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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ALI AL-AHMED,

Plaintiff,

v.

TWITTER, INC.; ALI HAMAD A ALZABARAH; and AHMAD ABOUAMMO,

Defendants.

Case No. 3:21-cv-08017-EMC

DEFENDANT TWITTER, INC.'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Date: October 20, 2022
Time: 1:30 P.M.
Dept.: Courtroom 5 – 17th Floor
Judge: Hon. Edward M. Chen

Date Filed: October 13, 2021
Trial Date: None Set

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NOTICE OF MOTION AND MOTION TO DISMISS

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 20, 2022, at 1:30 p.m., or as soon thereafter as this matter can be heard, in the courtroom of the Honorable Edward M. Chen, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Twitter, Inc. moves this Court for an order dismissing Plaintiff Ali Al-Ahmed's First Amended Complaint with prejudice in its entirety as to Twitter.

This motion is brought pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that the Plaintiff lacks Article III standing and that the First Amended Complaint fails to state a claim upon which relief may be granted. This motion is based on this Notice of Motion and Motion, the following Memorandum of Points and Authorities, Twitter's Request for Judicial Notice in Support of Its Motion to Dismiss Plaintiff's Complaint (ECF Nos. 29-4 (sealed); 31 (redacted)) ("RJN"), the Declaration of Anjali Srinivasan in Support of Twitter's Motion to Dismiss Plaintiff's Complaint and exhibits (ECF Nos. 29-5 (sealed); 30-1 (redacted)), including the Declaration of Twitter Employee in Support of Twitter's Motion to Dismiss Plaintiff's Complaint, all files, records, and orders in this action, oral argument, and such additional matters as may be judicially noticed or incorporated by reference by the Court or may come before the Court prior to or at the hearing on this matter.

The issues presented by Twitter's motion to dismiss are as follows:

1. Whether Al-Ahmed's FAC alleges facts establishing Article III standing under Rule 12(b)(1); and
2. Whether the FAC states a claim upon which relief can be granted under Rule 12(b)(6).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION[1]

Plaintiff Ali Al-Ahmed's First Amended Complaint ("FAC") fails to cure any of the deficiencies that led the Court to dismiss his previous Complaint in its entirety as time barred and pursuant to Section 230(c)(1) of the Communications Decency Act ("CDA"). *See* ECF No. 52 ("Order"). Al-Ahmed sought leave to file an FAC to plead a Lanham Act claim that would allegedly fall within the scope of Section 230's intellectual property exception, and the Court granted leave on that basis. But his FAC pleads no such Lanham Act claim. Instead, the FAC merely re-pleads his previously dismissed claims and adds four new claims against Twitter. Al-Ahmed's FAC does nothing to cure the deficiencies of his earlier Complaint and instead compounds those deficiencies by introducing new causes of action premised on the same flawed allegations, each of which fails as a matter of law.

As with his original Complaint, Al-Ahmed's FAC fails to state a claim and should be dismissed in its entirety against Twitter for numerous, independent reasons. *First*, Al-Ahmed lacks Article III standing to pursue any claims against Twitter based on the KSA's alleged espionage. *Second*, as a result of Al-Ahmed's delay in filing suit, nearly all his causes of action are time-barred. *Third*, the FAC's claims premised on the KSA's alleged espionage at Twitter rely on holding Twitter vicariously liable for its employees' torts, but Al-Ahmed has failed to plead facts showing that Twitter is vicariously liable. *Fourth*, Section 230(c)(1) of the CDA bars Al-Ahmed's claims based on Twitter's suspension of his account. *Fifth*, the Limitation of Liability clause in Twitter's Terms of Service ("TOS") bars many of Al-Ahmed's claims. *Finally*, the individual causes of action fail for numerous claim-specific reasons discussed below.

Because Al-Ahmed's claims are barred as a matter of law, and because he has demonstrated that he cannot cure these defects through amendment, his FAC in its entirety should be dismissed with prejudice as to Twitter.

[1] Throughout this brief, all emphases within quotations are added and all internal citations are omitted unless otherwise noted.

II. BACKGROUND

A. Al-Ahmed is a well-known and public critic of the KSA and, as a result of his public criticism, was the subject of harassment by the KSA.

Al-Ahmed describes himself as "one of the leading critics" of the KSA. In 1998, he was granted asylum in the United States because he faced "imminent persecution" in his native country, Saudi Arabia. FAC ¶ 1.[2] As a result of his "prominent social media presence" and "persistent critique of the KSA," the Saudi government has "consistently attempted to—quite literally—silence his voice, even going so far as to attempt to kidnap and kill him on multiple occasions." *Id*. ¶¶ 16-18. His public criticism of the KSA garnered him a large social media following. ECF No. 30-1 at 215-17 (Ex. B).[3]

B. In 2014, the Kingdom of Saudi Arabia ("KSA") recruited Abouammo and Alzabarah to gain access to Twitter account information.

According to the FBI's investigation, in 2014, the KSA allegedly recruited two Twitter employees, Ahmad Abouammo and Ali Alzabarah, to access Twitter account information in an act of state-sponsored espionage. *See United States v. Abouammo*, Case No. 3:19-cr-000621-EMC (N.D. Cal.), ECF No. 53; FAC ¶¶ 7, 22 (citing *Abouammo*, ECF No. 53). Abouammo, a U.S. citizen, worked at Twitter from November 2013 to May 2015 as a Media Partnerships Manager responsible for assisting notable Twitter accountholders in the Middle East and North Africa with their content and strategy. FAC ¶ 5.[4] Alzabarah worked as a site reliability engineer at Twitter from approximately August 2013 until December 2015. *Id.* ¶ 6.

According to the DOJ's superseding indictment, which Al-Ahmed cites in his FAC (*see, e.g.*, FAC ¶¶ 22-26, nn.6-7), in December 2014, Abouammo, secretly acting on behalf of the

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[2] While not described in his FAC, Al-Ahmed has explained in public interviews and op-eds that he "became a political prisoner [in Saudi Arabia] in 1981 at age 14 when he was arrested along with his parents and most of his siblings." *See* www.twincities.com/2009/09/25/st-thomas-magazine-halts-profile-of-saudi-alum/. After his "father warned him not to return home because he faced arrest," he was granted political asylum in 1998. *Id.; see also* www.theguardian.com/commentisfree/cifamerica/2010/aug/27/ground-zero-mosque-saudi-arabia.

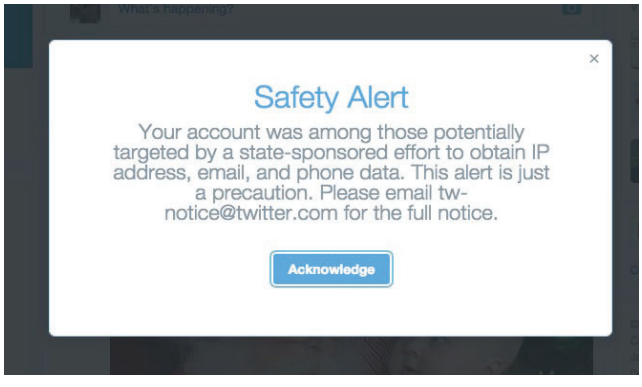
[3] This Court previously granted Twitter's RJN (ECF No. 30-1) with respect to Exhibits 1-4, B, C, D, and 6A-6N, and denied it with respect to Exhibit 5. *See* Order at 9-10.

[4] Al-Ahmed later claims that Abouammo was a "considered a manager of Twitter" until March 1, 2016. FAC ¶ 210. This is not only inconsistent, but inaccurate and contradicted by the indictment on which Al-Ahmed relies. *See Abouammo*, ECF No. 53 ¶ 26(k)-(l).

KSA, began accessing certain Twitter account information without Twitter's authorization. *Abouammo*, ECF No. 53, ¶¶ 21-28. Abouammo resigned from Twitter in May 2015 but continued to contact Twitter while working on behalf of the KSA. *Id.* ¶ 26(k)-(l); *see also* FAC ¶ 5. Around May 2015, Alzabarah, also secretly acting on behalf of the KSA, began accessing Twitter account information without Twitter's authorization. *Abouammo*, ECF No. 53, ¶ 26(n)-(o). Abouammo and Alzabarah's account access were direct violations of their employment obligations and of Twitter's written policies. *Id.* ¶¶ 14-19. After learning from federal authorities about the potential espionage, on December 2, 2015, Twitter placed its remaining employee, Alzabarah, on leave, seized his Twitter-owned laptop, and escorted him from the building. *Abouammo*, ECF No. 53, ¶ 26(s); *see also Abouammo*, ECF No. 1, ¶ 85. Thereafter, Alzabarah fled to Saudi Arabia, *Abouammo*, ECF No. 53, ¶ 26(s)-(u), and Twitter cooperated with the FBI's investigation into Abouammo and Alzabarah's activities. *See Abouammo*, ECF No. 1, ¶¶ 26, 42, 63, 71.[5]

C. Twitter informed individuals whose accounts may have been compromised.

On or about December 11, 2015, Twitter sent notifications in two ways to Al-Ahmed and others whose accounts appeared to have been accessed on behalf of the KSA. *See* ECF No. 30-1 at 5-6 (Ex. A ¶¶ 3, 4); *Id.* at 9-20 (RJN, Exs. 1, 2); FAC ¶ 45. First, Twitter advised Al-Ahmed via the e-mail address he provided to Twitter that: "As a precaution, we are alerting you that your Twitter account is one of a small group of accounts that may have been targeted by state-sponsored actors." ECF No. 30-1 at 5 (Ex. A ¶ 3); *Id.* at 9-18 (Ex. 1); ECF No. 29-5 at 23 (Ex. 3). And second, it transmitted an in-app message that advised Al-Ahmed as follows:



[5] Abouammo's criminal trial concluded before this Court on August 9, 2022. *Abouammo*, ECF No. 369.

ECF No. 30-1 at 6 (Ex. A ¶ 4); *Id.* at 20 (Ex. 2); ECF No. 29-5 at 102 (Ex. 4).[6]

D. Al-Ahmed did not personally suffer harm as a result of the KSA's espionage at Twitter.

According to the FAC, Al-Ahmed did not personally suffer any harm due to the KSA's espionage at Twitter. Rather, he vaguely alleges that *other Twitter users* who followed his account or communicated with him through private messaging "have disappeared, been arrested, or have been executed." FAC ¶ 27. Further, the only examples of such third-party harm he identifies are the case of a Saudi dissident Abdullah al-Hamid, whom the KSA jailed in 2013—at least a year before the alleged espionage activity at issue here—and the 2018 murder of journalist Jamal Khashoggi, which Al-Ahmed alleges only vaguely was "not uncoincidental" to the KSA's espionage against Twitter. *Id.*; *see also id.* at n.8, ¶ 57.

E. Al-Ahmed's Arabic-language Twitter account was suspended in May 2018.

Nearly ***three years after*** Al-Ahmed was notified of the unauthorized intrusion of his account, Twitter suspended one of his accounts—his Arabic-language Twitter account. FAC ¶ 28. As the Court previously recognized, this account suspension was unrelated to the KSA's espionage, *see* Order at 23, and occurred only after Twitter's records indicate that Al-Ahmed repeatedly directed abusive language at other Twitter users. *See* ECF No. 29-5 at 24-26 (Ex. 5) (cited and quoted in FAC ¶ 50).

