

1 Marc J. Randazza, Esq. SBN 269535  
2 RANDAZZA LEGAL GROUP, PLLC  
3 2764 Lake Sahara Drive, Suite 109  
4 Las Vegas, NV 89117  
5 (702) 420-2001  
6 ecf@randazza.com

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

10  
11 JARED TAYLOR, an individual; NEW  
12 CENTURY FOUNDATION, a Kentucky  
13 not-for-profit trust

14 Plaintiffs,

15 vs.

16 TWITTER, INC., a California corporation

17 Defendant.  
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No. CGC-18-564460

**PLAINTIFFS JARED TAYLOR AND NEW  
CENTURY FOUNDATION'S NOTICE OF  
OPPOSITION AND OPPOSITION TO  
DEFENDANT TWITTER, INC.'S  
SPECIAL MOTION TO STRIKE UNDER  
CALIFORNIA CODE OF CIVIL  
PROCEDURE SECTION 425.16;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
NOAH PETERS; AFFIDAVIT OF JARED  
TAYLOR**

Judge: Hon. Harold E. Kahn  
Reservation No. 04240524-03  
Date: June 14, 2018  
Time: 9:30 a.m.  
Dept.: 302

1 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 COME NOW Plaintiffs Jared Taylor and New Century Foundation, which hereby oppose  
3 Defendant Twitter, Inc.'s Special Motion to Strike Under Cal. Civ. Proc. Code § 425.16. Plaintiffs  
4 oppose this motion on the grounds that Plaintiffs' claims do not arise from conduct of Twitter protected  
5 under California's Anti-SLAPP statute, and Plaintiffs can demonstrate a probability of prevailing on  
6 their claims.  
7

8 This Opposition is based on this Notice of Opposition, the Memorandum of Points and  
9 Authorities served and filed herewith, the declaration of Noah Peters and Affidavit of Jared Taylor, on  
10 the records and file herein, and on such evidence and argument as may be presented at the hearing on  
11 the motion.  
12

13 Dated: May 21, 2018

Respectfully submitted,

15 /s/ Marc J. Randazza  
16 Marc J. Randazza, Esq. SBN 269535  
17 Randazza Legal Group, PLLC  
18 2764 Lake Sahara Drive, Suite 109  
19 Las Vegas, NV 89117  
20 702-420-2001  
21 ecf@randazza.com

22 Adam Candeub, Esq. (*pro hac vice* to be submitted)  
23 442 Law College Building  
24 Michigan State University  
25 East Lansing MI 48864  
26 (517) 432-6906  
27 candeub@law.msu.edu

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

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **1.0 INTRODUCTION**

3 Twitter’s Special Motion to Strike abuses California’s Anti-SLAPP Law. That law (Civ. Proc.  
4 Code § 425.16) was enacted to “combat frivolous lawsuits brought primarily to chill the valid exercise  
5 of the constitutional right of freedom of speech.” *Foothills Townhome Ass’n. v. Christiansen* (1998)  
6 65 Cal. App. 4th 688, 694. “The paradigm SLAPP is a suit filed by a large land developer against  
7 environmental activists or a neighborhood association intended to chill the defendants’ continued  
8 political or legal opposition to the developers’ plans.” *Grewal v. Jammu* (2011) 191 Cal. App. 4th 977,  
9 995. “The favored causes of action in SLAPP suits are defamation, various business torts such as  
10 interference with prospective economic advantage . . . **Plaintiffs in these actions typically ask for**  
11 **damages which would be ruinous to the defendants.**” *Id.* (emphasis added). As a rule, “SLAPP suits  
12 are brought to obtain an economic advantage over the defendant, not to vindicate a legally cognizable  
13 right of the plaintiff.” *Id.*

14 Now along comes Twitter, a multi-billion dollar corporation, which has decided that it will  
15 become a censor of any views that someone (who, exactly, is anyone’s guess at this point) inside  
16 Twitter decides are simply “disfavored.” As the censorious goon in this story, Twitter then turns the  
17 Anti-SLAPP statute on its head – seeking to weaponize the Anti-SLAPP Law to punish Plaintiffs, an  
18 individual (Jared Taylor) and a non-profit institution (New Century Foundation), for pursuing valid  
19 claims that seek to vindicate not just *their* free speech rights, but those of the public at large.

20 Twitter’s Anti-SLAPP motion in this case plays the same functional role as the vindictive,  
21 retaliatory lawsuit that the Anti-SLAPP Law was intended to prevent. Unlike Plaintiffs’ suit, which  
22 seeks no damages whatsoever, Twitter’s Anti-SLAPP motion seeks to impose a financial penalty  
23 (payment of Twitter’s legal fees) on Plaintiffs that would be ruinous to any individual member of the  
24 public. The purpose is clear – to try and intimidate anyone who might dare to shine a legal spotlight  
25 on Twitter’s censorious campaign.

26 Finding that “there has been a disturbing abuse of . . . the California Anti-SLAPP Law, which  
27 has undermined the exercise of the constitutional rights of freedom of speech and petition for the  
28 redress of grievances, contrary to the purpose and intent of Section 425.16,” the California Legislature  
29 carved out exceptions to the Anti-SLAPP Law for public interest lawsuits and lawsuits involving  
30 commercial speech. *See* Civ. Proc. Code § 425.17(a). Both exceptions apply in this case.

31 Further demonstrating the abusiveness of its Anti-SLAPP motion, Twitter fails to identify any  
32 act that it took in furtherance of its own free speech rights in connection with a public issue, as the

1 Anti-SLAPP Law requires. *See* Civ. Proc. Code § 425.16(b)(1). Twitter’s Anti-SLAPP Motion also  
2 fails because Plaintiffs have shown a likelihood of succeeding on their claims for violation of their  
3 rights to free speech, petition and assembly under Article I, Sections 2 and 3 of the California  
4 Constitution, and for violations of California’s Unruh Act and Unfair Competition Law (UCL).

5 **2.0 FACTUAL BACKGROUND**

6 Twitter is the world’s largest microblogging site, with an average of 330 million active users  
7 per month from all over the globe. First Amendment Complaint (“FAC”) ¶ 16.<sup>1</sup> It allows users who  
8 have established accounts to post short messages, called Tweets, as well as photos or short videos. *Id.*  
9 Anyone can join and set up an account on Twitter at any time. *Id.* Twitter’s self-proclaimed mission  
10 is to “[g]ive everyone the power to create and share ideas instantly, without barriers.” *Id.* On its  
11 “Values” page, Twitter states: “We believe in free expression and believe every voice has the power to  
12 impact the world.” *Id.* Twitter describes itself as “the live public square, the public space - a forum  
13 where conversations happen.” *Id.* Twitter has, however, decided that “everyone” means only those  
14 who its Orwellian-named “trust and safety council” approves of, and that “without barriers” is also  
15 subject to a political litmus test, and this “live public square” is not the kind that we Americans think  
16 of when we hear that term – but a resident of Leipzig in 1980 might have found philosophically familiar.

17 Access to Twitter is essential for meaningful participation in modern-day American democracy.  
18 FAC ¶ 18. It has become an important communications channel for governments and heads of state.  
19 FAC ¶ 17. As the U.S. Supreme Court noted in *Packingham v. North Carolina* (2017) 137 S. Ct. 1730,  
20 1735, “[O]n Twitter, users can petition their elected representatives and otherwise engage with them in  
21 a direct manner. Indeed, Governors in all 50 States and almost every Member of Congress have set up  
22 accounts for this purpose.” 137 S. Ct. at pp. 1735 (quoted in FAC ¶ 19). Twitter has actively promoted  
23 itself as an open platform for individuals to petition their elected leaders and participate in public  
24 affairs, billing itself as “a free platform for all voices to be heard and to organize.” FAC ¶ 19.

25 Jared Taylor is a well-known author and public intellectual. FAC ¶ 27. He is a graduate of Yale  
26 and the Paris Institute of Political Studies and the author of seven books. *Id.* Mr. Taylor founded the  
27 New Century Foundation in 1994 as a 501(c)(3) tax-exempt educational institution. *Id.* at ¶ 13. It  
28 maintains a very active website at [www.AmRen.com](http://www.AmRen.com), publishes books and monographs, and conducts  
29 conferences. *Id.* at ¶¶ 12-13.

