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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

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

Plaintiffs,

vs.

TWITTER, INC., a California corporation,

Defendant.

No. _______________

COMPLAINT

(1) Violation of California Constitution
(2) Violation of Unruh Civil Rights Act
(3) Breach of Contract
(4) Conversion
(5) Violation of Consumers Legal Remedies Act

Plaintiffs, Jared Taylor and New Century Foundation ("Plaintiffs"), hereby file this Complaint for Violation of Article I, sections 2 and 3 of the California Constitution, Violation of the Unruh Civil Rights Act (Civ. Code § 51 et seq.), Breach of Contract, Conversion, and Violation of Consumers Legal Remedies Act (Civ. Code §1750 et seq.), against Defendant, Twitter, Inc. ("Twitter"), and would show as follows:

INTRODUCTION

1. Article I, § 2 of the California Constitution guarantees that "every person may freely speak, write and publish his or her sentiments on all subjects." On its "Values" page, Twitter states: "We believe in free expression and believe every voice has the power to impact the world." (Exh. A). Twitter states that its mission is to "[g]ive everyone the power to create and share ideas instantly, without barriers." (Exh. B).

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2. However, in defiance of California law, as well as its own founding principles and terms of service, Twitter has decided that it will not allow Mr. Taylor and his publication, American Renaissance, to respectfully share their views on its open platform. Mr. Taylor's Twitter account and the Twitter account of American Renaissance (together, the "Accounts"), were permanently suspended by Twitter on December 18, 2017.

3. Twitter has not banned the Accounts because Mr. Taylor has engaged in disrespectful, harassing or abusive behavior. On the contrary, during their over six years on the platform, Mr. Taylor and American Renaissance have treated other users with the utmost respect and courtesy, and Twitter has never alleged otherwise. Indeed, Mr. Taylor has used the Accounts to caution against the use of Twitter to harass other users.

4. Thus, this lawsuit does not implicate Twitter's right to regulate its public forum to prevent legitimate instances of obscenity, harassment, threats, and abuse, so long as these rules are written and enforced in a viewpoint-neutral manner. Instead, it raises the issue of whether Twitter can arbitrarily and discriminatorily ban a speaker from its platform due to nothing more than the controversial nature of the speaker's viewpoint, political beliefs, and perceived political affiliations. While the Plaintiffs hold admittedly controversial positions, they have always expressed them—both on and off Twitter—in a lawful, civil, and respectful manner.

5. In unilaterally removing Mr. Taylor and American Renaissance from its open, public platform Twitter seeks to censor Mr. Taylor solely based on his controversial viewpoints and perceived affiliations. Giving Twitter the power to ban speakers due to the controversial nature of their speech and affiliations would nullify the guarantee of Art. I, §§ 2-3 of the California Constitution that "every person may freely speak, write and publish his or her sentiments on all subjects." In the words of the late Supreme Court justice Oliver Wendell Holmes, Jr., "if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate." *United States v. Schwimmer*, (1929) 279 U.S. 644, 654-655 [49 S. Ct. 448] (dis. opn. of Holmes, J.). The California Constitution embodies these same principles.

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6. The loss of the Accounts is a crippling blow to Plaintiffs. The Accounts permitted Plaintiffs to communicate instantly with a broad base of supporters, donors, and readers. Plaintiffs used the Accounts to alert their followers to their recent publications, forthcoming conferences, public appearances, articles, videos, podcasts, and their commentary on the news of the day. This drove traffic to American Renaissance's website, and kept the ideas of Mr. Taylor and American Renaissance constantly before the public.

7. The Accounts also supported Plaintiffs' fundraising efforts, vital to the continued existence of New Century Foundation, the 501(c)(3) non-profit that conducts the operations of American Renaissance. Indeed, the Accounts were an invaluable way to extend Plaintiffs' reach. Tweets from the Accounts were retweeted well beyond Mr. Taylor and American Renaissance's own follower bases, leading to continually increasing numbers of followers. New followers, in turn, became American Renaissance readers, supporters, and donors. There is no public platform comparable to Twitter that would allow Mr. Taylor and American Renaissance to express their views.

8. Accordingly, Plaintiffs seek an injunction to prevent Twitter from terminating Mr. Taylor and American Renaissance's accounts on its public forum and from restricting Plaintiffs' speech in violation of the California Constitution and the Unruh Civil Rights Law.

JURISDICTION AND VENUE

9. Twitter is headquartered in San Francisco County, regularly does business in San Francisco County and, upon information and belief, committed the acts complained of in San Francisco County. Accordingly, jurisdiction and venue are proper in San Francisco County pursuant to Code of Civil Procedure sections 395, subdivision (a), and 395.5. (See Exhs B and F). In addition, Twitter's Terms of Service specify San Francisco County, CA as the proper venue for all actions against Twitter. (*See* Exh. G).

10. Because Twitter has engaged in ongoing business activities in San Francisco County and directed to San Francisco County, and has committed tortious acts within this district, this Court has personal jurisdiction over Twitter.

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THE PARTIES

11. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth fully herein.

12. Plaintiff Jared Taylor is, and at all relevant times was, a natural person residing in the Commonwealth of Virginia. In 1990, Mr. Taylor started the monthly publication, *American Renaissance*, which was produced continuously until January 2012, when all content was shifted to the Internet at www.AmRen.com.

13. Plaintiff New Century Foundation was founded by Mr. Taylor in 1994. It is a 501(c)(3) tax-exempt, educational institution which conducts all the activities of American Renaissance. New Century's purpose is to "disseminate facts about race and race relations so that policies and public awareness can be founded as much as possible upon realistic assessments rather than intuition or ideology. Racial harmony, reduction of violence, elimination of prejudice, and mutual understanding between the races can be achieved only through better knowledge of all aspects—historical, cultural, biological, sociological—of the role race plays in the lives of Americans." It also seeks to "study the effect that immigration is likely to have on the changing demographic character of the nation. The consequences of a more diverse population are little understood, and the institute will attempt to throw light on this question." (*See* Exh. E). Since 1994, American Renaissance has put on 15 conferences at which academics, politicians, clergy, and activists have discussed these questions.

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

GENERAL ALLEGATIONS

15. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth fully herein.

16. Twitter is the world's largest microblogging site, with an average of 330 million active users per month from all over the globe. (Exh. S). Its self-proclaimed mission is to "[g]ive everyone the power to create and share ideas instantly, without barriers." (Exh. B). On its "Values" page,

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Twitter states: "We believe in free expression and believe every voice has the power to impact the world." (Exh. A). Twitter describes itself as "the live public square, the public space - a forum where conversations happen." (Exh. H). Twitter's CEO, Jack Dorsey, has stated, "Twitter is a communication utility." (Exh. I). It allows users who have established accounts to post short messages, called Tweets, as well as photos or short videos. Anyone can join and set up an account on Twitter at any time.

