

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>Robert D. Wilkinson, #100478</b>  <b>Baker, Manock &amp; Jensen, PC</b>  <b>5260 N. Palm Avenue, #421</b>  <b>Fresno, CA 93704</b>  TELEPHONE NO.: (559)432-5400 FAX NO. (Optional): (559) 432-5620  E-MAIL ADDRESS (Optional): <b>rwilkinson@bakermanock.com</b>  ATTORNEY FOR (Name): <b>Twitter, Inc.</b></p>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>E-FILED</b></p> <p style="text-align: center;"><b>7/17/2018 5:56 PM</b></p> <p style="text-align: center;"><b>FRESNO COUNTY SUPERIOR COURT</b></p> <p style="text-align: center;"><b>By: L. Whipple, Deputy</b></p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Fresno</b>  STREET ADDRESS: <b>1130 "O" Street</b>  MAILING ADDRESS:  CITY AND ZIP CODE: <b>Fresno, CA 93721</b>  BRANCH NAME:</p>	
<p>PLAINTIFF/PETITIONER: <b>Charles Johnson</b>  DEFENDANT/RESPONDENT: <b>Twitter, Inc.</b></p>	
<p style="text-align: center;"><b>NOTICE OF ENTRY OF JUDGMENT OR ORDER</b></p> <p>(Check one): <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeded \$25,000)      <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded was \$25,000 or less)</p> <p style="text-align: right;">CASE NUMBER: <b>18CECG00078</b></p>	


**TO ALL PARTIES :**

1. A judgment, decree, or order was entered in this action on (date): July 3, 2018
2. A copy of the judgment, decree, or order is attached to this notice.

Date: July 17, 2018

Robert D. Wilkinson

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

  
\_\_\_\_\_  
(SIGNATURE)

PLAINTIFF/PETITIONER: Charles Johnson	CASE NUMBER: 18CECG00078
DEFENDANT/RESPONDENT: Twitter, Inc.	

**PROOF OF SERVICE BY FIRST-CLASS MAIL  
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

*(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)*

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*): Business:

5260 N. Palm Avenue, #421  
Fresno, CA 93704

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):
- a.  deposited the sealed envelope with the United States Postal Service.
- b.  placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
3. The *Notice of Entry of Judgment or Order* was mailed:
- a. on (*date*): July 17, 2018
- b. from (*city and state*): Fresno, California

4. The envelope was addressed and mailed as follows:

- |  |  |
|--|--|
| a. Name of person served:<br>Robert E. Barnes, Barnes Law<br>Street address: 601 S. Figueroa St. Suite 4050<br>City: Los Angeles<br>State and zip code: CA 90017 | c. Name of person served:<br><br>Street address:<br>City:<br>State and zip code: |
| b. Name of person served:<br><br>Street address:<br>City:<br>State and zip code:   | d. Name of person served:<br><br>Street address:<br>City:<br>State and zip code: |

Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

5. Number of pages attached 13.

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

Date: July 17, 2018

Angela Thomson

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)



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**FILED**

**JUL - 9 2018**

**FRESNO COUNTY SUPERIOR COURT**  
By \_\_\_\_\_ **DEPT. 503 - DEPUTY**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO  
CENTRAL DIVISION

CHARLES JOHNSON,	)	Case No. 18CECG00078
	)	
Plaintiff,	)	Dept. 503
	)	
v.	)	ORDER AFTER HEARING GRANTING
	)	DEFENDANT'S SPECIAL MOTION TO
TWITTER, INC.,	)	STRIKE UNDER CODE OF CIVIL
	)	PROCEDURE SECTION 425.16 AND
Defendant.	)	FINDING DEMURRER MOOT

The special motion to strike under Code of Civil Procedure section 425.16 and demurrer filed by Defendant Twitter, Inc. ("Defendant") came on regularly for hearing on June 6, 2018, in Department 503. Plaintiff Charles Johnson ("Plaintiff") appeared through his attorney Robert E. Barnes. Defendant appeared through its attorneys, Patrick J. Carome and Robert D. Wilkinson.

After consideration of the moving and opposition papers, the declarations submitted, and the argument of counsel, the Court grants the special motion to strike the complaint on the ground it is a strategic lawsuit against public participation (SLAPP) action. (Code Civ. Proc., §425.16.) In light of this ruling, the Court finds the demurrer moot.