30 Mr. Taylor and American Renaissance used their Twitter accounts to communicate with a broad

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31  
32 <sup>1</sup> The FAC has been verified by Mr. Taylor, *see* Taylor Aff. at ¶ 16, and the attached exhibits have been authenticated as well. *See* Peters Decl.

1 base of supporters, donors, journalists and interested persons, and alert their followers to their recent  
2 publications, forthcoming conferences, public appearances, articles, videos, podcasts, and their  
3 commentary on the news of the day. *Id.* at ¶¶ 33. At all times, Mr. Taylor has expressed his views with  
4 respect and civility. *Id.* at ¶ 34. At no time did Mr. Taylor or American Renaissance engage in insults,  
5 threats, or harassment, nor did they ever encourage anyone else to engage in such activity. *Id.* at ¶ 36.  
6 Indeed, they urged their followers to avoid “personal attacks and harsh rhetoric” on Twitter and other  
7 social media platforms. *Id.* at ¶ 39.

8 On December 18, 2017, Twitter permanently banned Mr. Taylor and American Renaissance  
9 from speaking on its open public platform. *Id.* at ¶ 45. Twitter claimed it was banning Plaintiffs because  
10 they were supposedly “found to be violating Twitter’s Terms of Service, specifically the Twitter Rules  
11 against being affiliated with a violent extremist group,” without providing any details. *Id.* The charge  
12 is false: Neither Mr. Taylor nor American Renaissance has ever promoted or advocated violence, on  
13 Twitter or anywhere else, and they are not affiliated with any groups that practice violence. *Id.* at ¶ 35.

14 The “Violent Extremist Group” policy that Twitter cited as the reason for its ban was facially  
15 overbroad and viewpoint discriminatory. *Id.* at ¶¶ 41-44, 74-81. On the same day that Twitter banned  
16 Mr. Taylor and American Renaissance and announced its new “Violent Extremist Group” policy, it  
17 banned hundreds of other users. *Id.* at ¶ 46. The only thing that all the banned accounts appear to have  
18 had in common was that they were perceived as being “far right.” *Id.* Beyond that, accounts appear to  
19 have been banned at random, without any nexus to the terms of the “Violent Extremist Group” policy  
20 or any other Twitter policy. *Id.* Tellingly, there was no similar purge of clear members of “Violent  
21 Extremist Groups” who were of the “correct” political persuasion, such as “Antifa” members.

## 22 **3.0 ARGUMENT**

### 23 **3.1 Twitter’s Anti-SLAPP Motion is Barred By Civ. Proc. Code § 425.17(b)**

24 The common law requires that some public interest litigation necessarily defines and expands  
25 the limits of what is currently considered actionable. This case is brought precisely in that public  
26 interest, and thus is outside the Anti-SLAPP law’s scope. The California Legislature amended the  
27 Anti-SLAPP Law in 2003 to create the “public interest” exception. Code Civ. Proc. § 425.17(b). The  
28 Anti-SLAPP Law “does not apply to any action brought solely in the public interest or on behalf of  
29 the general public if all of the following conditions exist:

30 “(1) The plaintiff does not seek any relief greater than or different from the  
31 relief sought for the general public or a class of which the plaintiff is a member. A  
32 claim for attorney’s fees, costs, or penalties does not constitute greater or different

1 relief for purposes of this subdivision.

2 (2) The action, if successful, would enforce an important right affecting the  
3 public interest, and would confer a significant benefit, whether pecuniary or  
4 nonpecuniary, on the general public or a large class of persons.

5 (3) Private enforcement is necessary and places a disproportionate financial  
6 burden on the plaintiff in relation to the plaintiff's stake in the matter." *Id.*

7 The sponsor of the "public interest" exemption, Sen. Sheila Kuehl, noted that "the same types  
8 of businesses who used the SLAPP action were inappropriately using the anti-SLAPP motion against  
9 their public-interest adversaries." *Blanchard v. DIRECTV, Inc.* (2004) 123 Cal.App.4th 903, 913. So  
10 too in this case, Twitter, a multi-billion dollar corporation, seeks to use the Anti-SLAPP Law against  
11 an individual and a non-profit entity who seek only injunctive and declaratory relief on behalf of a  
12 large class of persons (Twitter's 330 million users). Courts look to the face of the plaintiff's complaint  
13 in determining whether an exception to the Anti-SLAPP law applies.<sup>2</sup> *Club Members For An Honest*  
14 *Election v. Sierra Club* (2008) 45 Cal.4th 309, 316 ("If a complaint satisfies the provisions of the  
15 applicable exception, it may not be attacked under the anti-SLAPP statute."). "If a plaintiff's lawsuit  
16 comes within section 425.17, subdivision (b), it is exempt from the anti-SLAPP statute, and thus, a  
17 trial court may deny the defendants' special motion to strike without determining whether the  
18 plaintiff's causes of action arise from protected activity, and if so, whether the plaintiff has established  
19 a probability of prevailing on those causes of action under section 425.16, subdivision (b)(1)."  
20 *Tourgeman v. Nelson & Kennard* (2014) 222 Cal. App. 4th 1447, 1460 (emphasis added).

21 The FAC satisfies each of the requirements for application of the "public interest" exemption.  
22 Where the plaintiffs seek as a "sole remedy . . . injunctive relief directed at preventing respondents  
23 from engaging in unlawful, unfair, and/or fraudulent . . . practices," the first prong of Code Civ. Proc.  
24 § 425.17(b) is met. *Tourgeman*, 222 Cal. App. 4th at 1461. So too in this case, Plaintiffs are seeking  
25 only injunctive and declaratory relief on behalf of a broad class of which they are members, as well as  
26 attorney's fees and costs. They seek no individual relief whatsoever, and no relief different from that  
27 which they seek on behalf of the general public and similarly-situated users.

28 If successful, this action would enforce important rights affecting the public interest, and would  
29 confer a significant benefit on the general public or a large class or persons. The California Supreme  
30 Court has described litigation to vindicate the public's right under *Robins v. Pruneyard Shopping*

31 \_\_\_\_\_  
32 <sup>2</sup> Because the Court need only look to the allegations in the FAC to make this determination, it is inappropriate to require  
Plaintiffs to make an evidentiary showing that an exception to the Anti-SLAPP statute applies.

1 *Center* (1979) 23 Cal.3d 899 to speak freely in a privately-owned public forum as protecting “*the*  
2 *people’s fundamental rights of free expression and petition guaranteed by article I, sections 2 and 3 of*  
3 *the California Constitution*” and effectuating “*fundamental constitutional principles.*” *Press v. Lucky*  
4 *Stores, Inc.* (1983) 34 Cal. 3d 311, 318, 319. “While these rights are by nature individual rights, **their**  
5 **enforcement benefits society as a whole. Indeed, only by protecting each individual’s free speech**  
6 **and petition rights will society’s general interests in these rights be secured.**” *Id.* (emphasis added).  
7 The FAC alleges that Twitter’s unlawful actions have chilled the exercise of free speech rights by the  
8 general public who use Twitter’s public forum to communicate their thoughts on all subjects.

