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15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**

18 JUSTIN HART,  
19 Plaintiff,

**Case No. 3:22-cv-00737-CRB**

20 v.

**FIRST AMENDED COMPLAINT**

21 META PLATFORMS, INC., f/k/a Facebook,  
22 Inc.; TWITTER, INC.; VIVEK MURTHY in  
23 his official capacity as United States Surgeon  
24 General; and JOSEPH R. BIDEN, JR. in his  
25 official capacity as President of the United  
26 States,

**DEMAND FOR JURY TRIAL**

26 Defendants.

## INTRODUCTION

1  
2 1. “A fundamental principle of the First Amendment is that all persons have access to  
3 places where they can speak and listen, and then, after reflection, speak and listen once  
4 more. The [United States Supreme] Court has sought to protect the right to speak in this  
5 spatial context.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017).

6 2. “While in the past there may have been difficulty in identifying the most important  
7 places (in a spatial sense) for the exchange of views, today the answer is clear. It is  
8 cyberspace — the ‘vast democratic forums of the Internet’ in general, *Reno v. American*  
9 *Civil Liberties Union*, 521 U. S. 844, 868 (1997), and social media in particular.”  
10 *Packingham*, 137 S. Ct. at 1735.

11 3. The Internet is a “dynamic, multifaceted category of communication” that “includes  
12 not only traditional print and news services, but also audio, video, and still images, as well  
13 as interactive, real-time dialogue.” *Reno*, 521 U. S. at 870.

14 4. Congress determined that “[t]he Internet and other interactive computer  
15 services offer a forum for a true diversity of political discourse, unique opportunities for  
16 cultural development, and myriad avenues for intellectual activity.” 47 U.S.C. § 230(a)(3).  
17 And Congress further found that “[t]he Internet and other interactive computer  
18 services have flourished, to the benefit of all Americans, with a minimum of government  
19 regulation.” 47 U.S.C. § 230(a)(4).

20 5. It is the policy of the United States “to preserve the vibrant and competitive free  
21 market that presently exists for the Internet” that is “unfettered by Federal or State  
22 regulation.” 47 U.S.C. § 230(b)(2).

23 6. Here, the Defendants conspired to remove from the Internet—a public forum  
24 devoted to the marketplace of ideas—valid public health messages and social media posts  
25 by Plaintiff, Justin Hart, and others, because they disagreed with the viewpoint and  
26 message expressed in such posts on the Internet, which contradicted the federal  
27 government’s COVID-19 public health message and views.

1 7. The Federal Government Defendants (President Biden and Surgeon General  
2 Murthy) publicly criticized and exerted pressure upon the Social Media Defendants (Meta  
3 Platforms, Inc. and Twitter, Inc.) and other platforms for allowing views opposed to the  
4 federal government’s COVID-19 public health message to be posted on the Internet.

5 8. And in private communications, the Federal Government Defendants held regular  
6 “be-on-the-lookout” warning meetings with the Social Media Defendants and overtly  
7 instructed them on the specific types of so called COVID-19 “disinformation” or  
8 “misinformation” that should be excluded from their platforms and the Internet, regardless  
9 of whether such public posts violated the Social Media Defendants’ terms, conditions, and  
10 policies on “disinformation” or “misinformation.” The Social Media Defendants even  
11 adjusted their policies and algorithms on valid public health messages and acceptable  
12 viewpoints on the Internet to align with the Federal Government Defendants’ pre-approved  
13 COVID-19 public health message and viewpoint.

14 9. The Social Media Defendants removing from the Internet COVID-19 related posts  
15 that opposed or contradicted the Federal Government Defendants’ COVID-19 message—  
16 such as Hart’s posts—violated the Social Media Defendants’ terms, conditions, and policies  
17 on “disinformation” or “misinformation,” because they acquiesced under duress to coercive  
18 pressure from the Federal Government Defendants.

19 10. Some of the Social Media Defendants further acquiesced under duress by giving the  
20 Federal Government Defendants millions of dollars in free advertising on their platforms  
21 so the government’s COVID-19 public health message would not be challenged on the  
22 Internet, despite the private Social Media Defendants substantially earning their revenue  
23 from third party advertising on their social media platforms.

24 11. The Federal Government Defendants knowingly received a benefit from the Social  
25 Media Defendants excluding from the Internet opposing views to the government’s COVID-  
26 19 public health message such as Hart’s public posts, because the government’s views were  
27 unchallenged and without public scrutiny on the “vibrant and competitive free market that  
28 presently exists for the Internet” in violation of United States policy. 47 U.S.C. § 230(b)(2).

1 12. The Federal Government Defendants also knowingly received a financial benefit  
2 from some of the Social Media Defendants' gifts of millions of dollars in free advertising to  
3 promote the government's COVID-19 public health message, because the Federal  
4 Government Defendants did not have to pay for a service—advertising its COVID-19 public  
5 health message on the Internet—that others who sought and paid for message advertising  
6 on the Internet, such as Hart, were required to pay to the Social Media Defendants.

7 13. First, Hart brings this action to defend his freedom of speech under the First  
8 Amendment from viewpoint-based, discriminatory collusion between private social media  
9 companies and the federal government, because they jointly removed his COVID-19 social  
10 media posts from the Internet since Hart's posts contradicted the federal government's  
11 COVID-19 public health message and views.

12 14. "It is axiomatic that the government may not regulate speech based on its  
13 substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of the*  
14 *Univ. of Va.*, 515 U.S. 819, 828 (1995). Under the Free Speech Clause of the First  
15 Amendment, "discrimination against speech because of its message is presumed to be  
16 unconstitutional." *Id.*

17 15. A conspiracy between private and governmental actors satisfies the joint action test  
18 when they have had a "meeting of the minds" to "violate constitutional rights." *Fonda v.*  
19 *Gray*, 707 F. 2d 435, 438 (9th Cir. 1983). When a government actor has "so far insinuated  
20 itself into a position of interdependence" with private actors it is recognized as a joint  
21 participant in the challenged constitutional deprivation. *See Gorenc v. Salt River Project*  
22 *Agr. Imp. & Power Dist.*, 869 F. 2d 503, 507 (9th Cir. 1989) (quoting *Burton v. Wilmington*  
23 *Parking Auth.*, 365 U.S. 715, 725 (1961)). Such joint action between government and  
24 private parties transforms private actors into state actors. *See Pasadena Republican Club*  
25 *v. W. Justice Ctr.*, 985 F. 3d 1161, 1167 (9th Cir. 2021).

