

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

GEOFF GOLBERG,

Plaintiff,

COMPLAINT

- vs -

Index No: _____

TWITTER, INC.,

Defendant.

Plaintiff Geoff Golberg (“Mr. Golberg”), by and through his undersigned counsel, for his Complaint against Defendant Twitter, Inc. (“Twitter”), alleges as follows:

Preliminary Statement

1. This lawsuit concerns the power of Silicon Valley corporate behemoths to trample on consumers’ rights. It asks whether basic principles of New York contract law and statutory prohibitions against unfair and deceptive practices against consumers apply to billion dollar social media platforms as they do to any other business.

2. At issue is a breach of contract claim by Manhattan resident Geoff Golberg. It arises out of Twitter’s breach of the duty of good faith and fair dealing present in every contract entered into with citizens and residents of the state of New York.

3. Twitter claims in its SEC filings to have “empathy” towards its users, but its actions speak louder than its words. By arbitrarily banning Mr. Golberg from Twitter after taking his money and profiting from his data, and in refusing to reconsider its incorrect

decision, failing to refund money he paid, or provide access to his content, data, and contact lists, none of which, on information and belief, Twitter found objectionable, Twitter acted in bad faith, breached its contract with him, and violated N.Y. Gen. Bus. L § 349 (2012), a New York law protecting New York consumers like Mr. Golberg from deceptive acts and practices in “the conduct of any business, trade or in the furnishing of any service” in New York (emphasis added).

4. Mr. Golberg seeks money damages of greater than \$25,000 but less than \$50,000 (inclusive of fees and costs) and an injunction reinstating his platform access, providing him with his account data, and prohibiting Twitter from arbitrarily terminating the accounts of New York users with no cause.

5. Even though a platform like Twitter enjoys broad discretion to grant, deny, modify, or revoke permission to moderate content on or use its platform at any time, that discretion is not unlimited, and under New York law cannot be exercised arbitrarily and in bad faith any more than a ticket seller could sell a baseball fan a ticket to a baseball game, keep the fan’s money, and then deny the fan entry to the ball park simply because the fan happens to root for the visiting team.

6. The arbitrary and bad faith nature of Twitter’s termination of its contract with Mr. Golberg is evidenced in multiple ways including, without limitation, the following:

a. It terminated Mr. Golberg for using words and terms used thousands of times daily by other users, including prominent political leaders, without consequence to these other users, suggesting that Twitter

does not find these words and terms, and the conduct of posting these words and terms, objectionable.

b. The tweets that Twitter used to justify Golberg's termination were directed at what appears to be an inauthentic account that tweets hundreds of times a day and not a real person, as explained in greater detail below.

c. Terminating Mr. Golberg's account and revoking his access to his own data is an arbitrary and capricious punishment for uttering words that the company does not find objectionable when used by, on information and belief, hundreds of users who are not Mr. Golberg.

d. Twitter promises in its Terms of Service ("Terms") to consider account suspension appeals. That promise is meaningless. On information and belief, the appeal process is algorithmic and arbitrary, providing no opportunity to speak or otherwise communicate with a human being. Attempts to communicate with Twitter's legal department were met with a similar wall of corporate silence. Twitter claims to care about users and profits greatly from them, but the company refuses to engage with its users in an evenhanded fashion or in a manner consistent with basic contract law principles. The company has refused to even respond to written correspondence from lawyers when inquiries are made. This leaves people whose rights were trampled on, and who are entitled to a remedy, with no choice but to sue.

e. Twitter provided no means or mechanism for Mr. Golberg to let his valuable network of friends and contacts on the platform know of his account termination or provide them with alternative contact information.

f. Twitter deleted access to Mr. Golberg's valuable content without providing him the means or methods to download and preserve it prior to or following notification of account suspension. It is unclear whether Twitter retains a copy of Mr. Golberg's data and intellectual property for its own purposes.

7. In short, in addition to money damages and injunctive relief, this case presents a simple but important question that has consequences for millions of New Yorkers who use systemically important social media platforms like Twitter, Facebook, Instagram and others: is the contractual discretion that these private platforms have unfettered and not subject to an obligation to act in good faith? Or are these platforms (at a minimum) subject to the same requirement of good faith and fair dealing of any commercial party that chooses to do any business with New York consumers, and liable for their failure to act in good faith?

The Parties, Venue, and Jurisdiction

8. Plaintiff Geoff Golberg is a natural person who is a citizen of New York County, in New York State.

9. Defendant Twitter, Inc. is a Delaware corporation with a principal place of business located at 1355 Market Street, Suite 900, San Francisco, California 94103 who can be served with the Summons and Complaint through its agent for service of process, C.T. Corporation System.