1 I. Operative Pleading - Plaintiff's Original Complaint

2 On January 8, 2018, Plaintiff filed his complaint, alleging  
3 nine causes of action, identified as follows: (1) California  
4 Constitution Article I, section 2; (2) California Unruh Civil  
5 Rights Act - Civil Code section 51 et seq.; (3) violations of  
6 Business and Professions Code section 17200 et seq.; (4) breach of  
7 the implied covenant of good faith and fair dealing; (5)  
8 intentional interference with contractual relations; (6)  
9 intentional interference with prospective economic advantage; (7)  
10 promissory estoppel; (8) Consumers Legal Remedies Act, Civil Code  
11 section 1750 et seq.; and (9) declaratory relief. Each claim  
12 purportedly stems from Defendant's decision to suspend Plaintiff's  
13 account based on his tweet inviting followers to donate to "tak[e]  
14 out" DeRay McKesson, a high-profile civil rights activist.

15 On March 8, 2018, Defendant filed its special motion to  
16 strike and demurrer. On April 16, 2018, Plaintiff filed a first  
17 amended complaint. A plaintiff may not amend the complaint before  
18 the hearing on an anti-SLAPP motion. (*Jackson v. Mayweather*  
19 (2017) 10 Cal.App.5th 1240, 1263; *Salma v. Capon* (2008) 161  
20 Cal.App.4th 1275, 1280.) As a result, the Court addresses the  
21 instant motion as directed to the original complaint and strikes  
22 the first amended complaint, sua sponte.

23 II. Defendant's Special Motion to Strike Pursuant to Anti-SLAPP  
24 Statute

25 A. Applicable Legal Principles

26 Anti-SLAPP Statute

27 Code of Civil Procedure section 425.16, subdivision (b)(1)  
28 provides:

1 A cause of action against a person arising from any act  
2 of that person in furtherance of the person's right of  
3 petition or free speech under the United States  
4 Constitution or the California Constitution in  
5 connection with a public issue shall be subject to a  
6 special motion to strike, unless the court determines  
7 that the plaintiff has established that there is a  
8 probability that the plaintiff will prevail on the  
9 claim.

7 Courts engage in a two-step process in determining whether an  
8 action is subject to the anti-SLAPP statute. First, the court  
9 decides whether the defendant has made a threshold showing that  
10 the challenged cause of action is one arising from protected  
11 activity, by demonstrating that the facts underlying the  
12 plaintiff's complaint fit one of the categories set forth in Code  
13 of Civil Procedure section 425.16, subdivision (e). Second, if  
14 the court finds that such a showing has been made, it then  
15 determines whether the plaintiff has demonstrated a probability of  
16 prevailing on the claim. (Code Civ. Proc., §425.16; *Cross v.*  
17 *Facebook, Inc.* (2017) 14 Cal.App.5th 190, 198.) The anti-SLAPP  
18 statute is to be broadly construed. (Code Civ. Proc., §425.16(e);  
19 *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th  
20 1106, 1120.)

21 The meaning of "arising from" in section 425.16, subdivision  
22 (b)(1) has been interpreted to mean that the act underlying the  
23 plaintiff's cause of action or the act which forms the basis of  
24 the cause of action "must have been an act in furtherance of the  
25 right of petition or free speech." (*ComputerXpress, Inc. v.*  
26 *Jackson* (2001) 93 Cal.App.4th 993, 1001; see also *Optional*  
27 *Capital, Inc. v. Das Corporation* (2014) 222 Cal.App.4th 1388,  
28 1398-1399 ["In the anti-SLAPP context, the critical point is

1 whether the plaintiff's cause of action itself was based on an act  
2 in furtherance of the defendant's right of petition or free  
3 speech."].) The court thus "examine[s] the specific acts of  
4 wrongdoing" alleged in the challenged pleading to determine  
5 whether they constitute protected activity. (*Peregrine Funding,*  
6 *Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133  
7 Cal.App.4th 658, 671.) Whether the "arising from" requirement is  
8 satisfied depends upon the "gravamen or principal thrust" of the  
9 claim. (*Martinez v. Metabolife Intern., Inc.* (2003) 113  
10 Cal.App.4th 181, 193.)