26 16. When the federal government admits to conspiring with social media companies to  
27 censor messages on the Internet with which it disagrees, as it has in this case, both the  
28 government and the private companies are guilty of unconstitutional viewpoint

1 discrimination: “Joint action exists where the government . . . encourages . . .  
2 unconstitutional conduct through its involvement with a private party . . .” *Ohno v.*  
3 *Yasuma*, 723 F.3d 984, 996 (9th Cir. 2013) (cleaned up). Joint action further occurs when  
4 there is “substantial cooperation” between the private and state actors, or their actions  
5 were “inextricably intertwined.” *Brunette v. Humane Society of Ventura Cnty.*, 294 F. 3d  
6 1205, 1211 (9th Cir. 2002).

7 17. This Court should declare the actions of Defendants Meta Platforms, Inc., f/k/a  
8 Facebook, Inc., Twitter, Inc., President Biden, and Surgeon General Murthy  
9 unconstitutional and permanently enjoin them from monitoring, flagging, censoring, and  
10 deleting social media posts on the Internet based on the viewpoints the posts espouse that  
11 contradict the federal government’s pre-approved viewpoint. The Court should further  
12 enjoin the Social Media Defendants from adjusting their policies on misinformation to align  
13 with the Federal Government Defendants’ misinformation policies.

14 18. Second, Defendants Meta Platforms, Inc., f/k/a Facebook, Inc., and Twitter, Inc. are  
15 liable under the doctrine of promissory estoppel for promising Hart the use of their social  
16 media platforms to access the Internet so he could further his business interests and then  
17 rescinding this promise after he relied on them to his detriment.

18 19. Third, Defendant Meta Platforms, Inc., f/k/a Facebook, Inc., is liable to Hart for  
19 intentional interference with a contract for knowingly denying him the ability to fulfill his  
20 contractual duty to administer the Facebook account of Donorbureau, LLC.

21 20. Fourth, Defendant Meta Platforms, Inc., f/k/a Facebook, Inc., is liable to Hart for  
22 negligent interference with a prospective economic advantage for knowingly disrupting the  
23 contractual relationship between Donorbureau, LLC and him by preventing him from  
24 administering the Facebook account of Donorbureau.

25 21. For these reasons, Hart brings this lawsuit and seeks declaratory, injunctive, and  
26 monetary relief for the constitutional deprivation, injuries, and injustices he has suffered  
27 at the hands of the Defendants.  
28

**PARTIES**

22. Plaintiff, Justin Hart, is a natural person domiciled in San Diego County, California.

23. Defendant Meta Platforms, Inc., f/k/a Facebook, Inc., (“Facebook”) is a publicly traded corporation incorporated in Delaware with a principal place of business at 1601 Willow Road, Menlo Park, California in San Mateo County.

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

25. Defendant Vivek Murthy is sued in his official capacity as the Surgeon General of the United States. In that role, he directs the office of the Surgeon General, a part of the Department of Health and Human Services (“HHS”) agency within the Executive Branch of the federal government.

26. Defendant Joseph R. Biden, Jr. is sued in his official capacity as the President of the United States. In that role, he directs the Executive Branch of the federal government, including the Office of Management and Budget (“OMB”), White House staff, and HHS.

**JURISDICTION AND VENUE**

27. This case raises federal claims under the First Amendment of the United States Constitution; therefore, the Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

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

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

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

1 31. The Court has personal jurisdiction over Defendants Murthy and Biden because  
2 they are officers of, or oversee agencies of, the United States.

3 32. The Court has personal jurisdiction over Defendants Facebook and Twitter because  
4 they maintain their principal places of business in California.

5 33. Venue is appropriate in this district because Facebook and Twitter maintain their  
6 principal places of business here and a substantial part of the events giving rising to the  
7 claims occurred in this district.

#### 8 **FACTUAL ALLEGATIONS**

#### 9 ***Facebook offered the government \$15 million dollars in free COVID-19 advertising***

10 34. On February 21, 2021, Payton Itheme, a Facebook employee in charge of U.S. Public  
11 Policy at the social media platform, sent an email to Carol Crawford, an employee of the  
12 Centers for Disease Control and Prevention (“CDC”). The CDC is a public health agency  
13 within HHS and is an agency that works with Surgeon General Murthy on public health  
14 issues such as COVID-19. A true and correct copy of this email string between Facebook’s  
15 Itheme and the CDC’s Crawford is attached as ***Exhibit 1***.

16 35. In the email, Facebook employee Itheme offered CDC and the federal government a  
17 \$15 million-dollar in-kind donation to allow the government to advertise for free its  
18 COVID-19 public health message on Facebook’s platform and the Internet. *Id.*

19 36. CDC employee Crawford responded to Facebook’s offer on the same day, stating,  
20 “Thank you for this amazing offer. We’ll work with our policy staff on next steps.” *Id.*

#### 21 ***The government placed a condition on the \$15 million gift and Facebook accepted***

22 37. On April 5, 2021, Dia Taylor, CDC’s Acting Chief Operating Officer, sent an email  
23 to Facebook’s Itheme and copied Crawford and other CDC employees. The email contained  
24 an attached letter, and true copies of the email and letter are attached hereto as ***Exhibit 2***.

25 38. In the letter from the CDC to Facebook, the federal government placed a “Publicity  
26 and Endorsements” conditional clause on Facebook’s \$15 million gift of free COVID-19  
27 advertising. This clause required Facebook to not use the name of HHS, CDC, or any  
28

1 related federal agencies regarding the federal government’s COVID-19 public health  
2 messages to be posted on Facebook and the Internet. *Id.*

3 39. The “Publicity and Endorsements” clause further required Facebook to “clear all  
4 publicity materials for this gift with HHS and CDC to ensure compliance with this  
5 paragraph.” *Id.*

6 40. Facebook acknowledged there was a meeting of the minds by accepting the federal  
7 government’s “Publicity and Endorsements” conditional clause, evidenced by Theme’s  
8 signature to the letter. Theme then emailed a copy of the signed acceptance letter to the  
9 CDC on April 8, 2022. *Id.*

10 ***The government held “Be-on-the-lookout” meetings with social media companies***

11 41. Beginning in May of 2021, the CDC scheduled regular “be-on-the-lookout” or BOLO  
12 meetings with social media platforms, including Facebook and Twitter, and provided  
13 detailed and specific instructions on what the government deemed to be COVID-19  
14 disinformation or misinformation and what information the social media private companies  
15 should or should not allow on their platforms and on the Internet.