III. PROCEDURAL BACKGROUND

A. Al-Ahmed's previous complaints

This is Al-Ahmed's third attempt to plead claims against Twitter based on the KSA's acts of espionage and persecution. In June 2020, Al-Ahmed brought suit against Twitter on these same facts in the Southern District of New York. On Twitter's motion, that court dismissed Al-Ahmed's complaint for lack of personal jurisdiction over Twitter. *Al-Ahmed v. Twitter, Inc.*, Case

[6] Contrary to Al-Ahmed's allegation, FAC ¶ 48, Twitter has provided evidence demonstrating that Twitter sent Al-Ahmed the December 2015 notice via the email and "in-app" notifications. Attached as Exhibits 3 and 4 to Twitter's RJN is a list of User ID Numbers who were sent the in-app notification, with Al-Ahmed's User ID Number appearing on the lists. *See* Declaration of Twitter Employee in Support of Twitter, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, to Transfer Venue (ECF Nos. 29-5 (unsealed), 30-1 (sealed)) ¶¶ 5, 6.

No. 20-CV-4982 (VEC), 2021 WL 3604577 (S.D.N.Y. Aug. 11, 2021).

Al-Ahmed filed his action in this Court two months later on October 13, 2021. *See* ECF No. 1. Twitter moved to dismiss the Complaint on December 20, 2021. ECF No. 30. On May 20, 2022, this Court dismissed Al-Ahmed's claims against Twitter on several grounds: First, Twitter's December 2015 notifications meant that the statute of limitations barred all but his breach of contract, UCL, and promissory estoppel claims to the extent they were related to the 2018 account suspension. Order at 15-24. These claims, in turn, were largely barred by Section 230(c)(1) of the CDA. Order at 24-31. The Court held that the only remaining claim, a breach-of-contract claim premised on Twitter's alleged failure to adequately justify or consider an appeal of his account suspension, did not state a claim because the alleged contract, the TOS, did not require Twitter to undertake any such actions. Order at 32.

On Al-Ahmed's request, the Court granted leave for Al-Ahmed to amend so that he could attempt "to allege a Lanham Act claim that falls within the scope of the CDA's intellectual property exception." *Id.* at 32. On June 20, 2022, Al-Ahmed filed his FAC, which fails to cure the defects identified in the Court's Order and does not bring a Lanham Act claim. Instead, the FAC largely repeats the same allegations that the Court previously found inadequate and adds four new causes of action against Twitter premised on the same facts as before.

B. *Abdulaziz v. Twitter, Inc., et al.*, Case No. 3:19-cv-06694-LB (N.D. Cal.)

Al-Ahmed's FAC also comes almost three years after a nearly identical action filed by another Saudi dissident, Omar Abdulaziz, regarding the same alleged state-sponsored espionage perpetrated by the KSA. *See Abdulaziz v. Twitter, Inc. et al.*, Case No. 3:19-cv-06694-LB (N.D. Cal.). Al-Ahmed's FAC borrows heavily from the *Abdulaziz* action, in many cases asserting verbatim allegations.[7] The *Abdulaziz* court dismissed these claims, ultimately with prejudice, on

[7] *Compare, e.g.*, *Abdulaziz*, ECF No. 113, ¶¶ 1, 8, 83 *with* FAC ¶ 1 (both self-identifying as a "leading critic" of the Saudi regime); *Abdulaziz*, ECF No. 113, ¶¶ 1, 8, 83 *with* FAC ¶ 1 (both alleging that Twitter ratified its rogue employees' conduct); *Abdulaziz*, ECF No. 113, ¶¶ 3, 118-119 *with* FAC ¶¶ 3, 30 (both alleging that Twitter allegedly stood to gain financially from working with the KSA); *Abdulaziz*, ECF No. 113, ¶¶ 116–17 *with* FAC ¶¶ 39–44 (both alleging that then-Twitter CEO Jack Dorsey's alleged relationship with KSA officials evinced Twitter's links to the KSA espionage); *Abdulaziz*, ECF No. 113, ¶¶ 112-113 *with* FAC ¶¶ 45–49 (both alleging that although Twitter notified affected accountholders of the espionage, the notice was deficient); *Abdulaziz*, ECF No. 113, ¶¶ 64, 94 *with* FAC ¶¶ 24, 61 (both alleging that the KSA

grounds equally applicable here: (1) lack of Article III standing; (2) failure to establish vicarious liability; (3) statute of limitations; and (4) that the claims for negligence were not plausibly alleged. *See Abdulaziz v. Twitter, Inc.*, Case No. 19-cv-06694-LB, 2021 WL 2986400 (N.D. Cal. July 15, 2021) ("*Abdulaziz III*"); *Abdulaziz v. Twitter, Inc.*, Case No. 19-cv-06694-LB, 2021 WL 633812 (Feb. 18, 2021) ("*Abdulaziz II*"); *Abdulaziz v. Twitter, Inc.*, Case No. 19-cv-06694-LB, 2020 WL 6947929 (Aug. 12, 2020) ("*Abdulaziz I*").

IV. LEGAL STANDARD

Under Rule 12(b)(1), the Court must dismiss any action that lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). At the core of the Court's jurisdictional inquiry is Article III's standing requirement. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead facts showing that his "right to relief [rises] above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While the Court must accept material factual allegations as true, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" and pleadings that are "no more than conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). Furthermore, the Court need not accept the truth of any allegations that are contradicted by matters properly subject to judicial notice. *St. Claire v. Gilead Scis., Inc.* (*In re Gilead Scis. Sec. Litig.*), 536 F.3d 1049, 1055 (9th Cir. 2008).

V. ARGUMENT

A. Al-Ahmed fails to establish Article III standing to pursue claims against Twitter related to the alleged 2014-2015 KSA espionage.

Al-Ahmed's claims arise from two separate alleged events: (1) the KSA's 2014 to 2015 espionage against Twitter and certain Twitter accountholders; and (2) the May 2018 suspension of Al-Ahmed's Arabic-language Twitter account. As to the first of these alleged events, Al-Ahmed lacks Article III standing, and thus the following eleven causes of action against Twitter, to the extent premised on that event, must be dismissed: violation of the Electronic

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espionage led to loss of allegedly private information); *Abdulaziz*, ECF No. 113, ¶¶ 82, 99 *with* FAC ¶¶ 31, 35, 118 (both alleging that Twitter breached its TOS).

Communications Privacy Act ("ECPA"); Computer Fraud and Abuse Act ("CFAA"); Stored Communications Act ("SCA"); Unfair Competition Law ("UCL"); unjust enrichment; breach of contract; promissory estoppel; intrusion upon seclusion; negligent hiring, supervision, and retention ("negligent hiring"); civil conspiracy; negligence; breach of duty of loyalty; and aiding and abetting breach of fiduciary duty. In *Abdulaziz I*, *II*, and *III*, the court considered many of these same claims and nearly identical factual allegations, and in all three orders, it dismissed plaintiff's complaint in its entirety for lack of standing. The same result should follow here. *See Lujan*, 504 U.S. at 560 ("[T]he injury has to be fairly traceable to the challenged action of the defendant . . . .") (cleaned up).

To establish Article III standing, "[a] plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016), *as revised* (May 24, 2016). But Al-Ahmed has not pleaded an "injury in fact" that is "fairly traceable" to Twitter's alleged conduct.

This Court previously concluded that, apart from an alleged invasion of privacy injury, Al-Ahmed "fails to identify a concrete and personal injury" that has "any causal connection to the alleged KSA-sponsored espionage claims." Order at 12. In his FAC, Al-Ahmed pleads no new allegations that would impact this Court's conclusion as to Al-Ahmed's other theories of injury. Although Al-Ahmed claims that he lost revenue from potential journalistic endeavors, *see* FAC ¶ ¶ 59-60, and claims without support that the 2015 espionage event is connected to the 2018 account suspension, *see* FAC ¶¶ 50-55,[8] these allegations do not alter the Court's previous ruling that "[t]he hacking of his account is distinct from the termination of his account." Order at 12.

As to Al-Ahmed's alleged invasion of privacy, Twitter recognizes the Court's prior ruling on this issue but respectfully submits that Al-Ahmed has pleaded no such injury. ***First***, Al-Ahmed

[8] These conclusory and implausible allegations are not supported by the facts. For instance, Al-Ahmed conclusorily alleges that Twitter employees accessed his account in 2018 to manipulate the direct message that led to the closing down of his Arabic-language account. FAC ¶ 50. But Al-Ahmed concedes that his message may have in fact been an "obscure, anomalous, and/or provoked ***response***." *Id.*; ECF No. 32-1 at ¶ 6.

has not pleaded a sufficiently concrete and particularized injury to establish standing because the information he alleges was exposed was already public. Al-Ahmed alleges that "Alzabarah and Abouammo mined Twitter's internal systems" for his "email addresses, contacts, phone numbers, birth dates, and internet protocol ("IP") addresses." FAC ¶ 24; *see also* Order at 13-14 ("The disclosure of Al-Ahmed's private information, including his personal phone number and email address . . . is sufficiently concrete and particularized."). But Al-Ahmed "cannot assert any privacy claim as to information [he] has already released to the public." *Wasson v. Sonoma Cty. Jr. Coll. Dist.*, 4 F. Supp. 2d 893, 908 (N.D. Cal. 1997). Al-Ahmed's Twitter followers or "contacts" were publicly available on his Twitter profile, and his e-mail addresses and phone number have been publicly available on the Internet since as early as January 2014—before the alleged espionage at Twitter. *See, e.g.*, ECF No. 29-5 at 304, 306 (Exs. C, D). It is also implausible that the KSA did not already have his birthdate, as he was a former Saudi national born in the KSA. *See* FAC ¶ 1 (referring to Saudi Arabia as his native country). Finally, IP addresses are also not private. *See Chevron Corp. v. Donziger*, No. 12-MC-80237 CRB (NC), 2013 WL 4536808, at *10 (N.D. Cal. Aug. 22, 2013). Thus, Al-Ahmed cannot claim he was injured by the "disclosure" of this non-private information. *Compare* FAC ¶ 24 *with* Order at 13.

Al-Ahmed's FAC adds the vague and conclusory allegation that Twitter "intercepted Plaintiff's Tweets, private messages, direct message, online chats, friend requests, file transfers, file uploads, and file downloads[.]" FAC ¶ 79. But Al-Ahmed provides no well-pleaded facts in support of these vague and conclusory allegations. These allegations are not supported by the DOJ's indictment, which Al-Ahmed otherwise relies on for the factual basis of his espionage allegations. Although the DOJ has alleged that Abouammo and Alzabarah accessed certain basic account information, the DOJ does not allege that they accessed information such as direct messages. *See Abouammo*, ECF No. 53, ¶¶ 17, 23, 26. Because Al-Ahmed's "conclusory statement lacks any factual support," his "conclusory and vague allegation of invasion of privacy" is insufficient to establish standing. *Shelton v. Hal Hays Construction, Inc.*, 2016 WL 8904414, *5 (C.D. Cal. 2016) (holding that plaintiff "has not pled sufficient facts to establish a concrete injury and has not established standing") (citing *Spokeo*, 136 S. Ct. at 1548-50); *see also Cahen v.*

Toyota Motor Corp., 717 Fed. App'x 720, 723-72 (9th Cir. 2017) (holding plaintiffs failed to establish Article III standing where "plaintiffs have only made conclusory allegations" and failed to make "specific allegations" as to the alleged invasion of privacy).

