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18 **UNITED STATES DISTRICT COURT**
19 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

19 JUSTIN HART,
20 Plaintiff,

21 v.

22 FACEBOOK, INC.; TWITTER, INC.;
23 VIVEK MURTHY in his official capacity as
24 United States Surgeon General; JOSEPH R.
25 BIDEN, JR. in his official capacity as
26 President of the United States; the
27 DEPARTMENT OF HEALTH AND
28 HUMAN SERVICES; and the OFFICE OF
MANAGEMENT AND BUDGET,

Defendants.

Case No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Defendants conspired to remove from the internet social media posts by
3 Plaintiff, Justin Hart, because they disagreed with his viewpoint.

4 2. First, Hart brings this action to defend the freedom of speech from viewpoint-
5 based, discriminatory collusion between private social media companies and the federal
6 government.

7 3. “It is axiomatic that the government may not regulate speech based on its
8 substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of the*
9 *Univ. of Va.*, 515 U.S. 819, 828 (1995). Under the Free Speech Clause of the First
10 Amendment, “discrimination against speech because of its message is presumed to be
11 unconstitutional.” *Id.*

12 4. When the federal government admits to conspiring with social media
13 companies to censor messages with which it disagrees, as it has in this case, both the
14 government and the private companies are guilty of unconstitutional viewpoint
15 discrimination: “Joint action exists where the government . . . encourages . . .
16 unconstitutional conduct through its involvement with a private party” *Ohno v.*
17 *Yasuma*, 723 F.3d 984, 996 (9th Cir. 2013) (cleaned up).

18 5. This Court should declare the actions of Defendants Facebook, Inc., Twitter,
19 Inc., President Biden, and Surgeon General Murthy unconstitutional and permanently
20 enjoin them from monitoring, flagging, and deleting social media posts based on the
21 viewpoints the posts espouse.

22 6. Second, Defendants the Department of Health and Human Services and the
23 Office of Management and Budget have refused to provide Hart with documents that are
24 relevant to this lawsuit, which he has requested pursuant to the Freedom of Information Act,
25 and this Court should order the release of those documents.

26 7. Third, Defendants Facebook, Inc. and Twitter, Inc. violated Hart’s right to Free
27 Speech under the California Constitution when they deprived him of an essential and
28 invaluable forum for speaking his mind.

1 8. Fourth, Defendants Facebook, Inc. and Twitter, Inc. are liable for promissory
2 estoppel for promising Hart the use of their social media platforms to further his business
3 interests and then rescinding this promise after he relied on them to his detriment.

4 9. Fifth, Defendant Facebook, Inc. is liable to Hart for intentional interference
5 with a contract for knowingly denying him the ability to fulfill his contractual duty to
6 administer the Facebook account of Donorbureau, LLC.

7 10. Sixth, Defendant Facebook, Inc. is liable to Hart for negligent interference
8 with a prospective economic advantage for knowingly disrupting the contractual
9 relationship between Donorbureau, LLC and him by preventing him from administering the
10 Facebook account of Donorbureau.

11 11. For these reasons, Hart brings this lawsuit and seeks declaratory, injunctive,
12 and monetary relief for the injustices he has suffered at the hands of Defendants.

13 **PARTIES**

14 12. Plaintiff, Justin Hart, is a natural person domiciled in San Diego County,
15 California.

16 13. Defendant Facebook, Inc. (“Facebook”) is a corporation incorporated in
17 Delaware with a principal place of business at 1601 Willow Road, Menlo Park, California
18 in San Mateo County.

19 14. Defendant Twitter, Inc. (“Twitter”) is a corporation incorporated in Delaware
20 with a principal place of business at 1355 Market Street, Suite 900, San Francisco,
21 California in the City and County of San Francisco.

22 15. Defendant Vivek Murthy is sued in his official capacity as the Surgeon General
23 of the United States. In that role, he directs the office of the Surgeon General.

24 16. Defendant Joseph R. Biden, Jr. is sued in his official capacity as the President
25 of the United States. In that role, he directs the executive branch of the federal government,
26 including White House staff.

27 17. Defendant the Department of Health and Human Services (“HHS”) is an
28 agency within the executive branch of the federal government which maintains agency

1 records for the Surgeon General of the United States, his office, and others within the
2 department.

3 18. Defendant the Office of Management and Budget (“OMB”) is an agency
4 within the Executive Office of the President which maintains agency records for the
5 President of the United States, his staff, and others within the executive branch.

6 **JURISDICTION AND VENUE**

7 19. This case raises federal claims under the First Amendment of the United States
8 Constitution and the Freedom of Information Act, 5 U.S.C. § 552; therefore, the Court has
9 subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

10 20. This Court has jurisdiction to issue injunctive relief to protect constitutional
11 rights. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 491 n.2
12 (2010).

13 21. The Court has jurisdiction to issue declaratory relief pursuant to 28 U.S.C. §
14 2201 and to order further necessary or proper relief based on a declaratory judgment or
15 decree pursuant to 28 U.S.C. § 2202.

16 22. The Court has jurisdiction to order the production of agency records
17 improperly withheld pursuant to 5 U.S.C. § 552(a)(4)(B).

18 23. The Court has supplemental jurisdiction over the California state law claims
19 pursuant to 28 U.S.C. § 1367.