16 42. On May 6, 2021, the CDC sent an email to Facebook with examples of what  
17 COVID-19 messages were inappropriate for the public on social media platforms and the  
18 Internet. Attached as ***Exhibit 3*** is a true and correct copy of this email.

19 43. On May 14, 2021, the CDC’s Crawford sent an email inviting social media  
20 companies including Facebook and Twitter to participate in a BOLO meeting and included  
21 a slide presentation related to COVID-19 “Misinformation.” Attached as ***Exhibit 4*** is a  
22 true and correct copy of this email along with the COVID-19 slide presentation.

23 44. On May 28, 2021, the CDC sent an email invitation for a second BOLO meeting  
24 with social media platforms including Facebook and Twitter, on COVID-19  
25 “Misinformation.” Attached as ***Exhibit 5*** is a true and correct copy of this email along with  
26 the COVID-19 slide presentation.

27 45. On June 18, 2021, the CDC sent another email invitation for a third BOLO meeting  
28 with social media platforms including Facebook and Twitter, on COVID-19



1 “Misinformation.” Attached as **Exhibit 6** is a true and correct copy of this email along with  
 2 the COVID-19 slide presentation.

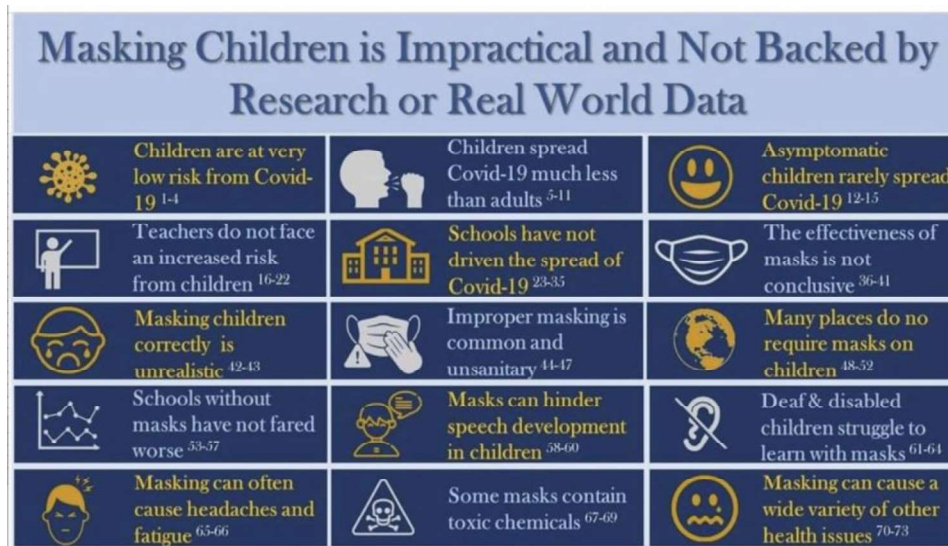
3 46. These BOLO meetings held in May and June, between the federal government and  
 4 private social media platforms, including Facebook and Twitter, followed a trend that  
 5 began in December of 2020, with the CDC’s Crawford initially emailing Facebook about  
 6 COVID-19 “Misinformation.” Attached as **Exhibit 7** is a true and correct copy of this  
 7 December 2020 email, along with a COVID-19 slide presentation.

8 ***Deplatforming Justin Hart and removing his posts from the Internet***

9 47. In early July of 2021, in preparation for the upcoming school year, the CDC  
 10 updated its guidelines and recommended that young children should continue to wear  
 11 masks at school but vaccinated older students and teachers did not need to wear masks.<sup>1</sup>

12 48. Following Facebook’s \$15 million-dollar gift to the federal government, regular  
 13 government BOLO instructional meetings with Facebook and Twitter, and the CDC’s  
 14 updated masking guidelines for children, on or around July 13, 2021, Hart posted to his  
 15 personal Facebook page and on the Internet a graphic entitled, “Masking Children is  
 16 Impractical and Not Backed by Research or Real World Data.”

17 49. Below is a photo of the graphic in the post:



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 28 <sup>1</sup> <https://www.chalkbeat.org/2021/7/9/22570068/new-cdc-guidance-schools-masks> (last visited Oct. 10, 2022)

1 50. The graphic Hart posted is science-based, contains footnotes to scientific evidence  
2 supporting its claims, and is a valid public health message.

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

5 **You can't post or comment for 3 days.**

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

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

10 **Learn more about updates to our standards.**

11 52. On or around July 18, 2021, Hart posted to his personal Twitter page and on the  
12 Internet a tweet that read:

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

17 53. Although Hart's post stated a valid public health message, Twitter locked Hart's  
18 account on or around July 18, 2021, after his post, with the following notice sent to his  
19 email:

20 **Hi Justin Hart,**

21 **Your Account, @justin\_hart has been locked for violating the Twitter**  
22 **Rules.**

23 Specifically for: Violating the policy on spreading misleading and potentially  
24 harmful information related to COVID-19.

25 ***President Biden, the White House, and Surgeon General Murthy***

26 54. Within days of these two removals of Hart's posts from the Internet, Defendant  
27 Biden's administration revealed publicly that it was directing social media companies to  
28 remove posts that bucked the party line on COVID-19.

1 55. On July 15, 2021, at a White House Press Conference, Defendant Surgeon General  
2 Murthy stated, “We’re asking [our technology companies] to consistently take action  
3 against misinformation super-spreaders on their platforms.”<sup>2</sup>

4 56. The White House revealed that a team of government employees was actively  
5 researching and tracking social media posts with which it disagreed and relaying those  
6 posts to social media companies with instructions to take them down from the Internet.

7 57. White House Press Secretary Jen Psaki admitted, “We’ve increased disinformation  
8 research and tracking within the Surgeon General’s office. We’re flagging problematic  
9 posts for Facebook that spread disinformation.”<sup>3</sup>

10 58. Psaki also revealed that the White House effort to suppress free speech on the  
11 Internet that contradicts the government’s COVID-19 public health message reaches all  
12 the way to the level of senior staff for Defendant Biden’s administration.