9       So too with respect to the rights protected under the Unruh Act, which “expresses a state and  
10 national policy against discrimination on arbitrary grounds.” *Angelucci v. Century Supper Club* (2007)  
11 41 Cal. 4th 160, 167. The Unruh Act’s provisions “were intended as an active measure that would  
12 create and preserve a nondiscriminatory environment in California business establishments by  
13 ‘banishing’ or ‘eradicating’ arbitrary, invidious discrimination by such establishments.” *Id.* “**The Act**  
14 **stands as a bulwark protecting each person’s inherent right to ‘full and equal’ access to ‘all**  
15 **business establishments.**” *Id.* (emphasis added). The Unruh Act “serves as a preventive measure,  
16 without which it is recognized that businesses might fall into discriminatory practices.” *Id.*

17       With respect to the public interest exception of Civil Procedure Code section 425.17(b), “the  
18 qualifying language would clearly encompass claims brought under the Unfair Competition Law . . . .”  
19 *Ingels v. Westwood One Broadcasting Services, Inc.* (2005) 129 Cal. App. 4th 1050, 1066. In this case,  
20 Twitter has consistently represented that it is a free speech platform—the “free speech wing of the free  
21 speech party.” FAC ¶¶ 1, 108-109. Yet, contrary to these representations, Twitter has censored  
22 Plaintiffs and hundreds of other similarly-situated users based on their political beliefs and affiliations  
23 and purported to apply its new rule on “Violent Extremist Groups” retroactively in order to ban them.  
24 *Id.* at ¶ 109. Twitter also violated the UCL by inserting unconscionable provisions into its Terms of  
25 Service stating that Twitter could ban users at will, at any time, for any reason or no reason. *Id.* at ¶ 99-  
26 103. Enjoining Twitter’s violations of the UCL would benefit the hundreds of millions of Twitter users  
27 who have also been subject to its unconscionable terms of service. *Id.* at ¶ 111. Millions of Twitter  
28 users who have spent time, money, and effort to gain followers could all have their accounts terminated  
29 for any or no reason, or could lose their valuable economic interest in access to their Twitter account  
30 and followers for any reason Twitter wishes, or for no reason at all. *Id.* Furthermore, the public at large  
31 will benefit since Twitter has effectively privatized the digital public square, and the marketplace of  
32 ideas should not be the “marketplace of centrally planned ideas.”

1 The final prong of Section 425.17(b) (whether private enforcement is necessary and places a  
2 disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter) is also  
3 satisfied. No public entity has sought to enforce the rights that Plaintiffs seek to vindicate in this  
4 lawsuit. Under these circumstances, private enforcement is necessary. *Tourgeman, supra*, 222 Cal.  
5 App. 4th at 1464. Moreover, "the possibility that a public entity might bring a lawsuit to vindicate  
6 certain rights does not demonstrate that a private plaintiff's action to vindicate such rights was not  
7 necessary where, as here, the public entity has not filed such a lawsuit." *Id.* at pp. 1464-45.

8 Moreover, Plaintiffs' financial burden is disproportionate to their stake in this matter. Plaintiffs  
9 do not seek any financial benefit from this lawsuit. *See id.* at p. 1465. Plaintiffs can, however, be  
10 expected to incur significant costs in this suit. *Id.* at 1466. Moreover, "the effect that this lawsuit could  
11 possibly have on the public at large" "far exceeds" the plaintiffs' "personal stake," *Blanchard*, 123 Cal.  
12 App. 4th at 916, as it would vindicate the right of Twitter's 330 million users to speak freely in a public  
13 forum, and hundreds of users have had their accounts banned pursuant to Twitter's discriminatory  
14 policies. FAC ¶¶ 5-6, 46-47. Not only are they shouldering extraordinary litigation costs in order to  
15 rid Twitter of viewpoint censorship and vindicate the rights of the public under the California  
16 Constitution, the Unruh Act, and the UCL, Plaintiffs are now facing the prospect of liability for  
17 Twitter's attorneys' fees simply for seeking to vindicate the rights of Twitter users to "freely speak,  
18 write and publish [their] sentiments on all subjects." Cal. Const., Art. I § 2.

19 **3.2 Twitter's Anti-SLAPP Motion is Barred by Civ. Proc. Code § 425.17(c) as to**  
20 **Plaintiffs' UCL Claim**

21 The "commercial speech" exception bars Twitter's Anti-SLAPP motion with respect to Count  
22 III of the FAC (alleging violations of the UCL). *See* Civ. Proc. Code § 425.17(c). As relevant here, the  
23 "commercial speech" exception states that "Section 425.16 does not apply to any cause of action  
24 brought against a person primarily engaged in the business of selling or leasing goods or services . . .  
25 arising from any statement or conduct by that person" if (1) "[t]he statement or conduct consists of  
26 representations of fact about that person's . . . business operations, goods, or services, that is made for  
27 the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial  
28 transactions in, the person's goods or services, or the statement or conduct was made in the course of  
29 delivering the person's goods or services" and (2) "[t]he intended audience is an actual or potential  
30 buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or  
31 potential buyer or customer . . ." *Id.*

32 Twitter is a multi-billion dollar business that is primarily engaged in the business of leveraging

1 its free platform to sell advertising services. FAC, Exh. S, Exh. W, Exh. Q at 117-123, Exh. J, Exh. K-  
2 M (“The Services that Twitter provides . . . may include advertisements . . . . In consideration for  
3 Twitter granting you access to and use of the Services, you agree that Twitter and its third party  
4 providers and partners may place such advertising on the Services or in connection with the display of  
5 Content or information from the Services whether submitted by you or others”). Twitter relies on its  
6 large user base to attract advertisers, Exh. S, and it also seeks to sell advertising to its users. Exh. J,  
7 Exh. Q at 117-123. Even with respect to users who do not pay directly for Twitter’s services, Twitter  
8 recognizes followers on its platform as assets that have an independent monetary value owned by the  
9 individual user. FAC ¶¶ 104. Twitter’s users are thus actual and potential buyers and customers.

10 Plaintiffs’ UCL claim arises from Twitter’s false and misleading statements made in advertising  
11 its platform and delivering its services. Twitter misrepresented key facts about its product in falsely  
12 advertising itself as a free speech platform, and these false representations were intended to mislead  
13 potential customers as to the nature of its platform, and succeeded in doing so. FAC ¶¶ 108-109. Twitter  
14 specifically stated that it would not “actively monitor user’s content and will not censor user content,”  
15 except in limited circumstances such as impersonation, violation of trademark or copyright, or “direct,  
16 specific threats of violence against others.” *Id.* at ¶ 109. Moreover, Twitter’s Terms of Service state  
17 that any changes “will not be retroactive,” and that it will attempt to notify users of “material revisions”  
18 to its Terms of Service. *Id.* These representations would be material to members of the public  
19 considering whether to join Twitter. Plaintiffs’ UCL claim thus falls within the “commercial speech”  
20 exception of Section 425.17(c). *See Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal. 4th 12, 26-  
21 27; *Demetriades v. Yelp, Inc.* (2014) 228 Cal. App. 4th 294, 309-312.

### 22 **3.3 Plaintiffs’ Claims Do Not Arise from Any Protected Activity of Twitter**

23 The Anti-SLAPP Law only applies to causes of action targeting (1) protected “expressive  
24 activity” that (2) occurs on a “public forum” and (3) has a “connection with an issue of public interest.”  
25 Civ. Proc. Code § 425.16. Twitter has the “burden . . . to demonstrate that the act or acts of . . . which  
26 the plaintiff complains” constitutes protected activity. *Equilon Enterprises v. Consumer Cause, Inc.*  
27 (2002) 29 Cal. 4th 53, 67 (quoting Civ. Proc. Code § 425.16(b)(1)). Twitter fails these tests.

28 Twitter argues that its conduct in banning Plaintiffs constituted a “written or oral statement or  
29 writing made in a place open to the public or a public forum in connection with an issue of public  
30 interest” within the meaning of Civ. Proc. Code § 425.16(e)(3), and thus that it engaged in an “act in  
31 furtherance of [its] right of petition or free speech under the United States or California Constitution in  
32 connection with a public issue.” (Def. Anti-SLAPP Br. at 11). In doing so, Twitter contradicts itself: it

1 argues that it *is* a “public forum” for Anti-SLAPP purposes, but that it is *not* a “public forum” for  
2 purposes of Plaintiffs’ *Pruneyard* claim. (Def. Anti-SLAPP Br. at 18). Either way, Twitter’s actions  
3 do not qualify under Civ. Proc. Code § 425.16(e)(3) because it made no written or oral statement in  
4 any place open to the public or any public forum regarding its decision to ban Plaintiffs or other  
5 similarly-situated users. FAC ¶ 50. Twitter’s statements notifying Mr. Taylor and American  
6 Renaissance of their bans and explaining its purported reasons for the bans were communicated  
7 privately to Plaintiffs via email. *Id.* at ¶¶ 45, 50. Courts are clear that “[m]eans of communication where  
8 access is selective . . . are not public forums.” *Weinberg v. Feisel* (2003) 110 Cal. App. 4th 1122, 1130;  
9 *see also Wilbanks v. Wolk* (2004) 121 Cal. App. 4th 883, 897-898; *Damon v. Ocean Hills Journalism*  
10 *Club* (2000) 85 Cal. App. 4th 468, 477. Courts have rejected claims that a “business letter addressed  
11 to the intended recipient . . . fit[s] the definition of a public forum. *Kurwa v. Harrington, Foxx, Dubrow*  
12 *& Canter, LLP* (2007) 146 Cal. App. 4th 841, 846. Twitter banned Plaintiffs’ accounts away from the  
13 public eye. Thus, while Twitter’s conduct affected Plaintiffs’ access to a public forum, none of its acts  
14 in doing so actually took place on a public forum.<sup>3</sup>

15 Twitter urges that it has a First Amendment interest in banning Plaintiffs from engaging in  
16 peaceful, consensual conversations with their followers on Twitter. (Defs’ Anti-SLAPP Br. at 11)  
17 (citing FAC ¶ 33). Twitter characterizes its actions in prohibiting Plaintiffs from having these  
18 discussions was an exercise of its own First Amendment right “not to speak.” (Defs’ Anti-SLAPP Br.  
19 at 11). This claim, that Twitter’s censorship of its users is its own “free speech,” is Orwellian.