10. Venue is proper in this Court pursuant to N.Y. C.P.L.R. § 503 because Mr. Golberg is a resident of New York County at the time that this lawsuit is being commenced and because a substantial part of the events or omissions giving rise to the claim occurred in this County.

11. This Court has general personal jurisdiction over Twitter pursuant to N.Y. C.P.L.R. § 301 because its affiliations, connections and contacts with the state of New York are so continuous and systematic as to render it essentially at home here.

12. In the alternative, this Court has specific personal jurisdiction over Twitter pursuant to N.Y. C.P.L.R. § 302 because Plaintiff's causes of action arise out of the transaction of business by Defendant in New York State.

Factual Background

13. Twitter is a social networking platform that was founded in California in 2006 by Jack Dorsey. It was incorporated in Delaware in 2007.

14. Users communicate on Twitter by posting short comments called "tweets" on a "feed" which may be read by the public or the user's "followers" who subscribe to such feeds. They can also communicate privately with other users via a "direct message" function.

15. Twitter does not require payment in money to register an account that has basic publishing or direct messaging functionality of the service but it does rely upon user data (provided by user account access and browsing history, among other things) in order to sell and deploy targeted advertising for which it earns substantial revenue. Stated differently, there are no "free accounts" on Twitter – that is a misnomer. User

data is the currency that all users provide to Twitter for access, and it becomes a valuable asset that Twitter then sells to platform advertisers.

16. Indeed, advertising is hugely profitable for Twitter, and its ability to monetize access to consumer data earns it billions of dollars every year. According to its most recent annual report (“the 10-K”) filed with the United States Securities and Exchange Commission, “[t]he substantial majority of [Twitter’s] revenue is currently generated from third parties advertising on Twitter. We generate substantially all of our advertising revenue through the sale of our Promoted Products: Promoted Tweets, Promoted Accounts and Promoted Trends.”¹

17. As the 10-K further notes, in 2019 alone the company’s total revenue was \$3.46 billion, of which advertising revenue totaled \$2.99 billion, or 86.41 percent.

18. Twitter further notes in the 10-K that it measures platform usage with a metric it calls “mDAU”, which is an acronym standing for “Monetizable Daily Active Usage”. Twitter says in the 10-K and elsewhere that it uses “mDAU” instead of “user in our external communications ... in an effort to demonstrate more empathy for the people who use Twitter[.]”

19. mDAU is defined “as people, organizations, or other accounts who logged in or were otherwise authenticated and accessed Twitter on any given day through twitter.com or Twitter applications that are able to show ads. Average mDAU for a period represents the number of mDAU on each day of such period divided by the number of days for such period.”

¹ See Twitter 2019 10-K, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1418091/000141809120000037/twtr-20191231.htm>

20. Twitter's success in growing "mDAU" is evidenced by an average mDAU in the 4th quarter of 2019 of 152 million, an increase of 21%.

21. Twitter's power and reach are such that, in less than 15 years of existence, it has become woven into public consciousness and discourse and is arguably now a major factor in, among many other uses, national political campaigns, a messaging medium for public health authorities, a key platform for advertising, and a communication medium for individuals.

22. One way to gain followers and content engagement, and thereby build a useful network on the platform, is by using certain paid functionalities, including what are known as "Promoted Tweets". As Twitter explains:

"Promoted Tweets appear within an individual's timeline, search results or profile pages just like an ordinary Tweet regardless of device. Promoted Tweets often include images and videos, such as Mobile App Cards and Website Cards. Using our proprietary algorithm and understanding of each individual's interest graph, we can deliver Promoted Tweets that are intended to be relevant to a particular person on Twitter. Our goal is to enable advertisers to create and optimize successful marketing campaigns - and pay either on impressions delivered or only for the actions taken by people on Twitter that are aligned with their marketing objectives. As a result, we have added product features to Promoted Tweets based on advertiser objectives, which may include Tweet engagements (e.g., Retweets, replies and likes), website clicks or conversions, mobile application installs or engagements, obtaining new followers, or video views."²

23. On information and belief, a significant and material portion of Twitter's revenue is derived from mDAU's in the form of Promoted Tweets paid for by New York residents, as well as advertising directed to and at New York residents based upon personal data harvested from their accounts and platform activity.

² *Id.*, p. 6

24. Twitter publishes Terms of Service on its website and updates those terms unilaterally from time to time (the "Terms"). According to Twitter, the Terms are a binding legal agreement – that is, a contract. The most recent version of Twitter's Terms was updated on January 1, 2020 and as of today's date can be found at <https://twitter.com/en/tos>.