17. Twitter is the platform in which important political debates take place in the modern world. The U.S. Supreme Court has described social media sites such as Twitter as the "modern public square." *Packingham v. North Carolina* (2017) 582 U.S. __ [137 S. Ct. 1730, 1737]. It is used by politicians, public intellectuals, and ordinary citizens the world over, expressing every conceivable viewpoint known to man. Unique among social media sites, Twitter allows ordinary citizens to interact directly with famous and prominent individuals in a wide variety of different fields. It has become an important communications channel for governments and heads of state. As the U.S. Supreme Court noted in *Packingham*, "[O]n Twitter, users can petition their elected representatives and otherwise engage with them in a direct manner. Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this purpose. In short, social media users employ these websites to engage in a wide array of protected First Amendment activity on topics as diverse as human thought." 137 S. Ct. at pp. 1735–36 (internal citations and quotations omitted). The Court in *Packingham* went on to state, in regard to social media sites like Twitter: "These websites can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard. They allow a person with an Internet connection to 'become a town crier with a voice that resonates farther than it could from any soapbox.'" *Id.* at p. 1737 (citation omitted) (quoting *Reno v. American Civil Liberties Union* (1997) 521 U. S. 844, 870 [117 S.Ct. 2329]).

18. It is universally understood that Tweets reflect the viewpoints of the user who posted the Tweet, and not Twitter itself. All Tweets are clearly 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 regulations."

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(Exh. G). It goes on to state: "You retain your rights to any Content you submit, post or display on or through the Services. What's yours is yours — you own your Content (and your photos and videos are part of the Content)." *Id.* Twitter and its executives have numerous accounts which they use to publish their own viewpoints on the platform. Tweets are published by individual users, not Twitter.

19. For several decades, Mr. Taylor has been a well-known author and public intellectual, primarily in the areas of race relations and immigration. He is a graduate of Yale University and the Paris Institute of Political Studies. He is author or editor of seven books. His writing has appeared in the *Wall Street Journal*, *Los Angeles Times*, *Chicago Tribune*, *Baltimore Sun*, *Boston Globe*, *National Review*, *Washington Post*, and *San Francisco Chronicle*. Mr. Taylor has been interviewed countless times by national and international print and electronic media on immigration and race relations.

20. Mr. Taylor takes the view that race is a biological reality that is part of individual and group identity. He argues that the evidence shows that despite a large amount of commonality, the different races are not—as groups—identical or equivalent, and that there is a genetic component to those differences. He believes that people of all races and nations have the right to choose a destiny for themselves that includes remaining the majority in their nation, region, municipality, neighborhood, or institution. He has always proposed such a choice as an expression of freedom of association, and has never argued for forcible separation of racial groups.

21. Mr. Taylor joined Twitter in March 2011.

22. On Nov. 16, 2016, Mr. Taylor entered into a commercial agreement for a "followers campaign" under which he paid Twitter to promote his tweets and increase the number of his followers. Twitter's promotional website for the "followers campaign" suggests each new follower is worth between $2.50 and $3.50.[1] Mr. Taylor established a campaign budget of $200, with a daily expenditure limit of $2.00. The campaign continued through the week of Feb. 22, 2017, and he paid Twitter a total of $179.32.

[1] *See* Exh. J ("The cost per follower on Twitter is set by a second price auction among other advertisers – you'll only ever pay just slightly more than the next highest bidder. A bid of $2.50 - $3.50 is recommended based on historical averages.").

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23. At some point before June 2017, Mr. Taylor was granted Twitter's blue check mark or "verification badge." Twitter informed Mr. Taylor by email on November 15, 2017 that it had "permanently removed" his verification badge.

24. At the time Mr. Taylor's account was permanently suspended on December 18, 2017, it had 40,900 followers.

25. In June 2011, American Renaissance established its own account, which was operated by its staff. In April 2017, American Renaissance was granted Twitter's "verification badge," which it kept until the account was permanently suspended on December 18, 2017. At the time American Renaissance's account was permanently suspended, it had 32,700 followers.

26. Over the course of over six years, Mr. Taylor and American Renaissance invested countless hours and significant time and effort into cultivating a large follower base and Twitter presence for the Accounts that would generate new readers, subscribers, and donors for American Renaissance and New Century. In addition to Mr. Taylor's agreement with Twitter to promote his account, Mr. Taylor and American Renaissance spent significant time and effort, including much staff time, in sharing articles and content to the Accounts in order to expand the reach of the Accounts.

27. The Accounts were an essential part of the advocacy and educational mission of Mr. Taylor and American Renaissance. They permitted Mr. Taylor and American Renaissance to communicate instantly with a broad base of supporters, donors, journalists, and readers. Mr. Taylor and American Renaissance used the Accounts to alert their followers to their recent publications, forthcoming conferences, public appearances, articles, videos, podcasts, and their commentary on the news of the day. This drove traffic to Plaintiffs' websites and kept their ideas constantly before the public. And the Accounts allowed Plaintiffs to maintain close contact with donors, crucial for a non-profit advocacy organization such as American Renaissance. The Accounts allowed Mr. Taylor and American Renaissance to share and disseminate articles and posts expressing their view on race relations, immigration, and other important national issues, and to have a voice in public debates.

28. Mr. Taylor has always expressed his views with respect and civility towards those who disagree. He has never engaged in vituperation or name-calling, on Twitter or elsewhere.

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29. Neither Mr. Taylor nor American Renaissance has ever promoted or advocated violence, on Twitter or anywhere else. Indeed, they have urged their followers to maintain a dignified and respectful tone towards those who disagree with them. Neither Mr. Taylor nor American Renaissance is affiliated with any groups that promote or practice violence.

30. At no time did either Mr. Taylor's or American Renaissance's accounts engage in "trolling," insults, or harassment, nor did they ever encourage anyone else to do such things.

31. Even Mr. Taylor's critics have recognized that he promotes respectful, polite debate and shuns name-calling. The Southern Poverty Law Center, which takes sharp issue with the views expressed by Mr. Taylor and American Renaissance, has written: "In his personal bearing and tone, Jared Taylor projects himself as a courtly presenter of ideas . . . ." It also noted that American Renaissance magazine "scrupulously avoided racist epithets [and] employed the language of academic journals," and was "bringing a measure of intellectualism and seriousness" to dissident critiques of mainstream thinking on race. It has called its conferences "decidedly genteel affairs." *Slate* magazine has referred to Mr. Taylor's "Ivy League education and 'polite manners.'"

32. Mr. Taylor is well known, even among his detractors, for taking a positive attitude toward Jews and for repudiating Nazism. The *Jewish Daily Forward* wrote this about Mr. Taylor: "From the start, he has been trying to de-Nazify the movement and draw the white nationalist circle wider to include Jews of European descent."