20 This argument requires that the Tweets of Plaintiffs and other users be treated as *Twitter’s own*  
21 *speech*. As such, it contradicts Twitter’s Section 230(c)(1) defense, where Twitter argues that it *cannot*  
22 be treated as the “publisher or speaker” of the Tweets of others. (Def. Anti-SLAPP Br. at 12). It also  
23 contradicts the well-pleaded allegations of the FAC making clear that the Tweets of individual users  
24 are universally understood to represent the views of individual users, and not Twitter itself. FAC ¶¶  
25 20-26. Indeed, all Tweets are clearly identified with the user who posted the Tweet, and Twitter’s own  
26 Terms of Service dictate that individual users are solely responsible for, and retain complete ownership  
27 of, all content they post. *Id.* Twitter provides no facts to the contrary.

28 Censoring others purportedly to “ensure that its users have a safe place” (Def. Anti-SLAPP Br.  
29 at 11) is not an act in furtherance of Twitter’s *own* speech. The law is clear that privately-owned public  
30

31 <sup>3</sup> Twitter cannot contend otherwise unless it wishes to assert that every single action that affects or touches Twitter, including  
32 sending private messages through Twitter, takes place in a public forum. This is not a credible argument and would lead  
to gross abuse of the Anti-SLAPP Law.

1 forums like Twitter do not have a First Amendment right to control the messages expressed by members  
2 of the public in the forum. *Pruneyard Shopping Ctr. v. Robins* (1980) 447 U.S. 74, 85-88; *Snatchko v.*  
3 *Westfield LLC* (2010) 187 Cal. App. 4th 469, 491. In *Snatchko*, for example, the California Court of  
4 Appeals rejected a shopping mall’s argument that it had “a First Amendment interest in remaining  
5 neutral on volatile political and social issues” that justified it in banning peaceful, consensual  
6 conversations between members of the public on its premises. 187 Cal. App. 4th at 491. Like the  
7 defendants in *Pruneyard* and *Snatchko*, Twitter is “a business establishment that is open to the public to  
8 come and go as they please.” *Pruneyard*, 447 U.S. at 87; *see also* Def. Anti-SLAPP Br. at 11 (admitting  
9 that “Twitter is generally open to the public.”); FAC ¶ 21. As in *Pruneyard* and *Snatchko*, it is unlikely  
10 that the views expressed by members of the public in the forum be identified with those of Twitter itself.  
11 FAC ¶¶ 20, 61. Moreover, like the defendants in *Pruneyard* and *Snatchko*, Twitter has ample means of  
12 making its own views clear and disavowing any endorsement of the views of its users. FAC ¶¶ 20, 23.

13 In addition, Twitter’s “safe place” argument urges that it may ban Plaintiffs and other users  
14 from sharing their views “solely for fear that others may be offended or angered by them.” *San Diego*  
15 *Unified Port Dist. v. United States Citizens Patrol* (1998) 63 Cal. App. 4th 964, 970 (internal quotation  
16 marks omitted). This would allow Twitter to impose a heckler’s veto on unpopular speech, permitting  
17 “a vocal minority (or even majority) [to] prevent the expression of disfavored viewpoints”—a result  
18 totally at odds with Twitter’s stated interest in encouraging the expression of “diverse views.” *Id.*  
19 (internal quotation marks omitted).

20 Indeed, the concept of a “safe place” exception is anathema to the First Amendment. Rather,  
21 “an individual [who is] confronted with an uncomfortable message can always turn the page, change  
22 the channel, or leave the Web site . . . . In light of the First Amendment's purpose ‘to preserve an  
23 uninhibited marketplace of ideas in which truth will ultimately prevail,’ this aspect of traditional public  
24 fora is a virtue, not a vice.” *McCullen v. Coakley* (2014) 134 S. Ct. 2518, 2529 (quoting *FCC v. League*  
25 *of Women Voters of Cal.* (1984) 468 U.S. 364, 377). So too here, Twitter users can choose whose  
26 Tweets they see by “following” or “unfollowing” an account, just as a customer in a shopping mall can  
27 choose to walk away from an unwanted attempt to engage in conversation. Exh. Q to FAC at 126-127.

28 Twitter has also failed to show any nexus between its actions in banning Plaintiffs and its  
29 supposed expressive interest in creating a “safe place.” It submits no evidence whatsoever that  
30 Plaintiffs’ Tweets created an “unsafe environment,” that any user complained regarding Plaintiffs’  
31 presence on Twitter, or that any user’s speech was chilled. The evidence it submits consists of  
32 inadmissible and irrelevant hearsay, and thus cannot “satisfy its burden with ‘proof’ made upon

1 competent admissible evidence.” *Paiva v. Nichols* (2008) 168 Cal. App. 4th 1007, 1017.

2 Twitter’s claim that this case arises from Twitter’s expressive activity rests on its unsupported  
3 and conclusory attempt to analogize itself to a newspaper publisher. (Defs’ Anti-SLAPP Br. at 10-11).  
4 In reality, Twitter is a virtual public forum for the self-expression of 330 million individual users the  
5 world over, and has consistently marketed itself as such. FAC ¶¶ 16-26. Unlike a newspaper, bookstore,  
6 or a parade, Twitter does not individually select speakers, writers or creative pieces for inclusion. *Id.*  
7 at ¶¶ 16-17; Exh. Q to FAC at pp. 126-127. Instead, like the cable provider in *Turner Broadcasting*  
8 *System, Inc. v. FCC* (1994) 512 U.S. 622, and the shopping mall in *Pruneyard*, it acts as a pathway for  
9 the speech of others. Settled law holds that such platforms, which passively facilitate the speech of the  
10 public while *actively disclaiming* any rights in or responsibility for that speech, do not enjoy First  
11 Amendment protections when they seek to “restrict, through physical control of a critical pathway of  
12 communication, the free flow of information and ideas.” *Turner*, 512 U.S. at p. 657. Indeed, “it has  
13 long been a basic tenet of national communications policy that the widest possible dissemination of  
14 information from diverse and antagonistic sources is essential to the welfare of the public.” *Id.* at 663.

15 *Kronemyer v. Internet Movie Database Inc.* (2007) 150 Cal. App. 4th 941, 944-945 is  
16 inapposite. In that case, the defendant website compiled listings of film credits, and the plaintiff sought  
17 to “to change the content of the Web site to identify him as a producer on the projects at issue.” *Id.* at  
18 p. 947. The website constituted the defendant’s own independent creative work, as it was solely  
19 responsible for organizing and arranging the film credits on its site. *Id.* at pp. 944-945. By contrast,  
20 Twitter consists of a series of user-created accounts where individual users (not Twitter) post their own,  
21 independently-created content, which they retain ownership of, control over, and responsibility for.  
22 FAC ¶ 16. Users choose whose Tweets they see by their decisions to follow individual users. Exh. Q  
23 to FAC at pp. 126-127. Like the cable networks at issue in *Turner*, Twitter is a platform for the speech  
24 of others, “consist[ing] of individual, unrelated segments that happen to be transmitted together for  
25 individual selection by members of the audience.” *Hurley v. Irish-American Gay, Lesbian and Bisexual*  
26 *Grp* (1995) 515 U.S. 557, 576. Unlike the website in *Kronemyer*, the content on Twitter is both created  
27 and arranged by users, and Twitter plays no role in either process outside of its function as a host—the  
28 exact same function performed by the shopping centers in *Pruneyard* and *Snatchko*.

