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September 1, 2022

VIA ELECTRONIC MAIL
AND FEDERAL EXPRESS

Ms. Vijaya Gadde
Head of Legal, Policy, and Trust
Twitter, Inc.
1355 Market Street, Suite 900
San Francisco, CA 94103
vijaya@twitter.com

RE: Wrongful Suspension of @LibsofTikTok Twitter Account

Dear Ms. Gadde:

We represent journalist Chaya Raichik who reports under the name Libs of TikTok. We write regarding Twitter's suspension of our client's Twitter account for alleged violations of your company's hateful conduct policy. We understand that the suspension is set to lapse on September 3. Nevertheless, we demand that Twitter immediately reinstate the account, which your company should have never suspended in the first place.

LOTT exists to hold up a mirror to our society. Our client primarily re-publishes content publicly available on other social media pages and platforms, in which users outline their views in their own words. Much of LOTT's work has focused on airing the perspectives of people in influential positions, particularly educators in public schools. LOTT's reporting has shown many of these educators expressing contempt for the perspectives of the taxpayers who pay their salaries, benefits, and pension plans. Some observers credit our client's reporting with helping create legislative reform at the state and local level, and inspiring parents to become more involved in their local school boards. *See* Tucker Carlson, *Libs of TikTok oust campaign was designed to shut down a highly effective Twitter feed*, Fox News, Apr. 19, 2022, <https://www.foxnews.com/opinion/tucker-libs-tiktok-oust-campaign-twitter>. Joe Rogan, the broadcaster who enjoys the largest podcast audience in the world, called LOTT one of the "greatest" Twitter "accounts of all time."

LOTT also does investigative journalism. Recently, LOTT reported on evidence it obtained from the website of one children's hospital, and from a telephone conversation with employees of another. That evidence—which LOTT accurately represented—indicates that these hospitals are offering and performing "gender-affirming" surgical services involving the removal of uteruses, cervixes, fallopian tubes, breasts, ovaries, and related reproductive organs of healthy children under the age of eighteen. Our client reported on this, not because LOTT harbors animosity toward any people group, but rather from a deep concern for the well-being of children and their families. LOTT's reporting added to the ongoing debate on these issues.

Regarding this reporting, LOTT needs to address two issues. First, some contend that our client's reporting constitutes misinformation and an attempt to smear these hospitals for the purpose of inciting violence against them. That is not true. Second, LOTT is aware of, and needs to address, the recent press accounts regarding threats against employees of the children's hospitals identified in its reporting. Our client has never advocated for violence against any person or group, and condemns violence or threats of violence against anyone, including health care providers and employees at hospitals offering the surgical services described above. And our client reiterates LOTT CEO Seth Dillon's August 31 tweet offering a \$20,000 cash reward to "anyone who comes forward with information leading" to the arrest of the "anonymous coward" who phoned in a bomb threat against Boston Children's Hospital. Seth Dillon (@SethDillon), Twitter (Aug. 31, 2022, 7:10 PM), <https://twitter.com/SethDillon/status/1565114912082362369>.

Despite our client's rejection of violence, and LOTT's track record of encouraging people to engage peacefully in the political process, on August 27 Twitter suspended our client's account. Your company's suspension notice cited no specific tweet or statement by LOTT, rather your company based LOTT's suspension on "[v]iolating our rules against hateful conduct." Twitter then cited the hateful conduct policy's language that "[y]ou may not promote violence against, threaten, or harass other people on the basis of" certain protected categories.

As we explain in further detail below, LOTT did not violate your company's hateful conduct policy. By wrongfully suspending LOTT, Twitter violated its contract with our client.

LOTT Did Not Violate Twitter's Hateful Conduct Policy

Twitter's hateful conduct policy says that your company's "mission is to give everyone the power to create and share ideas and information, and to express their opinions and beliefs without barriers." Twitter, *Hateful conduct policy*, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy> (last visited Sept. 1, 2022). Moreover, Twitter acknowledges that "[f]ree expression is a human right," and that the company "believe[s] that everyone has a voice, and a right to use it." *Id.* Twitter's "role is to serve the public conversation, which requires representation of a diverse range of perspectives." *Id.* (emphasis added).

Your company identifies the following different categories of speech for "[w]hen this," i.e., the hateful conduct policy, "applies":

- (1) "Violent threats";
- (2) "Wishing, hoping or calling for serious harm on a person or group of people";
- (3) "References to mass murder, violent events, or specific means of violence where protected groups have been the primary targets or victims";
- (4) "Incitement against protected categories";
- (5) "Repeated and/or non-consensual slurs, epithets, racist and sexist tropes, or other content that degrades someone"; and
- (6) "Hateful imagery."