33. Mr. Taylor and American Renaissance have encouraged people who share their views to maintain a dignified tone. An article in *American Renaissance* published on June 10, 2016 urged members of the "Alt-Right" to avoid "personal attacks and harsh rhetoric" on Twitter and other social media platforms. It added that those who use intemperate language should ask themselves: "Do you drive away Americans who might be sympathetic to Donald Trump and/or race realism?" For these stands, Mr. Taylor and American Renaissance drew considerable backlash and controversy. Many commenters expressed vehement disagreement with Mr. Taylor's and American Renaissance's stands in favor of temperate language and against harassment of other Twitter users.

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34. At the time Mr. Taylor and American Renaissance joined Twitter, there was no provision in Twitter's Terms of Services that permitted it to suspend or terminate accounts for any or no reason.

35. Twitter amended its Terms of Service on May 17, 2012, to read, *inter alia*: "We may suspend or terminate your accounts or cease providing you with all or part of the Services at any time for any reason, including, but not limited to, if we reasonably believe: (i) you have violated these Terms or the Twitter Rules. . . ." (Exh. K). On May 17, 2015, Twitter again amended its Terms of Service to read: "We may suspend or terminate your accounts or cease providing you with all or part of the Services at any time for any or no reason, including, but not limited to, if we reasonably believe: (i) you have violated these Terms or the Twitter Rules . . ." (Exh. L). Twitter's current Terms of Service include this same language. (*See* Exh. G). The provision allowing Twitter to terminate a user "at any time for any or no reason" is unconscionable under California law and violates California's Covenant of Good Faith and Fair Dealing. It also violates Article I, sections 2 and 3 of the California Constitution and the Unruh Civil Rights Act (Civ. Code, § 51 *et seq.*), insofar as it purports to allow Twitter to ban users based on their political views or affiliations. These terms were unilaterally added by Twitter after Mr. Taylor and American Renaissance joined the platform without their knowledge or consent, and purport to allow Twitter to unilaterally cancel and destroy the benefit of its bargain with Mr. Taylor and American Renaissance for arbitrary, capricious, discriminatory or illegal reasons, without affording Mr. Taylor or American Renaissance any rights or remedies and purporting to cancel any rights or remedies they might have legally held.

36. On January 27, 2016, Twitter revised its Terms of Service to read, *inter alia*: "We reserve the right at all times (but will not have an obligation) to remove or refuse to distribute any Content on the Services, to suspend or terminate users, and to reclaim usernames without liability to you." (Exh. M). This provision was amended on October 2, 2017 to read: "We may also remove or refuse to distribute any Content on the Services, suspend or terminate users, and reclaim usernames without liability to you." (Exh. G). This term is also unconscionable under California law and violates California's Covenant of Good Faith and Fair Dealing. It also violates Article I, sections 2 and 3 of

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the California Constitution and the Unruh Civil Rights Act (Civ. Code, § 51 *et seq.*), insofar as it purports to allow Twitter to ban users based on their political views or affiliations. These terms were unilaterally added by Twitter after Mr. Taylor and American Renaissance joined the platform without their knowledge or consent, and purport to allow Twitter to unilaterally cancel and destroy the benefit of its bargain with Mr. Taylor and American Renaissance for arbitrary, capricious, discriminatory or illegal reasons, without affording Mr. Taylor or American Renaissance any rights or remedies and purporting to cancel any rights or remedies they might have legally held.

37. The Twitter Terms of Service state: "We may revise these Terms from time to time. The changes will not be retroactive, and the most current version of the Terms, which will always be at twitter.com/tos, will govern our relationship with you. We will try to notify you of material revisions, for example via a service notification or an email to the email associated with your account." (Exh. G).

38. On December 18, 2017, Twitter announced it was enacting "New Rules on Violence and Physical Harm." In a blog post announcing these changes, Twitter stated: "Specific threats of violence or wishing for serious physical harm, death, or disease to an individual or group of people is in violation of our policies." (Exh. N). Twitter included as "related content," "[a]ccounts that affiliate with organizations that use or promote violence against civilians to further their causes." It defined such groups as follows: "Groups included in this policy will be those that identify as such or engage in activity — both on and off the platform — that promotes violence. This policy does not apply to military or government entities and we will consider exceptions for groups that are currently engaging in (or have engaged in) peaceful resolution."

39. The Twitter rules on "Violent Extremist Groups," first announced on December 18, 2017, provide: "You may not make specific threats of violence or wish for the serious physical harm, death, or disease of an individual or group of people. This includes, but is not limited to, threatening or promoting terrorism. You also may not affiliate with organizations that – whether by their own statements or activity both on and off the platform – use or promote violence against civilians to further their causes." (Exh. O). They go on to state: "We take pride in Twitter being a platform where a

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diverse range of opinions can be held and discussed, but we will not tolerate groups or individuals associated with them who engage in and promote violence against civilians both on and off the platform. Accounts affiliated with groups in which violence is a component of advancing their cause risk having a chilling effect on opponents and bystanders. The violence that such groups promote could also have dangerous consequences offline, jeopardizing their targets' physical safety." *Id.*

40. With respect to "When this applies," Twitter states:

> We prohibit the use of Twitter's services by violent extremist groups – i.e., identified groups subscribing to the use of violence as a means to advance their cause, whether political, religious, or social.
>
> We consider violent extremist groups to be those which meet all of the below criteria:
>
> - identify through their stated purpose, publications, or actions, as an extremist group
> - have engaged in, or currently engage in, violence (and/or the promotion of violence) as a means to further their cause
> - target civilians in their acts (and/or promotion) of violence
>
> Exceptions will be considered for groups that have reformed or are currently engaging in a peaceful resolution process, as well as groups with representatives elected to public office through democratic elections. This policy does not apply to military or government entities.
>
> Behavior we look for when determining whether an account is affiliated with a violent extremist group includes:
>
> - stating or suggesting that an account represents or is part of a violent extremist group
> - providing or distributing services (e.g., financial, media/propaganda) in furtherance of progressing a violent extremist group's stated goals
> - engaging in or promoting acts for the violent extremist group
> - recruiting for the violent extremist group

(Exh. O).

41. On December 18, 2017, Twitter suspended both of the Accounts without explanation. Mr. Taylor and American Renaissance immediately appealed the suspensions. Twitter replied via email that the suspensions were permanent because the Accounts were "found to be violating Twitter's Terms of Service, specifically the Twitter Rules against being affiliated with a violent extremist group." Twitter did not specify the "violent extremist group" with which Mr. Taylor or American Renaissance was supposedly affiliated. Mr. Taylor and American Renaissance immediately sent

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emails to Twitter expressing astonishment at the reason given for the permanent suspensions and seeking clarification, but Twitter did not reply. All of these exchanges took place on December 18, 2017. To be clear, neither Mr. Taylor nor American Renaissance has ever practiced, promoted, or advocated violence against anyone.