Second, Al-Ahmed fails to adequately plead that any alleged invasion of privacy injury is fairly traceable to Twitter. While the Court previously held that Al-Ahmed had standing to pursue claims against Twitter "for harms that were fairly traceable" to Abouammo and Alzabarah under a vicarious liability theory, *see* Order at 14, Al-Ahmed fails to adequately plead that Twitter is vicariously liable for Abouammo and Alzabarah's conduct, as discussed in Section VI. C., *infra*. *See also Abdulaziz II* at *1 ("The court dismissed the claims for lack of Article III standing and, alternatively, for the plaintiff's failure to plausibly plead that Twitter ratified its employees' conduct or otherwise had vicarious liability."). And even if the Court concludes that Al-Ahmed could establish standing based on vicarious liability, standing is "not dispensed in gross." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008). "Rather, a plaintiff must demonstrate standing for *each claim* he seeks to press and for *each form of relief* that is sought." *Id.* Accordingly, Al-Ahmed must establish that he has standing to assert a vicarious liability claim for each cause of action he pleads, which he has not. *See generally Doe v. Skyway House, Inc.*, No. 2:16–cv–00627–TLN–CMK, 2017 WL 2984878, *5 (E.D. Cal. July 13, 2017) ("Plaintiffs fail to demonstrate they have standing to assert a vicarious liability claim[.]"); *Freidman v. Massage Envy Franchising, LCC,* No. 3:12–cv–02962–L–RBB, 2013 WL 3026641, *4 (S.D. Cal. 2013) (holding plaintiffs lacked standing where plaintiffs "failed to sufficiently allege . . . vicarious liability"). Indeed, Al-Ahmed does not even plead a vicarious liability theory for several of his espionage-based claims—including the negligent hiring and aiding and abetting breach of fiduciary duty claims. FAC ¶¶ 164-68, 234-36. And other of his causes of action simply do not provide for vicarious liability—including the ECPA, SCA, CFAA, and civil conspiracy claims. *See infra*, Sections VI.F.1-3, 11.

Because Al-Ahmed has not pleaded a sufficiently concrete injury that is fairly traceable to Twitter, his espionage-based claims should be dismissed. *See Abdulaziz II* at *1; *Nichols v. Brown*, 859 F. Supp. 2d 1118, 1132 (C.D. Cal. 2012) (dismissing claim for lack of standing

because "Plaintiff has failed to show that his injury is 'fairly traceable' to [Defendant]").

B. Nearly all of Al-Ahmed's causes of action should be dismissed as time-barred.

Al-Ahmed's suit comes more than five-and-a-half years after he learned of the intrusion into his Twitter account and more than three years after his account suspension.[9] Thus, as this Court has already held, "all of Al-Ahmed's claims against Twitter related to the unauthorized intrusion of his Twitter account are barred by the statute of limitations" and "[a]ll claims related to the 2018 account suspension are barred except any claims with a 4-year statute of limitations[.]" Order at 23.[10] Nothing in Al-Ahmed's FAC saves these claims, or his newly added claims, from dismissal once again based on the applicable statutes of limitations. Accordingly, all of Al-Ahmed's claims against Twitter, except his breach of contract and civil conspiracy claims to the extent premised on his account suspension, are still time-barred.

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[9] Al-Ahmed's ECPA, CFAA, SCA, promissory estoppel, intrusion upon seclusion, negligent hiring, and negligence claims each have two-year statutes of limitations. 18 U.S.C. § 2520(e) (two years for ECPA claims); 18 U.S.C. § 1030(g) (two years for CFAA claims); 18 U.S.C. § 2707(f) (two years for SCA claims); *Calhoun v. Google LLC*, 526 F. Supp. 3d 605, 624 (N.D. Cal. 2021) (two years limitation period for intrusion upon seclusion claims under Cal. Civ. Proc. Code § 335.1); *So v. Shin*, 212 Cal. App. 4th 652, 662 (2013) (two years for negligence claims under Cal. Civ. Proc. Code § 335.1); *McGowan v. Weinstein*, 505 F. Supp. 3d 1000, 1025 (C.D. Cal. 2020) (two years for negligent hiring claims under Cal. Civ. Proc. Code § 335.1). UCL and breach of contract claims have four-year statutes of limitations. Cal. Civ. Proc. Code § 337(a) (four years for claims on written contracts); Cal. Bus. & Prof. Code § 17208 (four years for UCL claims). The statutes of limitations for unjust enrichment, promissory estoppel, and civil conspiracy are based on the underlying wrong. *Federal Deposit Insurance Corp. v. Dintino*, 167 Cal. App. 4th 333, 348 (2008); *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism*, 6 Cal. App. 5th 1207, 1224, n.5 (2016), *aff'd*, 4 Cal. 5th 637 (2018); *Maheu v. CBS, Inc.*, 201 Cal. App. 3d 662, 673 (1988). If founded on a quasi-contract theory, the claim is two years. Cal. Civ. Proc. Code § 339(1). If founded on conversion, fraud, or mistake, it is three years. Cal. Civ. Proc. Code § 338(d); *Maheu*, 201 Cal. App. 3d at 673. If founded on a written contract, it is 4 years under Cal. Civ. Proc. Code § 337. Replevin has a three-year statute of limitations. Cal. Civ. Proc. Code § 338. Interference with prospective economic advantage carries a two-year statute of limitations. *Curley v. Wells Fargo & Co.*, No. 13-cv-03805, 2014 WL 2187037, at *5 (N.D. Cal. May 23, 2014) (citing Cal. Civ. Proc. Code § 339(1)). Al-Ahmed's breach of fiduciary duty claims, which includes the breach of loyalty and aiding and abetting breach of fiduciary duty claims, have at most a four-year statute of limitations. Cal. Civ. Proc. Code § 343. However, "the applicable statute of limitations is determined by—as variously phrased—the nature of the right sued upon, the primary interest affected by the defendant's wrongful conduct, or the gravamen of the action." *Hydro-Mill Co., Inc. v. Hayward, Tilton & Rolapp Ins. Assocs., Inc.*, 115 Cal. App. 4th 1145, 1158-59 (2004) ("Since the gravamen of the . . . breach of fiduciary duty claims [is] the purported malpractice, the two-year statute of limitations applies."). Here, Al-Ahmed's fiduciary duty claims amount to interference with prospective economic advantage claims, which carry a two-year statute of limitations. *See* FAC ¶¶ 203-07, 214-15, 225-26, 229.

[10] In *Abdulaziz I*, the court likewise held that all but one of the claims based on the KSA espionage event were time-barred. *Abdulaziz I* at *6-7.

1. Al-Ahmed was notified of the unauthorized intrusion of his Twitter account more than five years before he filed this suit.

Al-Ahmed's claims relating to the espionage at Twitter accrued no later than December 11, 2015, when Twitter sent Al-Ahmed notices, via email and via the Twitter app, alerting him that his account information had been exposed. *See* ECF No. 30-1 at 5-6 (Ex. A ¶¶ 3, 4); FAC ¶¶ 45-47; ECF No. 29-5 at 9-20, 23, 102 (Exs. 1-4); Order at 9 (incorporating by reference the December 2015 notices and notification lists); *see also Abdulaziz I* at *7 n.58 (same). By waiting five-and-a-half years after Twitter notified him of the unauthorized access of his account, Al-Ahmed forfeited his right to pursue claims premised on that access, and those claims are therefore time barred. Order at 23. This Court has already rejected Al-Ahmed's arguments that a different statute of limitations is applicable based on Al-Ahmed's arguments that (1) he did not receive the notice; (2) he did not know the identity of the perpetrators; (3) he was ignorant of the cause of action; (4) the doctrine of fraudulent concealment tolled the statute of limitations; and (5) the continuous accrual doctrine made portions of his claims timely. Order at 15-24.

Nothing in Al-Ahmed's FAC changes the Court's previous analysis. While Al-Ahmed now explicitly alleges in his FAC he did not "receive" the notification, FAC ¶ 48, this Court has already evaluated that same argument by Al-Ahmed as made in his opposition to Twitter's previous motion to dismiss and held that "actual notice is not required for the statute of limitations to begin to run" and that Al-Ahmed's claim that he did not receive the notices "does not prove that Twitter did not send notices." Order at 17; *see also Abdulaziz I* at *7, *Abdulaziz II* at *7. Similarly, Al-Ahmed's FAC also adds various conclusory statements in what appears to be an effort to connect the 2015 espionage event with the 2018 account suspension. *See* FAC ¶¶ 50-55. These conclusory and implausible allegations, however, are not supported by any well-pleaded facts, *see supra* n.10; and this Court has already evaluated that same argument by Al-Ahmed and held that "both incidents are discrete and independent transactions, [thus] the continuous accrual doctrine does not apply." Order at 23. Moreover, even if the continuous accrual doctrine ***did*** apply, it "would permit the plaintiff to sue, but only for those discrete acts occurring within the relevant limitations period immediately preceding the filing of the plaintiff's

lawsuit"—meaning that Al-Ahmed would still be time barred from bringing any claims stemming from the 2015 espionage event. *See* Order at 22 (quoting *Aryeh v. Canon Bus. Solutions, Inc.*, 55 Cal. 4th 1185, 1199-200 (2013) (cleaned up)). In sum, because Al-Ahmed waited five-and-a-half years from Twitter's notices, all of his claims premised on the intrusion of his Twitter account should be dismissed with prejudice. *See Garrison v. Oracle Corp.*, 159 F. Supp. 3d 1044, 1084 ("[G]iving Plaintiffs yet another opportunity to amend their complaint to address the statute of limitations would . . . unduly prejudice [Defendant].").

2. Al-Ahmed waited more than three years after his account suspension before initiating this action.

Al-Ahmed's Arabic-language Twitter account was suspended in May 2018—more than three years before he filed suit. FAC ¶ 28. The Court previously held that his claims were time-barred because "[t]he continued suspension of the account does not constitute a separate act, and 'without separate wrongful acts to trigger the statute of limitations, continuous accrual does not apply.'" Order at 23 (quoting *Ryan v. Microsoft Corp.*, 147 F. Supp. 868, 896-97 (N.D. Cal. 2015)). Al-Ahmed does not plead any new facts to attempt to overcome the Court's prior dismissal. Thus, his replevin and interference with prospective economic advantage claims, as well as his SCA and breach of fiduciary duty claims, to the extent premised on account suspension, are time barred and should be dismissed with prejudice. *See Garrison*, 159 F. Supp. 3d at 1084.

C. Twitter is not vicariously liable for the KSA's conduct.

Al-Ahmed's ECPA, CFAA, SCA, UCL, unjust enrichment, breach of contract, promissory estoppel, intrusion upon seclusion, and breach of duty of loyalty claims all depend, at least in part, on his attempt to hold Twitter vicariously liable for Abouammo and Alzabarah's misconduct under a theory that Twitter either "aided or abetted" or otherwise "ratified" their illegal actions. FAC ¶¶ 15, 25, 28 & n.9. But Al-Ahmed's allegations do not support either theory, and these claims therefore fail as a matter of law.