29 Twitter fails to meet its burden, and the Court must deny its Anti-SLAPP motion.

### 30 **3.4 Plaintiffs Are Likely to Prevail on Their Claims**

31 Even if the Court were to find that Twitter has satisfied its burden, it still must deny Twitter’s  
32 Anti-SLAPP motion because Plaintiffs are likely to succeed on the merits of their claims. “Generally,

1 a plaintiff’s claims need only have minimal merit to survive an anti-SLAPP motion.” *De Havilland v.*  
2 *FX Networks, LLC* (2018) 21 Cal. App. 5th 845, 856 (internal quotation marks omitted). “Only a cause  
3 of action that satisfies both prongs of the anti-SLAPP statute—i.e., that arises from protected speech  
4 or petitioning and lacks minimal merit—is a SLAPP, subject to being stricken under the statute.” *Oasis*  
5 *West Realty, LLC v. Goldman* (2011) 51 Cal. 4th 811, 820, 820 (internal quotation marks omitted). To  
6 satisfy the second prong, “the plaintiff must demonstrate that the complaint is both legally sufficient  
7 and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the  
8 evidence submitted by the plaintiff is credited.” *Id.* (internal quotation marks omitted). The court  
9 considers “the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense  
10 is based.” *Id.* (quoting Civ. Proc. Code § 425.16(b)(2)). The Court “neither weigh[s] credibility nor  
11 compare[s] the weight of the evidence. Rather, [the Court] accept as true the evidence favorable to the  
12 plaintiff and evaluate the defendant’s evidence only to determine if it has defeated that submitted by  
13 the plaintiff as a matter of law.” *Id.* (internal quotation marks and formatting omitted). “If the plaintiff  
14 can show a probability of prevailing on any part of its claim, the cause of action is not meritless and  
15 will not be stricken; once a plaintiff shows a probability of prevailing on any part of its claim, the  
16 plaintiff has established that its cause of action has some merit and the entire cause of action stands.”  
17 *Id.* (internal quotation marks omitted).

### 18 **3.4.1 *Plaintiffs’ Claims Are Not Barred by the Communications Decency Act***<sup>4</sup>

19 Section 230(c)(1) of the Communications Decency Act, 47 U.S.C. § 230 (the “CDA”) prohibits  
20 only one type of action: those where a plaintiff seeks to “treat [a provider or user of an interactive  
21 computer service] as the publisher of independently posted content.” *Levitt v. Yelp! Inc.* (N.D. Cal.  
22 Mar. 22, 2011) 2011 U.S. Dist. LEXIS 99372, \*23. The test is “whether the cause of action *inherently*  
23 *requires* the court to treat the defendant as the ‘publisher or speaker’ of content provided by another.”  
24 *Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1102 (emphasis added). Applying this test, courts  
25 within the Ninth Circuit have overwhelmingly rejected application of Section 230(c)(1) to causes of  
26 action that seek to require websites to host or remove content, but do not treat them as the “publisher  
27 or speaker” of such content. *See, e.g., Barnes*, 570 F.3d at 1107 (promissory estoppel claim against  
28 website seeking the “removal of material from publication” was not precluded by Section 230(c)(1),  
29 because it sought to hold the website liable as a promisor, not a publisher or speaker); *Doe v. Internet*  
30 *Brands, Inc.* (9th Cir. 2016) 824 F.3d 846, 851. So too, Section 230(c)(1) has nothing to do with this

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31  
32 <sup>4</sup> Each of the remaining arguments are discussed at greater length in Plaintiff’s Opposition to Demurrer. Those arguments are incorporated here by reference.

1 case because Plaintiffs’ claims do not treat Twitter as a publisher or speaker of independently posted  
2 content. Instead, Plaintiffs seek to enforce Twitter’s legal obligations as a public forum and its duties  
3 to refrain from discrimination and unfair commercial activities.

4 In *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, the California Supreme Court held, in construing  
5 47 U.S.C. § 230 (c)(1), that “[l]iability for censoring content is not ordinarily associated with the  
6 defendant’s status as ‘publisher’ or ‘speaker.’” *Barrett, supra*, 40 Cal. 4th at 49 (emphasis added).  
7 So too in this case, Plaintiffs’ *Pruneyard* claim seeks to hold Twitter liable as a censor, not as a speaker  
8 or publisher. Section 230(c)(1) does not transform entities into publishers or speakers where the cause  
9 of action *would not otherwise treat them as publishers or speakers. Batzel v. Smith* (9th Cir. 2003) 333  
10 F.3d 1018, 1033 (section 230(c)(1) “is concerned with providing special immunity for individuals who  
11 *would otherwise be publishers or speakers*, because of Congress’s concern with assuring a free market  
12 in ideas and information on the Internet.”) (emphasis added).

13 Accepting Twitter’s argument that Section 230(c)(1) grants it immunity from Plaintiffs’ claims  
14 in this suit would render Section 230(c)(2) of the CDA superfluous. Congress in Section 230(c)(2)  
15 carefully limited the instances in which websites enjoy immunity for *censoring* material to cases where  
16 providers or users of interactive computer services act “in good faith to restrict access to or availability  
17 of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively  
18 violent, harassing, or otherwise objectionable. . . .” Twitter seeks to skirt these limitations by arguing  
19 that its “restriction of access” is protected under 230(c)(1). However, *Barrett, supra*, 40 Cal. 4th at p.  
20 49, holds that content restrictions (such as those at issue here) are judged under the 230(c)(2) standard,  
21 which applies to actions to taken by an interactive service provider to *restrict* content, and not  
22 230(c)(1), the intent of which was “primarily to protect websites against the evil of liability for *failure*  
23 *to remove* offensive content.” *Airbnb, Inc. v. City & Cnty. of San Francisco* (N.D. Cal. 2016) 217 F.  
24 Supp. 3d 1066, 1074 (emphasis added; internal quotation marks omitted).

25 So too, 47 U.S.C. § 230 (c)(1) does not shield Twitter from *its own discriminatory conduct* in  
26 banning users under the Unruh Act based on their political affiliation. *See Fair Hous. Council v.*  
27 *Roommates.com, LLC* (9th Cir. 2008) 521 F.3d 1157, 1163-65, 1172. Nor does it provide Twitter  
28 immunity from Plaintiffs’ UCL claim, which arises from Twitter’s own false and misleading  
29 statements. *Demetriades, supra*, 228 Cal. App. 4th at 298.

### 30 **3.4.2 *Plaintiffs’ Claims Are Not Barred by the First Amendment***

31 Twitter’s First Amendment argument attempts to analogize itself to the shelves of a bookstore  
32 or the editorial page of a newspaper. However, unlike the shelves of a bookstore or the editorial pages

1 of a newspaper, Twitter both has infinite shelf (or copy) space, and is freely open to the general public  
2 for “purposes of assembly, communicating thoughts and discussing public questions,” *In re Hoffman*  
3 (1967) 67 Cal.2d 845, 849, FAC ¶ 21, and serves as “the functional equivalent of a traditional public  
4 forum.” *Golden Gateway Center v. Golden Gateway Tenants Assn.* (2001) 26 Cal. 4th 1013, 1033.

5 The U.S. Supreme Court has expressly rejected the argument that privately-owned public  
6 forums (such as Twitter) have “a First Amendment right not to be forced by the State to use [their]  
7 property as a forum for the speech of others.” *Pruneyard, supra*, 447 U.S. 74, 85-88. Like the shopping  
8 center in *Pruneyard*, Twitter is not “being compelled to affirm [its] belief in any governmentally  
9 prescribed position or view, and they are free to publicly dissociate themselves from the views of the  
10 speakers or handbillers.” *Id.* at 88. Twitter ironically argues that *Pruneyard* is distinguishable because  
11 it involved a shopping mall, where Twitter operates a platform for the public’s self-expression. (Defs’  
12 Anti-SLAPP Br. at 16). But the U.S. Supreme Court has applied its reasoning in *Pruneyard* to  
13 platforms for expression. In *Turner, supra*, 512 U.S. 622, 630-632, the Court considered a First  
14 Amendment “compelled speech” challenge to “must carry” regulations that required privately-owned  
15 cable operators to carry certain television stations. The Court acknowledged that the cable operators  
16 “engage in and transmit speech,” *id.* at 636—that is, they were platforms for expression. As in *Turner*,  
17 Twitter’s acts in banning users based on their viewpoints in this case would restrict the free flow of  
18 information and ideas and allow Twitter to abuse its control over this medium to impose a regime of  
19 viewpoint censorship on public debate. *Id.* at ¶¶ 1, 6, 25, 52, 55.

