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16

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

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

22 Plaintiff,

23 v.  
24

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

27 Defendants.  
28

Case Number:

**CGC - 19-573712**

**COMPLAINT FOR:**

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

**ENDORSED  
FILED**  
Superior Court of California  
County of San Francisco

**FEB 11 2019**

**CLERK OF THE COURT**

BY: BOWMAN LIU  
Deputy Clerk

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).<sup>1</sup>

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 <sup>1</sup> 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

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

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

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

28 47. In its Enforcement Guidelines, promulgated in 2018, Twitter states: “We can take

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

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

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

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

26 51. Twitter enacted its first Hateful Conduct Policy on December 29, 2015. At the time,  
27 that policy stated: “Hateful conduct: You may not promote violence against or directly attack or  
28 threaten other people on the basis of race, ethnicity, national origin, sexual orientation, gender, gender

1 identity, religious affiliation, age, disability, or disease. We also do not allow accounts whose primary  
2 purpose is inciting harm towards others on the basis of these categories.” (“Disease” was amended to  
3 “serious disease” sometime in 2018.) When Twitter announced the Hateful Conduct Policy, its public  
4 statements emphasized that Twitter continued to support the free expression of diverse viewpoints, but  
5 that harassment, abuse, threats and the like prevent people from freely expressing their views.

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

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

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

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

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

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

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

28 54. Also in December 2017, Twitter added a section titled “How enforcement works,”  
which emphasized, in large bold letters: “**Context matters**”: “Some Tweets may seem to be abusive

1 when viewed in isolation, but may not be when viewed in the context of a larger conversation. While  
2 we accept reports of violations from anyone, sometimes we also need to hear directly from the target  
3 to ensure that we have proper context.”

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

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

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

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



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

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

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

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

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

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

28           In practice, Twitter’s ‘deadnaming’ policy will be a boon to anyone who wants to hide  
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).”

1           60.     Twitter has enforced its Hateful Conduct Policy in a discriminatory and targeted  
2 manner against Murphy and other users based on their political beliefs and perspectives, banning  
3 hundreds of users for expressing views critical of the idea that “gender identity” should be regarded  
4 solely a matter of personal choice. It has also invoked this policy to ban criticisms of prominent  
5 activists and public figures who advocate for defining “gender identity” in this way, even when such  
6 criticisms do not violate any of Twitter’s rules. But it does not impose any sort of restrictions when  
7 activists call for deplatforming, banning and even physically harming gender-critical feminists like  
8 Murphy. Indeed, Murphy was routinely subjected to violent threats and harassment based on her  
9 gender and political views, and complained frequently to Twitter, but Twitter took no action in  
10 response. This is the very definition of viewpoint discrimination: “licens[ing] one side of a debate to  
11 fight freestyle, while requiring the other to follow Marquis of Queensberry rules.” *R.A.V. v. St. Paul*  
12 (1992) 505 U.S. 377, 392 [112 S. Ct. 2538].

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

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

1 in viewpoint-based censorship. And the statements were false and misleading: Twitter has banned  
2 Murphy and hundreds of other users based entirely on their political viewpoints and perspectives, and  
3 Twitter’s new “misgendering” policy, enacted within two months of Dorsey’s testimony, directly  
4 banned expression of a widely-held political viewpoint and perspective.

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

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

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

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

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

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

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

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

28         69. Using these provisions, Twitter could ban users for the most arbitrary, discriminatory

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

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

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

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

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

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

1           74.     While up to 1.7% of the population is born “intersex” condition, meaning that they  
2 have sex hormones, chromosomes or sex organs that are not typical of either sex, the vast majority of  
3 people with intersex conditions identify as male or female rather than transgender or transsexual.

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

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

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

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

26                 “Transgender is an umbrella term used to describe people whose gender identity or  
27 gender expression do not match the gender they were assigned at birth. Some  
28 transgender people have medically transitioned, undergoing gender affirming surgeries  
and hormonal treatments, while other transgender people do not choose any form of

1 medical transition. There is no uniform set of procedures that are sought by transgender  
2 people that pursue medical transition. Transgender people may identify as female,  
3 male, or nonbinary, may or may not have been born with intersex traits, may or may  
4 not use gender-neutral pronouns, and may or may not use more specific terms to  
describe their genders, such as agender, genderqueer, gender fluid, Two Spirit,  
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

1 Committee on Legal and Constitutional Affairs in opposition to Bill C-16, which would amend the  
2 Canadian Human Rights Act and the Criminal Code to prohibit discrimination based on “gender  
3 expression” and “gender identity.” Murphy particularly objected to the definition of “gender identity”  
4 put forward by the bill’s sponsor as “a person’s internal or individual experience of their gender.”  
5 Murphy argued that “[t]reating gender as though it is either internal or a personal choice is dangerous  
6 and completely misunderstands how and why women are oppressed under patriarchy, as a class of  
7 people.” She explained, “Generally, the claim that one ‘feels’ like the opposite sex ‘on the inside’ is  
8 connected to a list of sexist gender stereotypes: a boy likes dolls and dresses, a girl plays with trucks  
9 and cuts her hair short, a man enjoys wearing pantyhose and getting manicures, etc. There is no  
10 scientific foundation for the idea that sex is defined by a ‘feeling’ or by superficial choices.” Thus,  
11 “[t]he idea that gender is something internal, innate, or chosen — expressed through superficial and  
12 stereotypical means like hairstyles, clothing, or body language — is deeply regressive.”