1. Twitter did not aid or abet Abouammo and Alzabarah.

A defendant may be liable for aiding and abetting an intentional tort if the person "knows

the other's conduct constitutes a breach of duty" and gives substantial assistance or encouragement to that person, or the substantial assistance itself constitutes a breach of duty. *Casey v. U.S. Bank Nat. Ass'n*, 127 Cal. App. 4th 1138, 1144 (2005). Central to aiding and abetting liability is a defendant's knowledge of and intent "to participate in tortious activity." *Howard v. Super. Ct.*, 2 Cal. App. 4th 745, 748-49 (1992); *see also Casey*, 127 Cal. App. 4th at 1145-46 ("[A] defendant must have knowledge and intent."). But Al-Ahmed fails to sufficiently plead that Twitter had either knowledge or intent to intrude on his account on behalf of the KSA.

Far from pleading knowledge and intent, Al-Ahmed's FAC acknowledges that Twitter did not even "detect [Abouammo and Alzabarah's] breaches over a period of time spanning over a year." *See* FAC ¶ 26; *see also id.* ¶ 166. While Al-Ahmed asserts without well-pleaded facts that "Defendants . . . maintained a general knowledge of the conspiracy's objectives," FAC ¶ 174, such conclusory allegations "are not entitled to the assumption of truth." *See Iqbal*, 556 U.S. at 679. Accordingly, Al-Ahmed has failed to allege well-pleaded facts sufficient to establish that Twitter aided or abetted its rogue employees. *See id*.

2. Twitter did not ratify Abouammo and Alzabarah's misconduct.

Al-Ahmed's ratification theory fares no better. Under California law, "an employer may be liable for an employee's act where the employer either authorized the tortious act or subsequently ratified an originally unauthorized tort." *C.R. v. Tenet Healthcare Corp.*, 169 Cal. App. 4th 1094, 1110 (2009). Subsequent ratification refers to the employer's after-the-fact approval or adoption of the employee's conduct as its own by, for example, failing to investigate or halt it, or by concealing the employee's misconduct after learning of it. *Id*. at 1110-11. In contrast, there can be no liability based on ratification where an employer investigated and responded to complaints about the employee. *Ramos v. Los Rios Community College District*, No. CV 2:17-1458 WBS KJN, 2018 WL 626381, at *1 (E.D. Cal. Jan. 29, 2018) (citing *Delfino v. Agilent Technologies, Inc.*, 145 Cal. App. 4th 790, 810-11 (2006)).

As the court held in *Abdulaziz I*, Twitter's dissemination of "the December 2015 notice[s] defeats any claim that Twitter ratified its employees' conduct." *Abdulaziz I* at *7. Moreover, other than conclusory allegations of ratification, *see, e.g.*, FAC ¶ 29 n.9 ("Twitter has ratified the

actions of its supposedly errant employees"), Al-Ahmed still does not plausibly plead that Twitter authorized Abouammo and Alzabarah's actions, *see id*. ¶ 7 ("Abouammo and Alzabarah . . . accessed user information ***without*** authorization.").

Al-Ahmed's FAC includes various purported facts that he claims evidence ratification, but even if true, these do not reflect that Twitter failed to investigate, sanction, or otherwise address Abouammo and Alzabarah's wrongdoing, or that Twitter in any way assisted them in their misconduct, or otherwise demonstrated approval or adoption after the fact. *See, e.g.*, FAC ¶ 68 (Twitter investigated but did not detain Alzabarah), ¶ 70 (Twitter waited nine days before sending the December 2015 notice), ¶ 71 (Saudi Royalty owned more Twitter stock than Twitter's CEO), ¶¶ 72-73 (Twitter allegedly ignored supposed security system "alerts"); ¶¶ 29 n.9, 30 (Twitter suspended Al-Ahmed's Arabic language account); ¶ 43 (Twitter's then-CEO Jack Dorsey met with representatives from the KSA in June 2016). Nothing about these allegations reflects Twitter's approval of Abouammo or Alzabarah's conduct, particularly given that as soon as Twitter learned of the misconduct, it investigated, removed Alzabarah from his position, seized his laptop, and notified potentially impacted accountholders. *See Abouammo*, ECF No. 53, ¶ 26(k), (s); *see also id.*, ECF No. 1, ¶ 85. Twitter also cooperated with the FBI's investigation into Abouammo and Alzabarah's activities. *See e.g.*, *Abouammo*, ECF No. 1 ¶¶ 26, 71 (discussing emails and records obtained from Twitter), ¶¶ 42, 63 (discussing information obtained through interviews with Twitter employees). Indeed, the superseding indictment of Abouammo and Alzabarah recognizes Twitter was an unwitting victim in its rogue employees' scheme. *Id*., ECF No. 53 ¶ 28.

Notably, in *Abdulaziz*, the plaintiff made similar allegations regarding ratification, *see Abdulaziz I* at *3, which the court roundly rejected, *see id.* at *7. Just as in *Abdulaziz*, Al-Ahmed has not pleaded any facts that Twitter aided, abetted, or otherwise ratified Alzabarah and Abouammo's actions. Therefore, his ECPA, CFAA, UCL, unjust enrichment, promissory estoppel, intrusion upon seclusion, and aiding and abetting breach of fiduciary duty claims against Twitter should be dismissed with prejudice in full, and his SCA and breach of contract, civil conspiracy, and interference with prospective economic advantage claims should be dismissed

with prejudice to the extent premised on Abouammo or Alzabarah's conduct.[11]

D. CDA Section 230(c)(1) bars Al-Ahmed's account suspension-related claims.

This Court previously held that Twitter's immunity under CDA Section 230(c)(1) precluded "all of Al-Ahmed's suspension-based claims," which included, at least in part, claims for violation of the SCA, replevin, civil conspiracy, and breach of contract, but not his breach of contract claim based on Twitter's failure to provide adequate justification for his suspension or consider his appeal. *See* Order at 31. Al-Ahmed pleads no new facts to save the claims the Court previously dismissed and instead adds two claims—violation of the UCL and interference with prospective economic advantage—which should be dismissed for the same reasons. Because Al-Ahmed does not, and indeed cannot, plead around Twitter's Section 230 immunity, the Court should dismiss with prejudice all of Al-Ahmed's suspension-based claims, including the breach-of-contract theory previously exempted.

Section 230(c)(1) "establish[es] broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1118 (9th Cir. 2007). Specifically, Section 230(c)(1) protects from liability (1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat as a publisher or speaker (3) of information provided by another information content provider. *Sikhs for Just. "SFJ", Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1093 (N.D. Cal. 2015), *aff'd* 697 F. App'x 526 (9th Cir. 2017). As this Court has already found, each of these elements is satisfied here.

First, Twitter is an "interactive computer service" as defined by the CDA. Order at 25; *see*

[11] Appearing solely within his negligence cause of action, Al-Ahmed appears to suggest that Twitter should be liable for Abouammo and Alzabarah's acts under a *respondeat superior* theory. *See* FAC ¶ 182. But this liability theory fails as well. *Respondeat superior* requires that the employees' torts be inherent, typical, or expected by the employer in the course of the employee's duties. *Lisa M. v. Henry Mayo Newhall Mem'l Hosp.*, 12 Cal. 4th 291, 298 (1995). But, just as the court held in *Abdulaziz*, Alzabarah and Abouammo were "demonstrably not acting in the scope of their employment and instead were acting as agents for the Saudi regime." *Abdulaziz I* at *7. Here too, Al-Ahmed concedes that Alzabarah and Abouammo were acting "outside the scope of their job duties." *See* FAC ¶ 25; *see also Abouammo*, ECF No. 53, ¶¶ 14-20 (recognizing that their access of account information on behalf of the KSA violated their employment obligations and Twitter's written policies). Accordingly, such a theory fails as a matter of law.

also Brittain v. Twitter, Inc., No. 19-CV-00114-YGR, 2019 WL 2423375, at *2 (N.D. Cal. June 10, 2019). *Second*, Al-Ahmed is clearly the "information content provider" because he is the creator of the content associated with his Twitter account. Order at 26, 28-31; *see also Sikhs for Just.*, 144 F. Supp. 3d at 1094; 47 U.S.C. § 230(f)(3). *Third*, consistent with well-established authority, this Court previously held that all of Al-Ahmed's suspension-based claims were foreclosed by the CDA because they sought to "treat[] [Twitter] as a publisher." Order at 26, 31; *see Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1170-71 (9th Cir. 2008).

The Court's previous holding applies equally to the FAC's newly added claims for violation of the UCL and interference with prospective economic advantage. To the extent these claims are based on the 2018 account suspension, they are barred for the same reasons. *See Murphy v. Twitter,* 60 Cal. App. 5th 12, 27 (2021) (holding CDA precluded claim for violation of UCL); *Darnaa, LLC v. Google, Inc.*, No. 15-CV-03221-RMW, 2016 WL 6540452, at *8 (N.D. Cal. Nov. 2, 2016) (holding CDA precluded claim for intentional interference with prospective economic advantage).

Finally, the breach-of-contract theory the Court previously exempted—Twitter's alleged failure to provide adequate justification for Al-Ahmed's account suspension or to adequately consider Al-Ahmed's appeal from the suspension—should also be dismissed under Section 230 of the CDA. This claim is also premised on Twitter's decision of whether and how to publish or decline to publish content. Courts have barred comparable contractual claims under the CDA, reasoning that the "gravamen" of such claims seek to hold service providers liable for publishing decisions. *Murphy*, 60 Cal. App. 5th at 30. In *Fed. Agency of News LLC v. Facebook, Inc.*, for example, the plaintiff alleged that Facebook breached its Terms of Service by removing content "without a legitimate reason." 432 F. Supp. 3d 1107, 1119 (N.D. Cal. 2020). The court nevertheless dismissed the claim under Section 230(c)(1), finding that it was ultimately "based on Facebook's decision not to publish [plaintiff]'s content." *Id.* Likewise, in *Murphy*, a plaintiff alleged that by removing her Tweets and suspending her account, Twitter breached its terms by enforcing them "in a discriminatory and targeted manner." 60 Cal. App. 5th at 29-30. There, the

California Court of Appeal affirmed dismissal of the breach-of-contract claim, reasoning that it "amount[ed] to attacks on Twitter's interpretation and enforcement of its own general policies rather than breach of a specific promise." *Id.*; *id.* at 30 ("[T]he ***gravamen*** of [plaintiff's] complaint seeks to hold Twitter liable, not for specific factual representations it made, but for enforcing its Hateful Conduct Policy against her and exercising its editorial discretion to remove content she had posted on its platform."); *see* FAC ¶ 52 ("Twitter's … ***selective enforcement of its rules*** further establishes its complicit efforts to further the KSA's agenda.").

Where courts have exempted breach-of-contract claims from Section 230 immunity, it is because of a separate promise or agreement by the service provider apart from traditional publishing or editorial decision-making. For example, in *Barnes v. Yahoo!, Inc.*, a director of defendant Yahoo informed plaintiff that the director would "personally" remove material harmful to the plaintiff from Yahoo's website. 570 F.3d 1096, 1099 (9th Cir. 2008). There, the court held that the CDA did not preclude a promissory estoppel claim where the duty to remove content sprung not from Yahoo's duty as a publisher, but from the "enforceable promise" that Yahoo had made to the plaintiff. *Id.* at 1107. As California courts have since recognized, "*Barnes* never suggested, however, that all contract or promissory estoppel claims survive CDA immunity." *Murphy*, 60 Cal. App. 5th 29. Likewise, in *King v. Facebook*, the plaintiff indeed alleged a specific "implied promise … to explain [Facebook's] decision" to disable plaintiff's account, thus removing that particular contractual claim from the scope of Section 230(c)(1) immunity. 572 F. Supp. 3d 776, at 795 (N.D. Cal. 2021). Here, Al-Ahmed does not—and cannot—allege a promise from Twitter to explain or review appeals of account suspensions. *See* Order at 32. This lack of a specific promise distinguishes Al-Ahmed's claim from cases in which the colorable gravamen of a contractual claim *is* the bona fide allegation of a promise.

