

1 HARMEET K. DHILLON (SBN: 207873)
harmeet@dhillonlaw.com
2 MICHAEL R. FLEMING (SBN: 322356)
mfleming@dhillonlaw.com
3 DHILLON LAW GROUP INC.
177 Post Street, Suite 700
4 San Francisco, California 94108
Telephone: (415) 433-1700
5 Facsimile: (415) 520-6593

6 D. ADAM CANDEUB, ESQ. (*pro hac vice* to be submitted)
candeub@law.msu.edu
7 442 Law College Building
8 Michigan State University
9 East Lansing MI 48864
Telephone: (517) 432-6906

10 NOAH B. PETERS, ESQ. (*pro hac vice* to be submitted)
noah@noahpeterslaw.com
11 NOAH PETERS LAW
12 1875 Connecticut Ave. N.W., Floor 10
13 Washington, D.C. 20009
Telephone: (202) 688-3246

14 Attorneys for Plaintiff Meghan Murphy

15
16 **SUPERIOR COURT OF CALIFORNIA**
17 **FOR THE COUNTY OF SAN FRANCISCO**
18 **UNLIMITED JURISDICTION**

19 MEGHAN MURPHY, an individual, on
20 behalf of herself, those similarly situated, and
21 the general public,

22 Plaintiff,

23 v.

24 TWITTER, INC., a California corporation;
25 TWITTER INTERNATIONAL COMPANY,
an Irish registered company,

26 Defendants.
27
28

Case Number:

COMPLAINT FOR:

1. **Breach of Contract**
2. **Promissory Estoppel**
3. **Violation of Unfair Competition Law, §17200 et seq.**

1 Plaintiff, Meghan Murphy, on behalf of herself, others similarly situated, and the general
2 public, hereby files this Complaint for Breach of Contract, Promissory Estoppel and Violation of the
3 Unfair Competition Law (Bus. & Prof. Code §17200 et seq.), against Defendants Twitter, Inc. and
4 Twitter International Company (collectively, “Twitter”), and alleges as follows:

5 INTRODUCTION

6 1. Twitter’s User Agreement, which includes its Terms of Service, Rules, and associated
7 policies, constitutes a binding contract with each of its users. In its Terms of Service, Twitter promises
8 its users that changes “will not be retroactive.” (Exhibit A). Twitter’s Terms of Service also state:
9 “Other than for changes addressing new functions or made for legal reasons, we will notify you 30
10 days in advance of making effective changes to these Terms that impact the rights or obligations of
11 any party to these Terms, for example via a service notification or an email to the email associated
12 with your account.” (*Id.*) (emphasis added).

13 2. In addition, in sworn public testimony before the U.S. House of Representatives
14 Committee on Energy and Commerce on September 5, 2018, Twitter’s CEO, Jack Dorsey, stated: “I
15 want to start by making something very clear. We don’t consider political viewpoints, perspectives, or
16 party affiliation in any of our policies or enforcement decisions, period.” (Exhibit B). Later in the
17 hearing, Dorsey stated: “Our policies and our algorithms don’t take into consideration any affiliation,
18 philosophy, or viewpoint.” (*Id.*)

19 3. However, in violation of these promises, Twitter covertly made sweeping changes to
20 its Hateful Conduct Policy sometime in in late October 2018 banning, for the first time,
21 “misgendering or deadnaming of transgender individuals.” This new policy banned expression of a
22 political belief and perspective held by a majority (54%, according to a 2017 Pew Research poll) of
23 the American public: that whether someone is a man or a woman is determined by the sex they were
24 assigned at birth. (Exhibit C).

25 4. Moreover, Twitter failed to provide any sort of notice to its users of this controversial
26 new policy, one which significantly affected their rights and obligations with respect to their use of
27 the platform, a clear violation of its contract with its users. And it retroactively enforced its new policy
28 against the plaintiff in this case, Meghan Murphy.

1 5. Murphy is a feminist writer and journalist. On November 15, 2018, Twitter locked
2 Murphy's account and forced her to remove a Tweet from October 11, 2018 stating: "Men aren't
3 women." The instruction was not subtle: the notification she received from Twitter read "Remove
4 Tweet." That same day, Twitter also demanded that she delete a Tweet from October 15, 2018 that
5 asked: "How are transwomen not men? What is the difference between a man and a transwoman?"
6 Murphy was forced to comply with these demands in order to regain access to her account.

7 6. In response, Murphy tweeted: "This is f**king bulls*** @twitter. I'm not allowed to
8 say that men aren't women or ask questions about the notion of transgenderism at all anymore? That a
9 multi billion dollar company is censoring BASIC FACTS and silencing people who ask questions
10 about this dogma is INSANE." The post went viral, receiving 20,000 likes. Four days later, on
11 November 19, 2018, Twitter forced Murphy to erase this Tweet as well, without citing any rule or
12 policy that it violated. (Exhibit D).

13 7. Four days after that, on November 23, 2018, Twitter banned her permanently. Its stated
14 reason for the permanent ban was a November 8, 2018 Tweet where Murphy wrote "Yeeeah it's him"
15 over an embedded image of a Google review of a waxing salon posted by an individual named
16 "Jonathan Yaniv" five months earlier. (Exhibit E). In addition to using the male name "Jonathan," the
17 review featured a picture of Yaniv in which Yaniv appeared to be entirely male. In addition to Google,
18 Yaniv also went by "Jonathan Yaniv" on several other public social media profiles, including
19 LinkedIn, Pinterest, and YouTube, at the time of Murphy's Tweet. (Exhibit F). In Yaniv's profile
20 pictures across social media, Yaniv wore male attire and presented as entirely male.

21 8. Nonetheless, Twitter claimed that Murphy's Tweet violated its Hateful Conduct Policy.
22 But the claim that Murphy "misgendered" Yaniv by Tweeting "Yeeeah it's him" over an image of
23 Yaniv's recent Google review in which *Yaniv* identified using a male name and a male-appearing
24 photo is specious. Instead, Murphy's Tweet presented relevant and newsworthy information regarding
25 a widely-reported series of lawsuits in which there was great public interest.

26 9. In the past year, Yaniv has filed 16 different human rights complaints against female
27 estheticians from across Canada for refusing to perform Brazilian waxes on Yaniv due to Yaniv
28 having male genitalia. Yaniv filed these suits under the alias "J.Y." "J.Y.'s" lawsuits were the subject

1 of news coverage in the *Economist*, *Windsor Star*, *National Post* and *Daily Wire*, among others.

2 10. Murphy was disturbed by Yaniv’s attempts to use the legal system to coerce female
3 estheticians, by threat of lawsuit, into doing something that makes them feel profoundly
4 uncomfortable and violates their basic autonomy. Murphy was also frustrated by the refusal of news
5 outlets to report Yaniv’s name in connection with Yaniv’s lawsuits, when the estheticians and
6 establishments sued by Yaniv were forced to deal with a torrent of negative publicity including
7 threats, derogatory videos and negative online reviews. One of the estheticians, a single mother who
8 worked out of her home, was forced to pay “J.Y.” \$2,500 to withdraw the complaint, so that she could
9 get on with her life and avoid crushing litigation expenses.

10 11. On November 8, 2018, Murphy posted on Twitter (referring to Yaniv’s Twitter handle,
11 “@trustednerd”): “Is it true that the man responsible for trying to extort money from estheticians who
12 refuse to give him a brazilian bikini wax is @trustednerd? Why tf is the media/court protecting this
13 guy’s identity either way? The women he targeted don’t get that luxury.” (Exhibit E). Murphy
14 followed up that Tweet by noting, “This is also, it should be pointed out, a key problem with allowing
15 men to ID as female, change their names, IDs etc. They can leave behind these kinds of pasts (and
16 likely continue to predate on women and girls, where that abuse will be reported as perpetrated by a
17 ‘woman’).”

18 12. Murphy then posted: “Yeeeah it’s him” over an image of Yaniv’s review of a
19 waxing/hair removal establishment: “Ally was great doing my Brazilian wax!” This Tweet was
20 newsworthy and of public interest because it showed that the “J.Y.” complaints were brought by an
21 individual, Yaniv, who publicly identified using a male name and male-appearing photograph in
22 recent online reviews of waxing salons that he posted, despite claiming in his human rights complaints
23 that he identified as a woman.

24 13. Twitter stated in a private email message to Murphy that this post violated its Hateful
25 Conduct Policy and that she was being permanently banned as a result. (Exhibit E). Murphy appealed
26 her permanent suspension to Twitter, but her appeal was denied.

27 14. Twitter’s new policy against “misgendering” was only discovered and reported on after
28 Murphy was banned. Its revelation in the wake of Murphy’s permanent suspension came as a

1 complete surprise to Twitter’s users and the general public. Twitter provided no notice to its users of
2 the change, in violation of its express promise in its Terms of Service. Indeed, the roll-out of the new
3 policy was so secretive that the exact date (sometime in late October) that the “misgendering” policy
4 was added has still never been confirmed, by Twitter or anyone else.

5 15. After Murphy was banned, numerous journalists, commentators and other users
6 expressed shock and dismay that Twitter had adopted a policy that sought to dictate what viewpoints
7 individuals could and could not express on what had long been advertised as, and understood to be, an
8 open forum for speech and debate for hundreds of millions of people across the globe.

9 16. Since its founding, Twitter has consistently advertised itself as a forum for the free
10 expression of its users—not a forum for Twitter’s own speech. It has reaffirmed time and again in its
11 Terms of Service that individual users, not Twitter, are fully responsible for the content they post on
12 Twitter and retain ownership of that content and their accounts. And it stated, in the Terms of Service
13 in effect when Murphy joined the platform in April 2011, that it would not censor the speech of its
14 users.

15 17. Proclaiming itself “the free speech wing of the free speech party,” Twitter has grown
16 into an unprecedented public forum for national and global communication. On its “Values” page,
17 Twitter states: “We believe in free expression and think every voice has the power to impact the
18 world.” (Exhibit G). Twitter states that its mission is “to give everyone the power to create and share
19 ideas instantly without barriers. **Our business and revenue will always follow that mission in ways**
20 **that improve – and do not detract from – a free and global conversation.**” (emphasis added)
21 (Exhibit H). Twitter’s success grew as its user-base grew, and its repeated promises of freedom of
22 expression, conveyed in its advertising, Rules, public statements and Terms of Service, was what
23 attracted a critical mass of users to the platform.

24 18. Twitter’s repeated representations that it would uphold the free speech rights of its
25 users and not censor user speech were material to the decision of millions of users, like Murphy, to
26 join. Twitter would never have attracted the hundreds of millions of users it boasts today had Twitter
27 let it be known that it would arbitrarily ban users who did not agree with the political and social views
28 of its management or impose sweeping new policies banning the expression of widely-held

1 viewpoints and perspectives on public issues.