13 59. Psaki gave a glimpse of how the scheme works: “we are in regular touch with these  
14 social media platforms, and those engagements typically happen through members of our  
15 senior staff, but also members of our COVID-19 team . . . .”<sup>4</sup>

16 60. Emails confirm Psaki’s public comments. For example, in February and March of  
17 2021, Facebook conducted a survey, shared its survey data with the CDC, and held  
18 meetings with government employees to discuss COVID-19 vaccine hesitancy on  
19 Facebook’s platform and the Internet. Attached as *Exhibit 8* are true and correct copies of  
20 emails regarding this communication between Facebook and the CDC.

21 61. Psaki further revealed in public comments that the far-reaching government effort  
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23 <sup>2</sup> Vivek H. Murthy, White House Press Briefing (July 15, 2021), transcript available at  
24 <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  
25 Aug. 18, 2021).

26 <sup>3</sup> Jen Psaki, White House Press Briefing (July 15, 2021), transcript available at  
27 <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  
28 Aug. 18, 2021).

<sup>4</sup> *Id.*

1 targeted multiple posts on multiple social media sites and the Internet: “You shouldn’t be  
2 banned from one platform and not others.”<sup>5</sup>

3 62. Against United States policy as set forth by Congress “to preserve the vibrant and  
4 competitive free market that presently exists for the Internet” that is “unfettered by  
5 Federal or State regulation” 47 U.S.C. § 230(b)(2), Defendants Biden and Murthy directed  
6 four key changes for social media platforms and the Internet.

7 63. First, Biden and Murthy directed that private companies “measure and publicly  
8 share the impact of misinformation on their platform.”<sup>6</sup>

9 64. Second, Biden and Murthy directed social media companies to “create a robust  
10 enforcement strategy that bridges their properties and provides transparency about the  
11 rules.”<sup>7</sup>

12 65. Third, Biden and Murthy stressed that “it’s important to take faster action against  
13 harmful posts” because “information travels quite quickly on social media platforms;  
14 sometimes it’s not accurate. And Facebook needs to move more quickly to remove harmful,  
15 violative posts[.]”<sup>8</sup>

16 66. Fourth, Biden and Murthy directed Facebook to “promote quality information in  
17 their feed algorithm.”<sup>9</sup> No definition was provided by Biden and Murthy publicly as to the  
18 government’s definition of “quality information.”

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24 <sup>5</sup> Jen Psaki, White House Press Briefing (July 16, 2021), transcript available at  
25 <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).

26 <sup>6</sup> Psaki, *supra* n. 3.

27 <sup>7</sup> *Id.*

28 <sup>8</sup> *Id.*

<sup>9</sup> *Id.*

1 67. At the direction of Biden, Murthy created and published a 22-page Advisory with  
2 instructions on how social media companies should remove posts with which Murthy and  
3 Biden disagree.<sup>10</sup>

4 68. Biden further threatened social media companies who do not comply with his  
5 directives by publicly shaming and humiliating them, stating, “They’re killing people.”<sup>11</sup>

6 69. Emails between Facebook and the government confirm that Facebook had used its  
7 proprietary tool “CrowdTangle” to monitor and report on social media posts that  
8 contradicted the federal government’s COVID-19 message and shared such information  
9 with the government. Attached as **Exhibit 9** are true and correct copies of emails  
10 regarding this communication between Facebook and the CDC regarding CrowdTangle  
11 reports.

12 70. At the direction of the Federal Government Defendants Biden and Murthy,  
13 Facebook used CrowdTangle, along with social media algorithms designed to cast a wide  
14 net, to remove posts from the Internet that contradicted the government line on COVID-19,  
15 regardless of whether such posts violated Facebook’s terms of service.

16 71. For example, in April of 2021, the CDC’s Crawford and Facebook’s Itheme  
17 communicated via email that the Wyoming Public Health Department notified the federal  
18 government that Facebook’s and other platforms’ algorithms, intended to screen out  
19 COVID-19 “misinformation,” were also screening out “valid” public health messaging,  
20 including social media posts on the Internet by the Wyoming Public Health Department.  
21 Attached as **Exhibit 10** is a true and correct copy of this email communication.

22 72. Like the Wyoming Public Health Department’s valid public health message that  
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24 <sup>10</sup> Vivek H. Murthy, *Confronting Health Misinformation: The U.S. Surgeon General’s*  
25 *Advisory on Building a Healthy Information Environment* (2021), available at  
26 <https://www.hhs.gov/sites/default/files/surgeon-general-misinformation-advisory.pdf> (last  
visited Aug. 18, 2021).

27 <sup>11</sup> Lauren Egan, “*They’re killing people*”: Biden blames Facebook, other social media for  
28 *allowing Covid misinformation*, NBC News (July 16, 2021, 4:10 PM), available at  
[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)  
[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).

1 was wrongfully removed from the Internet because of social media platforms' algorithms,  
2 Hart's public Facebook and Twitter posts in July of 2021 were valid public health messages  
3 wrongfully removed from the Internet by algorithms designed jointly by the Federal  
4 Government Defendants and the Social Media Defendants.

5 73. Defendants Biden and Murthy directed Defendants Facebook and Twitter to design  
6 specific algorithms to identify and remove social media posts from the Internet that  
7 contradicted the federal government's COVID-19 public health message and viewpoint. The  
8 Social Media Defendants substantially cooperated with the Federal Government  
9 Defendants' request by designing algorithms that would target viewpoint messages and  
10 posts that contradicted the federal government's COVID-19 public health viewpoint,  
11 resulting in Hart's social media posts being removed from the Internet.

12 74. On July 23, 2021, ten days after Facebook removed Hart's valid public health  
13 message from Facebook's platform and the Internet, Facebook employee Nick Clegg  
14 emailed Defendant Surgeon General Murthy. In the email, Clegg advised Murthy that  
15 Facebook had recently taken steps "to adjust policies on what we are removing for  
16 misinformation." Attached as *Exhibit 11* is a true and correct copy of this email  
17 communication.

18 75. Clegg's tone in his email to Surgeon General Murthy was defensive, and he stated,  
19 "We hear your call for us to do more and, as I said on the call, we're committed to working  
20 toward our shared goal of helping America get on top of this pandemic." *Id.*

21 76. Clegg continued with his defensive and submissive posture in his email to  
22 Defendant Murthy, and he said, "We will reach out directly to DJ to schedule the deeper  
23 dive on how to best measure Covid related content and how to proceed with the question  
24 around data." *Id.*

25 77. On information and belief, "DJ" is not employed by Facebook, does not have  
26 authority and control over Facebook's misinformation policies and terms of service, and  
27 "DJ" operates under the authority and control of Murthy, the Executive Branch, and the  
28 federal government.

