent than the
 23 shopping center in *Pruneyard* or the “streets, sidewalks and parks” that “[f]rom time immemorial . . .
 24 have been held in trust for the use of the public and have been used for purposes of assembly,
 25 communicating thoughts and discussing public questions.” *In re Hoffman* (1967) 67 Cal.2d 845, 849
 26 [64 Cal.Rptr. 97] (Traynor, C.J.) (paraphrasing *Hague v. C.I.O.* (1939) 307 U.S. 496, 515 [59 S. Ct.
 27 954]). Unlike shopping centers, streets, sidewalks and parks, which are mostly used for functional,

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

12 63. While the *Pruneyard* court placed great significance in the fact that “25,000 persons
13 [we]re induced to congregate daily” at the shopping center, *Pruneyard, supra*, 23 Cal. 3d at p. 910,
14 330 million people from all over the world are “induced to congregate daily” on Twitter. While
15 *Pruneyard* described shopping malls as having “growing importance” as places for large groups of
16 citizens to congregate, *id.* at pp. 907, 910 & n. 5, the U.S. Supreme Court described Twitter as *one of*
17 *the most important places in the world for the exchange of ideas and perhaps the most powerful*
18 *mechanism available to a private citizen to make his or her voice heard. Packingham, supra*, 137 S.
19 Ct. at pp. 1735, 1737. And it held that banning individuals from social media (and Twitter in
20 particular) imposes “unprecedented burdens” on their free speech rights. *Id.* at 1737.

21 64. The question of whether Twitter is a public forum under *Pruneyard* is not a close one:
22 it is similar in every relevant respect to the areas previously recognized as privately-owned public
23 forums under California law. The major differences are that Twitter’s purpose is *entirely* to facilitate
24 expression, whereas shopping centers, streets, parks and sidewalks exist primarily for functional
25 purposes; and Twitter has openly acknowledged its role as a public forum for speech, petition and
26 assembly, whereas the shopping center in *Pruneyard* strictly enforced a policy “not to permit any
27

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

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

7 66. Because Twitter is “freely and openly accessible to the public,” its actions in banning
 8 Plaintiffs and other similarly-situated users constitutes “state action” for purposes of Article I, sections
 9 2 and 3 of the California Constitution. *Golden Gateway Center v. Golden Gateway Tenants Assn.*
 10 (2001), 26 Cal. 4th 1013, 1033 [111 Cal. Rptr. 2d 336].

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

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

1 applies (as the State concedes it does) to social networking sites ‘as commonly understood’—that is,
 2 websites like Facebook, LinkedIn, and Twitter.”).

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

6 Social media allows users to gain access to information and communicate with one
 7 another about it on any subject that might come to mind. By prohibiting sex offenders
 8 from using those websites, North Carolina with one broad stroke bars access to what for
 9 many are the principal sources for knowing current events, checking ads for
 10 employment, speaking and listening in the modern public square, and otherwise
 11 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.’**

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

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

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

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

1 viewpoint discrimination in violation of Article I, Section 2 of the California Constitution. Under
 2 *Pruneyard*, privately-owned public forums may adopt “reasonable regulations of the time, place or
 3 manner of” speech in order to ensure that expressive activities “do not interfere with normal business
 4 operations.” *Fashion Valley Mall, LLC v. National Labor Relations Bd.* (2007) 42 Cal. 4th 850,
 5 870[69 Cal.Rptr.3d 288]. Thus, Plaintiffs do not dispute Twitter’s ability to regulate its public forum
 6 to prevent the posting of material that is obscene, lewd, lascivious, filthy, excessively violent,
 7 harassing and similar material, so long as it is done even-handedly and without regard to the content
 8 of the speech or the viewpoint of the speaker. However, privately-owned public forums may not enact
 9 content- or viewpoint-based restrictions on speech. *Fashion Valley Mall, LLC.*, 42 Cal. 4th at p. 870.

10 72. To withstand constitutional scrutiny, time, place and manner restrictions must be
 11 “justified without reference to the content of the regulated speech, narrowly tailored, and leave open
 12 ample alternative channels for communication of the information.” *Golden Gateway Center, supra*,
 13 26 Cal. 4th at p. 1013 (formatting and internal quotation marks omitted). “Restrictions upon speech
 14 that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views
 15 expressed are content based.” *Fashion Valley Mall, LLC*, 42 Cal. 4th at p. 866 (internal quotation
 16 marks omitted); see also *Glendale Associates, Ltd. v. National Labor Relations Bd.* (9th Cir. 2003)
 17 347 F.3d 1145, 1155 (“California state courts borrow from federal First Amendment jurisprudence to
 18 analyze whether a rule is content-based or content-neutral.”).