20 24. The Court has personal jurisdiction over Defendants Murthy, Biden, HHS, and
21 OMB because they are officers or agencies of the United States.

22 25. The Court has personal jurisdiction over Defendants Facebook and Twitter
23 because they maintain their principal places of business in California.

24 26. Venue must lie in this district under 5 U.S.C. § 552(a)(4)(B) with regards to
25 the claim under the Freedom of Information Act because Hart resides in San Diego County,
26 California. Venue lies in this district under 28 U.S.C. § 1391(e)(1) and (b)(2) because
27 Defendants Murthy, Biden, HHS, and OMB are officers or agencies of the United States; a
28 substantial part of the events giving rising to the claims occurred here, where Hart accesses

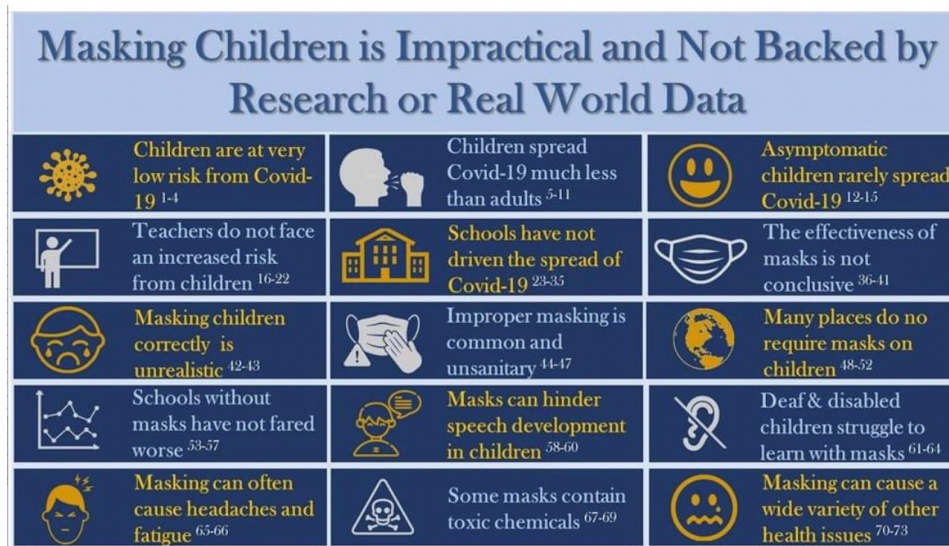
his Facebook and Twitter accounts; Hart resides here; and no real property is involved in the action.

FACTS

Deplatforming:

1. On or around July 13, 2021, Hart posted to his personal Facebook page a graphic entitled, “Masking Children is Impractical and Not Backed by Research or Real World Data.”

2. Below is a photo of the graphic in the post:



3. The graphic Hart posted is science-based and contains footnotes to scientific evidence supporting its claims.

4. Facebook flagged the above post on or around July 13, 2021, with the following notice:

You can't post or comment for 3 days.

This is because you previously posted something that didn't follow our Community Standards.

This post goes against our standards on misinformation that could cause physical harm, so only you can see it.

Learn more about updates to our standards.

1 5. On or around July 18, 2021, Hart posted to his personal Twitter page a tweet
2 that read:

3 So the CDC just reported that 70% of those who came down with #COvId19
4 symptoms had been wearing a mask. We know that masks don't protect you...
5 but at some point you have to wonder if they are PART of the problem.

6 6. Twitter locked Hart's account on or around July 18, 2021, with the following
7 notice sent to his email:

8 **Hi Justin Hart,**

9
10 **Your Account, @justin_hart has been locked for violating the Twitter**
11 **Rules.**

12
13 Specifically for: Violating the policy on spreading misleading and potentially
14 harmful information related to COVID-19.

15 **Biden and Murthy:**

16 7. Within days of these two removals, the administration of Defendant Biden
17 revealed publicly that it is directing social media companies to remove posts it deems to be
18 spreading misinformation regarding COVID-19.

19 8. On July 15, 2021, at a White House Press Conference, Defendant Murthy
20 stated, "We're asking [our technology companies] to consistently take action against
21 misinformation super-spreaders on their platforms."¹

22 9. The White House revealed that a team of government employees are actively
23 researching and tracking social media posts with which it disagrees and relaying those posts
24 to social media companies with instructions to take them down.

25
26 _____
27 ¹ Vivek H. Murthy, White House Press Briefing (July 15, 2021), transcript available at
28 <https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/15/press-briefing-by-press-secretary-jen-psaki-and-surgeon-general-dr-vivek-h-murthy-july-15-2021/> (last visited Aug. 18, 2021).

1 10. White House Press Secretary Jen Psaki admitted, “We’ve increased
2 disinformation research and tracking within the Surgeon General’s office. We’re flagging
3 problematic posts for Facebook that spread disinformation.”²

4 11. Psaki also revealed that the White House effort to suppress free speech reaches
5 all the way to the level of senior staff for Defendant Biden.

