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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 TWITCH INTERACTIVE, INC., a
Delaware corporation,
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Plaintiff,
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v.
20 JOHN AND JANE DOES 1–100,
21 individuals,
22 Defendants.

Case No. 19-3418
COMPLAINT FOR:
(1) FEDERAL TRADEMARK
INFRINGEMENT (15 U.S.C. § 1114)
(2) BREACH OF CONTRACT
(3) TRESPASS TO CHATTELS
(4) FRAUD
DEMAND FOR JURY TRIAL

23
24 **I. INTRODUCTION**

25 1. Twitch Interactive, Inc. (“Twitch”) is one of the world’s leading services for
26 content creators to stream content as part of a social, interactive community. Each month,
27 millions of people come together to create their own entertainment: live, never-to-be repeated
28 experiences created by the magical interactions of the many. In 2018, users watched over 500

1 billion minutes of content. Twitch’s success is due in part to the measures it has taken to create a
2 safe and accessible community for its millions of users.

3 2. The safety of Twitch’s community is its top priority. For this reason, Twitch
4 forbids obscene material as well as material depicting violence and threats. Its Terms of Service
5 prohibit users from creating, uploading, or streaming any content that is unlawful, defamatory,
6 obscene, pornographic, harassing, threatening, abusive, or otherwise objectionable. As expressed
7 in its Community Guidelines (“Guidelines”), Twitch does not tolerate harassing or dangerous
8 content, nudity and sexually explicit content or activities, or physical violence (including gore).

9 3. Beginning on or about May 25, 2019, Defendants flooded the Twitch.tv directory
10 for the game Artifact with dozens of videos that violated Twitch’s policies and terms. This
11 included, for example, a video of the March 2019 Christchurch mosque attack, hard core
12 pornography, copyrighted movies and television shows, and racist and misogynistic videos.
13 Defendants’ actions threatened and continue to threaten Twitch and the safety of the Twitch
14 community.

15 4. Twitch took down the posts and banned the offending accounts, but the offensive
16 video streams quickly reappeared using new accounts. It appears that Defendants use automated
17 methods to create accounts and disseminate offensive material as well as to thwart Twitch’s
18 safety mechanisms. Such methods are often referred to as “bots.”

19 5. Defendants also use bots to artificially increase the popularity of the streams
20 broadcasting the offensive conduct, making those streams more easily discoverable by users
21 browsing Twitch.

22 6. Defendants’ actions are ongoing and have harmed and continue to harm Twitch
23 and the Twitch community: Twitch users who inadvertently encountered Defendants’ streams
24 were understandably upset and on information and belief some users stopped or reduced their use
25 of the Twitch Services. Twitch has expended significant resources investigating and banning
26 Defendants. To protect the Twitch community, Twitch took the extremely disruptive step of
27 disabling streaming for all newly created accounts for almost two days before imposing two-
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1 factor authentication for certain accounts. In response, Defendants sought to evade these steps
2 using old accounts as well as accounts purchased from other users.

3 7. Twitch brings this action to end Defendants' unlawful and highly offensive
4 activities, enforce the Terms (as defined in paragraph 24), and hold Defendants accountable.

5 **II. JURISDICTION**

6 8. This Court has federal question jurisdiction over this action under 28 U.S.C.
7 §§ 1331 and 1338, because this action alleges violations of the Lanham Act (15 U.S.C. § 1114).

8 9. This Court has supplemental jurisdiction over the remaining claims under
9 28 U.S.C. § 1367.

10 10. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part
11 of the events or omissions giving rise to the claims occurred in this district. Defendants have
12 repeatedly, knowingly, and intentionally accessed Twitch servers located in this district to
13 undertake their unlawful activities. While accessing Twitch servers, Defendants engaged in
14 systematic and continuous contacts with this district and targeted their wrongful acts at Twitch,
15 which is headquartered in this district.

16 **III. INTRADISTRICT ASSIGNMENT**

17 11. This is an intellectual property action to be assigned on a districtwide basis under
18 Civil Local Rule 3-2.