1 78. Clegg further stated to Murthy, “We’d also like to begin a regular cadence of  
2 meetings with your team so that we can continue to update you on our progress.” *Id.* Clegg  
3 also noted to Surgeon General Murthy, “You have identified 4 specific recommendations for  
4 improvement, and we want to make sure to keep you informed of our work on each.” *Id.*

5 79. On information and belief, these “4 specific recommendations for improvement”  
6 Clegg referred to in his email to Surgeon General Murthy are the same 4 Executive Branch  
7 policy recommendations Psaki stated in her July 16, 2021, press briefing. *See supra*, Psaki  
8 transcript, n.5.

9 80. The following month, on August 20, 2021, Clegg sent Murthy a lengthy email  
10 because Surgeon General Murthy requested an update. Attached as ***Exhibit 12*** is a true  
11 and correct copy of this email communication.

12 81. In that email, Clegg stated to Defendant Murthy, “You asked for an update on  
13 existing and new steps Facebook is taking.” Clegg noted to date that Facebook had  
14 removed over 20 million pieces of content for COVID-related misinformation. *Id.*

15 82. Clegg further stated to Murthy, “In light of our conversation we have been  
16 reviewing our efforts to combat COVID-19 and are eager to continue working toward our  
17 shared goal of helping more people get vaccinated and limiting the spread of harmful  
18 misinformation.” *Id.*

### 19 ***Facebook***

20 83. Defendant Facebook is one of the most popular social media sites. It boasts “more  
21 than 2.8 billion monthly users worldwide,” who use it for both business and pleasure.<sup>12</sup>  
22 Almost 70% of Americans use Facebook in some capacity.<sup>13</sup> Of these users, 70% visit  
23 Facebook daily.<sup>14</sup>

24 84. Facebook’s services involve creating a sort of personal website for its users who can  
25

26 <sup>12</sup> John Gramlich, *10 facts about Americans and Facebook*, Pew Research Center (June 1,  
27 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/)  
28 [americans-and-facebook/](https://www.pewresearch.org/fact-tank/2021/06/01/facts-about-americans-and-facebook/) (last visited Aug. 18, 2021).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

1 post pictures of themselves and others, create posts on their wall where they can “debate  
 2 religion and politics with their friends and neighbors or share vacation photos.”  
 3 *Packingham*, 137 S. Ct. at 1735. These posts are published on the Internet and can also  
 4 include links to news articles and videos. Other users can post comments on a user’s posts  
 5 and thereby have a dialogue with one other. Users may also send each other direct  
 6 messages through Facebook’s Messenger feature.

7 85. Given this tremendous opportunity to network and speak with other people  
 8 throughout the United States and even the world on the Internet, users frequently use  
 9 Facebook to promote their business. “There are over 60 million active business [p]ages” on  
 10 Facebook.<sup>15</sup> Millions of businesses pay to be active advertisers.<sup>16</sup>

11 86. Facebook’s hosting of advertisements is very lucrative for it. In 2018, it generated a  
 12 total of \$55.8 billion in revenue, 99% of which came from ads on Facebook and other  
 13 platforms that it owns, such as Instagram.<sup>17</sup>

14 87. On December 31, 2021, the same fiscal year when Facebook made its \$15 million  
 15 free advertising donation to the Federal Government Defendants, Facebook filed its Form  
 16 10K Annual Report with the Securities and Exchange Commission (“SEC”).<sup>18</sup>

17 88. In its 2021 filed Annual Report with the SEC, Facebook noted: “Substantially all of  
 18 our revenue is currently generated from third parties advertising on Facebook and  
 19 Instagram.”<sup>19</sup>

21 <sup>15</sup> 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,  
 2021).

23 <sup>16</sup> *Id.*

24 <sup>17</sup> Erin Black, *How Facebook makes money by targeting ads directly to you*, CNBC (Apr. 2,  
 25 2019), available at [https://www.cnbc.com/2019/04/02/how-facebook-instagram-whatsapp-  
 26 and-messenger-make-money.html?\\_\\_source=facebook%7Cmain&fbclid=IwAR05sCPLjY61T3UOfYNvQQZwOiMY64mJsnMQ0Lu4UNYqXkaXa1FUPpn1Huo](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 <sup>18</sup> <https://www.sec.gov/Archives/edgar/data/1326801/000132680122000018/fb-20211231.htm>  
 28 (last visited Oct. 10, 2022).

<sup>19</sup> *Id.* at p. 15.



1 89. Facebook’s terms of service invite businesses to use its services to “connect with  
2 [other people], build communities, and grow businesses.”<sup>20</sup> Facebook describes its services  
3 as “[e]mpower[ing] you to express yourself and communicate about what matters to you.”<sup>21</sup>

4 90. The terms of service require users to follow Facebook’s “Community Standards.”<sup>22</sup>  
5 Those standards state that Facebook is “a service for more than two billion people to freely  
6 express themselves across countries and cultures and in dozens of languages.”<sup>23</sup> They go on  
7 to state, “To ensure that everyone’s voice is valued, we take great care to craft policies that  
8 are inclusive of different views and beliefs, in particular those of people and communities  
9 that might otherwise be overlooked or marginalized.”<sup>24</sup>

10 91. The limits on this pro-free-speech stance include abstract categories such as  
11 “Violence and Criminal Behavior,” “Safety” (which includes “Suicide and Self-Injury,”  
12 “Child Sexual Exploitation, Abuse, and Nudity,” “Sexual Exploitation of Adults,” “Bullying  
13 and Harassment,” “Human Exploitation,” and “Privacy Violations and Image Privacy  
14 Rights”), “Objectionable Content” (which includes “Hate Speech,” “Violent and Graphic  
15 Content,” “Adult Nudity and Sexual Activity,” and “Sexual Solicitation”), “Integrity and  
16 Authenticity,” (which includes “Account Integrity and Authentic Identity,” “Spam,”  
17 “Cybersecurity,” “Inauthentic Behavior,” “False News,” “Manipulated Media,” and  
18 “Memorialization”), and “Respecting Intellectual Property.” For the “False News” sub-  
19 category, Facebook states that “we do not remove false news from Facebook but we  
20 significantly reduce its distribution by showing it lower in News Feed.”<sup>25</sup>

21 92. At no point in the terms of service or Community Standards does Facebook prohibit  
22

23 \_\_\_\_\_  
24 <sup>20</sup> Terms of Service, Facebook, *available at* <https://www.facebook.com/terms.php> (last  
25 revised Oct. 22, 2020) (last visited July 19, 2021).