2 19. In violations of its repeated promises and representations to its users, Murphy and
3 hundreds of other users were targeted for a permanent suspension due to their views on a hotly-
4 contested political issue that is now before several legislative bodies worldwide: whether an
5 individual's gender should be regarded as entirely a matter of one's personal choice. It was completely
6 unforeseeable that Twitter would ban expression of a viewpoint held by a majority of individuals in
7 America and across the globe—much less that it would do so retroactively, with no warning or public
8 announcement whatsoever.

9 THE PARTIES

10 20. Murphy is a natural person residing in Vancouver, British Columbia, Canada.

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

14 22. Defendant Twitter International Company is an Irish registered company that is a
15 subsidiary of Twitter, Inc. It serves as a base for Twitter's EMEA (Europe, the Middle East and
16 Africa) operations. In April 2015, Twitter announced that, effective May 18, 2015, "If you live outside
17 the United States, our services are now provided to you by Twitter International Company, our
18 company based in Dublin, Ireland." It is now the nominal counterparty with respect to Twitter's
19 Terms of Service for non-U.S. users instead of Twitter, Inc.

20 23. Twitter International Company plays no significant role in Twitter's day-to-day
21 operations outside the EMEA region. With respect to all events and decisions relevant to this
22 Complaint, Twitter International Company was controlled and directed by Twitter, Inc. from its
23 headquarters in San Francisco, CA. Twitter, Inc. made all relevant decisions and took all relevant
24 actions with respect to promulgating and modifying Twitter's User Agreement, Rules, and policies,
25 and taking all enforcement actions described herein. Its control was pervasive and continual.

26 JURISDICTION AND VENUE

27 24. Murphy re-alleges and incorporates by reference each and every preceding paragraph
28 as though set forth fully herein.

1 25. Twitter, Inc. is headquartered in San Francisco County, CA and regularly does business
2 in San Francisco County. In addition, Twitter’s contractual breaches complained of in this suit
3 occurred in San Francisco County, and Twitter’s Terms of Service specify San Francisco County, CA
4 as the proper venue for all actions against Twitter. Accordingly, jurisdiction and venue are proper in
5 San Francisco County pursuant to Code of Civil Procedure sections 395, subdivision (a), and 395.5.

6 26. Because Twitter has engaged in ongoing business activities in San Francisco County
7 and directed to San Francisco County, has committed tortious acts within this district, and has
8 specified in its Terms of Service that “all disputes related to these Terms or the Services will be
9 brought solely in the federal or state courts located in San Francisco County, California, United
10 States,” this Court has personal jurisdiction over Twitter.

11 27. For over a year after Twitter International Company was substituted as the counterparty
12 on the Terms of Services for non-U.S. users, from May 2015 until September 2016, through two
13 successive revisions, Twitter’s Terms of Service contained a mandatory San Francisco, CA forum
14 selection clause that applied to non-U.S. users, including Murphy. As part of these contracts, Twitter
15 International Company agreed that “[t]hese Terms and any action related thereto will be governed by
16 the laws of the State of California without regard to or application of its conflict of law provisions or
17 your state or country of residence,” and that “[a]ll claims, legal proceedings or litigation arising in
18 connection with the Services will be brought solely in the federal or state courts located in San
19 Francisco County, California, United States, and you consent to the jurisdiction of and venue in such
20 courts and waive any objection as to inconvenient forum.” (emphasis added). (Exhibit I, Exhibit W).
21 While this provision was removed for international users in the September 2016 revision to the Terms
22 of Service, there was no subsequent forum selection or choice of law clause that superseded it, nor did
23 Twitter International Company revoke its consent to the jurisdiction of the California courts. Thus, the
24 forum selection clause still applies, and Twitter International Company has consented to personal
25 jurisdiction in California.

26 //
27 //
28 //

1 **GENERAL ALLEGATIONS**

2 **I. Twitter Becomes an Unprecedented Forum for Global Communication By**
3 **Advertising Itself As a Platform for the Free Expression of its Users**

4 28. Murphy re-alleges and incorporates by reference each and every preceding paragraph
5 as though set forth fully herein.

6 29. Twitter is the world’s largest microblogging site, with an average of 330 million active
7 users per month from all over the globe. Twitter states that its mission is “to give everyone the power
8 to create and share ideas and information instantly without barriers. Our business and revenue will
9 always follow that mission in ways that improve – and do not detract from – a free and global
10 conversation.” (Exhibit H). Twitter describes itself as “the live public square, the public space - a
11 forum where conversations happen.” (Exhibit J). Twitter allows users who have established accounts
12 to post short messages, called Tweets, as well as photos or short videos. Anyone can join and set up
13 an account on Twitter at any time. Twitter seeks to induce as many people as possible to actively use
14 its platform to share their views and discuss issues of public interest.

15 30. Twitter is a multi-billion dollar company that seeks to leverage its free public forum to
16 sell advertising services. Twitter’s Terms of Service describes its “Services” to include “ads” and
17 “commerce services,” and states, “In consideration for Twitter granting you access to and use of the
18 Services, you agree that Twitter and its third-party providers and partners may place such advertising
19 on the Services or in connection with the display of Content or information from the Services whether
20 submitted by you or others.” (Exhibit A). Twitter relies on its large user base to attract advertisers, and
21 it also seeks to sell advertising to its users. The vast majority of Twitter’s revenue, over 80%, comes
22 from advertising. Even with respect to users who do not pay directly for Twitter’s services, Twitter
23 recognizes followers on its platform as assets who have an independent monetary value owned by the
24 individual user. Twitter has stated, “The cost per follower on Twitter is set by a second price auction
25 among other advertisers – you’ll only ever pay just slightly more than the next highest bidder. A bid
26 of \$2.50 - \$3.50 is recommended based on historical averages.” (Exhibit K). Twitter also recognizes
27 that accounts are assets owned solely by their owners, which account owners may sell or assign to
28 others. Twitter’s users are thus actual and potential buyers and customers. Twitter’s promises and
representations regarding the nature of its platform and its services cited herein, especially its

1 commitment to uphold the free expression rights of its users, were designed to attract users and
2 ultimately purchasers of advertising to its site.

3 31. Users on Twitter choose whose Tweets they see by their decisions on which users to
4 “follow.” Any user who wants to stop seeing another user’s Tweets can simply choose to unfollow
5 that person. In addition, Twitter allows users to mute and/or block other users.

6 32. Unique among social media platforms, Twitter facilitates direct interaction between
7 ordinary individuals and public figures. It has 330 million regular users, and is of unmatched
8 importance in influencing public debate and news coverage of current affairs. Over 96% of journalists
9 use Twitter, and 70% view it as the most useful social media platform for their profession. (Exhibit
10 L),

11 33. Twitter is the platform in which important public debates take place in the modern
12 world. It is an essential communication tool for politicians, public intellectuals, journalists and
13 ordinary citizens the world over. Unique among social media sites, Twitter allows ordinary citizens to
14 interact directly with political leaders, academics, writers, journalists, and other prominent individuals
15 in a wide variety of fields. It has become an important communications channel for governments and
16 heads of state. As the U.S. Supreme Court noted in *Packingham v. North Carolina* (2017) 582 U.S. ___
17 [137 S. Ct. 1730, 1737], “[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. In short, social media users employ these websites to
20 engage in a wide array of protected First Amendment activity on topics as diverse as human thought.”
21 137 S. Ct. at pp. 1735–36 (internal citations and quotations omitted).¹

22 34. Access to Twitter is essential for meaningful participation in modern-day American
23 democracy. In a March 2016 article in *The Atlantic*, Adam Sharp, Twitter’s head of news, government
24 and public affairs, stated: “Twitter’s impact in politics and political movements became very clear
25 very early on,” noting that Twitter serves as “as a platform to communicate and to organize effectively
26 without a lot of the costs historically associated with that.” (Exhibit M). As the article notes, Twitter
27

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

1 has been essential to the rise of every major American political movement since it was founded: the
2 Tea Party, Occupy Wall Street, Black Lives Matter, and the presidential candidacies of Barack
3 Obama, Ted Cruz and Donald Trump. Twitter has created the unprecedented level of political
4 engagement of the last decade because it has “shift[ed] much of the power once hoarded by political
5 establishments back into the hands—or voices—of people.” By 2016,

6
7 “Twitter’s early promise as a political tool has become ingrained as a political reality.
8 **A candidate without Twitter is a losing candidate.** . . . Commentators and voters
9 engage with the highest officeholders in the world with candor, frankness—and often
10 meanness and crassness—and sometimes even participate in real back-and-forth
11 dialogue. This open dialogue . . . has also bolstered accountability and has caused the
12 downfall of several politicians who were not so mindful of the new rules in play. **The**
13 **amount of discursive access to politicians [facilitated by Twitter] is unprecedented**
14 **in the past century of American politics.**” (emphasis added).

15 Thus, a presence on Twitter is essential for an individual to run for office or engage in any level of
16 political organizing in the United States and Canada.

17 35. Twitter has actively promoted itself as an open platform for individuals who seek to
18 petition their elected leaders and participate in public affairs. Twitter published a “Twitter
19 Government and Elections Handbook” (“Handbook”) (Exhibit N) with the express purpose of helping
20 elected officials and government agencies “tap into the power of Twitter to connect with your
21 constituents.” According to the Handbook, “Twitter is a free platform for all voices to be heard and to
22 organize.” Twitter instructed officials in agencies on how to host “Twitter Town Halls,” where
23 constituents can ask questions via Twitter and petition their representatives for redress of grievances.
24 Twitter explained that “[t]hese forums are exceedingly necessary and important” and are among the
25 “best opportunities for community expression and dialogue using the platform.” Indeed, many
26 government agencies and elected officials now hold important public meetings on Twitter, meetings
27 that are inaccessible to users that Twitter has banned.

28 36. It is universally understood that Tweets reflect the viewpoints of the user who posted
the Tweet, and not Twitter itself. All Tweets are unmistakably identified with the user who posted the
Tweet. Indeed, Twitter clearly states in its Terms of Service: “You are responsible for your use of the
Services and for any Content you provide, including compliance with applicable laws, rules, and

1 regulations.” (Exhibit A). It goes on to state: “You retain your rights to any Content you submit, post
2 or display on or through the Services. What’s yours is yours — you own your Content (and your
3 photos and videos are part of the Content).” Twitter and its executives have numerous accounts which
4 they use to publish their own viewpoints on the platform. Tweets are published by individual users,
5 not Twitter.

6 37. Twitter has consistently marketed itself as an open forum for members of the public to
7 express themselves. All content posted by Twitter users is clearly associated with their own accounts,
8 and users retain ownership over what they post. Twitter freely acknowledges that it is “the public
9 square,” not a platform for its own corporate speech. It is universally understood that Tweets reflect
10 the viewpoints of the user who posted the Tweet, and not Twitter itself. When Twitter wishes to speak
11 as a corporate entity, it knows how to do so—its executives all have their own accounts, and Twitter
12 has its own corporate blog.

13 38. Twitter’s entire business purpose is to allow members of the public to freely share and
14 disseminate their views, and no reasonable person would think Twitter was promoting or endorsing
15 the speech of Murphy or any other user by not censoring it.