6 12. Psaki gave a glimpse of how the scheme works: “we are in regular touch with
7 these social media platforms, and those engagements typically happen through members of
8 our senior staff, but also members of our COVID-19 team”³

9 13. The next day she revealed that the far-reaching effort targeted multiple posts
10 on multiple social media sites: “You shouldn’t be banned from one platform and not
11 others.”⁴

12 14. Defendants Biden and Murthy directed four key changes for social media
13 platforms. The first is that the companies “measure and publicly share the impact of
14 misinformation on their platform.”⁵

15 15. Second, Biden and Murthy directed companies to “create a robust enforcement
16 strategy that bridges their properties and provides transparency about the rules.”⁶

17 16. Third, Biden and Murthy stressed that “it’s important to take faster action
18 against harmful posts” because “information travels quite quickly on social media
19
20

21
22 ² Jen Psaki, White House Press Briefing (July 15, 2021), transcript available at
23 <https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/15/press-briefing-by-press-secretary-jen-psaki-and-surgeon-general-dr-vivek-h-murthy-july-15-2021/> (last
24 visited Aug. 18, 2021).

25 ³ *Id.*

26 ⁴Jen Psaki, White House Press Briefing (July 16, 2021), transcript available at
27 <https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/16/press-briefing-by-press-secretary-jen-psaki-july-16-2021/> (last visited Aug. 18, 2021).

28 ⁵ Psaki, *supra* note 2.

⁶ *Id.*

1 platforms; sometimes it's not accurate. And Facebook needs to move more quickly to
2 remove harmful, violative posts[.]”⁷

3 17. Fourth, Biden and Murthy directed Facebook to “promote quality information
4 in their feed algorithm.”⁸

5 18. At the direction of Biden, Murthy created and published an entire 22-page
6 Advisory with instructions on how social media companies should remove posts with which
7 Murthy and Biden disagree.⁹

8 19. Biden further threatened social media companies who do not comply with his
9 directives by publicly shaming and humiliating them, stating, “They’re killing people.”¹⁰

10 20. On information and belief, Defendants Biden and Murthy directed Defendants
11 Facebook and Twitter to remove Hart’s social media posts because they disagreed with the
12 viewpoints he espoused in them and conspired with Facebook and Twitter to do so.

13 **Facebook:**

14 21. Defendant Facebook is one of the most popular social media sites. It boasts
15 “more than 2.8 billion monthly users worldwide,” who use it for both business and
16 pleasure.¹¹ Almost 70% of Americans use Facebook in some capacity.¹² Of these users,

19 ⁷ *Id.*

20 ⁸ *Id.*

21 ⁹ Vivek H. Murthy, *Confronting Health Misinformation: The U.S. Surgeon General’s*
22 *Advisory on Building a Healthy Information Environment* (2021), available at
23 <https://www.hhs.gov/sites/default/files/surgeon-general-misinformation-advisory.pdf> (last
24 visited Aug. 18, 2021).

25 ¹⁰ Lauren Egan, “*They’re killing people*”: Biden blames Facebook, other social media for
26 *allowing Covid misinformation*, NBC News (July 16, 2021, 4:10 PM), available at
27 [https://www.nbcnews.com/politics/white-house/they-re-killing-people-biden-blames-](https://www.nbcnews.com/politics/white-house/they-re-killing-people-biden-blames-facebook-other-social-media-n1274232)
28 [facebook-other-social-media-n1274232](https://www.nbcnews.com/politics/white-house/they-re-killing-people-biden-blames-facebook-other-social-media-n1274232) (last visited Aug. 18, 2021).

29 ¹¹ John Gramlich, *10 facts about Americans and Facebook*, Pew Research Center (June 1,
30 2021), available at [https://www.pewresearch.org/fact-tank/2021/06/01/facts-about-](https://www.pewresearch.org/fact-tank/2021/06/01/facts-about-americans-and-facebook/)
31 [americans-and-facebook/](https://www.pewresearch.org/fact-tank/2021/06/01/facts-about-americans-and-facebook/) (last visited Aug. 18, 2021).

32 ¹² *Id.*

1 70% visit Facebook daily.¹³

2 22. Facebook’s services involve creating a sort of personal website for its users
3 who can post pictures of themselves and others, create posts on their wall where they can
4 “debate religion and politics with their friends and neighbors or share vacation photos.”
5 *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017). These posts can also include
6 links to news articles and videos. Other users can post comments on a user’s posts and,
7 thereby, have a dialogue with one other. Users may also send each other direct messages
8 through Facebook’s Messenger feature.

9 23. Given this tremendous opportunity to network and speak with other people
10 throughout the United States and even the world, users frequently use it to promote their
11 business. “There are over 60 million active business [p]ages” on Facebook.¹⁴ Millions of
12 businesses pay to be active advertisers.¹⁵

13 24. Facebook’s hosting of advertisements is very lucrative for it. In 2018, it
14 generated a total of \$55.8 billion in revenue, and 99% of that came from ads on Facebook
15 and other platforms that it owns, such as Instagram.¹⁶

16 25. Facebook’s terms of service invites businesses to use its services to “connect
17 with [other people], build communities, and grow businesses.”¹⁷ Facebook describes its
18
19

20 ¹³ *Id.*

21 ¹⁴ Kit Smith, *53 Incredible Facebook Statistics and Facts*, Brandwatch (June 1, 2019),
22 available at <https://www.brandwatch.com/blog/facebook-statistics/> (last visited Aug. 18,
23 2021).