Because no additional facts could cure these legal deficiencies, Al-Ahmed's account-suspension-related claims against Twitter—his SCA, breach of contract, civil conspiracy, and UCL claims, in part, and his replevin and interference with prospective economic advantage claims in their entirety—should be dismissed with prejudice under Section 230.

E. Twitter's Limitation of Liability Clause contained within its Terms of Service bars many of Al-Ahmed's claims.

Al-Ahmed's claims for breach of contract, unjust enrichment, promissory estoppel, negligence, and negligent hiring are all barred by Twitter's TOS.[12] By using Twitter's services, Al-Ahmed agreed to be bound by Twitter's TOS, *see* FAC ¶ 140; *see also* ECF No. 30-1 at 103 (Ex. 6H),[13] which contains a Limitation of Liability provision that bars him from asserting liability against Twitter for an "inability to access or use the [Twitter] services," "any loss of data," and "unauthorized access, use or alteration of [his] transmissions or content" on "any theory of liability," including contract or "tort (including negligence)." *See* RJN, Ex. 6H § 11. While a limitation of liability clause may not exculpate a party from liability for intentional torts under California law, *see* Cal. Civ. Code § 1668, such clauses "have long been recognized as valid in California" and are otherwise fully enforceable, including for contract and negligence-based claims. *See generally Food Safety Net Servs. v. Eco Safe Sys. USA, Inc.*, 209 Cal. App. 4th 1118, 1126 (2012); *Lewis v. YouTube, LLC*, 244 Cal. App. 4th 118, 125 (2015); *Darnaa, LLC v. Google LLC*, 756 F. App'x 675, 676 (9th Cir. 2018); *Bass v. Facebook, Inc.*, 394 F. Supp. 3d 1024, 1037, 1038 (N.D. Cal. 2019).

Al-Ahmed conclusorily alleges that the clause cannot be enforced, citing to law review articles noting that privacy policies "are often difficult to understand"; stating that the relevant policies are "buried … in the code of [Twitter's] information structure" while acknowledging they are "public"; and alleging without specifying how the policies "are vague and ambiguous." FAC ¶ 74 & n.25. None of these points changes longstanding California law that enforces similar limitation-of-liability clauses. Accordingly, Al-Ahmed's breach of contract, unjust enrichment, promissory estoppel, negligence, negligent hiring, and negligent interference with prospective economic advantage claims should be dismissed as barred by the Limitation of Liability clause.

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[12] As explained below, *see infra*, Section VI.F.15, Al-Ahmed fails to specify whether he claims negligent or intentional interference with prospective economic advantage. If the former, the TOS bars that claim as well.

[13] Al-Ahmed cites to Twitter's TOS effective May 18, 2015, *see, e.g.*, FAC ¶¶ at 141, 146, and thus Twitter's citations are also to that TOS, *see* ECF No. 30-1 at 102-13 (Ex. 6H). But each of Twitter's TOSs from 2009 to the present, *see* ECF No. 30-1 at 27-214, 223-41 (Exs. 6A-6N, Ex. E), are materially the same with respect to the Limitation of Liability provisions.

F. Al-Ahmed's causes of action each fail for additional, independent reasons.

In addition to the broadly applicable reasons described above, Al-Ahmed's individual causes of action fail for additional, independent reasons.

1. Al-Ahmed fails to allege that Twitter violated the Wiretap Act as amended by the ECPA.

The Wiretap Act, as amended by ECPA, makes it unlawful to "intentionally intercept[] . . . any wire, oral, or electronic communication." 18 U.S.C. § 2511(1)(a); *see Konop v. Hawaiian Airlines, Inc.*, 302 F.3d 868, 874 (9th Cir. 2002). Al-Ahmed's FAC adds no new allegations beyond what was pleaded in his original complaint—Al-Ahmed alleges that Twitter violated the Wiretap Act because it "intentionally intercepted Plaintiff's Tweets, private messages, direct messages, online chats, friend requests, file transfers, file uploads, and file downloads." FAC ¶ 79. As before, his claim fails because he has not and cannot allege that Twitter "intercept[ed]" the "contents" of an electronic communication. *See* 18 U.S.C. § 2510(4).

First, Al-Ahmed again fails to allege facts sufficient to support the required element of "interception." For a communication to have been "intercepted" pursuant to the Wiretap Act it must have been "acquired during transmission, not while it is in electronic storage." *Konop*, 302 F.3d at 878 (no communication was "intercepted" where defendant accessed secure website). Al-Ahmed does not adequately plead that Defendants "intercepted" any information because there are no allegations that ***any*** of Al-Ahmed's communications were interrupted or halted while in transit. *See, e.g., NovelPoster v. Javitch Canfield Group,* 140 F. Supp. 3d 938, 952-53 (N.D. Cal. 2014) (holding that absent allegations of the halting of the transmission of the messages to their intended recipients, there was no illegal "interception"). Al-Ahmed merely vaguely alleges that broad categories of communication were "intercepted" with no further specificity. FAC ¶¶ 79, 86, 88. Such a "conclusory allegation" fails, among other reasons, because it does not "provide fair notice to Defendants of ***when*** [the Plaintiff] believes [Defendants] intercept[ed] [his] communications." *In re Vizio, Inc., Consumer Privacy Litig.*, 238 F. Supp. 3d 1204, 1228 (C.D. Cal. 2017).

Second, Al-Ahmed fails to adequately plead what "contents" were intercepted. Again, he

vaguely claims that Defendants intercepted his "Tweets, private messages, direct messages, online chats, friend requests, file transfers, file uploads, and file downloads." FAC ¶ 79. But these nonspecific and conclusory allegations fail to "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. For example, in *Smith v. Google LLC*, the plaintiff "support[ed] her claims with a single conclusory sentence" and did not include allegations regarding "when the communications occurred, what they were about and to whom they were directed." No. 18-CV-06459-SVK, 2019 WL 542110, at *3 (N.D. Cal. Jan. 18, 2019), *report and recommendation adopted*, No. 18-CV-06459-BLF, 2019 WL 539063 (N.D. Cal. Feb. 11, 2019).[14] The court held that plaintiff "fail[ed] to provide a sufficient factual basis to state a claim for relief" and dismissed plaintiff's claim with prejudice. *Id.* Al-Ahmed's conclusory allegation is similarly insufficient to state a claim under the Wiretap Act. Accordingly, his claim should be dismissed with prejudice.

Third, to the extent Al-Ahmed is alleging that Twitter is vicariously liable for Alzabarah and Abouammo's actions, such allegations fail for the reasons discussed *supra*, in Section VI.C. But such allegations also fail in particular as to the Wiretap Act, as the statute does not allow for secondary liability because it requires "intentional" conduct on the part of the defendant. 18 U.S.C. § 2511(1)(a)-(b); *see In re Toys R Us, Inc., Priv. Litig.*, No. 00-CV-2746, 2001 WL 34517252, at *7 (N.D. Cal. Oct. 9, 2001) ("The Court finds that § 2520(a) does not provide a cause of action against aiders and abetters . . . ."); *see also Butera & Andrews v. Int'l Bus. Machines Corp.*, 456 F. Supp. 2d 104, 110 (D.D.C. 2006). Al-Ahmed's Wiretap Act claim thus fails for this additional, independent reason. Accordingly, Al-Ahmed's Wiretap Act or ECPA claim should be dismissed with prejudice.

2. Al-Ahmed fails to plead a claim under the SCA.

The FAC's SCA claim is identical to the SCA claim Al-Ahmed pleaded in his original complaint, and once again fails to state a claim. To state a claim against Twitter under the SCA, Al-Ahmed must show that Twitter (1) "intentionally accesse[d] without authorization;" (2) "a

[14] Much like Al-Ahmed's, Smith's conclusory allegation read: "Google intercepted wire, oral, and electronic communications by invading the privacy of my phone calls, internet searches, and emails and are alleged to have redirected them unlawfully and/or improperly to unintended end users and/or endpoints." *Id.*

facility through which an electronic communication service is provided;" and (3) obtained, altered, or prevented authorized access to an electronic communication "while it is in electronic storage." 18 U.S.C. § 2701(a)(1)-(2). Al-Ahmed alleges Twitter violated the SCA both by blocking access to his account and as a result of the KSA espionage. But neither allegation qualifies as an SCA violation.

First, Al-Ahmed alleges that Twitter violated the SCA by "blocking Plaintiff's access to Twitter's platform without justification." FAC ¶¶ 107-108. The SCA, however, provides an exception from liability for "conduct authorized by the person or entity providing a wire or electronic communications service." 18 U.S.C. § 2701(c)(1). Because Twitter is the entity providing the electronic communication service, and Twitter authorized the suspension of Al-Ahmed's Twitter account, Twitter is not subject to liability under the SCA's unauthorized access provision. *Id.*; *see e.g., In re Google, Inc. Privacy Policy Litigation*, No. C-12-01382-PSG, 2013 WL 6248499, at *12 (N.D. Cal. Dec. 3, 2013) (concluding that plaintiff's SCA claim "borders on frivolous, considering the plain language of [§ 2701(c)] exempts conduct authorized" by the provider and the provider "plainly authorized actions that it took itself"); *Calhoun v. Google LLC*, 526 F. Supp. 3d 605, 627 (N.D. Cal. 2021) (same).

Second, Al-Ahmed alleges that Twitter violated the SCA by "accessing files on the Plaintiff's network without permission." FAC ¶ 109. But Al-Ahmed does not provide factual support for his allegation that any Defendant accessed ***his*** "network," as opposed to Twitter's network. *See* FAC ¶ 22 ("Alzabarah and Abouammo . . . accessed the company's information."), ¶ 24 ("Alzabarah and Abouammo mined Twitter's internal systems"). And regardless, "personal computing devices are not facilities" under the SCA. *Calhoun*, 526 F. Supp. 3d at 627.

Finally, Al-Ahmed appears to allege that Twitter is vicariously liable for its rogue employees' misconduct. But such allegations fail for the reasons discussed in Section VI.C, and also because, like the Wiretap Act, the SCA does not provide for secondary liability—it requires "intentional" conduct on the part of the defendant. 18 U.S.C. § 2701(a)(1)-(2); *see Vista Mktg., LLC v. Burkett*, 999 F. Supp. 2d 1294, 1296 (M.D. Fla. 2014) (collecting cases holding "that the SCA does not create or recognize a cause of action for secondary liability claims").

Al-Ahmed's SCA claim should be dismissed with prejudice.

3. Al-Ahmed fails to plead a CFAA claim against Twitter.

Al-Ahmed's FAC also fails to plead a CFAA claim against Twitter. The CFAA makes it a crime to "intentionally access[] a computer without authorization or [to] exceed[] authorized action" and to then take certain specified forbidden actions. *See* 18 U.S.C. § 1030(a)(2). The CFAA's private cause of action provides that "[a]ny person who suffers damage or loss . . . may maintain a civil action against the violator" but "***only if*** the conduct involves 1 of the factors set forth in subclauses (I), (II), (III), (IV), or (V) of subsection (c)(4)(A)(i)." 18 U.S.C. § 1030(g). Al-Ahmed fails to plead any facts to support his claim that Twitter violated the CFAA.