19 **IV. THE PARTIES**

20 12. Twitch is a Delaware corporation with its principal place of business in San
21 Francisco. Twitch operates the "Twitch Services," which are the website available at
22 <http://www.twitch.tv>, and its network of websites, software applications, and any other products
23 or services offered by Twitch.

24 13. On information and belief, Doe 1 is a person or entity responsible in whole or in
25 part for the wrongful conduct alleged herein who has operated an account on the Twitch Services
26 under a pseudonym. His acts described in this Complaint were intentionally directed toward
27 Twitch within this judicial district, subjecting him to personal jurisdiction. Twitch will amend
28 this Complaint if and when the legal name of Doe 1 becomes known.

1 14. Does 2–100 are persons or entities responsible in whole or in part for the
 2 wrongdoing alleged herein (“Doe Defendants”) (together with Doe 1, the “Defendants”). Twitch
 3 is informed and believes that each of the Defendants participated in, ratified, endorsed, or was
 4 otherwise involved in the acts complained of, and have liability for such acts. The acts described
 5 in this Complaint were intentionally directed toward Twitch within this judicial district,
 6 subjecting the Doe Defendants to personal jurisdiction. Twitch will amend this Complaint if and
 7 when the legal names of such persons or entities become known.

8 V. FACTS

9 A. **Twitch**

10 15. Twitch is a real-time streaming video service where community members gather to
 11 watch, play, and chat about shared interests—predominantly video games, sports, and creative
 12 arts. Twitch was founded in 2011 and has been an Amazon subsidiary since 2014.

13 16. On Twitch, streamers (those Twitch users who share live content on the service)
 14 pursue their interests to engage and entertain their viewers. More than 3,000,000 unique
 15 streamers per month stream via Twitch’s service. Streamers work extensively to create and foster
 16 authentic, passionate, and loyal communities on Twitch. The Twitch Services enable streamers to
 17 earn a livelihood by offering them ways to monetize their streaming.

18 17. Viewers from around the world who are fans of a particular video game, subject
 19 area, or streamer use Twitch to find the content that interests them. Viewers use Twitch to find
 20 and view interesting content and to interact with their favorite streamers.

21 18. “Popular” streamers—those with many people watching and following their
 22 stream—are easier for viewers to find on Twitch. Viewers can also find streamers by searching
 23 for “live” streams under a specific game directory.

24 19. Users who only watch streams may, but are not required to, create an account.
 25 Streamers, however, must create an account.

1 **B. Twitch’s Trademarks**

2 20. Twitch owns rights in the “GLITCH” trademark (U.S. Registration No.
3 5,769,921), pictured below, and the TWITCH mark (U.S. Registration Nos. 4,275,948, 5,769,920,
4 and 5,503,626).



11 21. Twitch has used these marks in commerce in connection with its goods and
12 services, including the Twitch Services, since at least as early as June 2012.

13 22. Since their first use, Twitch has invested substantial resources in marketing,
14 advertising, and distributing its goods and services, including the Twitch Services, under the
15 GLITCH and TWITCH marks.

16 23. Twitch has attained substantial goodwill and strong recognition in the GLITCH
17 and TWITCH marks and the marks have come to be exclusively associated with Twitch.

18 **C. Twitch’s Terms and Guidelines**

19 24. In order to create an account or otherwise use or access the Twitch Services or
20 utilize the Twitch developer platform, a prospective user must agree to be bound by, among other
21 things, Twitch’s Terms of Service, Community Guidelines, Twitch Developer Services
22 Agreement, and Trademark Guidelines (collectively, the “Terms”). Specifically, the Terms state:
23 “The Terms of Service apply whether you are a user that registers an account with the Twitch
24 Services or an unregistered user. You agree that by clicking “Sign Up” or otherwise registering,
25 downloading, accessing or using the Twitch Services, you are entering into a legally binding
26 agreement between you and Twitch regarding your use of the Twitch Services. You acknowledge
27 that you have read, understood, and agree to be bound by these Terms of Service.”
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1 25. Twitch issues its users a limited, non-sublicensable license to access or use the
2 Twitch Services for personal or internal business use only, provided that the user agrees to the
3 Terms. “Any use of the Twitch Services or the Materials except as specifically authorized in
4 these Terms of Service, without the prior written permission of Twitch, is strictly prohibited and
5 may violate intellectual property rights or other laws.”