11 Communications Decency Act

12 The express language of the Communications Decency Act  
13 ("CDA") "indicates Congress intended to extend immunity to all  
14 civil claims: 'This section provides "Good Samaritan" protections  
15 from civil liability for providers or users of an interactive  
16 computer service for actions to restrict or to enable restriction  
17 of access to objectionable online material.' (142 Cong. Rec.  
18 H1130 (Jan. 31, 1996).)" (*Doe II v. MySpace Inc.* (2009) 175  
19 Cal.App.4th 561, 568; see 47 U.S.C. §230.) An "important purpose"  
20 of the CDA was to encourage internet service providers "to self-  
21 regulate the dissemination of offensive materials over their  
22 services." (*Delfino v. Agilent Technologies, Inc.* (2006) 145  
23 Cal.App.4th 790, 802.) To this end, the objectives specifically  
24 set forth in the CDA include "to encourage the development of  
25 technologies which maximize user control over what information is  
26 received by individuals, families, and schools who use the  
27 Internet and other interactive computer services;" "to remove  
28 disincentives for the development and utilization of blocking and

1 filtering technologies that empower parents to restrict their  
2 children's access to objectionable or inappropriate online  
3 material;" and "to ensure vigorous enforcement of Federal criminal  
4 laws to deter and punish trafficking in obscenity, stalking, and  
5 harassment by means of computer." (47 U.S.C. §230(b); see *Zeran*  
6 *v. America Online, Inc.* (4th Cir. 1997) 129 F.3d 327, 330  
7 ["[L]awsuits seeking to hold a service provider liable for its  
8 exercise of a publisher's traditional editorial functions—such as  
9 deciding whether to publish, withdraw, postpone, or alter  
10 content—are barred."].)

11 In evaluating whether a claim is barred by the CDA, a court  
12 "must ask whether the duty that the plaintiff alleges the  
13 defendant violated derives from the defendant's status or conduct  
14 as a 'publisher or speaker.' If it does, [47 U.S.C.] section  
15 230(c)(1) precludes liability. [Citation.]" (*Cross, supra*, 14  
16 *Cal.App.5th* at p. 207; see also *Fair Housing Council of San*  
17 *Fernando Valley v. Roommates.Com, LLC* (9th Cir. 2008) 521 F.3d  
18 1157, 1170–1171 ["[A]ny activity that can be boiled down to  
19 deciding whether to exclude material that third parties seek to  
20 post online is perforce immune under section 230."]; *Jane Doe*  
21 *No. 1 v. Backpage.com, LLC* (1st Cir. 2016) 817 F.3d 12, 21 ["Those  
22 claims challenge features that are part and parcel of the overall  
23 design and operation of the website . . . . Features such as  
24 these, which reflect choices about what content can appear on the  
25 website and in what form, are editorial choices that fall within  
26 the purview of traditional publisher functions."]; *Klayman v.*  
27 *Zuckerberg* (D.C. Cir. 2014) 753 F.3d 1354, 1359 ["very essence of  
28 publishing is making the decision whether to print or retract a



1 given piece of content"]; *Doe v. MySpace, Inc.* (5th Cir. 2008) 528  
2 F.3d 413, 420 ["decisions relating to the monitoring, screening,  
3 and deletion of content [are] . . . actions quintessentially  
4 related to a publisher's role"]; *Fields v. Twitter, Inc.* (N.D.  
5 Cal. 2016) 200 F.Supp.3d 964, 969 [courts must ask whether duty  
6 that plaintiff alleges defendant violated derives from defendant's  
7 status or conduct as publisher or speaker; if yes, then 47 U.S.C.  
8 section 230(c)(1) precludes liability]; *Blumenthal v. Drudge*  
9 (D.D.C. 1998) 992 F.Supp. 44, 50 [47 U.S.C. section 230 precludes  
10 courts from entertaining claims that would place computer service  
11 provider in publisher's role; accordingly, lawsuits seeking to  
12 hold service provider liable for decision whether to publish,  
13 withdraw, postpone or alter content are barred].)