16 **II. Twitter Repeatedly Promises in Its User Agreements and Public Statements That It**
17 **Will Not Censor Speech Based on Viewpoint, Will Notify Users of Any Changes to Its**
18 **Policies, and Will Not Ban Users Arbitrarily**

19 39. Twitter repeatedly promised and represented that it would uphold the free speech rights
20 of its users and not engage in viewpoint-based censorship in its advertising, Rules, public statements
21 and Terms of Service. These promises and representations were statements of fact about Twitter’s
22 services. These promises and representations were material to the decision of millions of users, like
23 Murphy, to join. Without these promises, Twitter would not have been able to attract a critical mass of
24 users to its platform.

25 40. Indeed, Murphy is known for challenging conventional wisdom on a large number of
26 issues and for expressing a socialist critique of corporate power. She would never have joined Twitter
27 had the company let it be known that it would arbitrarily ban users who did not agree with the political
28 and social views of its management.

41. Relying on Twitter’s advertising, public statements, and contractual provisions,

1 Murphy and other similarly-situated users reasonably believed that Twitter would allow them to use
2 its open public forum to freely express their opinions on all subjects, without engaging in censorship
3 based on their political views and affiliations. Based on Twitter’s advertising, they reasonably
4 expected that it was and would continue to be a public forum for the speech of its users.

5 42. Twitter’s User Agreement, which includes its Terms of Service, Rules, and associated
6 policies, constitutes a binding contract with each of its users.

7 43. The Twitter Rules, as they existed when Murphy joined the platform in April 2011 and
8 which form part of Twitter’s User Agreement, stated: “Our goal is to provide a service that allows you
9 to discover and receive content from sources that interest you as well as to share your content with
10 others. We respect the ownership of the content that users share and each user is responsible for the
11 content he or she provides. Because of these principles, we do not actively monitor user’s content and
12 will not censor user content, except in limited circumstances described below.” (Exhibit O). Those
13 “limited circumstances” were:

- 14 ● “Impersonation: You may not impersonate others through the Twitter service in a
15 manner that does or is intended to mislead, confuse, or deceive others
- 16 ● Trademark: We reserve the right to reclaim user names on behalf of businesses or
17 individuals that hold legal claim or trademark on those user names. Accounts using
18 business names and/or logos to mislead others will be permanently suspended.
- 19 ● Privacy: You may not publish or post other people’s private and confidential
20 information, such as credit card numbers, street address or Social Security/National
21 Identity numbers, without their express authorization and permission.
- 22 ● Violence and Threats: You may not publish or post direct, specific threats of violence
23 against others.
- 24 ● Copyright: We will respond to clear and complete notices of alleged copyright
25 infringement. Our copyright procedures are set forth in the Terms of Service.
- 26 ● Unlawful Use: You may not use our service for any unlawful purposes or for
27 promotion of illegal activities. International users agree to comply with all local laws
28 regarding online conduct and acceptable content.
- Misuse of Twitter Badges: You may not use a Verified Account badge or Promoted
Products badge unless it is provided by Twitter. Accounts using these badges as part of
profile pictures, background images, or in a way that falsely implies affiliation with
Twitter will be suspended.”

44. While Twitter’s Rules stated that Twitter “may need” to change them, the idea that
Twitter would use this language to create content- and viewpoint-based restrictions around use of the

1 platform would have come as a complete surprise in light of Twitter’s express promises that it would
2 uphold the free speech rights of its users. In its public statements, Twitter was *emphatic* in its defense
3 of free speech as a core value of the company. In 2013, the *New York Times* explained, “Twitter has
4 deftly built something of a reputation for protecting free speech, even unpopular speech.” (Exhibit P).
5 Twitter’s then-Vice President Tony Wang explained in March of 2012 that “Generally, we remain
6 neutral as to the content because our general counsel and CEO like to say that we are the free speech
7 wing of the free speech party.” (Exhibit Q).

8 45. Twitter’s status as a forum that would uphold the free speech rights of its users was not
9 a minor detail lurking within Twitter’s Terms of Service. Instead, Twitter claimed that this was *the*
10 *entire reason the platform was founded* and the platform’s *most basic function*. Twitter’s well-
11 publicized mission statement, which appears on its official company pages, is: “The mission we serve
12 as Twitter, Inc. is to give everyone the power to create and share ideas and information instantly
13 without barriers. **Our business and revenue will always follow that mission in ways that improve**
14 **– and do not detract from – a free and global conversation.**” (Exhibit H). On its “Values” page,
15 Twitter states: “We believe in free expression and think every voice has the power to impact the
16 world.” (Exhibit G). In its advertising and public statements, Twitter describes itself as “a free
17 platform for all voices to be heard and to organize” “the live public square,” a “public forum,” and the
18 “free speech wing of the free speech party.” Twitter’s repeated representations that it was committed
19 to upholding the free speech rights of its users and would not engage in viewpoint-based censorship
20 were material to the decision of hundreds of millions of users across the globe, including Murphy, to
21 join the platform.

22 46. In addition, in its Terms of Service, Twitter promises its users that changes “will not be
23 retroactive.” (Exhibit A). Twitter’s Terms of Service also state, “Other than for changes addressing
24 new functions or made for legal reasons, we will notify you 30 days in advance of making effective
25 changes to these Terms that impact the rights or obligations of any party to these Terms, for example
26 via a service notification or an email to the email associated with your account.” (emphasis added).

27 47. In its Enforcement Guidelines, promulgated in 2018, Twitter states: “We can take
28 action at the Tweet, Direct Message, and account levels, and sometimes employ a combination of

1 these enforcement actions. In some instances, this is because the behavior violates the Twitter Rules.
2 Other times, it may be in response to a valid and properly scoped request from an authorized entity in
3 a given country.” (Exhibit R). The policy then goes on to describe a “range of enforcement options
4 that we may exercise when conducting a review.”

5 48. With respect to “[r]equiring Tweet removal,” Twitter states: “When we determine that
6 a Tweet violated the Twitter Rules, we require the violator to remove it before they can Tweet again.
7 We send an email notification to the violator identifying the Tweet(s) in violation and which policies
8 have been violated.” (emphasis added).

9 49. Twitter states that it reserves “account-level” actions for cases where “a person has
10 violated the Twitter Rules in a particularly egregious way, or has repeatedly violated them even after
11 receiving notifications from us.” With respect to “Permanent Suspension,” Twitter states: “This is our
12 most severe enforcement action. Permanently suspending an account will remove it from global view,
13 and the violator will not be allowed to create new accounts. When we permanently suspend an
14 account, we notify people that they have been suspended for abuse violations, and explain which
15 policy or policies they have violated and which content was in violation.” (emphasis added).

16 50. These policies constitute an agreement between Twitter and its users that it will only
17 ban users or the content they post when those users have actually violated specific Twitter rules or
18 policies, and that it will not ban users arbitrarily, in bad faith, or in instances where users have
19 complied with Twitter’s rules and policies in good faith. Before banning an account or requiring a
20 user to remove content, Twitter has promised that it will provide notice of the allegedly violative
21 content and the specific rule or policy that the user violated. Rules may not be enforced retroactively.
22 And Twitter has promised to provide users with 30 days’ advance notice of any changes to its rules,
23 policies or Terms of Service that alter their rights and obligations with respect to their use of the
24 platform,.

25 51. Twitter enacted its first Hateful Conduct Policy on December 29, 2015. At the time,
26 that policy stated: “Hateful conduct: You may not promote violence against or directly attack or
27 threaten other people on the basis of race, ethnicity, national origin, sexual orientation, gender, gender
28 identity, religious affiliation, age, disability, or disease. We also do not allow accounts whose primary

1 purpose is inciting harm towards others on the basis of these categories.” (“Disease” was amended to
2 “serious disease” sometime in 2018.) When Twitter announced the Hateful Conduct Policy, its public
3 statements emphasized that Twitter continued to support the free expression of diverse viewpoints, but
4 that harassment, abuse, threats and the like prevent people from freely expressing their views.

5 52. Twitter’s “Safety” page proclaims, in large letters: “We’re dedicated to making Twitter
6 a safe place for free expression.” Describing “our approach,” Twitter states: “**Free expression is a**
7 **human right. Everyone has a voice, and the right to use it.**” (emphasis added). (Exhibit S). Twitter
8 lists “our principles” as follows, in large, bold lettering:

9 “1. **Twitter stands for freedom of expression for everyone.**

10 2. **We do not take sides. We show sides. Every side.**

11 3. **We treat everyone equally: the same Twitter Rules apply to all.**

12 4. **You have the right to express yourself on Twitter if you adhere to these rules.”**

13 53. Twitter also modified its Hateful Conduct Policy in December 2017. (Exhibit T). It
14 added a preface stating: “Freedom of expression means little if voices are silenced because people are
15 afraid to speak up. We do not tolerate behavior that harasses, intimidates, or uses fear to silence
16 another person’s voice. If you see something on Twitter that violates these rules, please report it to
17 us.” It also added a section stating, “Examples of what we do not tolerate includes, but is not limited
18 to behavior that harasses individuals or groups of people with:

- 19
- 20 • violent threats;
 - 21 • wishes for the physical harm, death, or disease of individuals or groups;
 - 22 • references to mass murder, violent events, or specific means of violence in which/with
23 which such groups have been the primary targets or victims;
 - 24 • behavior that incites fear about a protected group;
 - 25 • repeated and/or non-consensual slurs, epithets, racist and sexist tropes, or other content
26 that degrades someone.”

27 54. Also in December 2017, Twitter added a section titled “How enforcement works,”
28 which emphasized, in large bold letters: “**Context matters**”: “Some Tweets may seem to be abusive
when viewed in isolation, but may not be when viewed in the context of a larger conversation. While

1 we accept reports of violations from anyone, sometimes we also need to hear directly from the target
2 to ensure that we have proper context.”

3 55. This version remained unchanged until Twitter covertly made sweeping changes to the
4 Hateful Conduct Policy sometime in late October 2018, nearly tripling the policy in length. Buried
5 within nearly 1200 words of text was the following new provision: “We prohibit targeting individuals
6 with repeated slurs, tropes or other content that intends to dehumanize, degrade or reinforce negative
7 or harmful stereotypes about a protected category. This includes targeted misgendering or deadnaming
8 of transgender individuals.” (Exhibit U).

9 56. Twitter provided no advance notice to Murphy or any other user of these changes
10 which substantially affected their rights and obligations under Twitter’s Terms of Service.