24 ¹⁵ *Id.*

25 ¹⁶ Erin Black, *How Facebook makes money by targeting ads directly to you*, CNBC (Apr.
26 2, 2019), available at https://www.cnbc.com/2019/04/02/how-facebook-instagram-whatsapp-and-messenger-make-money.html?__source=facebook%7Cmain&fbclid=IwAR05sCPLjY61T3UOfYNvQQZwOiMY64mJsnMQ0Lu4UNYqXkaXa1FUPpn1Huo (last visited Aug. 18, 2021).

27 ¹⁷ Terms of Service, Facebook, available at <https://www.facebook.com/terms.php> (last
28 revised Oct. 22, 2020) (last visited July 19, 2021).

1 services as “[e]mpower[ing] you to express yourself and communicate about what matters
2 to you.”¹⁸

3 26. The terms of service require users to follow its “Community Standards.”¹⁹
4 Those standards state that Facebook is “a service for more than two billion people to freely
5 express themselves across countries and cultures and in dozens of languages.”²⁰ They go on
6 to state, “To ensure that everyone’s voice is valued, we take great care to craft policies that
7 are inclusive of different views and beliefs, in particular those of people and communities
8 that might otherwise be overlooked or marginalized.”²¹

9 27. The limits on this pro-free speech stance include abstract categories such as
10 “Violence and Criminal Behavior,” “Safety” (which includes “Suicide and Self-Injury,”
11 “Child Sexual Exploitation, Abuse, and Nudity,” “Sexual Exploitation of Adults,”
12 “Bullying and Harassment,” “Human Exploitation,” and “Privacy Violations and Image
13 Privacy Rights), “Objectionable Content” (which includes “Hate Speech,” “Violent and
14 Graphic Content,” “Adult Nudity and Sexual Activity,” and “Sexual Solicitation”),
15 “Integrity and Authenticity,” (which includes “Account Integrity and Authentic Identity,”
16 “Spam,” “Cybersecurity,” “Inauthentic Behavior,” “False News,” “Manipulated Media,”
17 and “Memorialization”), and “Respecting Intellectual Property.” For the “False News” sub-
18 category, Facebook states that “we do not remove false news from Facebook but we
19 significantly reduce its distribution by showing it lower in News Feed.”²²

20 28. At no point in the terms of service or Community Standards does Facebook
21 prohibit viewpoints that oppose making children wear masks.

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24 _____
¹⁸ *Id.*

¹⁹ *Id.*

26 ²⁰ Community Standards, Facebook, available at
27 <https://www.facebook.com/communitystandards/> (last visited July 19, 2021).

²¹ *Id.*

28 ²² *Id.*

1 29. Plaintiff, Justin Hart, is an executive consultant with over 25 years' experience
2 creating data-driven solutions for Fortune 500 companies and presidential campaigns alike.
3 He is the Chief Data Analyst and founder of RationalGround.com, which helps companies,
4 public policy officials, and parents gauge the impact of COVID-19 across the country.

5 30. He has used Facebook's services since 2007. He has roughly 1,700 Facebook
6 users who follow his account, and roughly 3,000 Facebook friends.

7 31. He uses his Facebook account as a feeder for his other social media accounts,
8 as a networking tool for his consulting business, and as a promotion for his online website,
9 RationalGround.com, where he sells subscriptions to his articles and research on COVID-
10 19 and the government's response to it.

11 32. Given Hart's use of Facebook for his business, he has bought ads on Facebook
12 that promote his consulting business. Over the years, Hart has spent thousands of dollars on
13 Facebook advertisements.

14 33. Hart has also bought ads for his consulting clients over the years, spending
15 tens of thousands of dollars.

16 34. On his website, RationalGround.com, Hart offers some of his articles
17 exclusively to subscribers. His subscriptions generate thousands of dollars per month.

18 35. On or around September 15, 2020, Facebook issued Hart a warning regarding
19 a post he had made in July 2020 which had contained a video of protestors attempting to
20 tear down a statute of Christopher Columbus in Chicago. Hart's comment on the post read:
21 "BLM/SJW rally in Chicago to tear down the statue of Christopher Columbus. Cops
22 defending the place as hundreds of 'peaceful' protestors throw bottles, cans, canes, rocks...
23 But the best thing about this video is the 2 F's NOT given by these officers. Gotta love
24 Chicago." Inexplicably, the warning claimed, "False information about COVID-19 found
25 in your post. A notice was added to your post."

26 36. On or around September 25, 2020, Facebook claimed that a recent post by Hart
27 violated its Community Standards and banned him from advertising for 30 days and from
28 going "live" for 30 days. Going "live" on Facebook allows a user to have a video call with

1 followers in real-time. The post stated, “‘Spotify seems like a great place to work!’ – Joseph
2 Goebbels.”

3 37. On April 23, 2021, Facebook restricted the ability of Hart to post or comment
4 for 24 hours because it claimed the following three posts violated its Community Standards:

5 a. On or around April 14, 2021, Hart created a post on Facebook
6 stating, “If you ever want to know where your BLM donation is going – the
7 co-founder ‘trained Marxist’ Patrisee Cullars – just bought this amazing home
8 in LA” and it included a link to a picture of the house.

9 b. That same day, a second post of his was removed from Facebook.

10 c. On April 23, 2021, he created a post stating that: “This is the
11 truth: Covid is almost gone in America. Hospitals are literally empty. Every
12 willing senior has already been vaccinated. In a few weeks every willing adult
13 can be...