14 The First Amendment

15 It is well established that the constitutional right of free  
16 speech includes the right not to speak. (*Hurley v. Irish-American*  
17 *Gay, Lesbian and Bisexual Group of Boston* (1995) 515 U.S. 557, 574  
18 ["Nor is [the First Amendment's] benefit restricted to the press,  
19 being enjoyed by business corporations generally and by ordinary  
20 people engaged in unsophisticated expression as well as by  
21 professional publishers. Its point is simply the point of all  
22 speech protection, which is to shield just those choices of  
23 content that in someone's eyes are misguided, or even hurtful."];  
24 *Kronemyer v. Internet Movie Data Base, Inc.* (2007) 150 Cal.App.4th  
25 941, 947 [defendant website operator's anti-SLAPP motion granted,  
26 as defendant's choice not to list plaintiff's name on site was  
27 exercise of free speech]; see also *Greater Los Angeles Agency on*  
28 *Deafness, Inc. v. Cable News Network, Inc.* (9th Cir. 2014) 742

1 F.3d 414, 424-425 [defendant's choice not to provide closed  
2 captioning was protected by First Amendment, and thus subject to  
3 special motion to strike]; *La'Tiejira v. Facebook, Inc.* (S.D. Tex.  
4 2017) 272 F.Supp.3d 981, 991-992 [Facebook has a First Amendment  
5 right to decide what to publish and what not to publish on its  
6 platform].)

7 B. Defendant's Special Motion to Strike under Code of Civil  
8 Procedure section 425.16

9 In the instant case, the parties appear to agree that (1)  
10 Twitter is a public forum for purposes of the anti-SLAPP statute  
11 (see *ComputerXpress, Inc., supra*, 93 Cal.App.4th at p. 1007); and  
12 (2) Defendant's control of its platform, by allowing or preventing  
13 users' tweets, is an issue of public interest (see *Cross, supra*,  
14 14 Cal.App.5th at p. 199). Defendant brings its anti-SLAPP motion  
15 on the ground that the action as a whole attempts to premise  
16 liability on Defendant's performance of traditional editorial  
17 functions, i.e., Defendant's self-regulating act of terminating  
18 Plaintiff's Twitter account after Plaintiff posted a tweet that  
19 could reasonably be interpreted as threatening, specifically  
20 advocating the killing of another. Defendant argues that the  
21 complaint bases its claims on Defendant's exercise of its First  
22 Amendment right to free speech. Defendant also maintains that the  
23 complaint is barred by the CDA because Defendant is an interactive  
24 computer service and Plaintiff seeks to hold Defendant liable for  
25 its decision to exclude material that Plaintiff, a third party,  
26 seeks to post online.

27 Defendant sufficiently meets its burden of showing that  
28 Plaintiff's complaint arises from protected activity.

1 Accordingly, the burden shifts to Plaintiff to establish a  
2 likelihood of prevailing on the merits of his claims.

3 Plaintiff asserts that social media, including Defendant, are  
4 the modern version of the old public square; consequently, parties  
5 should be able to freely express their views, without social media  
6 companies monopolizing what types of speech may be expressed on  
7 their platforms. Plaintiff argues that the immunity provided in  
8 the CDA permits interactive computer services, like Defendant, to  
9 exclude a narrow set of speech: "illicit speech such as  
10 obscenity, offensive speech, harassment, and similar speech of the  
11 same kind." (Compl., 1:14-15.) Plaintiff asserts that Defendant  
12 suspended Plaintiff's accounts because Defendant disagrees with  
13 Plaintiff's political viewpoint, effectively abrogating  
14 Defendant's stated purpose of, in part, providing a public, free  
15 speech forum. In sum, Plaintiff argues that Defendant disapproves  
16 of Plaintiff's conservative political ideology, and thus  
17 discriminated against Plaintiff's free speech on Defendant's  
18 platform.

19 Plaintiff further argues that Defendant is not entitled to  
20 the protection of the CDA because Defendant seeks to be treated as  
21 a neutral content provider pursuant to the CDA, but at the same  
22 time asks for First Amendment protection for its editorial  
23 decision to terminate Plaintiff's accounts. However, this is not  
24 the standard for immunity under the CDA. (See 47 U.S.C. §230.)  
25 Plaintiff cites to 47 U.S.C. section 230(c)(2), which requires a  
26 showing of good faith in order to be protected from civil  
27 liability by the CDA. Defendant, however, relies on section  
28 230(c)(1), which provides that "[n]o provider or user of an

1 interactive computer service shall be treated as the publisher or  
2 speaker of any information provided by another information content  
3 provider." The heading of subdivision (c) is "Protection for  
4 'Good Samaritan' *blocking and screening* of offensive material."  
5 (Italics added.) Thus, Plaintiff fails to establish that  
6 Defendant is not entitled to protection under the CDA, i.e.,  
7 Plaintiff fails to show that any of his claims are not barred by  
8 the CDA.