11 57. Moreover, the other parts of the Hateful Conduct Policy dealt with conduct of a
12 fundamentally different character and severity than using the wrong pronoun: “violent threats against
13 an identifiable target”; “content that wishes, hopes, promotes, or expresses a desire for death, serious
14 and lasting bodily harm, or serious disease against an entire protected category”; “targeting
15 individuals with content that references forms of violence or violent events where a protected category
16 was the primary target or victims,” such as images of the Holocaust or lynchings; “targeting
17 individuals with content intended to incite fear or spread fearful stereotypes about a protected
18 category, including asserting that members of a protected category are more likely to take part in
19 dangerous or illegal activities, e.g., ‘all [religious group] are terrorists’”; and displaying “logos,
20 symbols, or images whose purpose is to promote hostility and malice against others based on their
21 race, religion, disability, sexual orientation, gender identity or ethnicity/national origin” such as Nazi
22 swastikas, in profile, account bio or header images. And, near the beginning of the revised policy,
23 Twitter reiterated *yet again* that it was a platform for the free speech of its users that allowed users to
24 freely express their political viewpoints and perspectives:

25 “Twitter’s mission is to give everyone the power to create and share ideas and
26 information, and to express their opinions and beliefs without barriers. Free expression
27 is a human right – we believe that everyone has a voice, and the right to use it. Our role
28 is to serve the public conversation, which requires representation of a diverse range of
perspectives.”

58. Twitter’s new “misgendering or deadnaming” policy is viewpoint discriminatory on its

1 face. It forbids expression of the viewpoints that 1) whether an individual is a man or a woman is
2 determined by their sex at birth and 2) an individual's gender is not simply a matter of personal
3 preference. These are widely-held political viewpoints and perspectives that are shared by a majority
4 of the American public. Twitter's "misgendering or deadnaming" policy singles out users who express
5 these widely-held viewpoints and perspectives for suspensions, permanent bans, and other
6 enforcement actions. Thus, the new policy contradicted Twitter's repeated promises and
7 representations, including the sworn public testimony of its CEO in September 2018, that it would not
8 ban users based on their political philosophies, or viewpoints or promulgate policies barring users
9 from expressing certain philosophies or viewpoints. Moreover, Twitter's enforcement of the
10 "misgendering" policy would require it to engage in active content monitoring and censorship,
11 something its Rules had previously stated that Twitter would not do.

12 59. The term "deadname," which only originated in 2012, is not widely known or used by
13 the general public. And the concept is controversial even within the transgender community. In a
14 widely-shared series of posts after Murphy's ban, Corinna Cohn, a transgender woman, wrote:

15 "With Twitter choosing to punish or ban the mention of a christened name,
16 'deadnaming' has now emerged as a highly privileged, extremely broad privacy right
17 which removes others' rights to speak about the past.

18 From the first time I heard the malapropism 'deadnaming,' I've criticized it for
19 promoting the idea that changing one's name or pronouns is a form of death. It isn't.
20 Changing your name introduces a new chapter; it doesn't destroy the book.

21 There is not a unified position in the trans community on 'deadnaming'. For Twitter to
22 add it to its prohibited speech restrictions, it means that Twitter has taken a specific,
23 ideological stance and is choosing to ban a wide swath of speech.

24 A ban on 'deadnaming' is categorically identical to a ban on heresy. If Twitter bans
25 'deadnaming', there is no distance from here to banning sacrilegious speech.
26 'Deadnaming' is a term from the most modern of theological movements.

27 In practice, Twitter's 'deadnaming' policy will be a boon to anyone who wants to hide
28 their past, particularly sex offenders and other violent offenders. This policy strips a
victim's ability to name their abuser.

(As a side note, a former senior engineer at Twitter is now protected by this policy)."

60. Twitter has enforced its Hateful Conduct Policy in a discriminatory and targeted

1 manner against Murphy and other users based on their political beliefs and perspectives, banning
2 hundreds of users for expressing views critical of the idea that “gender identity” should be regarded
3 solely a matter of personal choice. It has also invoked this policy to ban criticisms of prominent
4 activists and public figures who advocate for defining “gender identity” in this way, even when such
5 criticisms do not violate any of Twitter’s rules. But it does not impose any sort of restrictions when
6 activists call for deplatforming, banning and even physically harming gender-critical feminists like
7 Murphy. Indeed, Murphy was routinely subjected to violent threats and harassment based on her
8 gender and political views, and complained frequently to Twitter, but Twitter took no action in
9 response. This is the very definition of viewpoint discrimination: “licens[ing] one side of a debate to
10 fight freestyle, while requiring the other to follow Marquis of Queensberry rules.” *R.A.V. v. St. Paul*
11 (1992) 505 U.S. 377, 392 [112 S. Ct. 2538].

12 61. Twitter enforced its new “misgendering” policy retroactively to permanently ban
13 Murphy based on Tweets that she sent before Twitter covertly enacted the new policy sometime in
14 late October 2018. It also promulgated and enforced its new policy without giving Murphy or any
15 other user advance notice of this change, despite having expressly promised in its Terms of Service
16 that it would provide users 30 days’ notice of changes that affected their rights or obligations with
17 respect to their use of Twitter’s services.

18 62. Moreover, Twitter’s CEO, Jack Dorsey, had stated in sworn public testimony that
19 Twitter does not discriminate based on political viewpoint or perspective, either in its policies or its
20 enforcement of its policies. In widely-reported testimony before the U.S. House of Representatives
21 Committee on Energy and Commerce on September 5, 2018, Dorsey declared, “I want to start by
22 making something very clear. We don’t consider political viewpoints, perspectives, or party affiliation
23 in any of our policies or enforcement decisions, period.” (Exhibit B) (emphasis added). Later in the
24 hearing, Dorsey stated: “Our policies and our algorithms don’t take into consideration any affiliation,
25 philosophy, or viewpoint.” (*Id.*) The intended audience for these statements were Twitter’s customers,
26 prospective customers and investors. The statements were calculated to induce reliance on the part of
27 these persons that Twitter would continue to protect the free speech of its users and would not engage
28 in viewpoint-based censorship. And the statements were false and misleading: Twitter has banned

1 Murphy and hundreds of other users based entirely on their political viewpoints and perspectives, and
2 Twitter’s new “misgendering” policy, enacted within two months of Dorsey’s testimony, directly
3 banned expression of a widely-held political viewpoint and perspective.

4 **III. Twitter Inserts Unconscionable Terms Into Its User Agreements**

5 63. Twitter amended its Terms of Service on May 17, 2012, to read, *inter alia*: “We may
6 suspend or terminate your accounts or cease providing you with all or part of the Services at any time
7 for any reason, including, but not limited to, if we reasonably believe: (i) you have violated these
8 Terms or the Twitter Rules. . . .” (Exhibit V). On May 17, 2015, Twitter again amended its Terms of
9 Service to read: “We may suspend or terminate your accounts or cease providing you with all or part
10 of the Services at any time for any or no reason, including, but not limited to, if we reasonably
11 believe: (i) you have violated these Terms or the Twitter Rules . . .” (Exhibit I). Twitter’s current
12 Terms of Service include this same language.

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

19 65. The portions of Twitter’s Terms of Service purporting to give Twitter the right to
20 suspend or ban an account “at any time for any or no reason” and “without liability to you” are
21 procedurally and substantively unconscionable.

22 66. They are procedurally unconscionable because they were inserted unilaterally by
23 Twitter into its User Agreement without any opportunity for individual users to negotiate them.
24 Twitter’s Terms of Service did not include any provision allowing it to suspend or ban accounts “at
25 any time for any reason” until May 17, 2012 and did not include the “without liability to you”
26 language until even later, January 27, 2016. The idea that Twitter would use this language to create
27 content- and viewpoint-based restrictions around use of the platform would have come as a complete
28 surprise, as the Twitter Rules in effect previously stated “we do not actively monitor user’s content

1 and will not censor user content,” except in limited circumstances such as impersonation, violation of
2 trademark or copyright, or “direct, specific threats of violence against others,” and Twitter has
3 consistently listed “free expression” and the power of “every voice” among its core values and
4 affirmed repeatedly, including in *sworn congressional testimony*, that it does not discriminate on the
5 basis of viewpoint in either its policies or enforcement actions.

6 67. The portions of Twitter’s Terms of Service cited above are also substantively
7 unconscionable. That is because they are “unreasonably favorable to the more powerful party” and
8 “unfairly one-sided.” *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal. 4th 899, 911 [190 Cal.
9 Rptr. 3d 812] (internal quotation marks omitted). The terms purporting to give Twitter the right to
10 suspend or ban an account “at any time for any or no reason” and “without liability to you”
11 “contravene the public interest or public policy,” “attempt to alter in an impermissible manner
12 fundamental duties otherwise imposed by the law,” “seek to negate the reasonable expectations of the
13 nondrafting party,” and impose “unreasonably and unexpectedly harsh terms having to do with . . .
14 central aspects of the transaction.” *Id.* (internal quotation marks omitted).

15 68. With respect to the provisions purporting to give Twitter the right to suspend or ban an
16 account “at any time for any or no reason” and “without liability to you,” 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—for example, because they belong to an ex-girlfriend or ex-
20 boyfriend; the employee had a bad experience with a particular company that has an account on
21 Twitter; the employee is a fan of a certain sports team and thus bans all accounts associated with a
22 rival team. Millions of Twitter users who have spent time, money, and effort to gain followers could
23 all have their accounts permanently banned at any moment, losing their valuable economic interest in
24 access to their Twitter account and their followers forever, for petty, arbitrary or irrational reasons,
25 unlawful reasons, or no reason at all. Such terms are so one-sided and oppressive that they shock the
26 conscience.

27 69. Using these provisions, Twitter could ban users for the most arbitrary, discriminatory
28 and unlawful of reasons, including outright discrimination based on race and gender. Thus, in addition

1 to being shockingly one-sided and oppressive, these terms contravene the public interest and public
2 policy, including the implied duty of good faith and fair dealing, by allowing Twitter to use its
3 adhesive contracts with users to engage in behavior that is arbitrary, illegal, and contrary to public
4 policy.

5 **IV. Murphy Joins Twitter, Speaks Out on Public Issues, and Attracts a Large Following**

6 70. Murphy is a freelance writer and journalist. She graduated from Simon Fraser
7 University with a B.A. in Women’s Studies in 2010 and an M.A. in Gender, Sexuality and Women’s
8 Studies. She writes primarily on feminist issues, including the Me Too movement, the sex industry,
9 sex education, third-wave feminism, and gender identity politics. She has been an outspoken critic of
10 the sex industry, including prostitution and pornography, from both a socialist and feminist
11 perspective. Her writing has appeared in the CBC News, *The Globe and Mail*, *Ms.*, the *National Post*,
12 *rabble.ca*, *xoJane*, *Vice*, *Al Jazeera*, *The Vancouver Observer*, and the *New Statesman*, among others.
13 She is the founder and editor of *Feminist Current*, a feminist blog and podcast, which won the “Best
14 Feminism Blog” award at the 2012 Canadian Blog Awards.

15 71. Murphy joined Twitter on April 21, 2011. At the time she was banned, she had
16 approximately 25,000 followers on the platform. In addition, she had been granted Twitter’s blue
17 verification badge. According to Twitter, “[t]he blue verified badge on Twitter lets people know that
18 an account of public interest is authentic.”

19 72. At all times, Murphy used Twitter in good faith to discuss newsworthy events and
20 public issues, share articles, podcasts and videos, promote and support her writing, journalism and
21 public speaking activities, and communicate with her followers. At no time did she use Twitter to
22 harass or threaten others, nor did she ever encourage anyone else to do these things. At no point did
23 she violate any of Twitter’s rules.