6 26. The Terms expressly prohibit anyone who accesses or uses the Twitch Services
7 from posting obscene, pornographic, violent, or otherwise harmful content. Specifically, the
8 Terms prohibit users from:

- 9 a. creating, uploading, transmitting, or distributing “any content that is inaccurate,
10 unlawful, infringing, defamatory, obscene, pornographic, invasive of privacy or
11 publicity rights, harassing, threatening, abusive, inflammatory, or otherwise
12 objectionable”;
- 13 b. interfering with or damaging “operation of the Twitch Services or any user’s
14 enjoyment of them, by any means, including uploading or otherwise disseminating
15 viruses, adware, spyware, worms, or other malicious code”;
- 16 c. manipulating “identifiers in order to disguise the origin of any User Content
17 transmitted through the Twitch Services”; or
- 18 d. using “the Twitch Services for any illegal purpose, or in violation of any local,
19 state, national, or international law or regulation, including, without limitation,
20 laws governing intellectual property and other proprietary rights, data protection
21 and privacy.”

22 27. The Guidelines, as part of the Terms, govern activity on Twitch with the goal of
23 “provid[ing] the best shared social video experience created by our growing community where
24 creators and communities can interact safely.”

25 28. The Guidelines state that Twitch does not tolerate obscene or violent content of the
26 kind at issue here. Under the Guidelines,

- 27 a. “[n]udity and sexually explicit content or activities, such as pornography, sexual
28 acts or intercourse, and sexual services, are prohibited”;

- 1 b. “[c]ontent that exclusively focuses on extreme or gratuitous gore and violence is
2 prohibited”; and
3 c. “any content or activity that attempts to intimidate, degrade, abuse, or bully others,
4 or creates a hostile environment for others . . . is prohibited.”

5 29. The Guidelines make clear that Twitch will punish offensive conduct: “To protect
6 the integrity of our community, as the provider of the service, we at Twitch reserve the right to
7 suspend any account at any time for any conduct that we determine to be inappropriate or
8 harmful. Such actions may include: removal of content, a strike on the account, and/or suspension
9 of account(s).”

10 30. The Terms also prohibit the use of automated programs such as bots to create
11 accounts or artificially inflate a channel’s viewer or follower statistics. They state that users shall
12 not: “access any website, server, software application, or other computer resource owned, used
13 and/or licensed by Twitch, including but not limited to the Twitch Services, by means of any
14 robot, spider, scraper, crawler or other automated means for any purpose, or bypass any measures
15 Twitch may use to prevent or restrict access to any website, server, software application, or other
16 computer resource owned, used and/or licensed [to] Twitch, including but not limited to the
17 Twitch Services.”

18 31. Twitch’s efforts do not end with the posting of its Terms. Twitch employs a Trust
19 and Safety team that operates around the clock and around the globe to investigate and take action
20 in connection with violations of the Terms.

21 32. Twitch also invests in technologies and processes that address potential risks to
22 user safety, with the aim to create the best possible experience for streamers and their audiences.
23 For example, AutoMod, a Twitch proprietary tool, allows a streamer to automatically filter out
24 messages in chat that the streamer deems inappropriate or unwelcome. Twitch also offers tools
25 that streamers can deploy to block or ban users from their audience and report them to Twitch’s
26 safety operations team.

27 33. Twitch continuously works to improve its ability to detect and act upon violations
28 of the Terms and is continuing to invest in technologies to support this effort.

1 **D. Defendants' Unlawful Activity**

2 34. Beginning on or about May 25, 2019, Defendants co-opted the game directory for
3 Artifact to broadcast prohibited content, including hard-core pornography, racist and misogynistic
4 videos, copyrighted movies and television shows, and videos depicting violence, including videos
5 of the March 2019 Christchurch mosque attack.