42. Twitter enacted its new rules regarding "Violent Extremist Groups" on December 18, 2017, the same day it banned the Accounts. It purported to apply these new rules retroactively, in violation of its Terms of Service. It made no attempt to notify Plaintiffs of its new rules before permanently banning them, also in violation of its Terms of Service.

43. Neither Mr. Taylor nor American Renaissance has ever engaged in any conduct that runs afoul of Twitter's new rules on "Violent Extremist Groups." They have never "made specific threats of violence or wished for the serious physical harm, death, or disease of an individual or group of people." They have never "affiliated with organizations that use or promote violence against civilians to further their causes." They have never "engaged in violence (and/or the promotion of violence) as a means to further their cause," or affiliated with any such group. They have never "stated or suggested that an account represents or is part of a violent extremist group"; "provided or distributed services (e.g., financial, media/propaganda) in furtherance of progressing a violent extremist group's stated goals"; "engaged in or promoted acts for [a] violent extremist group"; or "recruit[ed] for [a] violent extremist group." In fact, Mr. Taylor and American Renaissance have denounced the use of Twitter to harass or threaten other users. Any construction of Twitter's policy on "Violent Extremist Groups" that would cast Mr. Taylor and American Renaissance as being in violation would indicate a hopelessly vague and incomprehensible standard.

44. The true motive for banning Mr. Taylor and American Renaissance may be gleaned from testimony that Twitter executive Sinead McSweeney provided to the British Parliament on December 19, 2017, the day after Twitter banned the Accounts. She suggested that Twitter was now banning speakers it considered to be "racist" and "extremist" based on their viewpoints:

> Twitter was in a place where it believed the most effective antidote to bad speech was good speech. It was very much a John Stuart Mill-style philosophy. We've realized the world we live in has changed. We've had to go on a journey with it, *and we've realized*

it's no longer possible to stand up for all speech in the hopes society will become a better place because racism will be challenged, or homophobia challenged, or extremism will be challenged. And we do have to take steps to limit the visibility of hateful symbols, to ban people from the platform who affiliate with violent groups — that's the journey we're on.

(Exh. P) (emphasis added).

45. Thus, it appears that the stated reason for Twitter's ban of Mr. Taylor and American Renaissance is a pretext. Instead, Mr. Taylor and American Renaissance were targeted for permanent suspension from Twitter due to nothing more than their controversial views on race and immigration—the subjective perception that they are "racist" and "extremist."

46. Twitter has enforced its policy on "Violent Extremist Groups" in a way that discriminates against Plaintiffs on the basis of their viewpoint. It has not applied its policies fairly or consistently, targeting Mr. Taylor and American Renaissance, who do not promote violence, while allowing accounts affiliated with left-wing groups that promote violence to remain on Twitter. (*See* Exh. C).

47. Twitter's actions threaten the free speech of all users on its platform. Twitter asserts the unilateral right to deprive anyone, at any time, of the ability to speak on its forum, if it dislikes the user's viewpoint. This will have a chilling effect on all users of the platform, requiring users to avoid expressing viewpoints that Twitter might dislike, or risk having their accounts suspended permanently.

48. As a result of Twitter's actions, Plaintiffs have suffered and will continue to suffer irreparable harm. The Accounts permitted Plaintiffs to communicate instantly with a broad base of supporters, donors, and readers. Plaintiffs used the Accounts to alert their followers to their recent publications, forthcoming conferences, public appearances, articles, videos, podcasts, and their commentary on the news of the day. This drove traffic to American Renaissance's website, and kept the ideas of Mr. Taylor and American Renaissance constantly before the public. The Accounts also supported Plaintiffs' fundraising efforts, vital to the continued existence of New Century, a 501(c)(3) non-profit. The Accounts were an invaluable way to extend Plaintiffs' reach, allowing Mr. Taylor and New Century to attract new readers, supporters, and donors.

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49. There is no public platform comparable to Twitter that would allow Mr. Taylor and American Renaissance to express their views and participate in the marketplace of ideas. Unique among social media platforms, Twitter facilitates direct interaction between ordinary individuals and public figures. It has 330 million regular users (Exh. S), and is of unmatched importance in influencing public debate and news coverage of current affairs. Over 96% of journalists use Twitter, and 70% view it as the most useful social media platform for their profession. (Exhs. T, U and V). By banning the Accounts, Twitter has deprived Mr. Taylor and American Renaissance of an essential mechanism to speak and engage in public discussion and debate.

FIRST CAUSE OF ACTION

(Violation of Article I, Sections 2 and 3 of the California Constitution)

50. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth fully herein.

51. Article I, section 2 of the California Constitution guarantees that "every person may freely speak, write and publish his or her sentiments on all subjects." Article I, section 3 of the California Constitution states, "The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good." Under California law, privately-owned spaces are subject to these protections where they serve "as a place for large groups of citizens to congregate"; where the public is "induced to congregate daily" at such places; and the property-owner has "fully opened his property to the public." *Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3d 899, 910-911 & n. 5 [153 Cal.Rptr. 854] (hereafter *Pruneyard*).

52. Twitter is a public forum that exists to "[g]ive everyone the power to create and share ideas instantly, without barriers." (Exh. B). The U.S. Supreme Court has described social media sites such as Twitter as the "modern public square." *Packingham, supra*, 137 S. Ct. at p. 1737. Twitter is the paradigmatic example of a privately-owned space that meets all of the requirements for a *Pruneyard* claim under the California Constitution: It serves as a place for large groups of citizens to congregate; it seeks to induce as many people as possible to actively use its platform to post their views and discuss issues, as it "believe[s] in free expression and believe[s] every voice has the power

to impact the world" (Exh. A); Twitter's entire business purpose is to allow the public to freely share and disseminate their views without any sort of viewpoint censorship; and no reasonable person would think Twitter was promoting or endorsing Plaintiffs' speech by not censoring it—no more than a reasonable person would think Twitter was promoting or endorsing President Trump's speech or Kim Jong Un's speech by allowing it to exist on their platform. Thus, Plaintiffs' speech imposes no cost on Twitter's business and no burdens on its property rights. Serving as a place where "everyone [has] the power to create and share ideas instantly, without barriers" and "every voice has the power to impact the world" is Twitter's very reason for existence. By adding to the variety of views available to the public, Plaintiffs are acting on Twitter's "belief in free speech" and fulfilling Twitter's stated mission of "sharing ideas instantly."