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

28



1           83.     Murphy also argued against Bill C-16 and similar legislation defining gender as a  
2 personal choice because it threatens the existence of female-only spaces, expressing concern that “the  
3 rights of women and girls are being pushed aside to accommodate a trend.” In her view, legislation  
4 that would allow individuals who are biologically male but self-identify as women to access female-  
5 only spaces such as changing rooms, women’s prisons, and rape crisis centers would invade women’s  
6 privacy and destroy their sense of safety and security in these spaces. These risks are especially acute  
7 for women who have previously been victims to sexual violence and assault—precisely the women  
8 who are most at need for rape crisis centers and domestic violence shelters. Murphy has written that  
9 “[t]here is a reason certain spaces are sex-segregated—such as change rooms, bathrooms, women’s  
10 shelters, and prisons: because these are spaces where women are vulnerable, and where male predators  
11 might target women and girls. These are spaces where women and girls may be naked, and where they  
12 do not want to be exposed to a man’s penis, regardless of his insistence that his penis is actually  
13 ‘female.’” She asked, “Is it now the responsibility of women and girls to leave their own spaces if  
14 they feel unsafe? Are teenage girls obligated to overcome material reality lest they be accused of  
15 bigotry? Is the onus on women to suddenly forget everything they know and have experienced with  
16 regard to sexual violence, sexual harassment, and the male gaze simply because one individual wishes  
17 to have access to the female change room?”

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

26           85.     Individuals such as Murphy who question the concept of “gender identity” are  
27 routinely subjected to threats, harassment and violence. In September 2017, a group of women  
28 assembled at the historic Speaker’s Corner in London’s Hyde Park before heading off to hear a talk

1 entitled “What is Gender,” regarding the UK’s proposed Gender Recognition Act, its effect on  
2 women’s rights and the women’s movement. Speaker’s Corner has long been recognized as a space  
3 for free speech, where open debate and discussion have taken place for over a century. In the 1940s,  
4 George Orwell described Speaker’s Corner as “one of the minor wonders of the world,” where he had  
5 listened to “Indian nationalists, temperance reformers, Communists, Trotskyists, the Socialist Party of  
6 Great Britain (SPGB), the Catholic Evidence Society, freethinkers, vegetarians, Mormons, the  
7 Salvation Army, the Church Army, and a large variety of plain lunatics.” A group called Action for  
8 Trans Health London had gotten wind that women were meeting at Speaker’s Corner and, using a  
9 Facebook event page titled “TERFs Never Welcome Anywhere!,” organized a group of 20-30  
10 protestors to harass attendees and follow them to the venue. Some yelled “Kill all TERFs” and held  
11 signs reading “No Debate.” A group of protestors pushed over a 60-year old woman who had planned  
12 to attend the talk after she attempted to film them. A protestor who goes by the name Tara Flik Wood  
13 then proceeded to punch and kick the woman as she lay on the ground helpless. Wood’s attack was  
14 completely foreseeable: he had previously commented on the “TERFs Never Welcome Anywhere!”  
15 Facebook event page, “I wanna fuck some terfs up, they are no better than fash.” Wood was  
16 eventually convicted of assault the following April. Rather than condemn the attack, Action for Trans  
17 Health London posted that it was “proud” of the protestors’ actions and accused the women who  
18 peacefully gathered for the talk of engaging in “hatred, misogyny and intimidation.

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

26 87. Violent threats and harassment against “TERFs” has become normalized to the point  
27 that the San Francisco Public Library in March 2018 hosted an exhibit that included a depiction of a  
28 bloody shirt with the words, “I PUNCH TERFS,” alongside baseball bats and axes, some covered in

1 barbed wire (in April 2018, the library altered the exhibit “to remove an offensive shirt” because it  
2 “could be interpreted as promoting violence.”). Indeed, Scout Tran, the creator of the exhibit, founded  
3 a transgender activist group called the Degenderettes, which has taken to showing up at LGBT and  
4 women’s events wearing bloody shirts and carrying baseball bats like the ones depicted in the exhibit.  
5 Harassment and bullying of women perceived to be “TERFs” is now common at such events.