20 It is also well-established that the First Amendment does not shield private entities from claims  
21 that they engage in unlawful discrimination prohibited by the Unruh Act. *Pines v. Tomson* (1984) 160  
22 Cal. App. 3d 370, 388-392 (rejecting First Amendment challenge to injunction issued under the Unruh  
23 Act; “[a]s a general proposition, government has a compelling interest in eradicating discrimination in  
24 all forms.”) (internal quotation marks omitted). It is also clear that Plaintiffs’ UCL claims are not barred  
25 by the First Amendment. *Kasky v. Nike, Inc.* (2002) 27 Cal. 4th 939, 959-970.

### 26 **3.4.3 Plaintiffs Have a Viable Claim Under the California Constitution**

27 Article I, Section 2 of the California Constitution provides, “Every person may freely speak,  
28 write and publish his or her sentiments on all subjects.” Article I, Section 3 of the California  
29 Constitution states, “The people have the right to instruct their representatives, petition government for  
30 redress of grievances, and assemble freely to consult for the common good.” These provisions apply  
31 both to government and privately owned public forums. *Pruneyard*, 23 Cal. 3d at 910.

32 The California Supreme Court has never suggested that *Pruneyard* is limited to shopping malls;

1 rather, it has reiterated that “[i]t is well established that public areas such as streets and parks are public  
2 forums for free expression,” *Int’l Society for Krishna Consciousness of California, Inc. v. City of Los*  
3 *Angeles* (2010) 48 Cal. 4th 446, 454, and that “[t]he idea that private property can constitute a public  
4 forum for free speech if it is open to the public in a manner similar to that of public streets and sidewalks  
5 long predates our decision in *Pruneyard*.” *Fashion Valley Mall, LLC v. National Labor Relations Bd.*  
6 (2007) 42 Cal. 4th 850, 858. (emphasis added).

7 While Twitter cites several cases applying the standard for “state action” under the *federal*  
8 *constitution* (Def. Br. at 14), it fails to cite the very different standard for what constitutes “state action”  
9 for purposes of a *Pruneyard* claim under the *California Constitution*. To demonstrate “state action” for  
10 purposes of a *Pruneyard* claim, the only requirement is that the privately-owned public forum be  
11 “freely and openly accessible to the public.” *Golden Gateway Center*, 26 Cal. 4th. at p. 1033. The FAC  
12 pleads that Twitter is “freely and openly accessible to the public,” FAC ¶ 16, 19-22, 24, 62, 66, and  
13 Twitter itself has admitted the point. (Def. Anti-SLAPP Br. at 11). There is thus no “state action” issue.

14 Whatever doubt may have existed on the question of whether Twitter is the “functional  
15 equivalent of a traditional public forum” was effectively settled by *Packingham*. In analysis that cuts  
16 to the heart of the question of whether Twitter is a public forum under *Pruneyard*, the Court stated:  
17 **“While in the past there may have been difficulty in identifying the most important places (in a**  
18 **spatial sense) for the exchange of views, today the answer is clear.** It is cyberspace—the vast  
19 democratic forums of the Internet in general, and **social media in particular.**” *Packingham*, 137 S.  
20 Ct. at p. 1735 (emphasis added) (internal quotation marks omitted).

21 Twitter hyperbolically suggests that applying *Pruneyard* to it would render it “unable to curb  
22 some of the most vile and dangerous postings.” (Def. Br. at 16). These contentions are false. Under  
23 *Pruneyard*, privately-owned public forums may adopt “reasonable regulations of the time, place or  
24 manner of” speech in order to ensure that expressive activities “do not interfere with normal business  
25 operations.” *Fashion Valley Mall, LLC, supra*, 42 Cal. 4th at p. 870. Twitter would thus retain the  
26 ability to enforce reasonable regulations to prevent abuse of its public forum. *See* FAC ¶ 71. It would  
27 simply need to do so honestly and neutrally.

#### 28 **3.4.4 *Plaintiffs Have a Viable Claim for Violation of the Unruh Act***

29 The Unruh Act prohibits business establishments from “exclud[ing] individuals who wear long  
30 hair or unconventional dress, who are black, who are members of the John Birch Society, or who belong  
31 to the American Civil Liberties Union, merely because of these characteristics or associations.” *In Re*  
32 *Cox* (1970) 3 Cal. 3d 205, 217-218. It prohibits discrimination based on “the alleged undesirable

1 propensities of those of a particular race, nationality, occupation, political affiliation, or age.” *Marina*  
2 *Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 726. The California courts have repeatedly listed “political  
3 affiliation” as a protected category under the Unruh Act. *See, e.g., Semler v. General Electric Capital*  
4 *Corp.* (2011) 196 Cal. App. 4th 1380, 1396. Moreover, the Ninth Circuit has expressly held that  
5 political affiliation was a protected category under the Unruh Act in *McCalden v. California Library*  
6 *Ass’n* (9th Cir. 1992) 955 F.2d 1214, 1220-1221.

7 Twitter argues that it had a legitimate business reason for banning Plaintiffs. But it offers no  
8 evidence to support its stated reason for banning Plaintiffs: that they were “affiliated with a violent  
9 extremist group.” Nor does it offer any factual support for the idea that Plaintiffs’ presence on Twitter  
10 was in any way disruptive or threatened other users. Instead, Twitter cites untrue, unsworn hearsay  
11 statements contained in internet blogposts to argue that it had a “legitimate business interest” in  
12 “protecting its reputation” and “avoiding chilling speech of its millions of users” by banning Plaintiffs.  
13 Meanwhile, it is not concerned about its “reputation” being that of a dishonest opaque organization,  
14 hell bent on censoring any views that a star-chamber of “trust and safety” finds to be politically correct  
15 enough to remain on the platform? Twitter’s reference to “protecting its reputation” is unconvincing in  
16 light of the fact that 330 million individuals from all over the globe, including many highly  
17 controversial political figures, have Twitter accounts, and no one thinks that Twitter in any way  
18 endorses the views or conduct of all of these people simply because it does not ban them. FAC at ¶¶  
19 20, 61. Twitter’s allegation that Mr. Taylor has been banned from unspecified “hotels and conference  
20 rooms,” even if it were true, does not justify Twitter’s actions in this case. Allowing one business to  
21 ban an individual simply because another business had done so in the past so would seriously  
22 undermine the protections of a law that was enacted to “create and preserve a nondiscriminatory  
23 environment in California business establishments by ‘banishing’ or ‘eradicating’ arbitrary, invidious  
24 discrimination by such establishments.” *Angelucci, supra*, 41 Cal. 4th at 167.

### 25 **3.4.5 Plaintiffs Have a Viable Claim for Violation of the UCL**

26 For the reasons stated in Section 2.5 of its Opposition to Demurrer, Plaintiffs have stated a  
27 proper claim under the UCL.

## 28 **4.0 CONCLUSION**

29 For the foregoing reasons, the Court should deny Twitter’s Special Motion to Strike in its  
30 entirety.

31  
32

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Respectfully submitted,

2 /s/ Marc J. Randazza

3 Marc J. Randazza, Esq. SBN 269535  
4 Randazza Legal Group, PLLC  
5 2764 Lake Sahara Drive, Suite 109  
6 Las Vegas, NV 89117  
7 702-420-2001  
8 ecf@randazza.com

9 Adam Candeub, Esq. (*pro hac vice* to be submitted)  
10 442 Law College Building  
11 Michigan State University  
12 East Lansing MI 48864  
13 (517) 432-6906  
14 candeub@law.msu.edu

15 Noah B. Peters, Esq. (*pro hac vice* to be submitted)  
16 1015 18th St. N.W., Suite 204  
17 Washington, D.C. 20036  
18 (202) 499-4222  
19 noah@noahpeterslaw.com



- *If We Do Nothing*, by Jared Taylor (New Century Books, 2017, 254 pp.)