53. Indeed, Twitter published a "Twitter Government and Elections Handbook" ("Handbook") with the express purpose of helping elected officials and government agencies "tap into the power of Twitter to connect with your constituents." (Exh. Q). According to the Handbook, "Twitter is a free platform for all voices to be heard and to organize." *Id.* Twitter instructed officials in agencies on how to host "Twitter Town Halls," where constituents can ask questions via Twitter. *Id.* It explained that "[t]hese forums are exceedingly necessary and important" and are among the "best opportunities for community expression and dialogue using the platform." *Id.* Twitter's publication of this guidebook underscores its status as a privately-owned public forum under the California Constitution. The dangers that would result from Twitter being able to hold itself out as the forum for individuals to communicate in "Town Hall" forums with their elected representatives, on one hand, while allowing Twitter to ban users from participating on its forum if it disagrees with their viewpoints, on the other, are self-evident. Individuals could be deprived of their most essential free-speech rights based on internal Twitter corporate directives.

54. Twitter is given over to public discussion and debate to a far greater extent than the shopping center in *Pruneyard* or the "streets, sidewalks and parks" that "[f]rom time immemorial . . . have been held in trust for the use of the public and have been used for purposes of assembly, communicating thoughts and discussing public questions." *In re Hoffman* (1967) 67 Cal.2d 845, 849

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[64 Cal.Rptr. 97]. Unlike shopping centers, streets, sidewalks and parks, which are mostly used for functional, non-expressive purposes such as purchasing consumer goods, transportation, and private recreation, Twitter's primary purpose is to enable members of the public to engage in speech, self-expression and the communication of ideas. *See Packingham*, *supra*, 137 S. Ct. at pp. 1735-1736 (noting that "[s]ocial media offers relatively unlimited, low-cost capacity for communication of all kinds" and that "social media users employ these websites to engage in a wide array of protected First Amendment activity on topics as diverse as human thought.") (internal quotation marks omitted). In analysis that cuts to the heart of the *Pruneyard* public forum inquiry, the *Packingham* Court stated: "While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the 'vast democratic forums of the Internet' in general, and social media in particular." *Id.* at p. 1735 (quoting *Reno*, *supra*, 521 U.S. at p. 868).

55. Because Twitter is a protected public forum under California law, Twitter may not selectively ban speakers from participating in its public forum based on disagreement with the speaker's viewpoint, just as the government may not selectively ban speech that expresses a viewpoint it disagrees with.

56. Mr. Taylor and American Renaissance used the Accounts to share and promote their recent publications, forthcoming conferences, public appearances, articles, videos, podcasts, and commentary on the news of the day; to have a voice in public debates on current events and political issues; to express their views on race relations, immigration, and other issues; to communicate with readers, supporters and donors; and to seek to generate new followers and readers. These activities constitute expressive speech and are activity protected by Article I, section 2 of the California Constitution.

57. Twitter's exclusion of Mr. Taylor and American Renaissance from its public forum amounts to viewpoint discrimination in violation of Article I, Section 2 of the California Constitution. Mr. Taylor and American Renaissance were targeted for permanent suspension from Twitter due to nothing more than their controversial views on race and immigration, as well as their perceived

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political affiliations and political identity. Under *Pruneyard*, privately-owned public forums may adopt reasonable "time, place and manner" restrictions on expressive activities, but may not enact content- or viewpoint-based restrictions. *Fashion Valley Mall, LLC v. National Labor Relations Bd.* (2007) 42 Cal. 4th 850, 864-870 [69 Cal.Rptr.3d 288]. That is, privately-owned public forums "may no more exclude individuals who wear long hair . . . who are black, who are members of the John Birch Society, or who belong to the American Civil Liberties Union, merely because of these characteristics or associations, than may the City of San Rafael." *Pruneyard*, *supra*, 23 Cal.3d at p. 909 (quoting *In Re Cox* (1970) 3 Cal.3d 205, 217-218 [90 Cal.Rptr. 24]). Thus, while Twitter may enact neutral rules against threats and harassment, singling out speakers that it perceives to be "racist" or "extremist" for prohibition is content-based and prohibited viewpoint discrimination. *See R.A.V. v. St. Paul* (1992) 505 U.S. 377, 391-392 [112 S. Ct. 2538]; *see also Glendale Associates, Ltd. v. National Labor Relations Bd.* (9th Cir. 2003) 347 F.3d 1145, 1155 ("California state courts borrow from federal First Amendment jurisprudence to analyze whether a rule is content-based or content-neutral.").

58. Twitter has arbitrarily and unreasonably construed its newly-minted policy on "Violent Extremist Groups" in such a way as to exclude Mr. Taylor and American Renaissance from its public forum. Any construction of this policy that would render Mr. Taylor and American Renaissance in violation is intolerably vague, subjective and overbroad, in violation of Article I, Section 2 of the California Constitution. Mr. Taylor and American Renaissance have never advocated violence against any group, nor are they affiliated with any groups that do. They have used their Twitter accounts to urge their followers to be respectful of other users and to not use offensive language or imagery, garnering considerable opposition in the process. Mr. Taylor and American Renaissance have spoken out against anti-Semitism within the Alt-Right. Moreover, Twitter has failed to apply its new policy on "Violent Extremist Groups" even-handedly, as it has allowed accounts affiliated with left-wing groups that promote violence to remain on Twitter. (*See* Exh. C). Instead, Twitter has used this new policy as a pretext to ban the Accounts due to nothing more than dislike of the viewpoints expressed by Mr. Taylor and American Renaissance.

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59. In addition, Twitter's policy regarding "Violent Extremist Groups" is overbroad on its face, in violation of Article I, section 2 of the California Constitution. That is because, like the California Constitution, "the First Amendment protects speech that advocates violence, so long as the speech is not directed to inciting or producing imminent lawless action and is not likely to incite or produce such action." *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal. App. 4th 1228, 1251-1252 [29 Cal.Rptr.3d 521] (citing *Brandenburg v. Ohio* (1969) 395 U.S. 444, 447 [89 S.Ct. 1827]). *Brandenburg* struck down, as facially overbroad, an Ohio statute that punished persons who "'advocate or teach the duty, necessity, or propriety' of violence 'as a means of accomplishing industrial or political reform'; or who publish or circulate or display any book or paper containing such advocacy; or who 'justify' the commission of violent acts 'with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism'; or who 'voluntarily assemble' with a group formed 'to teach or advocate the doctrines of criminal syndicalism.'" *Brandenburg*, 395 U.S. at p. 448. It did so because the statute failed to distinguish "mere advocacy" of violence from "incitement to imminent lawless action" *Ibid.*; *see also Siegel v. Committee of Bar Examiners* (1973), 10 Cal. 3d 156, 174 n. 18 [110 Cal.Rptr. 15]. Twitter's policy on "Violent Extremist Groups" is remarkably similar to the statute struck down in *Brandenburg*: it defines "violent extremist groups" as nothing more than "extremist groups" that engage in the "promotion of violence." An individual may be deemed to be "affiliated with a violent extremist group" if that person posts "media/propaganda" that Twitter deems to be "in furtherance of progressing a violent extremist group's stated goals." The policy's prohibition is not limited to accounts that post specific threats of violence or seek to incite imminent lawless action. Instead, it would ban speech that merely "promotes violence" in an abstract sense. Indeed, the policy is so vague that it could be read to allow Twitter to ban an individual who agrees with the stated goals of a "violent extremist group," *even if the individual sincerely wishes to achieve those goals through peaceful means*. Say a Twitter user wants to ban abortion, and shares a post about the viability of fetuses. If there is a group that wishes to ban abortion through violent means (such as assassinating doctors who perform abortions), then Twitter could deem the user to be "affiliated with a violent extremist group" because

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the user has posted "media/propaganda" that is "in furtherance of progressing a violent extremist group's stated goals." So too with any position held by any violent group anywhere in the world: Basque independence, animal rights, support for government by a worker's collective, opposition to the regime of Bashar al-Assad (to name just a few examples).