25. The Terms address suspension or termination of accounts such as Mr. Golberg's as follows:

We may suspend or terminate your account 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 and Policies or Periscope Community Guidelines, (ii) you create risk or possible legal exposure for us; (iii) your account should be removed due to unlawful conduct, (iv) your account should be removed due to prolonged inactivity; or (v) our provision of the Services to you is no longer commercially viable. We will make reasonable efforts to notify you by the email address associated with your account or the next time you attempt to access your account, depending on the circumstances. In all such cases, the Terms shall terminate, including, without limitation, your license to use the Services, except that the following sections shall continue to apply: II, III, V, and VI. If you believe your account was terminated in error you can file an appeal following the steps found in our Help Center (<https://help.twitter.com/forms/general?subtopic=suspended>). For the avoidance of doubt, these Terms survive the deactivation or termination of your account.

26. Mr. Golberg first created an account on Twitter on or about March 12th, 2009, using the "tag" @geoffgolberg. Mr. Golberg actively used this account from the time he created it until the date it was unilaterally terminated by Twitter on July 22, 2019.

27. Mr. Golberg paid a total of \$38,709.86 to Twitter for Promoted Tweets.

28. Mr. Golberg is the founder of Social Forensics. He has been researching social media manipulation full-time since early 2018.

29. Until his account was terminated, Twitter previously functioned as the primary platform for Mr. Golberg to publicly share the company's analysis.

30. On multiple occasions—and as a direct result of Mr. Golberg disseminating his research via Twitter—press coverage pushed Twitter to suspend accounts for engaging in platform manipulation. By way of example, and without limitation:

- a. In March 2018, Golberg tweeted about a group of accounts that were falsely representing the state of North Carolina and various North Carolina municipalities. Although Twitter employees with whom he shared this analysis privately rebuffed his communications, following subsequent media coverage Twitter suspended the accounts.
- b. Mr. Golberg's research on extensive platform manipulation involving a major cryptocurrency was also brought to the attention of Twitter executives and similarly ignored. Within the past few months—and a year after Mr. Golberg posted comprehensive findings—Twitter has begun suspending the very same accounts that Mr. Golberg identified.
- c. The same can be said of Mr. Golberg's research focused around platform manipulation by agents of foreign powers and in connection with national elections. Despite suspending accounts for engaging in platform manipulation, Twitter has yet to

acknowledge and disclose that their platform was (and continues to be) weaponized by these groups.

31. Given the nature of Mr. Golberg’s work, his account was frequently “mass reported” by nefarious actors seeking to silence his voice. “Mass reporting” refers to the act of flagging a tweet or account for review by Twitter by many users, a process which, on information and belief, may be driven by viral media campaigns or may be automated to give the appearance of bad conduct by the targeted account, with the aim of having Twitter terminating the targeted account, regardless of whether the account has engaged in a terms of service violation. Mass reporting can result in tweets being removed and accounts being automatically suspended or permanently terminated with or without cause. An example of the effect of this mass-reporting on Mr. Golberg is set forth below in this screenshot from his email account:



32. In addition to mass reporting, Mr. Golberg has received death threats on the Twitter platform. He has also been “doxed”, i.e., had private information about his identity, including address and contact information, disclosed publicly on Twitter without his consent in order to assist online mobs to wage a campaign of harassment against him. Doxing is a violation of the Terms and, in fact, Twitter has suspended accounts for alleged doxing violations. Twitter has not suspended the account that doxed Mr. Golberg, in spite of reports being made of the same to Twitter by Mr. Golberg.

33. The account that doxed Mr. Golberg remains active on Twitter’s platform.

34. Mr. Golberg’s account was abruptly and permanently terminated on July 22, 2019. According to Twitter, his account was suspended for “abusive behavior”. More specifically, the email he received from Twitter states: “You may not engage in the targeted harassment of someone, or incite other people to do so. We consider abusive behavior an attempt to harass, intimidate, or silence someone else’s voice.”

35. The tweets at issue said, among other things, “Your account will soon be suspended, moron”, “F**k off, moron”, and “Good luck with that, idiot”.

36. While this language may seem discourteous, these are words used thousands of times each week on the Twitter platform. When similar tweets were previously reported to Twitter they were determined not to be in violation of Twitter’s policies.

37. Furthermore, the specific tweets at issue from Mr. Golberg were directed to an account that appears to be a “sock puppet” account that itself engages in activity that is contrary to Twitter’s anti-spam and manipulation policies.

38. In short, Mr. Golberg's account was terminated for behavior that Twitter itself has determined is not abusive or objectionable and, in fact, it permits every day on the platform.

39. Furthermore, Mr. Golberg's tweets were directed at an account that likely violates Twitter's own policies, and his tweets followed a long and concerted campaign by people threatened by Mr. Golberg's analyses and message who hoped to see him removed from the platform.

40. While the Terms state that appeals of account suspension may be made, no human interaction or communication is offered to facilitate such appeals. Accounts appear to be suspended or terminated by algorithm. Review of appeals does not appear to involve direct communication with human beings.