First, Al-Ahmed appears to conclusorily and mistakenly allege that Defendants improperly accessed ***his*** computer "without authorization and/or exceed any authorized access." FAC ¶¶ 91-101. But this is not supported by any well-pleaded factual allegations. *See supra* Section VI.F.3. Rather, the FAC alleges that Alzabarah and Abouammo "***mined Twitter's internal systems***" and engaged in unauthorized access of "***Twitter's computer system***." FAC ¶¶ 24, 22, n.6. But the FAC nowhere pleads facts that Alzabarah or Abouammo—much less Twitter—accessed Al-Ahmed's personal computer. To the extent Al-Ahmed intended to allege that Twitter violated the CFAA by accessing its own computer network, such allegations fail as Twitter cannot be said to have accessed its own computer network without or in excess of any authorized action. *See, e.g., United States v. Nosal*, 676 F.3d 854, 864 (9th Cir. 2012).

Second, as with his claims under the Wiretap Act and the SCA, Al-Ahmed's CFAA claim against Twitter should be dismissed for the additional reason that the CFAA does not provide for vicarious liability. *See SolarCity Corp. v. Pure Solar Co.*, No. CV1601814BRODTBX, 2016 WL 11019989, at *9 (C.D. Cal. Dec. 27, 2016) ("[T]he CFAA creates liability only for those who violate its terms—it makes no mention of vicarious liability or liability for those who should have known of its violations.") . And, as discussed above, even if vicarious liability were permissible under the CFAA, Al-Ahmed fails to plausibly plead that Twitter is vicariously liable for Alzabarah and Abouammo's conduct. *See* Section VI.C.

Third, Al-Ahmed again fails to allege that Twitter's "conduct involve[d] 1 of the factors

set forth in . . . subsection (c)(4)(A)(i)," as required to plead a private cause of action. 18 U.S.C. § 1030(g). Al-Ahmed conclusorily alleges that "Defendants' conduct has caused a loss to Plaintiff in an amount exceeding $1,000,000 in value," FAC ¶ 98, apparently seeking to satisfy the factor providing a private cause of action where the offense caused "loss . . . aggregating at least $5,000 in value." 18 U.S.C. § 1030(c)(4)(A)(i)(I). But the CFAA narrowly defines "loss" as "any reasonable cost to any victim . . . incurred ***because of interruption of service***." 18 U.S.C. § 1030(e)(11). Al-Ahmed's CFAA allegations, however, are entirely unrelated to an interruption of service. FAC ¶¶ 91-101. Because Al-Ahmed has failed to plead any of the factors set forth under the private right of action provision in subsection (c)(4)(A)(i), his CFAA claim fails for this reason as well. *See Andrews v. Sirius XM Radio Inc.*, 932 F.3d 1253, 1263 (9th Cir. 2019) (dismissing CFAA claim for failure to "plausibly allege a qualifying loss" where plaintiff alleged that defendant "stole [his] personal information"); *see also NetApp, Inc. v. Nimble Storage, Inc.*, 41 F. Supp. 3d 816, 834-35 (N.D. Cal. 2014).

The CFAA claim should be dismissed with prejudice.

4. Al-Ahmed's UCL claims fail as a matter of law.

Al-Ahmed's FAC pleads two UCL claims. As in Al-Ahmed's original Complaint, Al-Ahmed again broadly alleges that Twitter's aiding and abetting of Alzabarah and Abouammo's misconduct, and its "deceptive" privacy policies, violated the UCL. FAC ¶¶ 111-27. In the FAC, Al-Ahmed adds a second claim that, although styled as a separate cause of action, merely adds allegations that Twitter aided and abetted Abouammo and Alzabarah in breaching their fiduciary duties. *See* FAC ¶ 249. Both UCL claims fail for the same reasons: Al-Ahmed lacks standing to pursue them and fails to plead their required elements.

a. Al-Ahmed lacks standing to pursue a claim under the UCL because he fails to plead causation or a redressable injury.

The UCL creates a private right of action against "any unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200. But to have standing to bring a UCL claim, a plaintiff must both plead an economic injury and "show that [the] economic injury was the result of, i.e., *caused by*, the unfair business practice." *Kwikset Corp. v. Super. Ct.*, 51 Cal. 4th

310, 320-22 (2011). As set forth in Section VI.A above, Al-Ahmed fails to show how any injury he suffered was the "result of" Twitter's conduct, and therefore he also fails to establish standing under the UCL. *See, e.g.*, *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1362 (2010).

Al-Ahmed also fails to establish standing to pursue a UCL claim for the separate reason that his FAC does not plead a cognizable injury under the UCL. The UCL's remedies are "generally limited to injunctive relief and restitution." *Korea Supply Co. v. Lockheed Martin Corp*., 29 Cal. 4th 1134, 1144 (2003). Al-Ahmed has pleaded claims for disgorgement and restitution, *see* FAC ¶¶ 127, 252, but "nonrestitutionary disgorgement is not available under the UCL" and Al-Ahmed cannot seek restitution because he did not pay Twitter for use of the free services at issue. *Sharpe v. Puritan's Pride, Inc.*, 466 F. Supp. 3d 1066, 1072 (N.D. Cal. 2020); *see also In re Facebook Privacy Litig.*, 791 F. Supp. 2d 705, 715 (N.D. Cal. 2011) (holding that where plaintiff "received [d]efendant's services for free, as a matter of law, [that] [p]laintiff[] cannot state a UCL claim"). While Al-Ahmed nominally seeks injunctive relief, FAC ¶¶ 127, 252, under the UCL, "a plaintiff cannot receive an injunction for past conduct unless he shows that the conduct will probably recur," and Al-Ahmed fails to allege facts sufficient to show that. *Sun Microsystems, Inc. v. Microsoft Corp.*, 188 F.3d 1115, 1123 (9th Cir. 1999), *overruled on other grounds*. Indeed, after learning of the KSA espionage, Twitter acted to remove its remaining rogue employee, terminate his access to its systems, seize his computer, and physically escort him from the building. *See Abouammo*, ECF No. 53, ¶ 26(k) and (s); *id.*, ECF No. 1, ¶ 85. Because Al-Ahmed has failed to state a viable claim for restitution or injunctive relief, both of his UCL claims should be dismissed. *Ice Cream Distribs. Of Evansville, LLC v. Dryer's Grand Ice Cream Inc.*, 487 Fed. App'x 362, 363 (9th Cir. 2012).

b. Al-Ahmed also fails to adequately plead a UCL violation.

Al-Ahmed has not pleaded fraudulent, unlawful, or unfair conduct by Twitter, as needed to state a UCL claim. ***First***, as in *Abdulaziz*, Al-Ahmed's fraud-prong claim should be dismissed because he fails to "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b); *see Abdulaziz I* at *7 ("[T]here is no viable fraud claim[.]"). Al-Ahmed vaguely alleges that he relied on Twitter "policies for services, and promise to protect private/confidential

information, which Twitter offers on Twitter's website." FAC ¶ 118. But he fails to specify which privacy policies he relied upon and how those policies are fraudulent, as is required to satisfy Rule 9. *See e.g., Williamson v. McAfee, Inc.*, No. 5:14-CV-00158-EJD, 2014 WL 4220824, at *6 (N.D. Cal. 2014) ("Plaintiff must plead reasonable reliance on alleged misstatements with particularity by alleging . . . facts of 'sufficient specificity[.]'") (quoting *Vess v. Ciba-Geigy Corp.*, 317 F.3d 1097, 1106 (9th Cir. 2003).

Second, also as in *Abdulaziz*, Al-Ahmed fails to state a claim under the unfair prong because he has not pleaded with "reasonable particularity" what unfair business practice Twitter engaged in. *See Abdulaziz I* at *7 ("[T]he plaintiff did not identify an unfair business practice[.]"). Al-Ahmed makes several vague and implausible allegations as to Twitter's unfair practices, FAC ¶ 115, but he fails to plead any practice with particularity. *See Williamson*, 2014 WL 4220824, at *7 (dismissing unfairness prong claim for failure to plead with reasonable particularity); *see also Khoury v. Maly's of California, Inc.*, 14 Cal. App. 4th 612, 619 (1993).

Third, Al-Ahmed's claims under the unlawful prong fail because his predicate statutory and common law violations fail. *See Abdulaziz I* at *7 (dismissing unlawful-prong claim in the absence of a predicate statutory violation); *Belton v. Comcast Cable Holdings*, 151 Cal. App. 4th 1224, 1234-39 (2007). There are no well-pleaded facts that Twitter violated the Federal Trade Commission Act or interfered with any contracts. And Al-Ahmed's allegations that Twitter violated the ECPA and CFAA, and that Twitter aided and abetted Abouammo and Alzabarah in breaching their fiduciary duties to Al-Ahmed, fail for the reasons set forth in Sections VI.F.1., VI.F.3, and VI.F.14, respectively. Additionally, Al-Ahmed's allegation that Twitter violated the California Comprehensive Computer Data Access and Fraud Act ("CDAFA"), Cal. Penal Code § 502, fails because he does not plausibly plead a CDAFA violation, much less plead one with the requisite "who, what, when, where, and how of the misconduct charged." *See In re Apple Inc. Device Performance Litig.*, 386 F. Supp. 3d 1155, 1181 (N.D. Cal. 2020) (applying Rule 9(b)'s heightened pleading standards to the CDAFA).

Accordingly, Al-Ahmed's UCL claim should be dismissed with prejudice because he has not pleaded—and cannot plead—fraudulent, unfair, or unlawful conduct by Twitter.

5. Al-Ahmed's claim for unjust enrichment fails as a matter of law.

California law generally does not recognize a standalone cause of action for unjust enrichment. *See Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015).[15] "When a plaintiff alleges unjust enrichment, a court may construe the cause of action as a quasi-contract claim seeking restitution." *Id*. However, that doctrine only applies where a plaintiff has "no enforceable contract." *Letizia v. Facebook Inc.*, 267 F. Supp. 3d 1235, 1253 (N.D. Cal. 2017). Here, Al-Ahmed alleges that he entered into an enforceable contract with Twitter. *See* FAC ¶¶ 139-14 ("Plaintiff entered into a contractual relationship with Twitter when he created a Twitter user account."). His claim for quasi-contract is thus barred, and his claim for unjust enrichment should be dismissed. *Sloan v. Gen. Motors LLC*, No. 16-CV-07244-EMC, 2020 WL 1955643, at *27 (N.D. Cal. Apr. 23, 2020) ("Numerous cases indicate that the mere existence of a contract that defines the parties' rights bars a claim for unjust enrichment.").