14 38. Losing the ability to connect with people through his Facebook account has
15 harmed Hart’s online business and work to help others. He is also suffering injury because
16 he serves as the administrator of at least one of his client’s Facebook pages. While Hart’s
17 personal account is suspended, he cannot service this account.

18 39. Facebook’s standards for censorship are constantly shifting.

19 40. For example, since early 2020, there has been widespread debate over whether
20 COVID-19 was made by humans in a lab in Wuhan, China and escaped from the lab or
21 whether it started naturally through animal to human transmission. Despite this debate, in
22 February 2020, Facebook announced it would remove posts that suggested the virus was
23 man-made, stating that the theory had been debunked by public health officials.²³ But in
24 May 2021, after Biden acknowledged the possibility of the theory, Facebook reversed its

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26 ²³ Peter Suci, *Social Media About Face: Facebook Won’t Remove Claims Covid Was Man-*
27 *Made*, Forbes (May 28, 2021, 3:39 PM), available at
28 [https://www.forbes.com/sites/petersuci/2021/05/28/social-media-about-face-facebook-](https://www.forbes.com/sites/petersuci/2021/05/28/social-media-about-face-facebook-wont-remove-claims-covid-was-man-made/?sh=d21e05c6aa1a)
[wont-remove-claims-covid-was-man-made/?sh=d21e05c6aa1a](https://www.forbes.com/sites/petersuci/2021/05/28/social-media-about-face-facebook-wont-remove-claims-covid-was-man-made/?sh=d21e05c6aa1a) (last visited Aug. 18,
2021).

1 policy and announced that it would no longer remove posts expressing that viewpoint.²⁴
2 Therefore, Facebook is stifling the free debate of scientific theories by taking its directions
3 from the federal government.

4 **Twitter:**

5 41. Defendant Twitter is also a popular social media site; more than one in five
6 adult Americans use the platform.²⁵ Of these users, 46% visit Twitter daily.²⁶

7 42. Twitter’s services involve creating a personal profile from which its users can
8 “tweet”—meaning post messages, photos, and weblinks to their feed for other users to see.
9 Users can “like,” repost, or reply to other users’ tweets.

10 43. Twitter allows users to have a dialogue on a variety of issues, including topics
11 of national importance. 42% of U.S. adults on Twitter say they use the site to discuss
12 politics.²⁷ Twitter is known for being “one of the social media sites with the most news-
13 focused users.”²⁸ 71% of adult Twitter users in the U.S. use the site to get news.²⁹

14 44. “The Twitter Rules” proclaim that “Twitter’s purpose is to serve the public
15 conversation.”³⁰

18 ²⁴ Donie O’Sullivan & Jordan Valinsky, *Facebook will no longer remove claims that Covid-*
19 *19 was man-made*, CNN Business (May 27, 2021, 12:16 PM), available at
20 [https://www.cnn.com/2021/05/27/tech/facebook-covid-19-origin-claims-](https://www.cnn.com/2021/05/27/tech/facebook-covid-19-origin-claims-removal/index.html)
[removal/index.html](https://www.cnn.com/2021/05/27/tech/facebook-covid-19-origin-claims-removal/index.html) (last visited Aug.18, 2021).

21 ²⁵ Brooke Auxier & Monica Anderson, *Social Media Use in 2021*, Pew Research Center
22 (April 7, 2021), available at [https://www.pewresearch.org/internet/2021/04/07/social-](https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/)
[media-use-in-2021/](https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/) (last visited July 19, 2021).

23 ²⁶ *Id.*

24 ²⁷ Adam Hughes & Stefan Wojcik, *10 facts about Americans and Twitter*, Pew Research
25 Center (Aug. 2, 2019), available at [https://www.pewresearch.org/fact-tank/2019/08/02/10-](https://www.pewresearch.org/fact-tank/2019/08/02/10-facts-about-americans-and-twitter/)
[facts-about-americans-and-twitter/](https://www.pewresearch.org/fact-tank/2019/08/02/10-facts-about-americans-and-twitter/) (last visited July 19, 2021).

26 ²⁸ *Id.*

27 ²⁹ *Id.*

28 ³⁰ The Twitter Rules, Twitter, available at [https://help.twitter.com/en/rules-and-](https://help.twitter.com/en/rules-and-policies/twitter-rules)
[policies/twitter-rules](https://help.twitter.com/en/rules-and-policies/twitter-rules) (last visited Aug. 19, 2021).

1 45. The limitations on that “public conversation” include Tweets that threaten or
2 glorify violence or terrorism, sexually exploit children, abuse or harass other people,
3 promote self-harm or suicide, show excessively gory media or adult content within live
4 videos or profile photos, or serve any unlawful purpose.³¹

5 46. At no point in the terms of service or Twitter Rules does Twitter prohibit
6 viewpoints that oppose wearing masks.

7 47. Hart has used Twitter’s services since 2007.

8 48. He uses his Twitter account as a feeder for his other social media accounts, as
9 a networking tool for his consulting business, and as a promotion of his online website,
10 RationalGround.com, where he sells subscriptions to his articles and research on COVID-
11 19 and the government’s response to it.

12 49. Hart has purchased ads on Twitter to promote his consulting business. Over
13 the years, he has spent thousands of dollars on Twitter ads. Hart planned to increase his use
14 of Twitter advertising, but he was denied from doing so by Twitter.