26 <sup>21</sup> *Id.*

27 <sup>22</sup> *Id.*

28 <sup>23</sup> Community Standards, Facebook, *available at*  
<https://www.facebook.com/communitystandards/> (last visited July 19, 2021).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

1 valid public health messages and viewpoints that oppose making children wear masks,  
2 such as Hart's posts.

3 93. Further, at no point in the terms of service or Community Standards does Facebook  
4 mention that it would adjust its policies at or about the same time Hart posted on  
5 Facebook in July of 2021, and substantially cooperate with, and follow, Defendants Biden  
6 and Murthy's "4 specific recommendations for improvement" Clegg referred to in his email  
7 to Surgeon General Murthy that Psaki mentioned in her July 16, 2021, press briefing.

8 94. Facebook voluntarily commits itself to be governed by an Oversight Board, which is  
9 an independent quasi-judicial board that interprets Facebook's content policies by  
10 reviewing content moderation decisions.

11 95. For example, in March of 2021, shortly before Facebook removed Hart's valid public  
12 health message, the Oversight Board "upheld Facebook's decision to leave up a post by a  
13 state-level medical council in Brazil which claimed that lockdowns are ineffective and had  
14 been condemned by the World Health Organization (WHO)."<sup>26</sup>

15 96. Hart is an executive consultant with over 25 years' experience creating data-driven  
16 solutions for Fortune 500 companies and presidential campaigns alike. He is the Chief  
17 Data Analyst and founder of RationalGround.com, which helps companies, public policy  
18 officials, and parents gauge the impact of COVID-19 across the country.

19 97. He has used Facebook's services since 2007. He has roughly 1,700 Facebook users  
20 who follow his account, and roughly 3,000 Facebook friends.

21 98. He uses his Facebook account as a feeder for his other social media accounts, as a  
22 networking tool for his consulting business, and as a promotion for his online website,  
23 RationalGround.com, where he sells subscriptions to his articles and research on COVID-  
24 19 and the government's response to it.

25 99. Given Hart's use of Facebook for his business, he has purchased advertising on  
26 Facebook to promote his consulting business. Over the years, Hart has spent thousands of  
27

28 <sup>26</sup> <https://www.oversightboard.com/decision/FB-B6NGYREK/> (last visited October 20, 2022).

1 dollars on Facebook advertisements and has never been gifted free advertisement from  
2 Facebook as it gifted the Federal Government Defendants.

3 100. Hart has also purchased advertising for his consulting clients over the years,  
4 spending tens of thousands of dollars.

5 101. On his website RationalGround.com Hart offers some of his articles exclusively to  
6 subscribers. His subscriptions generate thousands of dollars per month.

7 102. On April 23, 2021, Facebook restricted Hart's ability to post or comment for 24  
8 hours because it claimed the following three posts violated its Community Standards:

9 a. On or around April 14, 2021, Hart created a post on Facebook  
10 stating, "If you ever want to know where your BLM donation is going – the co-  
11 founder 'trained Marxist' Patrisee Cullars – just bought this amazing home in  
12 LA" and it included a link to a picture of the house.

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

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

17 103. Losing the ability to connect with people on the Internet through his Facebook  
18 account has harmed Hart's online business and work to help others. He is also suffering  
19 injury because he serves as the administrator of at least one of his client's Facebook pages.  
20 While Hart's personal account is suspended, he cannot service this account.

21 104. Facebook's policies and standards for censorship on its platform and the Internet  
22 are constantly shifting and adjusting in accordance with Defendants Biden and Murthy's  
23 direction on COVID-19 "misinformation" and the federal government's pre-approved public  
24 health message and views allowed on the Internet.

25 105. For example, since early 2020, there has been widespread debate over whether  
26 COVID-19 was made by humans in a lab in Wuhan, China, and escaped from the lab or  
27 whether it started naturally through animal-to-human transmission.  
28

1 106. Despite this public health debate, in February 2020, Facebook announced it would  
2 remove posts that suggested the virus was man-made, stating that the theory had been  
3 debunked by public health officials.<sup>27</sup>

4 107. But in May 2021, after Defendant Biden acknowledged the possibility of the  
5 theory, Facebook adjusted and reversed its policy and announced that it would no longer  
6 remove posts expressing that viewpoint.<sup>28</sup> Therefore, Facebook is stifling the free debate of  
7 scientific theories and valide public health messages on the Internet such as Hart’s by  
8 taking its directions from the Federal Government Defendants.

### 9 *Twitter*

10 108. Defendant Twitter is also a popular social media site; more than one in five adult  
11 Americans use the platform.<sup>29</sup> Of these users, 46% visit Twitter daily.<sup>30</sup>

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

15 110. Twitter allows users to have a dialogue on a variety of issues, including topics of  
16 national importance. 42% of U.S. adults on Twitter say they use the site to discuss  
17  
18  
19  
20

21 \_\_\_\_\_  
22 <sup>27</sup> Peter Suci, *Social Media About Face: Facebook Won’t Remove Claims Covid Was Man-*  
23 *Made*, Forbes (May 28, 2021, 3:39 PM), available at  
[https://www.forbes.com/sites/petersuci/2021/05/28/social-media-about-face-facebook-wont-](https://www.forbes.com/sites/petersuci/2021/05/28/social-media-about-face-facebook-wont-remove-claims-covid-was-man-made/?sh=d21e05c6aa1a)  
24 [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).

25 <sup>28</sup> Donie O’Sullivan & Jordan Valinsky, *Facebook will no longer remove claims that Covid-19*  
26 *was man-made*, CNN Business (May 27, 2021, 12:16 PM), available at  
<https://www.cnn.com/2021/05/27/tech/facebook-covid-19-origin-claims-removal/index.html>  
27 (last visited Aug.18, 2021).

28 <sup>29</sup> Brooke Auxier & Monica Anderson, *Social Media Use in 2021*, Pew Research Center (Apr.  
7, 2021), available at [https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-](https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/)  
2021/ (last visited July 19, 2021).