6. Al-Ahmed fails to plead any breach of contract by Twitter.

Al-Ahmed alleges that Twitter breached its User Agreement.[16] As before, this claim fails for the simple reason that Al-Ahmed does not identify a single term in the User Agreement that Twitter breached. It is blackletter law that "[t]o prevail in a breach of contract suit, a plaintiff must allege . . . [the] breach of a contract term." *Ewert v. eBay, Inc.*, 602 F. App'x 357, 359 (9th Cir. 2015). For example, Al-Ahmed fails to identify any contractual term that would obligate Twitter to take "all necessary measures" to protect his account. FAC ¶ 147(c). He does not do so because he cannot; the agreement makes no such guarantee. *See* ECF No. 30-1 at 110, Ex. 6H § 11.A ("Your access to and use of the Services or any Content are at your own risk. . . . [Twitter] makes no warranty or representation and disclaim all responsibility and liability for: (i) the … security or reliability of the Services or any content…"). The FAC's newly added allegations of Twitter's alleged promise to "safeguard Plaintiffs [sic] information, and that of his sources and

[15] *But see Hartford Cas. Ins. Co. v. J.R. Mktg., L.L.C.*, 61 Cal. 4th 988, 1007 (2015) (allowing unjust enrichment to proceed as an independent claim in an insurance case).

[16] The Twitter User Agreement includes the Terms of Service, Rules and Policies, and Privacy Policy. *See* ECF No. 30-1 at 112 (Ex. 6H § 12.C) ("These Terms, including the Twitter Rules for the Twitter Services and our Privacy Policy, are the entire and exclusive agreement between Twitter and you regarding the Services."); *see also id*. at 107 (§ 8).

followers" again fail to reference any relevant contractual terms. FAC ¶ 58.

Nor, as this Court has already held, does Al-Ahmed identify a contractual term that prohibits Twitter from "suspending [his] Twitter account without adequate justification." *See* FAC ¶ 147(g)*;* Order at 31-32. Al-Ahmed also generically alleges that Twitter failed to follow its own "internal rules, policies, and procedures," FAC ¶ 147(d), but the user-facing Twitter User Agreement does not incorporate or reference Twitter ***internal*** rules or policies, such as employee or other corporate policies. New allegations asserting that Twitter "violat[ed] its own privacy policies" again only assert bare legal conclusions. *Id.* ¶ 75. Without alleging *which* terms of the contract Twitter allegedly breached, Al-Ahmed fails to state a claim for breach of contract.

7. Al-Ahmed cannot bring a claim for promissory estoppel.

Al-Ahmed's promissory estoppel claim also fails. The FAC alleges that Twitter made promises in its Privacy Policy and Rules that induced Al-Ahmed to rely on Twitter's Direct Message feature to engage in politically sensitive communications, and that he was irreparably harmed from "these communications [being] obtained and/or mined by KSA spies." FAC ¶¶ 151-53. But Al-Ahmed cannot bring such a claim for promissory estoppel because promissory estoppel "is an equitable doctrine to allow enforcement of a promise that would otherwise be unenforceable." *US Ecology, Inc. v. State of California*, 129 Cal. App. 4th 887, 902 (2005). Where, as here, the promise at issue is part of a contract, the claim must "be pleaded as one for breach of the bargained-for contract." *Fontenot v. Wells Fargo Bank, NA*, 198 Cal. App. 4th 256, 275 (2011) (dismissing promissory estoppel claim where alleged promise was contained in contract between the parties), *disapproved of on other grounds in Yvanova v. New Cent. Mortg. Corp.*, 62 Cal. 4th 919 (2016). Furthermore, where, as here, a plaintiff pleads adequate consideration for the underlying contract, *see* FAC ¶ 146, promissory estoppel cannot be pleaded in the alternative to a breach-of-contract claim. *See, e.g.*, *Avidity Partners, LLC v. State of Cal.*, 221 Cal. App. 4th 1180, 1209 (2013). In such cases, promissory estoppel and breach-of-contract claims are not simply "distinct or alternative theories of recovery"; they are "mutually exclusive." *Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.*, 211 Cal. App. 4th 230, 243 (2012). Because the alleged promises at issue are part of an express written contract, *see* FAC ¶¶ 139-42; ECF 30-

1 at 111 (Ex. 6H § 11.C), Al-Ahmed cannot maintain a claim for promissory estoppel and his claim should be dismissed.

8. Al-Ahmed does not plead the threshold elements required to state a claim for intrusion upon seclusion.

Al-Ahmed fails to allege an actionable claim for intrusion upon seclusion. To state a claim for intrusion upon seclusion, a plaintiff must show that "(1) a defendant 'intentionally intrude[d] into a place, conversation, or matter as to which the plaintiff has a reasonable expectation of privacy[,]' and (2) the intrusion 'occur[red] in a manner highly offensive to a reasonable person.'" *In re Facebook Internet Tracking Litig.*, 956 F.3d 589, 601 (9th Cir. 2020) (quoting *Hernandez v. Hillsdale*, 47 Cal. 4th 272, 285 (2009)).

As to the first element, Al-Ahmed fails to plead a "reasonable expectation of privacy" because he does not specify what private matters were intruded upon and how they were in fact private. Al-Ahmed generically alleges that his "private messages, contacts, confidential sources, conversations, and data" were disclosed, FAC ¶ 160. But under California law, such non-specific allegations cannot form the basis of a privacy claim; rather, a plaintiff must provide "robust allegations" about the specific information allegedly invaded. *Cahen v. Toyota Motor Corp.*, 147 F. Supp. 3d 955, 973 (N.D. Cal. 2015); *In re Google Location History Litig.*, 428 F. Supp. 3d 185, 199 (dismissing intrusion upon seclusion claim for lack of "particular pleading" as to the confidential information allegedly invaded). For example, in *In re Yahoo Mail Litigation*, the court dismissed privacy claims premised on allegations that Yahoo had scanned the content of users' emails, holding that there is "no legally protected privacy interest and reasonable expectation of privacy in emails as a general matter" and that plaintiff must "plead ***specific email content in specific emails***" to establish a reasonable expectation of privacy. 7 F. Supp. 3d 1016, 1040-42 (N.D. Cal. 2014). Because Al-Ahmed offers no such specifics, he fails to plead this element. *Sunbelt Rentals, Inc. v. Victor*, 43 F. Supp. 3d 1026, 1035 (N.D. Cal. 2015) (dismissing claim where pleading "[did] not identify the contents of any particular text messages").[17]

[17] Further, Al-Ahmed "cannot assert any privacy claim as to information [he] has already released to the public." *Wasson v. Sonoma Cty. Jr. Coll. Dist.*, 4 F. Supp. 2d 893, 908 (N.D. Cal. 1997). To the extent he alleges his "e-mail addresses, contacts, phone numbers, birth dates, and internet protocol ("IP") addresses," were private, FAC ¶¶ 24, 61, such allegations are contradicted by the

As to the second element, actionable invasions of privacy must be "highly offensive" and an "egregious breach of the social norms." *Hernandez*, 47 Cal. 4th at 293. Courts regularly dismiss invasion-of-privacy claims at the pleading stage for not establishing this threshold element. *Low v. LinkedIn Corp.*, 900 F. Supp. 2d 1010, 1025 (N.D. Cal. 2012) ("The California Constitution and the common law set a high bar for . . . invasion of privacy claim[s]."). Specifically, the "manner in which" an alleged invasion of privacy occurred impacts whether it is sufficiently "egregious." *Ruiz v. Gap, Inc.*, 540 F. Supp. 2d 1121, 1127-28 (N.D. Cal. 2008), *aff'd*, 380 F. App'x 689, 693 (9th Cir. 2010). ("California courts have yet to extend the cause of action to include accidental or negligent conduct."). For example, in *Ruiz*, the court held that the theft of a retail store's laptop containing job applicants' personal information, including their social security numbers, did not constitute an egregious breach of privacy by the retail store, which itself was an unwitting victim of the theft. *Id*. at 1128; *see also Razuki v. Caliber Home Loans, Inc.*, No. 17-cv-1718LAB(WVG), 2018 WL 2761818 at *1 (S.D. Cal. June 8, 2018) (finding no "egregious breach" by defendant where third-party "hackers breached [defendant's] security and stole sensitive customer information"). So too here, where Twitter was the victim of state-sponsored espionage.

Because he has not pled either element, Al-Ahmed's claim should be dismissed with prejudice.

9. Al-Ahmed fails to plead facts necessary to support his negligent hiring, supervision, and retention claim.

As in *Abdulaziz*, Al-Ahmed alleges that Twitter negligently hired, supervised, and retained Abouammo and Alzabarah. But, also as in *Abdulaziz*, his FAC fails to identify any "red flags" that would have put Twitter on notice that its employees had become agents of the KSA ***prior to*** their misconduct, and his claim should therefore be dismissed. *See Abdulaziz I* at *7 ("[T]he plaintiff's allegations — that there were "red flags" and known risks — are conclusions, not facts."). There can be no liability for negligent supervision "in the absence of knowledge by the principal that the agent or servant was a person who could not be trusted to act properly

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fact that this information was publicly available. *See supra* Section VI.A.

without being supervised." *Juarez v. Boy Scouts of Am., Inc.*, 81 Cal. App. 4th 377, 395 (2000), *disapproved of on other grounds by Brown v. USA Taekwondo*, 11 Cal. 5th 204, 483 P.3d 159 (2021).

The same is true of negligent hiring and retention: Al-Ahmed must establish that Twitter "knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materialize[d]." *Doe v. Capital Cities*, 50 Cal. App. 4th 1038, 1054 (1996). But, as in *Abdulaziz*, Al-Ahmed has not pleaded any facts that Twitter was aware of Abouammo and Alzabarah's activities ***prior to*** hiring them, or that it retained or failed to supervise them ***after*** learning of their misconduct. Seeking to overcome this pleading deficiency previously highlighted in Twitter's first motion to dismiss, Al-Ahmed adds conclusory allegations that Alzabarah and Abouammo's conduct must have set off alerts that were ignored by Twitter. FAC ¶¶ 72-73. Conclusory statements such as these, however, "are not entitled to the assumption of truth." *Iqbal*, 556 U.S. at 679.[18] Further, these wholly implausible allegations are contradicted by others in the FAC that Twitter did ***not*** have an alert system and was ***unaware*** of its employees' misconduct. *See, e.g.*, FAC ¶ 63 ("[T]he breach of Plaintiff's account was entirely foreseeable given . . . the utter dearth of any internal control mechanism to monitor employees' conduct"), *id.* ¶ 166 ("[I]t took [Twitter] at least one year to even detect the improper and criminal actions of Alzabarah and Abouammo"), *id.* ¶ 26 ("A superseding indictment filed by the [DOJ] makes clear that Twitter failed to detect these breaches over a period of time spanning over a year."). Moreover, as soon as Twitter became aware of its employees' misconduct, Twitter removed Alzabarah, *see Abouammo*, ECF No. 53, ¶ 26(k) and (s), and Abouammo had already left the company by then, *id.* ¶ 26(k). In short, as in *Abdulaziz*, Al-Ahmed has not pleaded any plausible "facts that Twitter knew or should have known that its employees created a particular risk or hazard," or retained them after learning what they had done. *Abdulaziz II* at *7.[19] Accordingly,

[18] There is no evidence supporting these conclusory allegations. Notably, the DOJ's superseding indictment, which Al-Ahmed otherwise relies on for the factual allegations in his Complaint, does not provide any indication of "alerts" occurring.

[19] Al-Ahmed's added allegations of "alerts" parallel the allegations added by Abdulaziz in his Third Amended Complaint. *See, e.g.*, *Abdulaziz*, ECF No. 98 ¶¶ 12, 33, 46, 49, 53, 64, 67, 87, 93; *see also Abdulaziz II* at *7 (dismissing Abdulaziz's claim).

this claim should be dismissed with prejudice.