9 Plaintiff also fails to show that any of his claims can  
10 survive Defendant's challenge based on its First Amendment right.  
11 Defendant is a private sector company. Although it does invite  
12 the public to use its service, Defendant also limits this  
13 invitation by requiring users to agree to and abide by its User  
14 Rules, in an exercise of Defendant's First Amendment right. The  
15 rules clearly state that users may not post threatening tweets,  
16 and also that Defendant may unilaterally, for any reason,  
17 terminate a user's account. The rules reflect Defendant's  
18 exercise of free speech. (See *Hurley, supra*, 515 U.S. at p. 574.)  
19 Plaintiff fails to show that his claims are not barred by  
20 Defendant's First Amendment right to exercise independent  
21 editorial control over the content of its platform. Defendant's  
22 choice to close Plaintiff's account on the ground that Plaintiff's  
23 tweet was threatening and harassing is an editorial decision  
24 regarding how to present content, i.e., an act in furtherance of  
25 Defendant's free speech right. Defendant's choice not to allow  
26 certain speech is a right protected by the First Amendment.

27 Plaintiff's reliance on *Robins v. Pruneyard Shopping Center*  
28 (1979) 23 Cal.3d 899 is misplaced and fails to defeat Defendant's

1 CDA and First Amendment protections. In *Robins v. Pruneyard*  
2 *Shopping Center*, the California Supreme Court held that the  
3 soliciting at a shopping center of signatures for a petition to  
4 the government is an activity protected by the California  
5 Constitution. The Court specifically noted that "[b]y no means do  
6 we imply that those who wish to disseminate ideas have free rein."  
7 (*Id.* at p. 910.) The Court reasoned: "A handful of additional  
8 orderly persons soliciting signatures and distributing handbills  
9 in connection therewith, under reasonable regulations adopted by  
10 defendant to assure that these activities do not interfere with  
11 normal business operations . . . would not markedly dilute  
12 defendant's property rights." (*Id.* at p. 911.) The case is  
13 distinguishable from the instant action, where Plaintiff's tweet  
14 could reasonably be, and in fact was, interpreted as threatening  
15 and harassing, unlike activity that "would not markedly dilute  
16 defendant's property rights." (See Sprankling Decl. at Ex. D.)  
17 Moreover, Defendant's rules were adopted to ensure that Defendant  
18 is able to maintain control over its site and to protect the  
19 experience and safety of its users. (See Sprankling Decl. at  
20 Ex. A.)

21 Defendant states that it chose to close Plaintiff's accounts  
22 after Plaintiff posted a tweet inviting Plaintiff's followers to  
23 go to one of Plaintiff's websites to donate to "taking out" DeRay  
24 McKesson, a high-profile civil rights activist. Defendant notes  
25 that a common meaning of "taking out" is murder, and such  
26 harassing and threatening tweets are barred by Defendant's rules.  
27 Defendant sufficiently shows that it is protected from liability  
28 by both the CDA and the First Amendment.

1 Plaintiff's opposition fails to establish a likelihood of  
2 prevailing on the merits, as Plaintiff is unable to show that  
3 Defendant is not entitled to the protections it invokes.  
4 Accordingly, Defendant's special motion to strike is granted.


5 III. Defendant's Demurrer to Complaint

6 As a result of the Court's ruling on Defendant's special  
7 motion to strike, it is unnecessary to address Defendant's  
8 demurrer to the complaint. As a result, the Court finds the  
9 demurrer moot.

10 It is so ordered.

11 Dated this 3rd day of July, 2018.

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KIMBERLY A. GAAB  
JUDGE OF THE SUPERIOR COURT

<p style="text-align: center;"><b>SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO</b>          Civil Department, Central Division          1130 "O" Street          Fresno, California 93724-0002          (559) 457-2000</p>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE:  <b>Charles Johnson vs. Twitter, Inc.</b></p>	
<p style="text-align: center;"><b>CLERK'S CERTIFICATE OF MAILING</b></p>	<p>CASE NUMBER:  <b>18CECG00078</b></p>

I certify that I am not a party to this cause and that a true copy of the:

**Minute order from Chambers and Order after hearing dated July 3, 2018**

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On Date: 07/03/2018

Clerk, by *M. Duarte*, Deputy  
M. Duarte

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Clerk's Certificate of Mailing Additional Address Page Attached