19 73. Thus, Twitter may not, consistent with the California Constitution, “grant the use of a
 20 forum to people whose views it finds acceptable, but deny use to those wishing to express less favored
 21 or more controversial views.” *Police Dep’t of Chicago v. Mosley* (1972) 408 U.S. 92, 96 [92 S. Ct.
 22 2286]; see also *Danskin v. San Diego Unified School Dist.* (1946) 28 Cal. 2d 536, 548 [171 P.2d 885]
 23 (Traynor, J.) (“The very purpose of a forum is the interchange of ideas, and that purpose cannot be
 24 frustrated by a censorship that would label certain convictions and affiliations suspect, denying the
 25 privilege of assembly to those who hold them, but granting it to those whose convictions and
 26 affiliations happen to be acceptable.”). Privately-owned public forums “may no more exclude
 27 individuals who wear long hair . . . who are black, who are members of the John Birch Society, or who

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

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

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

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

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

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

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

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

17 79. *Fourth*, Twitter’s “Violent Extremist Groups” policy is substantially overbroad on its
18 face because it prohibits mere advocacy of “the use of violence as a means to advance [a] cause,
19 whether political religious, or social.” The First Amendment “protects speech that advocates violence,
20 so long as the speech is not directed to inciting or producing imminent lawless action and is not likely
21 to incite or produce such action.” *Planned Parenthood of the Columbia/Willamette, Inc. v. Am.*
22 *Coalition of Life Activists* (9th Cir. 2002) 290 F.3d 1058, 1071 (citing *Brandenburg v. Ohio* (1969)
23 395 U.S. 444, 447 [89 S. Ct. 1827] [per curiam]). The California Constitution contains the same
24 protections. *Siegel v. Committee of Bar Examiners* (1973) 10 Cal. 3d 156, 174 n. 18 [110 Cal. Rptr.
25 15]. *Brandenburg* struck down, as facially overbroad, an Ohio statute that punished persons who
26 “‘advocate or teach the duty, necessity, or propriety’ of violence ‘as a means of accomplishing
27 industrial or political reform’; or who publish or circulate or display any book or paper containing

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

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

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

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

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

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

1 Constitution that “every person may freely speak, write and publish his or her sentiments on all
 2 subjects.”

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

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

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

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

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

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

9 88. Under the Unruh Act, therefore, Twitter cannot deny service to Mr. Taylor, American
 10 Renaissance or similarly-situated users on the basis of their political views. The Unruh Act prohibits
 11 businesses from imposing any arbitrary exclusionary policy if such policy “rests on the alleged
 12 undesirable propensities of those of a particular . . . political affiliation.” *Marina Point, Ltd., supra*,
 13 30 Cal. 3d at p. 736.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 104. In addition, Twitter recognizes followers on its platform as assets that have a monetary
 6 value. *See* Exh. J (“The cost per follower on Twitter is set by a second price auction among other
 7 advertisers – you’ll only ever pay just slightly more than the next highest bidder. A bid of \$2.50 -
 8 \$3.50 is recommended based on historical averages.”). It also recognizes that accounts are assets
 9 owned solely by their owners, which account owners may sell or assign to others. However, the
 10 provisions of the Terms of Service purporting to give Twitter the right to suspend or ban an account
 11 “at any time for any or no reason” and “without liability to you” would allow Twitter to take away this
 12 valuable asset at any time, for any or no reason, without any compensation.

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

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

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

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

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

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

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

PRAYER FOR RELIEF

22 Wherefore, Plaintiffs respectfully pray for a judgment as follows:

- 23 1. For an injunction ordering (i) that Twitter cease and desist from enforcing its facially
 24 overbroad policy on “Violent Extremist Groups”; (ii) with respect to any accounts Twitter has
 25 purported to suspend or ban pursuant to this policy, that Twitter lift any such suspension or ban, and
 26 restore access to these accounts immediately; and (iii) that Twitter cease and desist from any efforts
 27

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

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

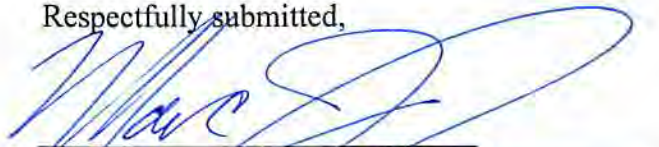
6 3. For costs of suit incurred herein;

7 4. For reasonable attorney's fees; and

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

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10 DATED: March 14, 2018

Respectfully submitted,



11
12 Marc J. Randazza, SBN 269535
13 RANDAZZA LEGAL GROUP, PLLC
14 4035 S. El Capitan Way
15 Las Vegas, NV 89147
16 (702) 420-2001
17 (305) 437-7662 fax
18 ecf@randazza.com

19
20 D. Adam Candeb, Esq. (*pro hac vice* to be submitted)
21 442 Law College Building
22 Michigan State University
23 East Lansing MI 48864
24 (517) 432-6906
25 candeb@law.msu.edu

26
27 Noah B. Peters, Esq. (*pro hac vice* to be submitted)
28 1015 18th St. N.W., Suite 204
29 Washington, D.C. 20036
30 (202) 499-4222
31 (202) 318-7071 (fax)
32 noah@noahpeterslaw.com