10. Al-Ahmed failed to adequately plead proximate causation.

As in *Abdulaziz*, Al-Ahmed's negligence-based claims (his claims for negligence and negligent hiring) should also be dismissed for lack of proximate causation. *See Abdulaziz III* at *3. The proximate causation standard imposes an even higher burden than Article III's causation requirement. *See Native Vill. of Kivalina v. ExxonMobil Corp*., 663 F. Supp. 2d 863, 878 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012). Here, for the same reasons that Al-Ahmed has failed to plead injury-in fact causation under Article III, *see supra*, Section VI.A., he has also failed to plead proximate causation and his negligence-based claims should thus be dismissed.

11. There is no separate cause of action for civil conspiracy.

Al-Ahmed purports to assert an independent cause of action for civil conspiracy in which Twitter "conspired" with Abouammo and Alzabarah to improperly acquire Al-Ahmed's personal information to harm him and "others who had direct contact with him." FAC ¶ 170. This implausible allegation is conclusory and not supported by any well-pleaded facts; and should thus be dismissed. *See Iqbal*, 556 U.S. at 679. Further, under California law, "[c]onspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who . . . share with the immediate tortfeasors a common plan or design in its perpetration." *Applied Equip. Corp. v. Litton Saudi Arabia Ltd*., 7 Cal. 4th 503, 504 (1994). Accordingly, this cause of action also should be dismissed with prejudice as not cognizable under California law. *See Mintel Learning Tech., Inc. v. Beijing Kaidi Educ.*, No. C 06 7541 PJH, 2007 WL 2288329, at *4 (N.D. Cal. Aug. 9, 2007) (dismissing separately pleaded cause of action for civil conspiracy).

12. Al-Ahmed fails to state a claim for replevin.

Al-Ahmed alleges that Twitter has wrongfully deprived him of "access to" a list of Twitter accountholders who followed his suspended account, and through his replevin claim demands that Twitter provide him "any and all information related to [his] subscribers" and/or the "subscribers list with associated data." FAC ¶¶ 191, 193, 194. "Under current California law, … replevin … [is] addressed by the tort of conversion." *Foster v. Sexton*, 61 Cal. App. 5th 998, 1020 (Cal. Ct. App. 2021). To plead conversion, a plaintiff must plead, *inter alia*, "(1) his ownership of

or right to possess the property at the time of the conversion" and "(2) that the defendant disposed of the plaintiff's property rights or converted the property by a wrongful act." *Bank of New York v. Fremont Gen. Corp*., 523 F.3d 902, 914 (9th Cir. 2008). Al-Ahmed cannot allege either.

With respect to alleging a "wrongful act," Al-Ahmed alleges that Twitter "wrongfully withheld from Plaintiff access" to data about his followers. FAC ¶ 194. But there was nothing wrongful about Twitter's suspending Al-Ahmed's access. Aside from the harassing message that led to the suspension, Twitter's TOS provides that it may suspend accounts within its discretion, including "for any or no reason." ECF No. 30-1 at 109 (Ex. 6H § 10). The suspension was not "wrongful," but well within the terms to which Al-Ahmed consented. *See, e.g., CRV Imperial-Worthington, LP v. Gemini Ins. Co.*, 770 F. Supp. 2d 1074, 1079 (S.D. Cal. 2010) (dismissing conversion claim where contract permitted defendants' conduct and was thus not wrongful).

Al-Ahmed also cannot plead an ownership or possessory right for several, independent reasons. The Ninth Circuit, examining California law, applies a three-factor test to recognize a property right: "First, there must be an interest capable of precise definition; second, it must be capable of exclusive possession or control; and third, the putative owner must have established a legitimate claim to exclusivity." *G.S. Rasmussen & Assocs., Inc. v. Kalitta Flying Serv., Inc.*, 958 F.2d 896, 903 (9th Cir. 1992). But Al-Ahmed does not plead a "precise" interest: he refers to his alleged interest variably as: (1) "access" to the subscriber list, FAC ¶ 194; (2) "any and all information related to" his subscribers, *id.* ¶ 191; and (3) "subscribers lists with associated data," FAC ¶ 193. Second, however styled, the list of followers of Al-Ahmed's account is not capable of exclusive possession by Al-Ahmed, nor can he allege a "legitimate claim to exclusivity" because under Twitter's TOS the list of followers of Al-Ahmed's account is expressly the property of Twitter. *See* ECF 30-1 at 107, Ex. 6H § 7 ("All right, title, and interest in and to the Services (excluding Content provided by users) are and will remain the exclusive property of Twitter . . . .").

Accordingly, Al-Ahmed's claim for conversion should be dismissed with prejudice.

13. Al-Ahmed's Cal. Corp. Code § 17704.09 claim fails as a matter of law.

Al-Ahmed's claim under California Corporate Code § 17704.09 is entirely inapplicable

here. Al-Ahmed claims Twitter violated Cal. Corp. Code § 17704.09 because Twitter "owed a duty of undivided loyalty" to him, which Twitter breached by acting "at the behest of the KSA." FAC ¶ 200. But Section 17704.09 sets forth the "fiduciary duties that a member owes to a member-managed ***limited liability company*** and the other members of the ***limited liability company***," Cal. Corp. Code § 17704.09(a), as well as the duties of members and managers in "a manager-managed ***limited liability company***," *id.* § 17704.09(f). Al-Ahmed's claim fails as a matter of law because Twitter is a corporation, not a limited liability company.[20] Furthermore, the provision specifies the duties owed to LLC members and to the LLC itself—not to third parties like Al-Ahmed. This provision is thus inapplicable, and his claim under Section 17704.09 should be dismissed with prejudice.[21]

14. Al-Ahmed fails to plead aiding and abetting any breach of fiduciary duty by Twitter.

Al-Ahmed alleges that Twitter aided and abetted a breach of fiduciary duty owed to him by Alzabarah and Abouammo by facilitating the KSA's infiltration of Al-Ahmed's Twitter account and suspending Al-Ahmed's Arabic-language account. FAC ¶ 234. Under California law, the "elements of a claim for aiding and abetting a breach of fiduciary duty are: (1) a third party's breach of fiduciary duties owed to plaintiff; (2) defendant's actual knowledge of that breach of fiduciary duties; (3) substantial assistance or encouragement by defendant to the third party's breach; and (4) defendant's conduct was a substantial factor in causing harm to plaintiff." *Albert's Organics, Inc. v. Holzman*, 445 F. Supp. 3d 463, 481–82 (N.D. Cal. 2020). Because Al-Ahmed does not adequately plead any of these elements, his claim should be dismissed.

First, Al-Ahmed does not colorably plead that a third party had, let alone breached, any fiduciary duties to him. Al-Ahmed's claim that Alzabarah and Abouammo owed him fiduciary duties appears premised on their alleged duties as "managers" of Twitter under Cal. Corp. Code §

[20] *See* "Twitter, Inc. Amended and Restated Certificate of Incorporation," *available at* https://www.sec.gov/Archives/edgar/data/1418091/000119312513406804/d564001dex32.htm.

[21] Al-Ahmed also claims that Twitter is an "information fiduciary" and therefore has a "special power" over its users. FAC ¶ 66. This argument is unsupported by any authority. The single case Al-Ahmed cites in support does not even mention fiduciary duties; it discusses instead whether a party named "Fiduciary" owed a tort-based duty of care to the other party. *See id.* ¶ 66 n.20; *Knight Sec. L.P. v. Fiduciary Tr. Co.*, 774 N.Y.S.2d 488, 489 (2004).

17704.09. *See* FAC ¶ 232; *see also id* ¶¶ 210, 221. Again, that provision does not apply here: Twitter is not an LLC, and Alzabarah and Abouammo were not "managers" as defined in the Corporations Code. *See* Cal. Corp. Code § 17701.02(n) (defining "manager" as a person who performs certain functions for a manager-managed LLC). Because he has not alleged any fiduciary duty owed by Alzabarah and Abouammo to him, Al-Ahmed's claim for aiding and abetting a breach of that duty fails at its very inception. Moreover, Al-Ahmed also cannot plead that Twitter had actual knowledge of any breach of duty, that Twitter substantially assisted that breach, or that such a breach caused Al-Ahmed harm. Indeed, as discussed *supra*, *see* Section VI.C.1, Al-Ahmed's FAC concedes that Twitter had no knowledge of the purported KSA intrusion while it was ongoing. *See* FAC ¶¶ 26, 73, 166. And the suspension of Al-Ahmed's account was permitted under the TOS, and thus cannot constitute a purported breach of any duty, see *supra* Section VI.F.12. Accordingly, Al-Ahmed's aiding and abetting a breach of fiduciary duty claim should be dismissed with prejudice.

15. Al-Ahmed allegations regarding his suspended account fail to state a claim for interference with prospective economic advantage.

Al-Ahmed alleges that, by suspending his Arabic-language account, Twitter deprived him of business relationships that would have otherwise led to economic benefits generated by his journalism and advocacy. FAC ¶ 254; *see also id.* ¶¶ 33, 59-60. Although Al-Ahmed fails to specify whether he claims negligent or intentional interference, he fails to state a claim either way.

For both negligent and intentional interference, a plaintiff must plead the defendant's knowledge of a relationship between the plaintiff and a third party that "contains the probability of future economic benefit." *Redfearn v. Trader Joe's Co.*, 20 Cal. App. 5th 989, 1005 (2018), *disapproved of on other grounds by Ixchel Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130 (2020). For intentional interference, a plaintiff must additionally plead that the defendant undertook "intentionally wrongful acts designed to disrupt the relationship." *Roy Allan Slurry, et al., v. Am. Asphalt S., Inc.,* 2 Cal. 5th 505, 512 (2017). For negligent interference, a plaintiff must plead "the defendant's knowledge (actual or construed) that the relationship would be disrupted if the

defendant failed to act with reasonable care" and "the defendant's failure to act with reasonable care." *Redfearn*, 20 Cal. App. 5th at 1005. Negligent interference therefore "arises only when the defendant owes the plaintiff a duty of care." *Lange v. TIG Ins. Co*., 68 Cal. App. 4th 1179, 1187 (1998).

First, fatal to both claims, Al-Ahmed fails to plead that Twitter acted "wrongfully" in suspending Al-Ahmed's account. Again, under the TOS, Twitter was entitled to suspend Al-Ahmed's account for any reason. *See supra* Section VI.F.12; *cf. Lange*, 68 Cal. App. at 1187 (defendant's exercise of a contractual right does not constitute an "independently wrongful act"). *Second*, again fatal to both torts, there is no colorable allegation that Twitter knew of Al-Ahmed's purported business relationships. *Third*, for negligent interference, Al-Ahmed does not plead that Twitter had any duty not to suspend Al-Ahmed's account. And given the TOS, he cannot. Al-Ahmed therefore cannot plead that Twitter knew that his business relationships would be disrupted in the absence of "reasonable care," or that Twitter failed to act with "reasonable care." Because these defects cannot be cured by amendment, Al-Ahmed's claim should be dismissed with prejudice.

VI. CONCLUSION

Twitter respectfully submits that the numerous defects in Al-Ahmed's FAC are fundamental and cannot be cured by amendment. Accordingly, the FAC in its entirety should be dismissed with prejudice as to Twitter.

Dated: August 19, 2022

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