15 50. Losing the ability to communicate with people through his Twitter account has
16 harmed his online business.

17 **COUNT I – Free Speech**

18 **Murthy, Biden, Facebook, and Twitter violated the Free Speech clause of the First**
19 **Amendment when they acted jointly to remove Hart’s social media posts and block**
20 **him from using his accounts.**

21 51. The allegations in the preceding paragraphs are incorporated herein by
22 reference.

23 52. “The First Amendment is a kind of Equal Protection Clause for ideas.” *Barr v.*
24 *Am. Ass’n of Political Consultants*, 140 S. Ct. 2335, 2354 (2020) (plurality). A government
25 violates this promise of equal treatment for ideas when it engages in viewpoint
26 discrimination. *Rosenberger*, 515 U.S. at 819.

27
28 ³¹ *Id.*

1 53. Murthy and Biden engaged in viewpoint discrimination when they directed
2 Facebook and Twitter to remove social media posts like those of Hart that contained a
3 viewpoint on COVID-19 that did not fit with their own political narrative.

4 54. Private companies engage in state action when they work with government
5 officials to deprive individuals of their constitutional rights. *Lugar v. Edmondson Oil Co.*,
6 457 U.S. 922, 942 (1982).

7 55. “The Supreme Court has articulated four tests for determining whether a non-
8 governmental person’s actions amount to state action: (1) the public function test; (2) the
9 joint action test; (3) the state compulsion test; and (4) the governmental nexus test.” *Ohno*
10 *v. Yasuma*, 723 F.3d 984, 995 (9th Cir. 2013) (cleaned up).

11 56. “Joint action exists where the government affirms, authorizes, encourages, or
12 facilitates unconstitutional conduct through its involvement with a private party.” *Ohno v.*
13 *Yasuma*, 723 F.3d 984, 996 (9th Cir. 2013) (cleaned up).

14 57. The Ninth Circuit finds joint action when “state officials and private parties
15 have acted in concert in effecting a particular deprivation of constitutional rights.” *Tsao v.*
16 *Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012) (cleaned up). “This requirement
17 can be satisfied either by proving the existence of a conspiracy or by showing that the
18 private party was a willful participant in joint action with the State or its agents.” *Id.*
19 (cleaned up). “Particularly relevant here is the maxim that if the state knowingly accepts
20 the benefits derived from unconstitutional behavior, then the conduct can be treated as state
21 action.” *Id.* (cleaned up).

22 58. Facebook and Twitter engaged in state action when they removed posts like
23 Hart’s at the request of Murthy and Biden based on the viewpoint of those posts.

24 59. Facebook and Twitter worked in concert and/or conspiracy with Murthy and
25 Biden to deprive Hart of his First Amendment right to Free Speech.

26 60. Murthy and Biden affirmed, authorized, encouraged, and/or facilitated
27 Facebook and Twitter’s unconstitutional conduct of censorship.

1 61. Facebook and Twitter were either willful participants when they removed
2 posts based on their viewpoint at the direction of Murthy and Biden or they were subject to
3 government compulsion, either of which amounts to state action.

4 62. Murthy and Biden knowingly accepted the benefits of censored speech derived
5 from the unconstitutional behavior of Facebook and Twitter in removing posts based on a
6 viewpoint with which Murthy and Biden disagreed.

7 63. Facebook and Twitter now require that Hart and other users express a
8 government-approved viewpoint to use their platforms.

9 64. Hart is entitled to declaratory and injunctive relief against Murthy and Biden
10 for violating his right to Free Speech.

11 65. Hart is entitled to declaratory and injunctive relief as well as compensatory and
12 nominal damages from Facebook and Twitter for violating his right to Free Speech.

13 **COUNT II – Freedom of Information Act**

14 **HHS and OMB violated the Freedom of Information Act when they failed to respond**
15 **to Plaintiff’s records request within the statutory timeframe.**

16 66. The allegations in the preceding paragraphs are incorporated herein by
17 reference.

18 67. Justin Hart, through his counsel, submitted a request for documents pursuant
19 to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to both the Department of
20 Health and Human Services and the Office of Management and Budget on July 22, 2021.

21 68. Under the FOIA, agencies are granted twenty (20) business days to respond to
22 a request for records. 5 U.S.C. § 552(a)(6)(A)(i).

23 69. To date, it has been twenty-eight (28) business days since Hart requested the
24 documents. Neither HHS nor OMB have provided the records requested by Hart, nor have
25 they provided a denial of his records requests.

26 70. The only response received was from OMB on August 2, 2021, denying
27 expedited processing of the records request.

1 71. When an agency fails to respond to the requester within the statutory time
2 limit, the requester “shall be deemed to have exhausted his administrative remedies[.]” 5
3 U.S.C. § 553(a)(6)(C)(i).

4 72. Therefore, Hart may lodge this Complaint against HHS and OMB.

5 73. HHS and OMB have improperly withheld the requested records from Hart.

6 74. Hart is entitled to a judgment from this Court ordering HHS and OMB
7 immediately to produce the records he requested.

8 **COUNT III – California Free Speech**

9 **Facebook and Twitter violated the Free Speech clause of the California Constitution**
10 **when they blocked Hart’s speech.**

11 75. Facebook and Twitter are common carriers of information and are not able to
12 suppress speech based on viewpoint.