60. Any unstated policy that allows Twitter to ban users based on its subjective perception that they are "racist" and "extremist" is intolerably vague, subjective and overbroad, in violation of Article I, section 2 of the California Constitution. Such a policy also impermissibly discriminates based on the content of the speech (whether the speech is "racist" or "extremist") and the speaker's viewpoint. *Fashion Valley Mall, LLC, supra*, 42 Cal. 4th at pp. 864-870.

61. Twitter has restricted Plaintiffs' speech and expressive conduct based on subjective, vague, and overbroad, and expanding criteria that gives Twitter unfettered and unbridled discretion to censor speech for any or no reason. Twitter's policies, on their face, allow Twitter to permanently ban any user, at any time, for any reason or no reason at all. Those policies also purport to deprive users of any sort of legal remedy in the event they are banned. This reservation of an unreviewable power to censor for any reason or no reason, without any legal recourse, is unconscionable and inconsistent with Article I, section 2 of the California Constitution.

62. Further, Twitter's actions also violate Plaintiffs' right to free association and assembly by blocking readers and supporters of American Renaissance and followers of the Accounts from accessing Mr. Taylor and American Renaissance's tweets, and thus preventing Plaintiffs from engaging in a dialogue with their Twitter-based followers, readers, supporters and donors.

63. No compelling, significant, or legitimate reason justifies Twitter's banning of the Accounts. Twitter's actions in banning the Accounts are not justified by the interests underlying its policy against "Violent Extremist Groups," because Mr. Taylor and American Renaissance have never used their Twitter accounts to promote or advocate violence, and indeed have used the Accounts to urge their followers to avoid harassing language and violent imagery.

64. Twitter's wrongful actions were taken with oppression, fraud, malice and/or are arbitrary and capricious, and as part of Twitter's normal course of business, and were effectuated

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through Twitter's staff. And Twitter's actions were done with the intent to deprive Mr. Taylor, American Renaissance, and their followers of their rights under the California Constitution.

65. As a direct and proximate result of Twitter's violations of Article I, Section 2 of the California Constitution, Plaintiffs have suffered, and will continue to suffer, immediate and irreparable injury in fact, including lost income, reduced donor and subscriber base, and damage to brand, reputation, and goodwill, for which there exists no adequate remedy at law. There is no public platform comparable to Twitter that would allow Mr. Taylor and American Renaissance to express their views. By banning the Accounts, Twitter has deprived Mr. Taylor and American Renaissance of an essential mechanism to speak and engage in public discussion and debate.

SECOND CAUSE OF ACTION

(Violation of Unruh Civil Rights Act – Civil Code § 51, *et seq.*)

66. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth fully herein.

67. Twitter hosts a business establishment under the Unruh Civil Rights Act, California Civil Code § 51 *et seq*. The Act prohibits discrimination against "persons of unusual political views." *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal. 3d 721, 730 [180 Cal.Rptr. 496]. It also prohibits "all arbitrary discrimination by business establishments." *Id.* at p. 725. Thus, the Unruh Act requires all business establishments in California to provide full and equal service to all customers without arbitrary discrimination and regardless of customers' political and social views.

68. Those who hold unpopular views have "protected status" under the Unruh Act. The California Supreme Court has stated that the Unruh Act prohibits business establishments from excluding individuals merely on the basis of their "characteristics or associations," such as those "who wear long hair or unconventional dress, who are black, who are members of the John Birch Society, or who belong to the American Civil Liberties Union, merely because of these characteristics or associations." *In re Cox*, *supra*, 3 Cal. 3d at pp. 217–18.

69. Under the Unruh Act, therefore, Twitter cannot deny service to Mr. Taylor or American Renaissance on the basis of their political views. The Unruh Act prohibits businesses from imposing

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all arbitrary exclusionary policies if such policy "rests on the alleged undesirable propensities of those of a particular . . . political affiliation." *Marina Point, Ltd.*, *supra*, 30 Cal. 3d at p. 736.

70. In this case, Twitter has permanently banned Mr. Taylor and American Renaissance due to their political views and perceived political associations, in violation of the Unruh Act. Twitter has discriminated against and censored Mr. Taylor and American Renaissance based on their political identity and viewpoint—specifically, their views on race relations and immigration. Twitter has denied Plaintiffs full and equal accommodations, advantages, privileges, and services by permanently banning Plaintiffs from Twitter due to their political beliefs and perceived political affiliations.

71. Twitter's discrimination against Plaintiffs is arbitrary, capricious, and pretextual. It is also wholly without any legitimate, reasonable business interest, as Mr. Taylor and American Renaissance are not affiliated with any "violent extremist groups," and Twitter's relationship with Mr. Taylor and American Renaissance was mutually beneficial economically. Twitter is censoring and treating Mr. Taylor and American Renaissance differently out of animus towards Mr. Taylor and American Renaissance's political identity, political views, and perceived political affiliations.

72. Twitter's wrongful actions were taken with oppression, fraud, and malice. Twitter refused to restore access to the Accounts even after Mr. Taylor and American Renaissance wrote to explain that they do not and have never advocated violence and were not affiliated with any violent extremist groups. Further, even a slight bit of research into Mr. Taylor and American Renaissance would have revealed that they do not advocate violence, have never been involved in any violent incident, and are not affiliated with any groups that advocate violence, but instead are dedicated entirely to non-violent writing, research, and advocacy on race relations and immigration.

73. To the extent Twitter removed Mr. Taylor and American Renaissance based on the false perception that they advocated violence (or were associated with groups that did), its manifest error rendered its actions arbitrary and reveals a discriminatory intent. Due to their controversial political views, Twitter discriminatorily and erroneously claimed Mr. Taylor and American Renaissance advocate violence and irrationally and arbitrarily denied them full and equal privileges.