<sup>30</sup> *Id.*

1 politics.<sup>31</sup> Twitter is known for being “one of the social media sites with the most news-  
2 focused users.”<sup>32</sup> 71% of adult Twitter users in the U.S. use the site to get news.<sup>33</sup>

3 111. “The Twitter Rules” proclaim that “Twitter’s purpose is to serve the public  
4 conversation.”<sup>34</sup>

5 112. The limitations on that “public conversation” include Tweets that threaten or  
6 glorify violence or terrorism, sexually exploit children, abuse or harass other people,  
7 promote self-harm or suicide, show excessively gory media or adult content within live  
8 videos or profile photos, or serve any unlawful purpose.<sup>35</sup>

9 113. At no point in the terms of service or Twitter Rules does Twitter prohibit valid  
10 public health messages and viewpoints that oppose wearing masks. Nor do the terms of  
11 service or Twitter Rules state that Twitter would have BOLO meetings with the Federal  
12 Government Defendants to get instruction and direction on COVID-19 “misinformation.”

13 114. Hart has used Twitter’s services since 2007.

14 115. He uses his Twitter account as a feeder for his other social media accounts, as a  
15 networking tool for his consulting business, and to promote his website  
16 RationalGround.com, where he sells subscriptions to his articles and research on COVID-  
17 19 and the government’s response to it.

18 116. Hart has purchased ads on Twitter to promote his consulting business. Over the  
19 years, he has spent thousands of dollars on Twitter ads. Hart planned to increase his use of  
20 Twitter advertising, but Twitter has denied him the ability to do so.

21 117. Losing the ability to communicate with people through his Twitter account has  
22 harmed his online business.

23 \_\_\_\_\_  
24 <sup>31</sup> 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-facts-about-americans-and-twitter/> (last visited July 19, 2021).

26 <sup>32</sup> *Id.*

27 <sup>33</sup> *Id.*

28 <sup>34</sup> The Twitter Rules, Twitter, *available at* <https://help.twitter.com/en/rules-and-policies/twitter-rules> (last visited Aug. 19, 2021).

<sup>35</sup> *Id.*

COUNT I – Free Speech

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

118. The allegations in the preceding paragraphs are incorporated herein by reference.

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

120. Murthy and Biden knowingly engaged in viewpoint discrimination when they directed Facebook and Twitter to remove from the Internet social media posts and valid public health messages like those of Hart’s that contained a viewpoint on COVID-19 that did not fit with their own political public health narrative.

121. Murthy and Biden further knowingly engaged in viewpoint discrimination against Hart when they and Executive Branch officials (1) directed Facebook and Twitter representatives to employ the federal government’s “4 specific recommendations for improvement;” (2) held BOLO meetings with Facebook and Twitter representatives to target opposing public health messages on the Internet; (3) directed the Social Media Defendants to design algorithms to specifically target valid public health messages on the Internet opposing the government’s COVID-19 views resulting in 20 million pieces of content being removed from platforms and the Internet including Hart’s valid public health messages; (4) directed Facebook to adjust its policies regarding COVID-19 “misinformation” on the Internet at or about the time of Hart’s valid public health message; and (5) negotiated and received a \$15 million advertising credit from Facebook to advertise the government’s unchallenged COVID-19 public health message on the Internet shortly before Hart’s valid public messages were removed.

122. Murthy and Biden’s unconstitutional viewpoint discrimination acts that deprived Hart of his First Amendment rights were further contrary to the policy of the United

1 States “to preserve the vibrant and competitive free market that presently exists for the  
2 Internet” that is “unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(2).

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

6 124. “The Supreme Court has articulated four tests for determining whether a non-  
7 governmental person’s actions amount to state action: (1) the public function test; (2) the  
8 joint action test; (3) the state compulsion test; and (4) the governmental nexus test.” *Ohno*,  
9 723 F.3d at 995.

10 125. “Joint action exists where the government affirms, authorizes, encourages, or  
11 facilitates unconstitutional conduct through its involvement with a private party.” *Id.* at  
12 996.

13 126. The Ninth Circuit finds joint action when “state officials and private parties have  
14 acted in concert in effecting a particular deprivation of constitutional rights.” *Tsao v.*  
15 *Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012) (cleaned up). “This requirement can  
16 be satisfied either by proving the existence of a conspiracy or by showing that the private  
17 party was a willful participant in joint action with the State or its agents.” *Id.* (cleaned up).

18 127. “Particularly relevant here is the maxim that if the state knowingly accepts the  
19 benefits derived from unconstitutional behavior, then the conduct can be treated as state  
20 action.” *Id.* (cleaned up).

21 128. Facebook and Twitter engaged in state action when they removed valid public  
22 health messages and posts like Hart’s from their platforms and the Internet at the request  
23 of Murthy and Biden, based on the viewpoint of those posts on COVID-19 that differed  
24 from the public health message of the federal government.

25 129. Facebook and Twitter worked in concert, substantially cooperated with, and/or  
26 conspired with Murthy and Biden to deprive Hart of his First Amendment right to free  
27 speech to post valid public health messages on the Internet.

1 130. Murthy and Biden affirmed, authorized, encouraged, and/or facilitated Facebook  
2 and Twitter's unconstitutional conduct of censorship of Hart's posts and valid public health  
3 messages on the Internet.

4 131. Facebook and Twitter either were willful participants when they removed Hart's  
5 posts from the Internet based on his viewpoint at the direction of Murthy and Biden, or  
6 were subject to government compulsion, either of which makes the removal of the posts  
7 state action and transforms Facebook and Twitter into state actors.

8 132. Murthy and Biden knowingly accepted the benefits of censored speech derived  
9 from the unconstitutional behavior of Facebook and Twitter in removing posts from the  
10 Internet based on a valid COVID-19 public health viewpoint with which Murthy and Biden  
11 disagreed.

12 133. Further, Murthy, Biden, and Executive Branch officials knowingly accepted the  
13 benefits of \$15 million in advertising credit from Facebook to promote the federal  
14 government's unchallenged public health COVID-19 viewpoint and message on the  
15 Internet, a public forum Congress intended to be a marketplace of ideas free from  
16 government regulation.

17 134. Although Hart remains active on Facebook and Twitter in an attempt to rebuild  
18 his brand and continue to post valid public health messages, Facebook and Twitter now  
19 require that Hart and other users in the future express a government-approved viewpoint  
20 to use their platforms that reach the Internet and that are subject to the COVID-19 public  
21 health policies and control of the federal government, and such posts that reach the  
22 Internet are no longer subject to the Social Media Defendants' policies.