24 73. Like other organisms that reproduce sexually, human beings are specialized into male
25 or female varieties, each known as a biological sex. In general, an individual’s biological sex is
26 determined by whether that individual has XX sex chromosomes (female) or XY sex chromosomes
27 (male).

28 74. While up to 1.7% of the population is born “intersex” condition, meaning that they

1 have sex hormones, chromosomes or sex organs that are not typical of either sex, the vast majority of
2 people with intersex conditions identify as male or female rather than transgender or transsexual.

3 75. In the 1950s, the sex researcher John Money coined the phrase “gender role” to
4 distinguish biological sex from the social construction of gender. This meaning of the word “gender,”
5 as distinguished from biological sex, has become increasingly common since the 1970s.

6 76. However, the distinction between one’s biological sex and one’s gender remains
7 controversial. A 2017 Pew Research poll found that 54% of the American public believed that
8 whether an individual is a man or a woman is determined by their sex at birth. Only a minority, 44%,
9 said that someone can be a man or a woman even if they were born a member of the opposite sex.
10 (Exhibit C).

11 77. Historically, the law did not differentiate between biological sex and gender. However,
12 in recent years, some have argued that the law should define an individual’s gender solely as a
13 personal choice, regardless of any biological, physical, or societal considerations.

14 78. For example, in 2017, California changed its law to remove the requirement that an
15 individual undergo any sort of clinical treatment to change genders in order to obtain a new birth
16 certificate or to petition a court for a judgment recognizing a change of gender. Instead, to obtain a
17 change of gender on any legal document, an individual need only “attest[], under penalty of perjury,
18 that the request for a change of gender is to conform the person’s legal gender to the person’s gender
19 identity and not for any fraudulent purpose.” In enacting the new law, the California legislature
20 declared that “[g]ender identification is fundamentally personal,” and “[t]he binary gender
21 designations of female and male fail to adequately represent the diversity of human experience.” It
22 recognized specifically that individuals might legally change their gender regardless of whether they
23 had undergone any sort of medical transition or sought to change their appearance in any way
24 whatsoever:

25 “Transgender is an umbrella term used to describe people whose gender identity or
26 gender expression do not match the gender they were assigned at birth. Some
27 transgender people have medically transitioned, undergoing gender affirming surgeries
28 and hormonal treatments, while other transgender people do not choose any form of
medical transition. There is no uniform set of procedures that are sought by transgender
people that pursue medical transition. Transgender people may identify as female,

1 male, or nonbinary, may or may not have been born with intersex traits, may or may
2 not use gender-neutral pronouns, and may or may not use more specific terms to
3 describe their genders, such as agender, genderqueer, gender fluid, Two Spirit,
4 bigender, pangender, gender nonconforming, or gender variant.”

5 79. These efforts to change the law to define gender entirely based on an individual’s
6 internal, subjective perception of their gender have been controversial, and the changes have not all
7 been in one direction. In October 2018, for example, the U.S. Department of Health and Human
8 Services directed federal agencies tasked with administering Title IX, which is the federal civil rights
9 law that bans gender discrimination in education programs that receive government financial
10 assistance, to adopt an explicit and uniform definition of gender as determined “on a biological basis
11 that is clear, grounded in science, objective and administrable.” After several women at a prison in
12 Texas filed a federal lawsuit in which they alleged that sharing facilities, including cell blocks and
13 bathrooms, with transgender women violated their privacy and subjected them to increased to risk of
14 rape and assault, the Bureau of Prisons stated that it would use an inmate’s biological sex to initially
15 determine where that person will be housed and which bathroom the person will use. In 2017, civil
16 rights officials in the Department of Justice and Department of Education rejected the position that
17 civil rights laws required schools to permit students to use the bathroom of the gender they choose to
18 identify with.

19 80. Many feminists, including Murphy, argue that there is a difference between
20 acknowledging that transgender women see themselves as female and counting them as women in a
21 legal or social sense. To accept the viewpoint of transgender activists, argues the philosopher Kathleen
22 Stock, is to view female biology and reproduction as only “contingent features of womanhood”. Yet,
23 for most women, “it’s central to their sense of self-identity” that “they have a female body.” There are
24 also many significant public health issues that disproportionately or differently affect biological
25 women, including breast and cervical cancer, sexual and reproductive health issues (such as access to
26 contraception), maternal health, and sexually transmitted diseases.

27 81. Murphy and other feminists also object to the notion that one’s gender is purely a
28 matter of personal preference. In May 2017, Murphy testified before the Senate of Canada’s
Committee on Legal and Constitutional Affairs in opposition to Bill C-16, which would amend the
Canadian Human Rights Act and the Criminal Code to prohibit discrimination based on “gender

1 expression” and “gender identity.” Murphy particularly objected to the definition of “gender identity”
2 put forward by the bill’s sponsor as “a person’s internal or individual experience of their gender.”
3 Murphy argued that “[t]reating gender as though it is either internal or a personal choice is dangerous
4 and completely misunderstands how and why women are oppressed under patriarchy, as a class of
5 people.” She explained, “Generally, the claim that one ‘feels’ like the opposite sex ‘on the inside’ is
6 connected to a list of sexist gender stereotypes: a boy likes dolls and dresses, a girl plays with trucks
7 and cuts her hair short, a man enjoys wearing pantyhose and getting manicures, etc. There is no
8 scientific foundation for the idea that sex is defined by a ‘feeling’ or by superficial choices.” Thus,
9 “[t]he idea that gender is something internal, innate, or chosen — expressed through superficial and
10 stereotypical means like hairstyles, clothing, or body language — is deeply regressive.”

11 82. Murphy asked, “If we say that a man is a woman because of something as vague as a
12 ‘feeling’ or because he chooses to take on stereotypically feminine traits, what impact does that have
13 on women’s rights and protections? Should he be allowed to apply for positions and grants
14 specifically reserved for women, based on the knowledge that women are underrepresented or
15 marginalized in male-dominated fields or programs and based on the fact that women are paid less
16 than men and often will be fired or not hired in the first place because they get pregnant or because it
17 is assumed they may become pregnant one day? The way men ‘feel’ ‘on the inside’ does not change
18 that they hold power and privilege in this society and the way women ‘feel’ ‘on the inside’ does not
19 change their experience of sexism. . . . Dissolving the categories of ‘man’ and ‘woman’ in order to
20 allow for ‘fluidity’ may sound progressive, but is no more progressive, under the current
21 circumstances, than saying race doesn’t exist and that white people don’t hold privilege in this world
22 if they don’t ‘feel’ white or if they take on racist stereotypes attached to people of colour. If a white
23 person did this, we would rightly call it cooptation and denounce the behavior. Why do we accept that
24 if a man takes on sexist stereotypes traditionally associated with women he magically changes sex and
25 sheds his status as male in this world?”

26 83. Murphy also argued against Bill C-16 and similar legislation defining gender as a
27 personal choice because it threatens the existence of female-only spaces, expressing concern that “the
28 rights of women and girls are being pushed aside to accommodate a trend.” In her view, legislation

1 that would allow individuals who are biologically male but self-identify as women to access female-
2 only spaces such as changing rooms, women’s prisons, and rape crisis centers would invade women’s
3 privacy and destroy their sense of safety and security in these spaces. These risks are especially acute
4 for women who have previously been victims to sexual violence and assault—precisely the women
5 who are most at need for rape crisis centers and domestic violence shelters. Murphy has written that
6 “[t]here is a reason certain spaces are sex-segregated—such as change rooms, bathrooms, women’s
7 shelters, and prisons: because these are spaces where women are vulnerable, and where male predators
8 might target women and girls. These are spaces where women and girls may be naked, and where they
9 do not want to be exposed to a man’s penis, regardless of his insistence that his penis is actually
10 ‘female.’” She asked, “Is it now the responsibility of women and girls to leave their own spaces if
11 they feel unsafe? Are teenage girls obligated to overcome material reality lest they be accused of
12 bigotry? Is the onus on women to suddenly forget everything they know and have experienced with
13 regard to sexual violence, sexual harassment, and the male gaze simply because one individual wishes
14 to have access to the female change room?”

15 84. During her time on Twitter, Murphy was subjected to numerous violent, explicit
16 threats, along with continual abuse and harassment. She was routinely called a “TERF” (a derogatory
17 term meaning “trans-exclusionary feminist”), a “Nazi,” a “cunt” by other users, typically men, many
18 of whom had large followings. Many of the insults and abuse were sexual in nature and explicitly
19 targeted Murphy based on her gender. For example, one Tweet from a user who still on the platform
20 said, “Meghan is having fantasies about being raped again.” Another user who has not been banned
21 directed her to “[g]o chew on razorblades you TERF scum.” Murphy reported these threatening and
22 harassing Tweets on numerous occasions, but Twitter took no action in response.

23 85. Individuals such as Murphy who question the concept of “gender identity” are
24 routinely subjected to threats, harassment and violence. In September 2017, a group of women
25 assembled at the historic Speaker’s Corner in London’s Hyde Park before heading off to hear a talk
26 entitled “What is Gender,” regarding the UK’s proposed Gender Recognition Act, its effect on
27 women’s rights and the women’s movement. Speaker’s Corner has long been recognized as a space
28 for free speech, where open debate and discussion have taken place for over a century. In the 1940s,

1 George Orwell described Speaker’s Corner as “one of the minor wonders of the world,” where he had
2 listened to “Indian nationalists, temperance reformers, Communists, Trotskyists, the Socialist Party of
3 Great Britain (SPGB), the Catholic Evidence Society, freethinkers, vegetarians, Mormons, the
4 Salvation Army, the Church Army, and a large variety of plain lunatics.” A group called Action for
5 Trans Health London had gotten wind that women were meeting at Speaker’s Corner and, using a
6 Facebook event page titled “TERFs Never Welcome Anywhere!,” organized a group of 20-30
7 protestors to harass attendees and follow them to the venue. Some yelled “Kill all TERFs” and held
8 signs reading “No Debate.” A group of protestors pushed over a 60-year old woman who had planned
9 to attend the talk after she attempted to film them. A protestor who goes by the name Tara Flik Wood
10 then proceeded to punch and kick the woman as she lay on the ground helpless. Wood’s attack was
11 completely foreseeable: he had previously commented on the “TERFs Never Welcome Anywhere!”
12 Facebook event page, “I wanna fuck some terfs up, they are no better than fash.” Wood was
13 eventually convicted of assault the following April. Rather than condemn the attack, Action for Trans
14 Health London posted that it was “proud” of the protestors’ actions and accused the women who
15 peacefully gathered for the talk of engaging in “hatred, misogyny and intimidation.

16 86. Several Twitter users also praised the attack. One user wrote, “Imagine if twenty
17 people had punched terfs. Imagine if every terf had left bruised and bloodied. Every one would stop
18 organizing.” Another posted: “I heard a TERF got punched so it’s my duty as commander of
19 Armchair Violence Enthusiast Twitter to say: good job, nice work, keep it up.” A verified user
20 responded, “It’d be nice if there were roving gangs of trans women beating the shit out of transphobes,
21 but sadly this doesn’t seem to be the case.” All of these users are still active on Twitter, and none has
22 been banned.