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74. Even more fundamentally, Twitter "offers to the public to carry . . . messages" and is, therefore, a common carrier under California law. Civ. Code § 2168. The California Supreme Court has recognized that the Unruh Act derives its protection from "the early common law right of equal access to the services of innkeepers or common carriers." *Marina Point, Ltd., supra,* 30 Cal. 3d at 725. The "basic characteristic" of common carriage is the "requirement [to] hold[ ] oneself out to serve the public indiscriminately." *Verizon v. FCC* (D.C. Cir. 2014) 740 F.3d 623, 651; *Doe v. Uber Techs., Inc.* (N.D. Cal. 2016) 184 F. Supp.3d 774, 787. In the communications context, common carriers "make[ ] a public offering to provide communications facilities whereby all members of the public who choose to employ such facilities may communicate or transmit intelligence of their own design and choosing." *FCC v. Midwest Video Corp.* (1979) 440 U.S. 689, 701 [99 S.Ct. 1435]. Thus, following the Unruh Act's purpose and history, common carriers in particular may not discriminate against customers on the basis of their messages' political content.

75. As a direct and proximate result of Twitter's unlawful discriminatory actions, Plaintiffs have suffered, and will continue to suffer, immediate and irreparable injury in fact, including lost income, reduced donor and subscriber base, and damage to brand, reputation, and goodwill, for which there exists no adequate remedy at law.

76. Twitter's violations of the Unruh Act further entitle Plaintiffs to recover statutory damages of up to three times the amount of actual damages in an amount to be proven at trial, or a minimum of $4,000 per violation.

THIRD CAUSE OF ACTION
(Breach of Contract)

77. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth fully herein.

78. The Twitter Terms of Service and Twitter Rules form a binding written contract between Twitter and Mr. Taylor, and Twitter and American Renaissance, governing their use of Twitter.

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79. Implied in those contracts is the implied covenant of good faith and fair dealing. This is particularly so because these contracts were presented to Mr. Taylor and American Renaissance on a take-it-or-leave-it basis, without any opportunity for meaningful bargaining or negotiation. To the extent these contracts delegate broad discretionary power to Twitter, Twitter is obligated to exercise those powers fairly and in good faith.

80. At all times, Mr. Taylor and American Renaissance substantially complied with all of Twitter's Rules and Terms of Service. None of Mr. Taylor or American Renaissance's Tweets violated the letter or spirit of any term in Twitter's Terms of Service or Twitter Rules. Neither Mr. Taylor nor American Renaissance ever engaged in harassment or abuse of other users, promoted violence against any individual or group, or used hateful imagery. Indeed, Mr. Taylor and American Renaissance used the Accounts to urge their followers to avoid harassing language and violent imagery, and to maintain a respectful tone toward others.

81. Twitter was bound by the implied covenant of good faith and fair dealing in its agreements, terms, and policies, not to engage in any acts, conduct, or omissions that would impair or diminish Mr. Taylor and American Renaissance's rights and benefits under the parties' agreements. Pursuant to the terms of those agreements, Mr. Taylor and American Renaissance were supposed to have equal access to Twitter's platform so long as they complied with Twitter's Rules and Terms of Service. Twitter has, by the acts and omissions complained of herein, intentionally and tortiously breached the implied covenant of good faith and fair dealing by unfairly interfering with Mr. Taylor and American Renaissance's rights to receive the benefits of their contracts with Twitter.

82. When Mr. Taylor and American Renaissance joined Twitter in March 2011 and June 2011, respectively, its Terms of Service provided: "We reserve the right at all times (but will not have an obligation) to remove or refuse to distribute any Content on the Services and to terminate users or reclaim usernames. Please review the Twitter Rules (which are part of these Terms) to better understand what is prohibited on the Service." (Exh. R).

83. The Twitter Rules, as they existed when Mr. Taylor and American Renaissance joined the platform, stated: "Our goal is to provide a service that allows you to discover and receive content

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from sources that interest you as well as to share your content with others. We respect the ownership of the content that users share and each user is responsible for the content he or she provides. Because of these principles, we do not actively monitor user's content and will not censor user content, except in limited circumstances described below." (Exh. D). Those "limited circumstances" set forth in the Twitter Rules were:

> - Impersonation: You may not impersonate others through the Twitter service in a manner that does or is intended to mislead, confuse, or deceive others
> - Trademark: We reserve the right to reclaim user names on behalf of businesses or individuals that hold legal claim or trademark on those user names. Accounts using business names and/or logos to mislead others will be permanently suspended.
> - Privacy: You may not publish or post other people's private and confidential information, such as credit card numbers, street address or Social Security/National Identity numbers, without their express authorization and permission.
> - Violence and Threats: You may not publish or post direct, specific threats of violence against others.
> - Copyright: We will respond to clear and complete notices of alleged copyright infringement. Our copyright procedures are set forth in the Terms of Service.
> - Unlawful Use: You may not use our service for any unlawful purposes or for promotion of illegal activities. International users agree to comply with all local laws 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.

Id.

84. Twitter's Terms of Service and the Twitter Rules as they existed when Mr. Taylor and American Renaissance joined Twitter in March 2011 and June 2011, respectively, form a binding contract regarding Mr. Taylor and American Renaissance's use of Twitter. Twitter has made no allegation that Mr. Taylor or American Renaissance violated any of the provisions of its Terms of Service or Rules as they existed in 2011, or even any of the many revisions to its Terms of Service and Rules prior to their suspension. Instead, it relies solely on its rule against "Violent Extremist Groups" that it promulgated on December 18, 2017, and cited in banning Mr. Taylor and American

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Renaissance that same day. However, Mr. Taylor and American Renaissance cannot be deemed to have meaningfully consented to this new rule.

85. Further, it was arbitrary, capricious, unconscionable, and in violation of the covenant of good faith and fair dealing for Twitter to impose this new rule and then purport to apply it retroactively to permanently ban Mr. Taylor and American Renaissance the same day it was promulgated, without giving Mr. Taylor and American Renaissance any advance notice or opportunity to demonstrate their compliance with this new policy. Indeed, Twitter's Terms of Service state that any changes "**will not be retroactive**," and that it will attempt to notify users of "material revisions" to its Terms of Service. (Exh. G) (emphasis added). Twitter violated these provisions in purporting to apply its new policy regarding "Violent Extremist Groups" retroactively to permanently ban the Accounts, without providing notice to Plaintiffs of its new policy.

86. Twitter also violated the covenant of good faith and fair dealing by claiming, without any basis whatsoever, that Mr. Taylor and American Renaissance were in violation of its new policy against "Violent Extremist Groups." Neither Mr. Taylor nor American Renaissance has ever engaged in any conduct that runs afoul of this policy. They have never "made specific threats of violence or wished for the serious physical harm, death, or disease of an individual or group of people." They have never "affiliated with organizations that use or promote violence against civilians to further their causes." They have never "engaged in violence (and/or the promotion of violence) as a means to further their cause," or affiliated with any such group. They have never "stated or suggested that an account represents or is part of a violent extremist group"; "provided or distributed services (e.g., financial, media/propaganda) in furtherance of progressing a violent extremist group's stated goals," "engaged in or promoted acts for [a] violent extremist group," or "recruiting for the violent extremist group." In fact, Mr. Taylor and American Renaissance have denounced the use of Twitter to harass or threaten other users.