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

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

26 90. At the 2016 British Columbia Federation of Labour (BCFED) Conference, Kreut had  
27 helped organize a successful effort to prohibit BCFED and its affiliated unions from funding the  
28 Vancouver Rape Relief and Women’s Shelter (VRR), on the ground that it limited its services to

1 biological females. Murphy was intensely critical of the effort to defund the Women’s Shelter.

2 91. On Twitter, Murphy expressed shock and dismay that March On Vancouver had  
3 chosen Kreut/Heartless, a professional dominatrix who promotes legalized prostitution and sexualized  
4 violence to speak, at a feminist rally. On January 11, 2018, Murphy tweeted: “For the record, this  
5 ‘dominatrix’ was also one of those behind the push to get @bcfed to boycott and defund Vancouver  
6 Rape Relief, Canada’s longest standing rape crisis center. He is ACTIVELY working to take away  
7 women’s services and harm the feminist movement.” (Exhibit Y). Twitter took no action regarding  
8 this Tweet for over 7 months.

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

1 a letter demanding she be removed from a panel scheduled as part of this conference [...] . The  
2 organizers caved immediately.” She noted, “The ‘evidence’ provided to claim the activist should be  
3 removed is almost entirely to do with her activism against the sex trade, then literally a few retweets  
4 and ‘likes’ from feminists these men don’t like. Seven people signed the thing. It’s ridiculous.”

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

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

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

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

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

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

1 sham. Murphy appealed the suspension, but received no response.

2 99. On November 15, 2018, Murphy’s account was locked again. This time, Twitter forced  
3 Murphy to remove a Tweet from October 11, 2018 stating: “Men aren’t women,” and a Tweet from  
4 October 15, 2018 that asked: “How are transwomen not men? What is the difference between a man  
5 and a transwoman?” Twitter once again claimed that these Tweets violated its Hateful Conduct  
6 Policy, despite the fact that they did not “promote violence against or directly attack or threaten”  
7 anyone. At the time Murphy posted these Tweets, Twitter had no rule, policy or contractual provision  
8 forbidding users from differentiating between men and women based on their biological sex. Twitter  
9 did not enact its new policy on “misgendering” until late October 2018, and even so, Murphy’s  
10 Tweets did not “misgender” anyone, nor were they even *arguably* targeted at any specific individual.  
11 Instead, these Tweets did nothing more than expressed a political belief held by a majority of the  
12 American public: that biological men are not women merely because they internally and subjectively  
13 perceive their gender identity to be female (and vice versa).

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

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

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

27 103. On November 23, 2018, Twitter informed Murphy via private email that she was being  
28 permanently suspended based on a November 8, 2018 Tweet where Murphy wrote “Yeeeah it’s him”

1 over an embedded image of Yaniv’s public Google review of a waxing salon that Yaniv five months  
2 earlier using the name “Jonathan Yaniv” and a photo where Yaniv appears clearly to be a man.  
3 (Exhibit E).

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

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

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

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

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



1 Access to Twitter’s open public forum is essential to Murphy’s livelihood.

2 109. Murphy has invested a great deal of time and effort in building up a substantial Twitter  
3 following of nearly 25,000 users worldwide. Twitter recognizes followers on its platform as assets  
4 that have a monetary value, noting: “The cost per follower on Twitter is set by a second price auction  
5 among other advertisers – you’ll only ever pay just slightly more than the next highest bidder. A bid  
6 of \$2.50 - \$3.50 is recommended based on historical averages.” (Exhibit K). Twitter also recognizes  
7 that accounts are assets owned solely by their owners, which account owners may sell or assign to  
8 others. In permanently suspending her account, Twitter deprived Murphy of an asset that it recognizes  
9 as having a significant monetary value.

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

24 111. Twitter banned the accounts of Murphy and hundreds of similarly-situated users as part  
25 of a new regime of viewpoint-based censorship that was intended to chill the speech and debate of its  
26 users and the public at large on issues of widespread public interest. Its actions have had a significant  
27 chilling effect on public debate and discussion. California, and the nation as a whole, has a supremely  
28 important interest in ensuring that our national dialogue remains uninhibited and robust, and that the

1 traditional freedom to speak freely in public forums is upheld. Twitter’s actions in playing the role of  
2 a viewpoint censor pose a direct threat to our “profound national commitment to the principle that  
3 debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v.*  
4 *Sullivan* (1964) 376 U.S. 254, 270 [84 S. Ct. 710]. It is a direct break with California’s long and  
5 cherished tradition of protecting the rights of the public to freely speak and petition in the public  
6 square.

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

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

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

23 **FIRST CAUSE OF ACTION**  
24 **(Breach of Contract)**

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

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

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

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

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

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

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

27           122. At all times, Murphy complied in good faith with all provisions of the Twitter’s Terms  
28 of Service, Rules and incorporated policies. However, in violation of Twitter’s User Agreement and

1 the duty of good faith and fair dealing implicit within it, Twitter targeted her for permanent  
2 suspension despite the fact that she never violated any the Terms of Service, Rules or incorporated  
3 policies.