23 87. Violent threats and harassment against “TERFs” has become normalized to the point
24 that the San Francisco Public Library in March 2018 hosted an exhibit that included a depiction of a
25 bloody shirt with the words, “I PUNCH TERFS,” alongside baseball bats and axes, some covered in
26 barbed wire (in April 2018, the library altered the exhibit “to remove an offensive shirt” because it
27 “could be interpreted as promoting violence.”). Indeed, Scout Tran, the creator of the exhibit, founded
28 a transgender activist group called the Degenderettes, which has taken to showing up at LGBT and

1 women's events wearing bloody shirts and carrying baseball bats like the ones depicted in the exhibit.
2 Harassment and bullying of women perceived to be "TERFs" is now common at such events.

3 88. The threats and violence are part of a coordinated effort to smear, discredit and silence
4 anyone who questions the notion of "gender identity" as a matter of personal preference. The threats
5 have worked: a recent ComRes survey of 150 Members of the UK Parliament found that only 33% of
6 MPs agreed with the statement, "I feel I can speak freely on transgender issues without undue fear of
7 social media attacks or being accused of transphobia." A majority, 54%, disagreed. 28% of all MPs
8 agreed that people should be able to decide their own legal gender without the approval of a doctor;
9 50% disagreed. 59% said that the rise in the number of children presenting as transgender "is a
10 worrying development that has not been properly explained or discussed yet." 67% said "I am
11 concerned that rules allowing men to self-identify as women and access women-only spaces like
12 prisons and refuges could be exploited by abusive individuals." Yet due to fear of the type of threats,
13 bullying and harassment suffered by Murphy and others who question whether "gender identity"
14 should be regarded as purely a private choice, no MPs to date have expressed these concerns publicly.

15 89. On January 10, 2018, March On Vancouver, the organizers of the Vancouver Women's
16 March, announced via Twitter that one of the speakers at the March would be Hailey Heartless.
17 According to the organizers, Heartless "self identifies as a transsexual professional dominatrix" and
18 "has over ten years of activist experience in LGBTQ, feminist, sex positive, sex worker and labour
19 communities." Heartless's Twitter account, @SadistHailey, bills Heartless as "Western Canada's only
20 #tsbbw goddess. Worship and serve by Skype or in person," as well as a "[s]ex worker union
21 organizer." Heartless's legal name is Lisa Kreut. Kreut is biologically male and identified as "Ryan
22 Kreut" until 2015.

23 90. At the 2016 British Columbia Federation of Labour (BCFED) Conference, Kreut had
24 helped organize a successful effort to prohibit BCFED and its affiliated unions from funding the
25 Vancouver Rape Relief and Women's Shelter (VRR), on the ground that it limited its services to
26 biological females. Murphy was intensely critical of the effort to defund the Women's Shelter.

27 91. On Twitter, Murphy expressed shock and dismay that March On Vancouver had
28 chosen Kreut/Heartless, a professional dominatrix who promotes legalized prostitution and sexualized

1 violence to speak, at a feminist rally. On January 11, 2018, Murphy tweeted: “For the record, this
2 ‘dominatrix’ was also one of those behind the push to get @bcfed to boycott and defund Vancouver
3 Rape Relief, Canada’s longest standing rape crisis center. He is ACTIVELY working to take away
4 women’s services and harm the feminist movement.” (Exhibit Y). Twitter took no action regarding
5 this Tweet for over 7 months.

6 92. In April 2018, Kreut was one of the signatories on an open letter demanding that Yuly
7 Chan, a Vancouver anti-poverty activist, be removed from a panel discussing urban renewal at the
8 Vancouver Crossroads conference. The letter was posted on a website Kreut had helped create,
9 noterfsnoswerfs.wordpress.com/. Chan had been invited by conference organizers to speak on behalf
10 of her group, the Chinatown Action Group, which organizes to improve the lives of low-income
11 residents of Vancouver’s Chinatown. Kreut and the other signatories demanded that Chan be removed
12 from the panel on the ground that she “is a well-documented Trans Exclusionary Radical Feminist
13 (TERF) and Sex Worker Exclusionary Radical Feminist (SWERF), and is known in the community to
14 promote this ideology.” As evidence, the group cited Chan’s membership in a group called Asian
15 Women Coalition to End Prostitution, her retweet of a post by the VRR, and the fact that she tweeted
16 a link to Murphy’s *Feminist Current* article “Bill C-16 misunderstands what gender is and how it
17 harms women under patriarchy.” The signatories demanded that Chan and anyone who holds similar
18 beliefs be banned “from being offered and/or provided a platform at any event” organized by the
19 Vancouver District Labour Council, Canadian Union of Public Employees, Organize BC, and that the
20 groups apologize for having ever invited Chan. Although targeted at Chan, the letter’s signatories
21 made clear that this statement applied equally to Murphy: they were urging that she never again be
22 allowed to speak in public either. Organize BC, the conference organizer, complied with the
23 signatories’ demand, removing Chan from the panel and apologizing both publicly and privately for
24 having invited her to speak. Shortly after, in May 2018, Murphy tweeted: “Lisa Kreut and another
25 trans-identified male/misogynist created a website in order to libel a local woc activist, and published
26 a letter demanding she be removed from a panel scheduled as part of this conference [...] . The
27 organizers caved immediately.” She noted, “The ‘evidence’ provided to claim the activist should be
28 removed is almost entirely to do with her activism against the sex trade, then literally a few retweets

1 and ‘likes’ from feminists these men don’t like. Seven people signed the thing. It’s ridiculous.”

2 93. Angered by Murphy’s criticism and wishing to silence her permanently, Kreut then
3 proceeded to target the advertising revenue of her website, *Feminist Current*. Kreut contacted the
4 company that arranged *Feminist Current*’s advertising, SheKnows Publishing Network, and
5 complained about Murphy’s writing. SheKnows responded in July 2018 by pulling all advertising
6 from *Feminist Current* and terminating its relationship with the site. Ironically, the two articles that
7 SheKnows cited as violations of their policies were 1) a May 1, 2018 article where Murphy
8 highlighted violence and threats against women who question “gender identity” politics; 2) a June 19,
9 2018 article where Murphy criticized calls for censorship and attempts to smear Jesse Singal as
10 “transphobic” after his *Atlantic* cover story on teenagers who attempt to medically transition genders,
11 which angered many activists because it included interviews with teenagers who halted or reversed
12 their gender transitions and questioned whether physicians should uncritically affirm a teenager’s
13 desire to transition genders without further inquiry.

14 94. After Kreut publicly admitted to targeting *Feminist Current*’s ad revenue by contacting
15 SheKnows and urging it to terminate its relationship with Murphy, Murphy tweeted the following on
16 August 30, 2018: “Aaaand look who publicly admitted to going after @feministcurrent’s ad revenue
17 in an attempt to shut us down, and is now offering tips to other men in order to go after
18 @MumsnetTowers [...] [...] ” “This is Lisa Kreut, @lispinglisa, the male BDSMer who was given a
19 platform to promote prostitution at the Vancouver Women’s March this year, who led efforts to
20 defund Vancouver Rape Relief & Women’s Shelter at BCFED 2016... [...]” “So @blogher pulled
21 revenue from a feminist site because a white man who spends his energy promoting the sex trade as
22 empowering for women and targeting/trying to silence/defund women’s shelters, female activists, and
23 feminist media told them to.” (Exhibit Y).

24 95. The same day, Kreut posted, “I know someone who works at Twitter safety,” and
25 implied that Kreut regularly communicated with this person.

26 96. Later on August 30, 2018, Murphy’s Twitter account was locked for the first time.
27 Twitter claimed that four of Murphy’s Tweets violated its Hateful Conduct Policy and required that
28 Murphy delete them before she could regain access to her account. All four of the supposedly

1 offending Tweets were critical of Kreut: Murphy’s January 11, 2018 Tweet noting that Kreut was
2 “one of those behind the push to get @bcfed to boycott and defund Vancouver Rape Relief, Canada’s
3 longest standing rape crisis center” and her three tweets from August 30, 2018 noting that Kreut had
4 admitted to targeting *Feminist Current*’s ad revenue and criticizing SheKnows for capitulating to
5 Kreut’s demand. These Tweets criticized Kreut’s actions in attempting to defund and deplatform
6 *Feminist Current* and VRR and encouraging activists in efforts to do the same to Mumsnet, a popular
7 UK women’s website. They did not promote violence against, threaten or harass Kreut based on
8 Kreut’s gender identity. While the Tweets refer in passing to Kreut as a man, Twitter’s Rules at this
9 time did not include any prohibition on “misgendering,” and there was not requirement that Murphy
10 or any other user refer to Kreut by Kreut’s “gender identity” as opposed to biological sex.

11 97. The notion that Murphy’s passing references to Kreut as male could be regarded as
12 promoting violence against, threatening or harassing Kreut based on Kreut’s gender is baseless. Kreut
13 is a highly visible public figure and leader within Vancouver’s feminist community, who has used that
14 power and influence to urge, repeatedly, that female-only spaces and those who defend them be
15 permanently defunded and deplatformed. In this context, it was fair to note that Kreut is a self-
16 identified “transsexual professional dominatrix” who had identified as a man until approximately 3
17 years prior, and thus may have interests and perspectives that differ from those of women who have
18 had that status their entire lives, especially with respect to the need for female-only spaces such as
19 rape crisis centers.

20 98. After complying with Twitter’s demand that she delete the Tweets in question, Murphy
21 posted, on August 31, 2018: “Hi Twitter, I’m a journalist. Am I no longer allowed to report facts on
22 your platform?” Twitter required her to immediately delete this Tweet, implausibly claiming that it
23 violated its Hateful Conduct Policy. (Exhibit D). It then suspended her from the platform for 12 hours.
24 Twitter’s baseless invocation of the Hateful Conduct Policy in this instance shows that Twitter lacked
25 a good-faith belief that Murphy was violating its rules, and that its stated reasons for her ban were a
26 sham. Murphy appealed the suspension, but received no response.

27 99. On November 15, 2018, Murphy’s account was locked again. This time, Twitter forced
28 Murphy to remove a Tweet from October 11, 2018 stating: “Men aren’t women,” and a Tweet from

1 October 15, 2018 that asked: “How are transwomen not men? What is the difference between a man
2 and a transwoman?” Twitter once again claimed that these Tweets violated its Hateful Conduct
3 Policy, despite the fact that they did not “promote violence against or directly attack or threaten”
4 anyone. At the time Murphy posted these Tweets, Twitter had no rule, policy or contractual provision
5 forbidding users from differentiating between men and women based on their biological sex. Twitter
6 did not enact its new policy on “misgendering” until late October 2018, and even so, Murphy’s
7 Tweets did not “misgender” anyone, nor were they even *arguably* targeted at any specific individual.
8 Instead, these Tweets did nothing more than expressed a political belief held by a majority of the
9 American public: that biological men are not women merely because they internally and subjectively
10 perceive their gender identity to be female (and vice versa).