87. Twitter engaged in the foregoing acts and omissions by Twitter with the knowledge that it was bound to act consistently with the covenant of good faith and fair dealing. Those acts and

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omissions were not only failures to act fairly and in good faith, but they were acts of oppression, fraud, and malice.

88. As a direct and proximate result of Twitter's breach of contract, Plaintiffs have suffered, and will continue to suffer, immediate and irreparable injury in fact, including lost income, reduced donor and subscriber base, and damage to brand, reputation, and goodwill, for which there exists no adequate remedy at law.

FOURTH CAUSE OF ACTION
(Conversion)

89. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth fully herein.

90. Plaintiffs had ownership over and the right to possess the Accounts, which they developed and cultivated at great cost, effort and expense. Over the course of over six years, Mr. Taylor and American Renaissance invested countless hours and significant time and effort into cultivating a large follower base and Twitter presence for the Accounts that would generate new readers, subscribers and donors for American Renaissance and New Century. Mr. Taylor even entered into a commercial agreement with Twitter to promote his tweets and increase his follower base. Mr. Taylor and American Renaissance spent significant time and effort, including much staff time, in sharing articles and content to the Accounts in order to expand the reach of the Accounts. The Accounts drove traffic to American Renaissance's website, and kept the ideas of Mr. Taylor and American Renaissance constantly before the public. The Accounts also supported Plaintiffs' fundraising efforts, vital to the continued existence of New Century, a 501(c)(3) non-profit. The Accounts were an invaluable way to extend Plaintiffs' reach, allowing Mr. Taylor and New Century to attract new readers, supporters, and donors.

91. Twitter maintains an internal valuation of followers on its platform at $2.50-$3.50 per follower. At all times, Twitter recognized that followers on its platform are assets with independent economic value. It also recognizes that accounts are assets owned solely by their owners, which account owners may sell or assign to others. At the time Mr. Taylor's account was permanently

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suspended on December 18, 2017, it had 40,900 followers. And at the time American Renaissance's account was permanently suspended, it had 32,700 followers.

92. Twitter converted the Accounts by permanently banning Plaintiffs from having access to them and by refusing to restore access after Mr. Taylor and American Renaissance demanded that they be reinstated. Twitter's interference with Mr. Taylor and American Renaissance's right to possess the accounts was unwarranted, without justification, and has deprived Plaintiffs of their property rights in the Accounts.

93. As a result of Twitter's tortious acts in preventing Plaintiffs from accessing the Accounts, they have suffered, and will continue to suffer, immediate and irreparable injury in fact, including lost income, reduced donor and subscriber base, and damage to brand, reputation, and goodwill, for which there exists no adequate remedy at law.

FIFTH CAUSE OF ACTION

(Violation of Consumers Legal Remedies Act, § 1750 *et seq.*)

94. Plaintiffs re-allege and incorporate by reference each and every preceding paragraph as though set forth fully herein.

95. Under the Consumer Legal Remedies Act (CLRA), businesses are proscribed from "unfair methods of competition and unfair or deceptive acts," including "[i]nserting an unconscionable provision in the contract." Civ. Code § 1770(a)(19). The portions of Twitter's Terms of Service purporting to give Twitter the right to suspend or ban an account "at any time for any or no reason" and "without liability to you," are procedurally and substantively unconscionable.

96. These terms are procedurally unconscionable because they were inserted unilaterally by Twitter into its Terms of Service without any opportunity to negotiate, well after Mr. Taylor and American Renaissance joined the platform in 2011. Twitter's Terms of Service did not include any provision allowing it to suspend or ban accounts "at any time for any reason" until May 17, 2012, nearly a full year after Mr. Taylor and American Renaissance established their accounts, and did not include the "without liability to you" language until even later, January 27, 2016. The idea that Twitter would use this language to create content- and viewpoint-based restrictions around their use of the

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platform would have come as a complete surprise, as the Twitter Rules in effect when they the Plaintiffs signed up stated "we do not 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," and Twitter listed "free expression" and the power of "every voice" among its core values. Moreover, as two of hundreds of millions of Twitter users, Mr. Taylor and American Renaissance lacked any bargaining power vis-à-vis Twitter. Twitter provided Plaintiffs no opportunity to bargain with or opt out of the terms and revisions. Twitter is essential to Plaintiffs' ability to communicate, raise funds, and engage with the public, and they had no suitable alternative platform to move to if they were unhappy with Twitter's unfair terms. Even if they did, they would be unable to transfer the tens of thousands of followers they accrued to the new platform.

97. These portions of Twitter's Terms of Service are also substantively unconscionable. By Twitter's own valuation of $2.50-3.50 per follower, the Accounts were each worth tens to hundreds of thousands of dollars. These provisions of the Terms of Service purport to allow Twitter to take away this valuable asset at any time, for any or no reason, without any compensation. Moreover, Twitter employees could, using these provisions, engage in active content monitoring and threaten to shut down any account at any time for posting something the employee disliked. Twitter employees could ban accounts for the most petty and self-interested of reasons—they belong to an ex-girlfriend or ex-boyfriend; the employee had a bad experience with a particular company that has an account on Twitter; the employee is a fan of a certain sports team and thus bans all accounts associated with a rival team. Such terms are so one-sided and oppressive that they shock the conscience.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for a judgment as follows:

1. For an injunction ordering that Twitter (i) immediately lift its permanent ban on the Twitter accounts of Jared Taylor (@jartaylor) and American Renaissance (@amrenaissance) and restore these accounts to Mr. Taylor and American Renaissance, respectively; (ii) cease and desist

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from seeking to ban these accounts or any other account based on the account's viewpoint; and (iii) cease and desist from enforcing its facially overbroad policy on "Violent Extremist Groups";

2. For an injunction prohibiting Twitter from attempting to enforce the language in its Terms of Service purporting to allow Twitter suspend or ban any account "at any time for any or no reason" and "without liability to you";

3. For a declaratory judgment that Twitter has violated and continues to violate Plaintiffs' free speech rights under Article I, section 2 of the California Constitution; the Unruh Civil Rights Act (Civ. Code, § 51 *et seq*.), and Consumers Legal Remedies Act (Civ. Code, § 1750 *et seq*.);

4. For compensatory, special, and statutory damages in an amount to be proven at trial, including statutory damages pursuant to, *inter alia*, Civ. Code sections 51, 51.5, 52, and Code of Civil Procedure section 1021.5;

5. For prejudgment and post-judgment interest;

6. For costs of suit incurred herein;

7. For reasonable attorney's fees; and

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

DATED: February 20, 2018

Respectfully submitted,

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