13 76. In *Pruneyard Shopping Center*, the California Supreme Court recognized that
14 the suburban shopping center—even ones that are privately owned—are an “essential and
15 invaluable forum for exercising” speech rights. 592 P.2d 341, 347 (Cal. 1979). The court
16 reasoned that shopping centers are where most people “spend the most significant amount
17 of [their] time in suburban areas where [their] needs and wants are satisfied” because
18 “shopping centers provide the location, goods, and services to satisfy [their] needs and
19 wants.” *Id.* at 345.

20 77. The U.S. Supreme Court made a similar observation about the internet in
21 *Packingham*, 137 S. Ct. at 1735. There, the Court compared social media to a
22 “quintessential forum” for engaging in speech such as “a street or park.” It further found
23 that the most important forum today for speech is “cyberspace—the ‘vast democratic
24 forums of the Internet’ in general . . . and social media in particular.” *Id.* (quoting *Reno v.*
25 *American Civil Liberties Union*, 521 U. S. 844, 868, 117 S. Ct. 2329, 138 L. Ed. 2d 874
26 (1997)). Social media platforms are the modern-day town square.

1 78. Because Facebook and Twitter provide an essential and invaluable forum for
2 exercising Hart’s right to Free Speech under the California Constitution, they violated such
3 right when they removed Hart’s posts and suspended his ability to speak on their platforms.

4 79. Hart is entitled to declaratory and injunctive relief as well as compensatory and
5 nominal damages from Facebook and Twitter for violating his right to Free Speech under
6 the California Constitution.

7 **COUNT IV - Promissory Estoppel**

8 **Facebook and Twitter committed promissory estoppel by not fulfilling their promise**
9 **for Hart to use their platform for his business.**

10 80. The allegations in the preceding paragraphs are incorporated herein by
11 reference.

12 81. Facebook and Twitter made “a clear and unambiguous promise” to Hart that
13 he could use their services to communicate and network with other Facebook and Twitter
14 users. *Bushell v. JPMorgan Chase Bank, N.A.*, 163 Cal. Rptr. 3d 539, 550 (Cal. Ct. App.
15 2013).

16 82. Facebook and Twitter did not caveat this promise by announcing that they
17 would censor speech opposing masks.

18 83. Hart engaged in “reasonable, foreseeable and detrimental reliance” on
19 Facebook’s and Twitter’s promise when he started using their services to speak with and
20 network with other Facebook and Twitter users to promote his business. *Bushell*, 163 Cal.
21 Rptr. 3d at 550.

22 84. Hart engaged in “reasonable, foreseeable and detrimental reliance” on
23 Facebook’s promise when he invested substantial sums of money to advertise on Facebook
24 and Twitter. *Id.*

25 85. Facebook’s and Twitter’s removal and flagging of Hart’s posts and suspension
26 of his account for engaging in speech caused his reliance on their promises to be to the
27 detriment of his business, finances, and reputation.

1 86. As the result of this detrimental reliance, Hart suffered monetary and non-
2 monetary damages.

3 87. Hart is entitled to monetary relief from Facebook and Twitter for committing
4 the tort of promissory estoppel.

5 **COUNT V - Intentional Interference with a Contract**

6 **Facebook committed intentional interference with a contract by interfering with**
7 **Hart’s contract with Donorbureau, LLC.**

8 88. The allegations in the preceding paragraphs are incorporated herein by
9 reference.

10 89. To establish a claim of intentional interference with a contractual relationship,
11 the claimant must show (1) a valid contract between claimant and a third party; (2)
12 defendant’s knowledge of this contract; (3) defendant’s intentional acts designed to induce
13 a breach or disruption of the contractual relationship; (4) actual breach or disruption of the
14 contractual relationship; and (5) resulting damage. *Davis v. Nadrich*, 94 Cal. Rptr. 3d 414,
15 421 (Cal. Ct. App. 2009).

16 90. California law does not require that the defendant act with the specific intent
17 to interfere. *See id.* at 422; *Quelimane Co. v. Stewart Title Guaranty Co.*, 960 P.2d 513
18 (1998). The tort is applicable if the defendant knows that the interference is substantially
19 certain or certain to happen as a result of defendant’s actions. *Nadrich*, 94 Cal. Rptr. 3d at
20 422.

21 91. Hart maintains a valid employment contract with Donorbureau, LLC
22 (“Donorbureau”), a Virginia-based limited liability company.

23 92. As part of his employment contract, Hart’s job duties include serving as an
24 Administrator on the Donorbureau Facebook account, so he can post content to the site and
25 make other changes in an effort to increase Donorbureau’s revenue.

26 93. Facebook has knowledge of the relationship between Hart and Donorbureau
27 because it has actual notice that Hart serves as an Administrator for the Donorbureau
28 account.

1 94. Facebook intentionally suspended Hart's use of his personal Facebook
2 account, and Facebook knew and intended that such action would prevent Hart from doing
3 his work as an Administrator on the Donorbureau account.

4 95. Therefore, Facebook intentionally interfered with Hart's contract with
5 Donorbureau.

6 96. Not being able to service Donorbureau's Facebook page placed Hart in breach
7 of his contract with Donorbureau.

8 97. Hart suffered and is suffering monetary damage for not being able to fulfill his
9 social media duties to Donorbureau.