11 100. In response, Murphy tweeted on November 15, 2018: “This is f**king bulls***
12 @twitter. I’m not allowed to say that men aren’t women or ask questions about the notion of
13 transgenderism at all anymore? That a multi billion dollar company is censoring BASIC FACTS and
14 silencing people who ask questions about this dogma is INSANE.”

15 101. Four days later, on November 19, 2018, Twitter locked Murphy out of her account
16 once against and forced her to erase her November 15, 2018 Tweet in which she protested its
17 censorship of her views. (Exhibit D). It did not identify any rule or policy that this Tweet violated, in
18 violation of its promise in its Enforcement Guidelines to inform users “which policies have been
19 violated” before requiring removal of a Tweet.

20 102. The next day, November 20, 2018, Murphy was locked out of her account again, and
21 forced to remove her two Tweets from May 2018 defending Yuly Chan against smears against her
22 from Lisa Kreut and other signatories of the letter demanding she be permanently deplatformed and
23 never permitted to speak publicly again.

24 103. On November 23, 2018, Twitter informed Murphy via private email that she was being
25 permanently suspended based on a November 8, 2018 Tweet where Murphy wrote “Yeeeah it’s him”
26 over an embedded image of Yaniv’s public Google review of a waxing salon that Yaniv five months
27 earlier using the name “Jonathan Yaniv” and a photo where Yaniv appears clearly to be a man.
28 (Exhibit E).

1 104. Twitter’s claim that Murphy “misgendered” Yaniv by Tweeting “Yeeeah it’s him” over
2 an image of Yaniv’s recent Google review in which *Yaniv* identified using a male name and a male-
3 appearing photo was frivolous.

4 105. Murphy’s ban stunned Twitter users and the wider public, generating an outpouring of
5 commentary and news coverage. Despite its express contractual promise to its users, Twitter failed to
6 provide any notice whatsoever of its new “misgendering” policy prior to enforcing it against Murphy
7 and other users. The existence of this controversial new policy was only discovered and reported upon
8 after Murphy was permanently suspended, at which point it became the subject of countless news
9 articles and much controversy. The roll-out of the new policy was so secretive that the exact date
10 (sometime in late October) that the “misgendering” policy was added has still never been confirmed,
11 by Twitter or anyone else.

12 106. Twitter made no written or oral statement in any place open to the public or any public
13 forum regarding its decision to ban Murphy or its new “misgendering” policy. Twitter’s statements
14 notifying Murphy of her ban and explaining its purported reasons for the ban were communicated
15 privately to her.

16 107. On December 10, 2018, Yaniv stated before a public meeting of the Township Council
17 of Langley, British Columbia that he “personally got [Murphy’s] Twitter account suspended and
18 created global outcry . . . and created global policy changes in social networks.” In the same public
19 meeting, Yaniv called for Murphy to be criminally prosecuted for tweeting “Men are not women.”

20 108. Murphy is a freelance journalist and writer who relies on Twitter for her livelihood.
21 Without a Twitter account, she unable to share articles with her followers, share links to her Patreon
22 account (where readers can support her work financially), have a voice in public debates, or defend
23 herself against constant false and defamatory attacks. There is no public forum comparable to Twitter
24 that would allow Murphy to support herself as a freelance journalist. Over 96% of journalists use
25 Twitter, and 70% view it as the most useful social media platform for their profession. (Exhibit L).
26 Access to Twitter’s open public forum is essential to Murphy’s livelihood.

27 109. Murphy has invested a great deal of time and effort in building up a substantial Twitter
28 following of nearly 25,000 users worldwide. Twitter recognizes followers on its platform as assets

1 that have a monetary value, noting: “The cost per follower on Twitter is set by a second price auction
2 among other advertisers – you’ll only ever pay just slightly more than the next highest bidder. A bid
3 of \$2.50 - \$3.50 is recommended based on historical averages.” (Exhibit K). Twitter also recognizes
4 that accounts are assets owned solely by their owners, which account owners may sell or assign to
5 others. In permanently suspending her account, Twitter deprived Murphy of an asset that it recognizes
6 as having a significant monetary value.

7 110. The injunctive relief sought by Murphy in this case will benefit the hundreds of
8 millions of Twitter users who have been subject to its unconscionable terms of service. Twitter asserts
9 the right to permanently ban anyone from its platform at any time, for any reason or no reason at all,
10 including arbitrary and discriminatory reasons such as race and gender, without any liability. Millions
11 of Twitter users who have spent time, money, and effort to gain followers could all have their
12 accounts terminated for any or no reason, or could lose their valuable economic interest in access to
13 their Twitter accounts and followers based on arbitrary, discriminatory or unlawful reasons. In
14 addition, Twitter has violated its User Agreement by targeting Murphy and hundreds of other users for
15 permanent bans based on new rules that they were not any given notice of and which they did not
16 violate, and which Twitter has purported to enforce against them retroactively. Twitter’s actions
17 directly threaten the contractual rights and reasonable expectations of all of Twitter’s 330 million
18 users. Moreover, Twitter’s revisions to its Terms of Service and Rules, including its “misgendering”
19 policy, have chilled the free and uninhibited public debate on important issues that Twitter promises
20 to its users, and to the public.

21 111. Twitter banned the accounts of Murphy and hundreds of similarly-situated users as part
22 of a new regime of viewpoint-based censorship that was intended to chill the speech and debate of its
23 users and the public at large on issues of widespread public interest. Its actions have had a significant
24 chilling effect on public debate and discussion. California, and the nation as a whole, has a supremely
25 important interest in ensuring that our national dialogue remains uninhibited and robust, and that the
26 traditional freedom to speak freely in public forums is upheld. Twitter’s actions in playing the role of
27 a viewpoint censor pose a direct threat to our “profound national commitment to the principle that
28 debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v.*

1 *Sullivan* (1964) 376 U.S. 254, 270 [84 S. Ct. 710]. It is a direct break with California’s long and
2 cherished tradition of protecting the rights of the public to freely speak and petition in the public
3 square.

4 112. Private enforcement of the UCL’s prohibitions on false and deceptive advertising and
5 unfair business practices is necessary in this case to advance the public interest. The UCL specifically
6 contemplates that it will be enforced through lawsuits brought by injured citizens seeking injunctive
7 relief on behalf of a class of similarly-situated persons and the general public. Murphy’s UCL claim
8 seeks to enforce the obligation of Twitter to live up to the promises it has made that it would uphold
9 free speech rights on its open public forum. It also seeks to protect the rights of the public to have
10 their economic investments in their Twitter accounts protected.

11 113. Moreover, the financial burden placed on Murphy is disproportionate in relation to her
12 stake in the matter. Murphy is shouldering the entire burden of financing this lawsuit, and seeks no
13 monetary relief other than her attorney’s fees. Instead, she seeks injunctive relief that is identical to
14 that sought on behalf of other similarly-situated persons and the general public.

15 114. This suit would result in the enforcement of an important right affecting the public
16 interest under Cal. Civ. Proc. Code § 1021.5. The relief sought would confer a significant benefit on
17 the general public or a large class of persons; private enforcement is necessary because no public
18 entity has sought to enforce the rights that Murphy seeks to vindicate in this lawsuit; and Murphy is
19 shouldering a financial burden that is disproportionate in relation to her stake in the suit.

20 **FIRST CAUSE OF ACTION**
21 **(Breach of Contract)**

22 115. Murphy re-alleges and incorporates by reference each and every preceding paragraph
23 as though set forth fully herein.

24 116. Twitter’s User Agreement, which includes its Terms of Service, Rules, and associated
25 policies, constitutes a binding contract with each of its users, including Murphy.

26 117. In its Terms of Service, Twitter promises its users that changes “will not be
27 retroactive.” Twitter’s Terms of Service also state: “Other than for changes addressing new functions
28 or made for legal reasons, we will notify you 30 days in advance of making effective changes to these

1 Terms that impact the rights or obligations of any party to these Terms, for example via a service
2 notification or an email to the email associated with your account.” (emphasis added).

3 118. Twitter’s Enforcement Guidelines state that Twitter reserves “account-level” actions,
4 including permanent suspensions, for cases where “a person has violated the Twitter Rules in a
5 particularly egregious way, or has repeatedly violated them even after receiving notifications from
6 us.”

7 119. In violation of the express contractual provisions cited above, Twitter did not provide
8 Murphy or any other user notice of the sweeping changes to its Hateful Conduct Policy, including its
9 new “misgendering” provision, that it enacted at some point in late October 2018. These changes were
10 not made in order to address new functions, nor were they made for legal reasons. Twitter then
11 purported to ban Murphy for violating these new provisions. In doing so, Twitter enforced these
12 changes against Murphy retroactively, and without providing her 30 days’ advance notice, in violation
13 of its User Agreement.

14 120. Twitter’s changes to the Hateful Conduct Policy, including the new “misgendering”
15 provision, significantly impacted the rights and obligations of Murphy and millions other users with
16 respect to the Terms of Service and her use of Twitter. Twitter’s Hateful Conduct Policy is
17 incorporated into its Rules, and Twitter’s Rules are specifically incorporated into its Terms of Service,
18 which state that the Rules “outline what is prohibited on the Services” and directs readers to review
19 them.

20 121. With respect to “Permanent Suspension,” Twitter states: “This is our most severe
21 enforcement action. . . . When we permanently suspend an account, we notify people that they have
22 been suspended for abuse violations, and explain which policy or policies they have violated and
23 which content was in violation.”

24 122. At all times, Murphy complied in good faith with all provisions of the Twitter’s Terms
25 of Service, Rules and incorporated policies. However, in violation of Twitter’s User Agreement and
26 the duty of good faith and fair dealing implicit within it, Twitter targeted her for permanent
27 suspension despite the fact that she never violated any the Terms of Service, Rules or incorporated
28 policies.

1 123. The portions of Twitter’s Terms of Service purporting to give Twitter the right to
2 suspend or ban an account “at any time for any or no reason” and “without liability to you” are
3 procedurally and substantively unconscionable.

4 124. Given Twitter’s unique role as the dominant public forum for news reporting and
5 public discussion and debate, Murphy and others users had no comparable alternative platform to
6 move to if they were unhappy with Twitter’s unfair terms. Even if they did, they would be unable to
7 transfer the tens of thousands of followers they had accrued on Twitter to the new platform.

8 125. Twitter’s Terms of Service state, “In the event that any provision of these Terms is
9 held to be invalid or unenforceable, then that provision will be limited or eliminated to the minimum
10 extent necessary, and the remaining provisions of these Terms will remain in full force and effect.”
11 The Court should thus sever the aforementioned unconscionable provisions from Twitter’s User
12 Agreement and enforce the remainder of the contract.

13 126. The aforementioned breaches by Twitter have caused, and will cause, Murphy and
14 similarly-situated users to suffer irreparable harm. They have lost their valuable economic interests in
15 access to their Twitter account and their followers forever. Moreover, there is no public forum
16 comparable to Twitter which would allow Murphy and other users to build a widespread following,
17 communicate with a global audience, or support themselves in the fields of journalism, politics, or
18 public affairs.