5. I have written many articles for publications such as *Wall Street Journal*, *Los Angeles Times*, *Chicago Tribune*, *Baltimore Sun*, *Boston Globe*, *National Review*, *Washington Post*, and *San Francisco Chronicle*.

6. In 1990, I started the monthly publication, *American Renaissance*, which was produced continuously until January 2012, when all content was shifted to the Internet at [www.AmRen.com](http://www.AmRen.com).

7. In 1994, I established New Century Foundation, a 501 (c) (3) tax-exempt, educational institution, and since that time NCF has conducted all the activities of *American Renaissance*.

8. Since 1994, *American Renaissance* has put on 16 conferences at which academics, politicians, clergy, and activists have discussed the questions NCF is chartered by the IRS to investigate. I have been invited to speak about immigration and race relations before audiences not only in the United States but in Britain, France, Belgium, Australia, Finland, Sweden, Germany, and the Netherlands. I have been interviewed countless times by national and international print and electronic media.

9. I joined Twitter in March 2011. On Nov. 16, 2016, I entered into a commercial agreement under which I paid Twitter to promote my tweets and increase the number of my followers. I established a campaign budget of \$200, with a daily expenditure limit of \$2.00. The campaign continued through the week of Feb. 22, 2017, and I paid Twitter a total of \$179.32.

10. At some point before June 2017—I do not recall the exact date—I was granted Twitter’s blue check mark or “verification badge.” Twitter informed me by email on November 15, 2017 that it had “permanently removed” my verification badge. By the time my account was suspended on December 18, 2017, it had 40,900 followers.

11. In June 2011, *American Renaissance* established a “corporate” account, which was operated by the *American Renaissance* staff. In April 2017, it was granted Twitter’s “verification badge,” but unlike my account, it kept the badge until the account was suspended on the same day as my own—Dec. 18, 2017—at which time it had 32,700 followers. At no time did either of our accounts engage in “trolling,” insults, or harassment, nor did we ever encourage anyone else to do such things.

12. When Twitter suspended both my personal account and the *American Renaissance* account on December 18, 2017, it offered us an opportunity to appeal the suspensions, and we immediately appealed both. That same day, Twitter replied by email, saying that the suspensions were permanent because both accounts were “affiliated with a violent extremist group.”

13. The idea that I or American Renaissance could be, as Twitter claims, “affiliated with a violent extremist group” is preposterous. Not even our bitterest enemies have suggested such a thing.

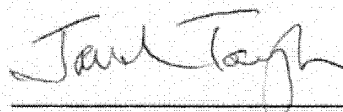
14. The harm that I and New Century would suffer in the event that my account and the American Renaissance corporate account are not restored to Twitter would be immediate and irreparable. It would deprive us of our most effective means of communicating with our supporters, donors, and readers, as well as the general public. There is no public platform comparable to Twitter that would allow me and American Renaissance to express our views and share our message.

15. Twitter is, quite literally, the platform in which important political debates take place in the modern world. It is used by leading politicians and public intellectuals from all over the world, expressing every conceivable viewpoint known to man—except, now, mine.

16. I have reviewed the First Amended Complaint in this case. The allegations contained therein are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

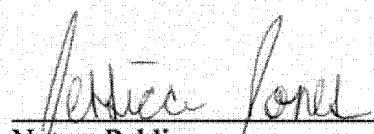
Executed this 21<sup>st</sup> day of May, 2018 in  
Oakton, VA.

  
\_\_\_\_\_  
JARED TAYLOR

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of May, 2018,  
by Jessica Jones.

My commission expires:

11/30/2022

  
\_\_\_\_\_  
Notary Public

Jessica Ashley Jones  
Notary Public  
Commonwealth of Virginia  
Reg. No. 7778869  
My Commission Expires 11/30/2022

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

JARED TAYLOR, an individual; NEW  
CENTURY FOUNDATION, a Kentucky  
not-for-profit trust

Plaintiffs,

vs.

TWITTER, INC., a California corporation

Defendant.

DECLARATION OF NOAH B. PETERS

I, Noah B. Peters, declare as follows:

1. Exhibit A to the First Amended Complaint (“FAC”) is a true and authentic copy of Twitter’s “Values” page, [https://about.twitter.com/en\\_us/values.html](https://about.twitter.com/en_us/values.html), as accessed by me on December 27, 2017.

2. Exhibit B to the FAC is a true and authentic copy of Twitter’s “Company” page, [https://about.twitter.com/en\\_us/company.html](https://about.twitter.com/en_us/company.html), as accessed by me on December 27, 2017.

3. Exhibit C to the FAC are true and authentic copies of several Twitter accounts proclaiming that they are associated with “Antifa,” as accessed by me on January 14, 2018. Antifa is well-known for using and advocating the use of violence against its political opponents. *See* Katie Bo Williams, “Antifa activists say violence is necessary,” *The Hill* (September 14, 2017) (noting that members of Antifa “are unapologetic about what they describe as the necessary use of violence to combat authoritarianism,” that “use of force is intrinsic to [Antifa’s] political philosophy,” and that “[a]s early as 2016, the Department of Homeland Security (DHS) and the FBI warned state and local officials that antifa had become increasingly confrontational and were engaging in “domestic terrorist violence.”);<sup>1</sup> Josh Meyer, “FBI, Homeland Security warn of more ‘antifa’ attacks,” *Politico* (September 1, 2017) (reporting that the DHS formally classified Antifa’s activities as “domestic terrorist violence”; that DHS and FBI prepared a report in April 2016 noting that Antifa was responsible for instigating and planning violence at public rallies against “a range of targets”; and describing many incidents since then where Antifa had instigated violence);<sup>2</sup> Peter Bienart, “The Rise of the Violent Left,” *The Atlantic* (Sept. 2017) (describing several incidents where Antifa used violence);<sup>3</sup> Casey Tolan, “Nancy Pelosi condemns Antifa violence in Berkeley,” *San Jose Mercury News* (Aug. 30, 2017) (reporting that “hooded, masked and black-clad Antifa members started fights and punched or kicked people they believed were Trump supporters” at Berkeley’s Civic Center Park in response to a small

<sup>1</sup> Available at <http://thehill.com/policy/national-security/350524-antifa-activists-say-violence-is-necessary>

<sup>2</sup> Available at <https://www.politico.com/story/2017/09/01/antifa-charlottesville-violence-fbi-242235>

<sup>3</sup> Available at <https://www.theatlantic.com/magazine/archive/2017/09/the-rise-of-the-violent-left/534192/>

gathering of supporters of President Trump that “was totally peaceful”<sup>4</sup>; Paige St. John and James Quealy, “‘Antifa’ violence in Berkeley spurs soul-searching within leftist activist community,” *Los Angeles Times* (Aug. 29, 2017) (reporting that Antifa members “resort[ed] to mob violence, attacking a small showing of supporters of President Trump and others they accused, sometimes inaccurately, of being white supremacists or Nazis” and quoting sociologist Todd Gitlin describing “what he sees as a push by the anti-fascist — also called ‘antifa’ — movement to put ‘themselves on the map of protest’ by using violence to ‘intimidate’ both political opponents and those on the left who promote non-violence.”)<sup>5</sup>; U.S. Rep. Nancy Pelosi (D-CA), “Statement Condemning Antifa Violence in Berkeley” (Aug. 29, 2017) (“The violent actions of people calling themselves antifa in Berkeley this weekend deserve unequivocal condemnation, and the perpetrators should be arrested and prosecuted.”)<sup>6</sup>.

4. Exhibit D to the FAC is a true and authentic copy of the Twitter Rules effective as of June 11, 2011, obtained from <https://web.archive.org/web/20110612102052/http://support.twitter.com/entries/18311>, and accessed on January 18, 2018.

5. Exhibit E to the FAC is a true and authentic copy of plaintiff New Century Foundation’s application for 501(c)(3) non-profit status.