41. Indeed, counsel for Mr. Golberg wrote to Twitter on December 13, 2019 requesting review and reconsideration of the suspension and account termination. Twitter did not respond to the December 13, 2019 letter, so it was resent on January 22, 2020. Copies of the December 13, 2019 and January 22, 2020 letters to Twitter, not including the letters' enclosure, are attached collectively as Exhibit A.

42. Twitter did not respond to either letter, other than sending an automated email on February 4, 2020 to Mr. Golberg stating: "Hello, We're writing to let you know that we've permanently suspended your account due to multiple or repeat violations of our rules. This account will not be restored. Please do not reply to this email or send us new appeals for this account as we won't monitor them. Thanks, Twitter." The email is attached as Exhibit B.

43. As a result of his account termination, Mr. Golberg can no longer send direct messages to his Twitter followers. Included among his (more than 12,000) followers were many academics, researchers, and journalists that Mr. Golberg communicated with regularly. Twitter direct messaging functioned as the primary communication channel for a number of these relationships.

44. In addition, Twitter has removed and apparently deleted valuable content associated with his Twitter account, Mr. Golberg's intellectual property, without providing him access to or the ability to download and preserve it. Plaintiff does not know if Twitter has retained access to this content for its own use.

COUNT I: BREACH OF CONTRACT

45. Mr. Golberg incorporates by reference paragraphs 1 through 44 of this Complaint as if set forth here again in their entirety.

46. The Twitter Terms constitute a binding and enforceable contract between Twitter and Mr. Golberg

47. Mr. Golberg provided valuable consideration to Twitter for use of and access to the Twitter Platform, including money and access to and use of his personal data and content.

48. It has been recognized as the law of New York State for more than a century that every contract entered into in this state contains and implied covenant of good faith and fair dealing in both the enforcement and performance of the contract.

49. Twitter breached the implied covenant of good faith and fair dealing and thus breached its contract with Mr. Golberg by arbitrarily suspending his account,

keeping the money that he paid, deleting and/or removing access to his content, and denying him access to the valuable network he created on it.

50. Twitter breached the implied covenant of good faith and fair dealing and thus breached its contract with Mr. Golberg by refusing to provide meaningful appeal rights upon account suspension and termination, in spite of the fact that the contract specifically states that such rights will be afforded.

51. Twitter's breaches of the implied duty of good faith and fair dealing defeated the purposes of the contract between the parties in that the contract states that appeal rights will be provided but no such rights are granted in practice.

52. Indeed, Mr. Golberg alleges, on information and belief, that Twitter grants preferential treatment on a regular basis to account holders who have personal contacts and relationships with Twitter's management and investors.

53. Thus, other users who have had their accounts suspended for violating Twitter's rules have been able to reinstate account access by circumventing the algorithmic review process and accessing a privileged review process not available to Mr. Golberg or other ordinary users.

54. Furthermore, the contract states that content and intellectual property created by users remains users' property, but Mr. Golberg's account was suspended and deleted – and his intellectual property destroyed by Twitter – without Mr. Golberg having first been afforded any opportunity to save, copy, or preserve it.

COUNT II: VIOLATION OF N.Y. Gen. Bus. L § 349 (2012)

55. Mr. Golberg incorporates by reference paragraphs 1 through 54 of this Complaint as if set forth here again in their entirety.

56. Twitter's conduct in banning Mr. Golberg (and other New York residents) as set forth and described above violates N.Y. Gen. Bus. L § 349(a) ("the UDP law"), which states that "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

57. Furthermore, any reliance by Twitter on a provision in the Terms that purports to give it the power to terminate or suspend an account for any reason at all is a deceptive act or practice proscribed by the UDP law in that if enforced it renders much of the contract unenforceable and illusory and is and would be void as against public policy where applied to consumers who give access to their valuable personal data and information and who, like Mr. Golberg, pay Twitter for access.

58. In addition to money damages, the UDP law states that "any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice". N.Y. Gen. Bus. L § 349(h).

WHEREFORE, Plaintiff Geoff Golberg prays for the following relief:


1. Enter judgment on Count I in favor of Mr. Golberg and against Twitter in the form of actual damages in an amount to be determined by the Court, but less than \$50,000 (inclusive of fees and costs), to compensate Mr. Golberg for Twitter's breach of contract;
2. Enter judgment on Count II in favor of Mr. Golberg and against Twitter in the form of an injunction from this Court ordering (1) reinstatement of Mr. Golberg's Twitter account; (2) providing Mr. Golberg with a copy of his account data; (3) implementation by Twitter of a meaningful appeal process of and for account suspensions or termination of New York users of the

- platform; and (4) an Order barring Twitter from unlawfully terminating or suspending accounts of New York residents in the absence of cause; and
3. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Mr. Golberg demands trial by jury on all issues so triable.

Dated: March 3, 2020

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