23 135. Further, Facebook adjusts and deviates from its voluntary submission to its  
24 independent Oversight Board on COVID-19 public health misinformation and instead  
25 follows the direction of Murthy and Biden's recommendations.

26 136. Hart is entitled to declaratory and injunctive relief against Murthy and Biden for  
27 violating his right to free speech on the Internet under the First Amendment and to stop  
28



1 them from directing Facebook and Twitter to utilize the federal government’s policies on  
2 what constitutes COVID-19 “misinformation” on the Internet.

3 137. Hart is entitled to declaratory and injunctive relief as well as compensatory and  
4 nominal damages from Facebook and Twitter for violating his right to free speech on the  
5 Internet under the First Amendment and to stop them from adjusting their algorithms and  
6 policies to align with the federal government’s COVID-19 “misinformation” policies.

7 **COUNT II - Promissory Estoppel**

8 **Facebook and Twitter committed promissory estoppel by not fulfilling their**  
9 **promise to Hart to use their social media platforms to reach an audience on the**  
10 **Internet in furtherance of his business.**

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

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

15 140. In making this promise, Facebook and Twitter did not include a provision that  
16 they would censor speech on the Internet opposing masks at the direction of the federal  
17 government.

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

22 142. Hart engaged in “reasonable, foreseeable and detrimental reliance” on Facebook’s  
23 promise when he invested substantial sums of money to advertise on Facebook and Twitter  
24 and their platforms that reach an audience on the Internet. *Id.*

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

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

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

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

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

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

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

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

19 149. Hart maintains a valid employment contract with Donorbureau, LLC  
20 ("Donorbureau"), a Virginia-based limited liability company.

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

24 151. Facebook has knowledge of the relationship between Hart and Donorbureau because  
25 it has actual notice that Hart serves as an Administrator for the Donorbureau account.

26 152. Facebook intentionally suspended Hart's use of his personal Facebook account and  
27 removed his posts from the Internet, and Facebook knew and intended that such action  
28 would prevent Hart from doing his work as an Administrator on the Donorbureau account.

1 153. Therefore, Facebook intentionally interfered with Hart’s contract with Donorbureau.

2 154. Not being able to service Donorbureau’s Facebook page placed Hart in breach of his  
3 contract with Donorbureau.

4 155. Hart suffered and is suffering monetary damage for not being able to fulfill his social  
5 media duties to Donorbureau.

6 156. Hart is entitled to monetary relief from Facebook for intentionally interfering with  
7 his contract with Donorbureau.

8 **COUNT IV - Negligent Interference with a Prospective Economic Advantage**

9 **Facebook committed negligent interference with a prospective economic**  
10 **advantage by interfering with Hart’s contract with Donorbureau, LLC.**

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

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

21 159. Hart maintains a valid employment contract with Donorbureau, LLC, a Virginia-  
22 based limited liability company.

23 160. 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.

26 161. Hart has a probability of future economic benefit by fulfilling the terms of his  
27 employment contract with Donorbureau.

1 162. Facebook has knowledge of the relationship between Hart and Donorbureau  
2 because it has actual notice that Hart serves as an Administrator for the Donorbureau  
3 account.

4 163. When Facebook suspended Hart's use of his personal Facebook account and  
5 removed his posts from the Internet, it knew or should have known that Hart's work as an  
6 Administrator on the Donorbureau account and his relationship with Donorbureau would  
7 be disrupted as a result of its negligent actions.

8 164. In not providing Hart any avenue to access the Donorbureau account, Facebook  
9 failed to act with reasonable care.

10 165. Facebook's act of suspension caused an actual disruption in the relationship  
11 between Hart and Donorbureau because he could not post content to the site or on the  
12 Internet or make other changes in his work to increase Donorbureau's revenue.

13 166. Therefore, Facebook negligently interfered with Hart's prospective economic  
14 advantage from his contractual relationship with Donorbureau.

15 167. Hart suffered and is suffering monetary damage for not being able to fulfill his  
16 social media duties to Donorbureau.

17 168. Hart is entitled to monetary relief from Facebook for negligently interfering with  
18 the prospective economic advantage resulting from his contract with Donorbureau.

19 **PRAYER FOR RELIEF**

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

22 A. Declare that the actions of Murthy, Biden, Facebook, and Twitter constitute a  
23 violation of the Free Speech Clause of the First Amendment by denying Hart the ability to  
24 speak on the Internet through the social media platforms of Facebook and Twitter;

25 B. Enjoin Murthy and Biden from directing social media companies in the future to  
26 censor information on the Internet with which Murthy and Biden disagree;

1 C. Enjoin Facebook and Twitter from removing in the future Hart's posts from the  
2 Internet or suspending his posts at the direction of Murthy and Biden or based on the  
3 federal government's "misinformation" policies;

4 D. Award Hart nominal damages of \$1 each from Facebook and Twitter for suffering a  
5 violation of his federal free speech rights and for suffering damages in California tort law;

6 E. Award Hart compensatory damages in the amount of his past, present, and future  
7 lost income resulting from Facebook's and Twitter's actions of promissory estoppel and  
8 resulting from Facebook's intentional interference with a contract and negligent  
9 interference with a prospective economic advantage;

10 F. Award Hart compensatory damages in the amount of a return of the money he spent  
11 on Facebook and Twitter advertisements because of Facebook's and Twitter's actions of  
12 promissory estoppel and Facebook's intentional interference with a contract and negligent  
13 interference with a prospective economic advantage;

14 G. Award Hart compensatory damages in an amount to fully compensate him for the  
15 time he spent building a following on the Internet through Facebook and Twitter that has  
16 now been wasted by Facebook's and Twitter's actions of promissory estoppel and  
17 Facebook's intentional interference with a contract and negligent interference with a  
18 prospective economic advantage;

19 H. Award Hart compensatory damages in the amount of the harm to his reputation on  
20 the Internet resulting from Facebook's and Twitter's actions of promissory estoppel and  
21 resulting from Facebook's intentional interference with a contract and negligent  
22 interference with a prospective economic advantage; and

23 I. Award any further relief to which Hart may be entitled, including reasonable  
24 attorneys' fees and costs.

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Respectfully submitted,

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