10 98. Hart is entitled to monetary relief from Facebook for intentionally interfering
11 with his contract with Donorbureau.

12 **COUNT VI - Negligent Interference with a Prospective Economic Advantage**

13 **Facebook committed negligent interference with a prospective economic advantage**
14 **by interfering with Hart's contract with Donorbureau, LLC.**

15 99. The allegations in the preceding paragraphs are incorporated herein by
16 reference.

17 100. To establish a claim of negligent interference with a prospective economic
18 advantage, a claimant must show (1) the existence of a valid contractual relationship
19 between the plaintiff and a third party containing the probability of future economic benefit
20 to the plaintiff; (2) the defendant's knowledge, actual or construed, of the relationship; (3)
21 the defendant's knowledge, actual or construed, that the relationship would be disrupted if
22 the defendant failed to act with reasonable care; (4) the defendant's failure to act with
23 reasonable care; (5) actual disruption of the relationship; and (6) resulting economic harm.
24 *Nelson v. Tucker Ellis, LLP*, 262 Cal. Rptr. 3d 250, 264 n.5 (Cal. App. Ct. 2020).

25 101. Hart maintains a valid employment contract with Donorbureau, LLC, a
26 Virginia-based limited liability company.

1 102. As part of his employment contract, Hart’s job duties include serving as an
2 Administrator on the Donorbureau Facebook account, so he can post content to the site and
3 make other changes in an effort to increase Donorbureau’s revenue.

4 103. Hart has a probability of future economic benefit by fulfilling the terms of his
5 employment contract with Donorbureau.

6 104. Facebook has knowledge of the relationship between Hart and Donorbureau
7 because it has actual notice that Hart serves as an Administrator for the Donorbureau
8 account.

9 105. When Facebook suspended Hart’s use of his personal Facebook account, it
10 knew or should have known that Hart’s work as an Administrator on the Donorbureau
11 account and his relationship with Donorbureau would be disrupted as a result of its
12 negligent actions.

13 106. In not providing Hart any avenue to access the Donorbureau account,
14 Facebook failed to act with reasonable care.

15 107. Facebook’s act of suspension caused an actual disruption in the relationship
16 between Hart and Donorbureau because he could not post content to the site or make other
17 changes in his work to increase Donorbureau’s revenue.

18 108. Therefore, Facebook negligently interfered with Hart’s prospective economic
19 advantage from his contractual relationship with Donorbureau.

20 109. Hart suffered and is suffering monetary damage for not being able to fulfill his
21 social media duties to Donorbureau.

22 110. Hart is entitled to monetary relief from Facebook for negligently interfering
23 with the prospective economic advantage resulting from his contract with Donorbureau.

24 **PRAYER FOR RELIEF**

25 Plaintiff respectfully requests that this Court enter judgment in his favor on every
26 claim set forth above and award him the following relief:

1 A. Declare that the actions of Murthy, Biden, Facebook, and Twitter constitute a
2 violation of the Free Speech clause by denying Hart the ability to speak on Facebook and
3 Twitter;

4 B. Enjoin Murthy and Biden from directing social media companies to censor
5 information with which Murthy and Biden disagree;

6 C. Enjoin Facebook and Twitter from removing or suspending posts at the
7 direction of Murthy and Biden;

8 D. Enjoin Murthy and Biden from directing social media companies to censor
9 Hart’s speech;

10 E. Enjoin Facebook and Twitter from removing Hart’s posts or suspending his
11 ability to post because they disagree with the content of his posts regarding masks, COVID-
12 19, or other highly debated topics of the day;

13 F. Order OMB and HHS immediately to produce the records Hart requested
14 pursuant to the Freedom of Information Act;

15 G. Award Hart attorneys’ fees and costs, pursuant to 5 U.S.C. § 552(a)(4)(E);

16 H. Declare that the actions of Facebook and Twitter constitute a violation of the
17 Free Speech clause of the California Constitution by denying Hart the ability to speak on
18 Facebook and Twitter;

19 I. Award Hart nominal damages of \$1 each from Facebook and Twitter for
20 suffering a violation of his federal and state free speech rights and for suffering damages in
21 California tort law;

22 J. Award Hart compensatory damages in the amount of his past, present, and
23 future lost income resulting from Facebook’s and Twitter’s actions of promissory estoppel
24 and resulting from Facebook’s intentional interference with a contract and negligent
25 interference with a prospective economic advantage;

26 K. Award Hart compensatory damages in the amount of a return of the money he
27 spent on Facebook and Twitter advertisements because of Facebook’s and Twitter’s actions
28

1 of promissory estoppel and Facebook's intentional interference with a contract and
2 negligent interference with a prospective economic advantage;

3 L. Award Hart compensatory damages in an amount to fully compensate him for
4 the time he spent building a following on Facebook and Twitter that has now been wasted
5 by Facebook's and Twitter's actions of promissory estoppel and Facebook's intentional
6 interference with a contract and negligent interference with a prospective economic
7 advantage;

8 M. Award Hart compensatory damages in the amount of the harm to his reputation
9 resulting from Facebook's and Twitter's actions of promissory estoppel and resulting from
10 Facebook's intentional interference with a contract and negligent interference with a
11 prospective economic advantage;

12 N. Award any further relief to which Hart may be entitled, including attorneys'
13 fees and costs.

14
15 Dated: August 31, 2021

Respectfully submitted,

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