6. Exhibit F to the FAC is a true and authentic copy of a page from Twitter’s “Careers” site, <https://careers.twitter.com/en/locations/san-francisco.html>, describing San Francisco as “our global headquarters,” accessed on January 2, 2018.

7. Exhibit G to the FAC is a true and authentic copy of Twitter’s Terms of Service, accessed at <https://twitter.com/en/tos> on January 20, 2018.

8. Exhibit H to the FAC is a true and authentic copy of a post from Twitter’s official corporate blog titled, “Twitter: the public square of #GE16,” [https://blog.twitter.com/official/en\\_us/a/2016/twitter-the-public-square-of-ge16.html](https://blog.twitter.com/official/en_us/a/2016/twitter-the-public-square-of-ge16.html), accessed on January 24, 2018.

9. Exhibit I to the FAC is a true and authentic copy of an article published in VentureBeat entitled “Jack Dorsey: the future of Twitter is anything (and everything),” accessed from VentureBeat’s website at <https://venturebeat.com/2012/09/17/jack-dorsey-future-of-twitter-anything-everything/> on January 24, 2018.

10. Exhibit J to the FAC is a true and authentic copy of a page from Twitter’s website entitled, “Create a followers campaign,” accessed from Twitter’s website at <https://business.twitter.com/en/help/campaign-setup/create-a-followers-campaign.html> on January 24, 2018.

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<sup>4</sup> Available at <https://www.mercurynews.com/2017/08/30/nancy-pelosi-condemns-antifa-violence-in-berkeley/>

<sup>5</sup> Available at <http://www.latimes.com/local/lanow/la-me-far-left-violence-20170829-story.html>

<sup>6</sup> Available at <https://www.democraticleader.gov/newsroom/82917/>

11. Exhibit K to the FAC is a true and authentic copy of Twitter's Terms of Service first effective May 17, 2012, accessed from Twitter's website at [https://twitter.com/en/tos/previous/version\\_6](https://twitter.com/en/tos/previous/version_6) on January 24, 2018.
12. Exhibit L to the FAC is a true and authentic copy of Twitter's Terms of Service first effective May 18, 2015, accessed from Twitter's website at [https://twitter.com/en/tos/previous/version\\_9](https://twitter.com/en/tos/previous/version_9) on January 24, 2018.
13. Exhibit M to the FAC is a true and authentic copy of Twitter's Terms of Service first effective January 27, 2016, accessed from Twitter's website at [https://twitter.com/en/tos/previous/version\\_10](https://twitter.com/en/tos/previous/version_10) on January 24, 2018.
14. Exhibit N to the FAC is a true and authentic copy of an article appearing on Twitter's official blog entitled, "Enforcing New Rules to Reduce Hateful Conduct and Abusive Behavior," accessed from Twitter's website at [https://blog.twitter.com/official/en\\_us/topics/company/2017/safetypoliciesdec2017.html](https://blog.twitter.com/official/en_us/topics/company/2017/safetypoliciesdec2017.html) on January 24, 2018.
15. Exhibit O to the FAC is a true and authentic copy of Twitter's policy on "Violent Extremist Groups," accessed from Twitter's website at <https://help.twitter.com/en/rules-and-policies/violent-groups> on February 19, 2018.
16. Exhibit P to the FAC is a true and authentic copy of an article by Scott Greer titled "Twitter Blocks The Alt-Right, Allows Racist Death Threats to Ajit Pai," published in the *Daily Caller* on December 18, 2017 and accessed at <http://dailycaller.com/2017/12/18/twitter-blocks-the-alt-right-allows-racist-death-threats-to-ajit-pai/?print=1> on March 10, 2018.
17. Exhibit P to the FAC is a true and authentic copy of an article published in *Business Insider* on December 19, 2017 titled "Twitter was once a bastion of free speech but now says it's 'no longer possible to stand up for all speech.'" It is available at <http://www.businessinsider.com/twitter-no-longer-possible-to-stand-up-for-all-speech-2017-12>.
18. Exhibit Q to the FAC is a true and authentic copy of "The Twitter Government and Elections Handbook," published by Twitter, Inc. and accessed from <https://g.twimg.com/elections/files/2014/09/16/TwitterGovElectionsHandbook.pdf> on or about January 24, 2018.
19. Exhibit R to the FAC is a true and authentic copy of an article by Vann R. Newkirk II entitled "The American Idea in 140 Characters," published in *The Atlantic* on March 24, 2016 and accessed from <https://www.theatlantic.com/politics/archive/2016/03/twitter-politics-last-decade/475131/> on March 10, 2018.
20. Exhibit S to the FAC is a true and authentic copy of an article by Hamza Shaban entitled "Twitter says it overstated the size of its user base for years," published in the *Chicago Tribune* on October 27, 2017 and accessed from

<http://www.chicagotribune.com/bluesky/technology/ct-biz-bsi-twitter-users-20171027-story.html> on January 25, 2018.

21. Exhibit T to the FAC is a true and authentic copy of Muck Rack “2017 survey results: How journalists are using social media,” downloaded from Muck Rack’s website (<https://muckrack.com/blog/2017/05/31/annual-journalist-survey-2017>) on or about January 20, 2018.

22. Exhibit U to the FAC is a true and authentic copy of Cision & Canterbury Christ Church University (UK), Social Journalism Study 2015, downloaded from Cision’s website (<https://www.cision.com/us/resources/research-reports/social-journalism-study/>) on or about January 20, 2018.

23. Exhibit V to the FAC is a true and authentic copy of Heravi, B.R., Harrower, N. Boran, M. (2014). Social Journalism Survey: First National Study on Irish Journalists’ Use of Social Media. HuJo, Insight Centre for Data Analytics, National University of Ireland, Galway, downloaded from [http://www.academia.edu/30717188/Social\\_Journalism\\_Survey\\_First\\_National\\_Survey\\_on\\_Irish\\_Journalists\\_use\\_of\\_Social\\_Media](http://www.academia.edu/30717188/Social_Journalism_Survey_First_National_Survey_on_Irish_Journalists_use_of_Social_Media) on January 25, 2018.

24. Exhibit W to the FAC is a true and authentic copy of an article by Josh Halliday, entitled “Twitter’s Tony Wang: ‘We are the free speech wing of the free speech party,’” appearing in *The Guardian* on March 22, 2012 and accessed from <https://www.theguardian.com/media/2012/mar/22/twitter-ton-wang-free-speech> on March 12, 2018.

25. Exhibit X to the FAC is a true and authentic copy of a Tweet from Noah Pollak on February 27, 2018, accessed from <https://mobile.twitter.com/NoahPollak/status/968604636461506561> on February 27, 2018.

26. Exhibit A to the Opposition to Judicial Notice is a true and authentic copy of an article by Ben Schreckinger entitled “Has a Civil Rights Stalwart Lost Its Way?,” appearing in *Politico* and accessed from its website at <https://www.politico.com/magazine/story/2017/06/28/morris-dees-splc-trump-southern-poverty-law-center-215312> on May 21, 2018.

27. Exhibit B to the Opposition to Judicial Notice is a true and authentic copy of an article from the SPLC’s official website (<https://www.splcenter.org/hatewatch/2017/10/02/can't-we-talk-about-more-anti-muslim-propaganda-pamela-geller>) accessed on May 21, 2018.

28. Exhibit C to the Opposition to Judicial Notice is a true and authentic copy of an article by David A. Graham entitled “How Did Maajid Nawaz End Up on a List of ‘Anti-Muslim Extremists’?,” appearing in *The Atlantic* and accessed from its website at <https://www.theatlantic.com/international/archive/2016/10/maajid-nawaz-splc-anti-muslim-extremist/505685/> on May 21, 2018.

29. Exhibit D to the Opposition to Judicial Notice is a true and authentic copy of an article from the SPLC's official website (<https://www.splcenter.org/hatewatch/2011/02/28/far-right-african-americans-chosen-testify-congress-immigration>) accessed on May 21, 2018.

30. Exhibit E to the Opposition to Judicial Notice is a true and authentic copy of an article from the SPLC's official website (<https://www.splcenter.org/fighting-hate/intelligence-report/2003/mainstream>) accessed on May 21, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 21st day of May, 2018



NOAH B. PETERS