Id.

Of the six categories above, only the fourth could conceivably apply (though we do not concede that it does) to our client, particularly in view of Twitter's August 27 suspension notice. Twitter "prohibits inciting behavior that targets individuals or groups belonging to protected categories," and then cites examples of such as "spread[ing] fearful stereotypes about a protected category," "incit[ing] others to harass members of a protected category on or off platform," and "incit[ing] others to discriminate in the form of denial of support to the economic enterprise of an individual or group because of their perceived membership in a protected category." *Id.*

LOTT's recent reporting on children's hospitals, the apparent predicate for the current suspension, did not transgress Twitter's speech code. Nowhere in our client's reporting on this issue did LOTT target any individual or group of people that belongs to a protected category. LOTT reported accurately and truthfully on what hospitals have done and said, and the hospitals themselves are not "individuals or groups"—they are corporate entities that have no gender or gender identity. Even assuming LOTT's reporting did incite others to "target" the hospitals—a demonstrably false allegation our client strenuously denies—it is unclear how that would violate Twitter's hateful conduct policy since hospitals are corporate entities.

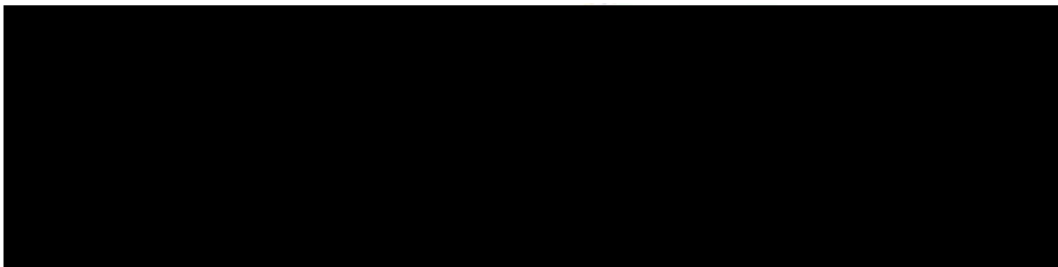
If publishing evidence about the operations of entities that serve individuals who belong to protected categories violates your company's hateful conduct policy, then that would have troubling consequences for investigative journalism on Twitter. We note that "religious affiliation" is a protected category under Twitter's policy. *Id.* If Twitter's rules had been in effect in 2002 and 2003, under your company's apparent interpretation of its rules, it would have violated your company's hateful conduct policy to publish *The Boston Globe's* Pulitzer Prize-winning reporting on clergy sexual abuse within the Roman Catholic Church. Why? It would have led to "targeting" Roman Catholics, something that is happening on your platform anyway. *See, e.g.,* The Pro Black Philosophy (@The_Pro_Black), Twitter (Aug. 9, 2021, 6:08 PM), https://twitter.com/The_Pro_Black/status/1424855170253561861 ("Priests are Pedophiles."). Similarly, reporting on alleged abuse within the Southern Baptist Convention would violate Twitter's hateful conduct policy because it might incite people to retaliate against individual Protestant Christians and churches. These outcomes are troubling, but they are the logical extension of Twitter's application of its rules to LOTT.

These are not academic issues for our client. Twitter suspended LOTT in violation of its own hateful conduct policy. Notably, in the suspension notice, Twitter gave a specific reason, and it did not invoke the language in your company's Terms of Service that allow it to terminate accounts "for any or no reason." Certainly, in Twitter's communications with the press regarding the suspension, your company did not cite that language, but rather announced "it had taken enforcement action against the account for 'hateful conduct'." Anders Hagstrom, *Twitter locks 'Libs of TikTok' account for 'hateful conduct': report*, Fox News, Aug. 28, 2022, <https://www.foxnews.com/us/twitter-locks-lib-tiktok-account-hateful-conduct>. Note that your company did not say "in its opinion" LOTT committed "hateful conduct," but rather it asserted as fact that our client did, a statement that creates a potential defamation claim.