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

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

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

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

22 **SECOND CAUSE OF ACTION**  
23 **(Promissory Estoppel)**

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

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

- 27 a. Its promise in the Twitter Rules applicable when Murphy joined that “we do not  
28 actively monitor user’s content and will not censor user content,” except in limited  
circumstances such as impersonation, violation of trademark or copyright, or “direct,

specific threats of violence against others”;

- 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.”

1 Civ. Code § 17203. Unfair competition is defined as “any unlawful, unfair or fraudulent business act  
2 or practice and unfair, deceptive, untrue or misleading advertising.” Civ. Code § 17200.

3 134. In *California Grocers Assn. v. Bank of America* (1994) 22 Cal. App. 4th 205, 218, the  
4 Court noted that the UCL “generally prohibit[s] an ‘unfair’ business practice (Bus. & Prof. Code, §  
5 17200), which ‘may be enjoined in any court of competent jurisdiction’ (Bus. & Prof. Code, §  
6 17203).” The Court “assumed” that this language “encompass[ed] an affirmative cause of action for  
7 unconscionability,” a conclusion that it found to be “suggested by the Legislature’s broad grant of  
8 remedial power.” (*California Grocers*, 22 Cal. App. 4th at p. 218.)

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

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

20 137. Twitter’s practices are fraudulent because it held itself out to be a free speech  
21 platform—the “free speech wing of the free speech party,” as one of its executives stated in 2012. Its  
22 advertisements describe it as “the live public square,” and a “public forum.” Twitter’s status as a  
23 forum that would uphold the free speech rights of its users was not a minor detail lurking within  
24 Twitter’s Terms of Service. Instead, Twitter claimed that this was *the entire reason the platform was*  
25 *founded* and the platform’s *most basic function*. Twitter’s well-publicized mission statement, which  
26 appears on its official company pages, is: “The mission we serve as Twitter, Inc. is to give everyone  
27 the power to create and share ideas and information instantly without barriers. **Our business and**  
28 **revenue will always follow that mission in ways that improve – and do not detract from – a free**

1 **and global conversation.**” (Exhibit H). On its “Values” page, Twitter states: “We believe in free  
2 expression and think every voice has the power to impact the world.” (Exhibit G). In its advertising  
3 and public statements, Twitter describes itself as “a free platform for all voices to be heard and to  
4 organize” “the live public square,” a “public forum,” and the “free speech wing of the free speech  
5 party.” And its CEO promised in sworn public testimony on September 5, 2018 that it would not  
6 discriminate on the basis for political viewpoint or perspective, either in its policies or the  
7 enforcement of those policies. (Exhibit B).

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

- 12 “1. **Twitter stands for freedom of expression for everyone.**
- 13 2. **We do not take sides. We show sides. Every side.**
- 14 3. **We treat everyone equally: the same Twitter Rules apply to all.**
- 15 4. **You have the right to express yourself on Twitter if you adhere to these rules.**”

16 139. These repeated promises that Twitter was committed to upholding the free speech  
17 rights of its users were material to the decision of hundreds of millions of users across the globe,  
18 including Murphy, to join the platform.  
19

20 140. Moreover, in its Terms of Service effective when Murphy joined the platform, Twitter  
21 specifically stated that it would not “actively monitor user’s content and will not censor user content,”  
22 except in limited circumstances such as impersonation, violation of trademark or copyright, or “direct,  
23 specific threats of violence against others.”  
24

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

1 and would continue to be a public forum for the speech of its users.

2 142. Twitter’s Terms of Service state that any changes “**will not be retroactive,**” and that  
3 “we will notify you 30 days in advance of making effective changes to these Terms that impact the  
4 rights or obligations of any party to these Terms, for example via a service notification or an email to  
5 the email associated with your account.”

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

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

18 **PRAYER FOR RELIEF**

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

- 20 1. For an injunction ordering:
- 21 a. that Twitter cease and desist from enforcing its unannounced and viewpoint
  - 22 discriminatory “misgendering” rule;
  - 23 b. with respect to any accounts Twitter has purported to suspend or ban pursuant to its
  - 24 “misgendering” policy, that Twitter lift any such suspension or ban, and restore
  - 25 access to these accounts immediately;
  - 26 c. that Twitter cease and desist from promulgating or enforcing any other rules or
  - 27 policies that discriminate based on viewpoint;
  - 28 d. that Twitter cease and desist from any attempts to make or enforce material



1 changes to its User Agreement without providing 30 days' advance notice of the  
2 changes, either via service notification or an email to the email address associated  
3 with the account of each affected user;

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

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

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

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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 11, 2019

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