19 **SECOND CAUSE OF ACTION**
20 **(Promissory Estoppel)**

21 127. Murphy re-alleges and incorporates by reference each and every preceding paragraph
22 as though set forth fully herein.

23 128. Twitter made several promises that were clear and unambiguous in their terms:

- 24 a. Its promise in the Twitter Rules applicable when Murphy joined that “we do not
25 actively monitor user’s content and will not censor user content,” except in limited
26 circumstances such as impersonation, violation of trademark or copyright, or “direct,
27 specific threats of violence against others”;
28 b. Its promise in its Terms of Service that, “Other than for changes addressing new
functions or made for legal reasons, we will notify you 30 days in advance of making
effective changes to these Terms that impact the rights or obligations of any party to
these Terms, for example via a service notification or an email to the email associated

with your account”

- c. It promise in its Terms of Service that any changes would not be retroactive;
- d. It promises in its Enforcement Guidelines that “Twitter reserves “account-level” actions, including permanent suspensions, for cases where “a person has violated the Twitter Rules in a particularly egregious way, or has repeatedly violated them even after receiving notifications from us”;
- e. It promises on its Safety page that “We treat everyone equally: the same Twitter Rules apply to all” and “You have the right to express yourself on Twitter if you adhere to these rules”; and
- f. The sworn statements of its CEO that Twitter does not “consider political viewpoints, perspectives, or party affiliation in any of our policies or enforcement decisions, period.”

129. Murphy and other similarly-situated users reasonably relied on these promises to their detriment in joining Twitter and remaining on the platform. Murphy and other users never would have joined the platform, invested time in building a following, or used the platform to communicate on public issues had they known that Twitter would engage in viewpoint-based censorship of their views.

130. The reliance of Murphy and similarly-situated users was foreseeable and calculated. Twitter intended that customers and potential customers would rely on these promises in joining and remaining on the platform.

131. Murphy and other users that Twitter has censored have been injured by their reliance on these promises. They have lost their valuable economic interests in access to their Twitter account and their followers forever.

THIRD CAUSE OF ACTION

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

132. Murphy re-alleges and incorporates by reference each and every preceding paragraph as though set forth fully herein.

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

134. In *California Grocers Assn. v. Bank of America* (1994) 22 Cal. App. 4th 205, 218, the

1 Court noted that the UCL “generally prohibit[s] an ‘unfair’ business practice (Bus. & Prof. Code, §
2 17200), which ‘may be enjoined in any court of competent jurisdiction’ (Bus. & Prof. Code, §
3 17203).” The Court “assumed” that this language “encompass[ed] an affirmative cause of action for
4 unconscionability,” a conclusion that it found to be “suggested by the Legislature’s broad grant of
5 remedial power.” (*California Grocers*, 22 Cal. App. 4th at p. 218.)

6 135. In this case, for the reasons described above, the portions of Twitter’s Terms of Service
7 purporting to give Twitter the right to suspend or ban an account “at any time for any or no reason”
8 and “without liability to you” are procedurally and substantively unconscionable. Twitter’s Terms of
9 Service did not include any provision allowing it to suspend or ban accounts “at any time for any
10 reason” until May 17, 2012 and did not include the “without liability to you” language until even later,
11 January 27, 2016. Twitter committed an “unfair” business practice by inserting these unconscionable
12 provisions into its Terms of Service.

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

17 137. Twitter’s practices are fraudulent because it held itself out to be a free speech
18 platform—the “free speech wing of the free speech party,” as one of its executives stated in 2012. Its
19 advertisements describe it as “the live public square,” and a “public forum.” Twitter’s status as a
20 forum that would uphold the free speech rights of its users was not a minor detail lurking within
21 Twitter’s Terms of Service. Instead, Twitter claimed that this was *the entire reason the platform was*
22 *founded* and the platform’s *most basic function*. Twitter’s well-publicized mission statement, which
23 appears on its official company pages, is: “The mission we serve as Twitter, Inc. is to give everyone
24 the power to create and share ideas and information instantly without barriers. **Our business and**
25 **revenue will always follow that mission in ways that improve – and do not detract from – a free**
26 **and global conversation.**” (Exhibit H). On its “Values” page, Twitter states: “We believe in free
27 expression and think every voice has the power to impact the world.” (Exhibit G). In its advertising
28 and public statements, Twitter describes itself as “a free platform for all voices to be heard and to

1 organize” “the live public square,” a “public forum,” and the “free speech wing of the free speech
2 party.” And its CEO promised in sworn public testimony on September 5, 2018 that it would not
3 discriminate on the basis for political viewpoint or perspective, either in its policies or the
4 enforcement of those policies. (Exhibit B).

5 138. Twitter’s “Safety” page proclaims, in large letters: “We’re dedicated to making Twitter
6 a safe place for free expression.” Describing “our approach,” Twitter states: “**Free expression is a**
7 **human right. Everyone has a voice, and the right to use it.**” (emphasis added). (Exhibit S). Twitter
8 lists “our principles” as follows, in large, bold lettering:

9 “1. **Twitter stands for freedom of expression for everyone.**

10 2. **We do not take sides. We show sides. Every side.**

11 3. **We treat everyone equally: the same Twitter Rules apply to all.**

12 4. **You have the right to express yourself on Twitter if you adhere to these rules.”**

13 139. These repeated promises that Twitter was committed to upholding the free speech
14 rights of its users were material to the decision of hundreds of millions of users across the globe,
15 including Murphy, to join the platform.
16

17 140. Moreover, in its Terms of Service effective when Murphy joined the platform, Twitter
18 specifically stated that it would not “actively monitor user’s content and will not censor user content,”
19 except in limited circumstances such as impersonation, violation of trademark or copyright, or “direct,
20 specific threats of violence against others.”
21

22 141. Relying on these statements, Murphy and other similarly-situated users reasonably
23 assumed that Twitter would allow them to use the forums to freely express their opinions on all
24 subjects, without engaging in censorship based on their political views and affiliations, so long as they
25 did not threaten or harass others. Based on Twitter’s advertising, they reasonably expected that it was
26 and would continue to be a public forum for the speech of its users.

27 142. Twitter’s Terms of Service state that any changes “**will not be retroactive,**” and that
28 “we will notify you 30 days in advance of making effective changes to these Terms that impact the

1 rights or obligations of any party to these Terms, for example via a service notification or an email to
2 the email associated with your account.”

3 143. However, in violation of its previous representations, Twitter has censored Murphy and
4 other users based on their political beliefs and perspectives and applied its new rule on
5 “misgendering” retroactively. In addition, it provided Murphy and other users no notice whatsoever of
6 the rule change.

7 144. As a result of Twitter’s violations of the UCL, Murphy and other users that Twitter has
8 censored based on their viewpoints have suffered, and will continue to suffer, immediate and
9 irreparable injury in fact. They have lost a tangible property interest in their accounts and the
10 followers they had accumulated. There is no public forum comparable to Twitter that would allow
11 Murphy and other users to build a widespread following, communicate with a global audience, or
12 support themselves in the fields of journalism, politics, or public affairs. Murphy, on behalf of herself,
13 those similarly-situated, and the general public, therefore seeks injunctive relief to remedy Twitter’s
14 unlawful conduct, and prevent its repetition.

15 PRAYER FOR RELIEF

16 Wherefore, Murphy respectfully prays for a judgment as follows:

- 17 1. For an injunction ordering:
- 18 a. that Twitter cease and desist from enforcing its unannounced and viewpoint
19 discriminatory “misgendering” rule;
 - 20 b. with respect to any accounts Twitter has purported to suspend or ban pursuant to its
21 “misgendering” policy, that Twitter lift any such suspension or ban, and restore
22 access to these accounts immediately;
 - 23 c. that Twitter cease and desist from promulgating or enforcing any other rules or
24 policies that discriminate based on viewpoint;
 - 25 d. that Twitter cease and desist from any attempts to make or enforce material
26 changes to its User Agreement without providing 30 days’ advance notice of the
27 changes, either via service notification or an email to the email address associated
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- with the account of each affected user;
- e. that Twitter cease and desist from any attempts to enforce changes to its User Agreement retroactively;
- f. that Twitter cease and desist from requiring users to delete Tweets without first notifying the user of what rule or policy the Tweet allegedly violated;
- g. that Twitter remove the unconscionable provisions in its Terms of Service purporting to give Twitter the right to suspend or ban an account “at any time for any or no reason” and “without liability to you,” and cease and desist from any efforts to invoke or enforce this language against any user;
- h. that Twitter issue a full and frank public correction of its false and misleading advertising and representations to the general public that it does not censor user content except in narrowly-defined, viewpoint-neutral circumstances such as impersonation and copyright violations; that it welcomes all voices and serves as a platform for the free expression of its users; and that it does not discriminate based on the political viewpoints or perspectives of its users in either its policies or enforcement.

2. For a declaratory judgment that Twitter has breached and continues to breach its contractual agreements with Murphy and similarly-situated users, and has violated and continues to violate the rights of Murphy and other similarly-situated users under the UCL, by:

- a. Promulgating and enforcing its “misgendering” rule without providing 30 days’ advance notice to its users of this change to its User Agreement which impacted their rights and obligations, either via service notification or an email to the email address associated with the account of each affected user;
- b. attempting to enforce changes to its User Agreement retroactively;
- c. requiring users to delete Tweets without first notifying the user of what rule or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

policy the Tweet allegedly violated;

d. enforcing its “Hateful Conduct Policy” arbitrarily and in bad faith in order to suspend, ban and censor users who expressed critical views on “gender identity” issues.

3. For a declaratory judgment that Twitter has violated and continues to violate the rights of Murphy and other similarly-situated users under the UCL, by:

a. Inserting unconscionable provisions in its Terms of Service purporting to give it the right to suspend or ban an account “at any time for any or no reason” and “without liability to you”;

b. Falsely advertising and representing itself to the general public as an open platform that welcomes all voices, upholds the free expression rights of its users, and does not censor content or discriminate based on the political viewpoints or perspectives of its users, when in reality it arbitrarily and discriminatorily censors certain disfavored political viewpoints and perspectives;

4. For costs of suit incurred herein;

5. For reasonable attorney’s fees; and

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

Date: February 10, 2019

DHILLON LAW GROUP INC.

By:

Harmeet K. Dhillon, Esq. (SBN: 269535)
Michael R. Fleming, Esq. (SBN: 322356)
DHILLON LAW GROUP, INC.
177 Post Street, Suite 700
San Francisco, California 94108
Telephone: (415) 433-7000
Facsimile: (415) 520-6593
harmeet@dhillonlaw.com
mfleming@dhillonlaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Noah B. Peters, Esq. (*pro hac vice* to be submitted)
NOAH PETERS LAW
1875 Connecticut Ave. N.W., Floor 10
Washington, D.C. 20009
(202) 688-3246
noah@noahpeterslaw.com