Even so, from a contract perspective, the court in *Berenson v. Twitter, Inc.*, 2022 WL 1289049 (N.D. Cal. Apr. 29, 2022), rejected your company's argument that the "for any or no

reason” language in Twitter’s Terms of Service provided an escape from liability. In that case, which involved Twitter’s COVID-19 information policy, the court held that the plaintiff had “plausibly aver[ed] that Twitter’s conduct here modified its contract with plaintiff and then breached that contract by failing its own five-strike policy.” *Id.* at *2. The same kind of modification happened here through Twitter’s hateful conduct policy. To be sure, *Berenson* also involved direct assurances from a Twitter executive regarding the company’s purported commitment to debate and speech around COVID-19, but the breach of contract issue remains. Nor will Section 230 of the Communications Decency Act provide refuge for Twitter here, since under a breach of contract theory LOTT would not be trying “to hold Twitter liable as a publisher or speaker of third-party content, but rather as the counter-party to a contract, as a promisor who has breached.” *Id.* (internal quotation marks omitted). Further, “[a]ny ambiguities in a contract like Twitter’s terms of service are interpreted against the drafter, Twitter.” *Id.*

From an overall policy standpoint, Twitter’s hate speech code seeks to “combat abuse motivated by hatred, prejudice, or intolerance, particularly abuse that seeks to silence the voices of those who have been historically marginalized.” Twitter, *Hateful conduct policy, supra*. There is evidence that our client’s reporting has not silenced, but rather evoked a strong response from at least some members of “historically marginalized” groups. As shown below, two prominent accounts have accused LOTT of being a “terrorist” and “inciting violence.” Our client has dozens of additional examples from these accounts and others. Against this backdrop, it is demonstrably the case that LOTT’s presence on the platform does not silence voices, but rather stimulates discussion and debate—our client’s contribution to public discourse is fostering the very “diverse range of perspectives” Twitter’s hateful conduct policy says your company desires.



Any Further Action Against LOTT’s Account Would Create a Vehicle for Exploring Twitter’s Censorship Practices

LOTT is not interested in litigating against Twitter, but rather in doing journalism. That said, if Twitter follows through on its threat to permanently suspend our client’s account, LOTT will have no choice but to sue Twitter. In addition to suing for breach of contract, our client would bring claims under California state law and the California Constitution.

Regarding state law claims, while Twitter and other social media platforms have had success convincing lower courts to misconstrue Section 230 of the Communications Decency Act to nullify them, the tide is turning. *See* Brendan Pierson, *Court revives Texas social media law against banning users for views*, *Reuters*, May 11, 2022, <https://www.reuters.com/legal/government/court-revives-texas-social-media-law-against->

[banning-users-views-2022-05-11/](#). Consistent with the Fifth Circuit’s action in May, many courts have misread Section 230, and we think that any permanent suspension of LOTT would provide an ideal vehicle to explore these issues, all the way to the Supreme Court if necessary.

Section 230(c) contains two operative provisions that social media platforms have used to censor speech regardless of state laws to the contrary. Subsection (c)(1) provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” The plain language of this provision immunizes platforms from liability for content posted by their users, rather than creating a liability shield for the platforms’ own censorship. If “only the written word is law,” *Bostock v. Clayton County*, 140 S. Ct. 1731, 1737 (2020), then we think the courts will agree.

Subsection 230(c)(2)(a), the other key provision, bars liability for “any action” by a platform “voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.” Given the volume of complaints regarding client’s account, and the false accusations of “terrorism” and other criminal activity being made against LOTT, we question whether Twitter’s censorship of our client would qualify as “voluntary” to qualify for this exception under these circumstances.

A permanent suspension of LOTT would also provide our client with an opportunity to explore the limitations of the “good faith” provision in Section 230(c)(2)(A). Despite the plain language of Twitter’s hateful conduct policy defining race and religious affiliation as protected categories, your company provides a platform for users to spread anti-white racism, *e.g.*, Leilani (@Lalane), Twitter (Aug. 30, 2022, 6:35 PM), <https://bit.ly/3B4VpoU> (“We shoulda just let these white devils succumb to scurvy and syphilis.”) and anti-Christian sentiment, *e.g.*, bRational (@bRational2), Twitter (Aug. 28, 12:44 PM), <https://twitter.com/Brational2/status/1563930517401391104> (“Christians are evil.”). Famously, America’s enemies like the Taliban and the Ayatollah Khomeini also have a voice on Twitter, while LOTT is currently silenced. It is difficult to see how this censorship is conducted in “good faith,” much less how the same Congress that passed the Defense of Marriage Act would have forbidden future State legislatures from stopping Twitter from censoring our client’s reporting.

We reiterate our request that Twitter immediately reinstate the @LibsofTikTok account prior to the end of the seven-day suspension which ends on September 3.

Please do not hesitate to contact me if you have any questions or would like to discuss this matter further.

Sincerely,



James R. Lawrence, III