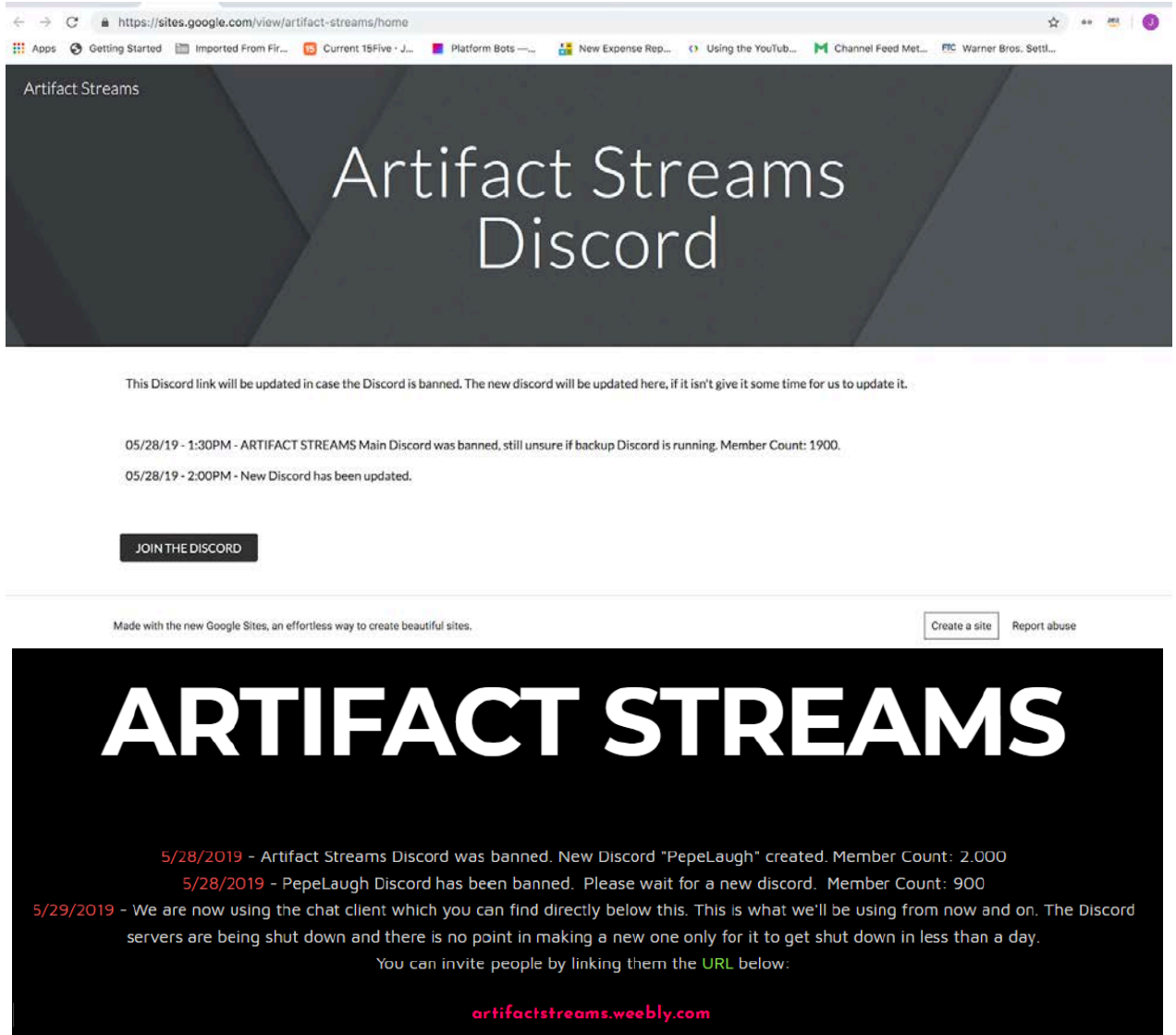
6 35. Twitch took swift action against the accounts and users that posted these videos,
7 immediately and permanently suspending them consistent with the Terms.

8 36. However, despite Twitch's best efforts, new streamers quickly appeared in the
9 Artifact game directory to re-post the same or similar offending videos. On information and
10 belief, Defendants used bots and other automated programs to quickly open new Twitch accounts
11 and continue streaming the offending videos as soon as Twitch shut down accounts.

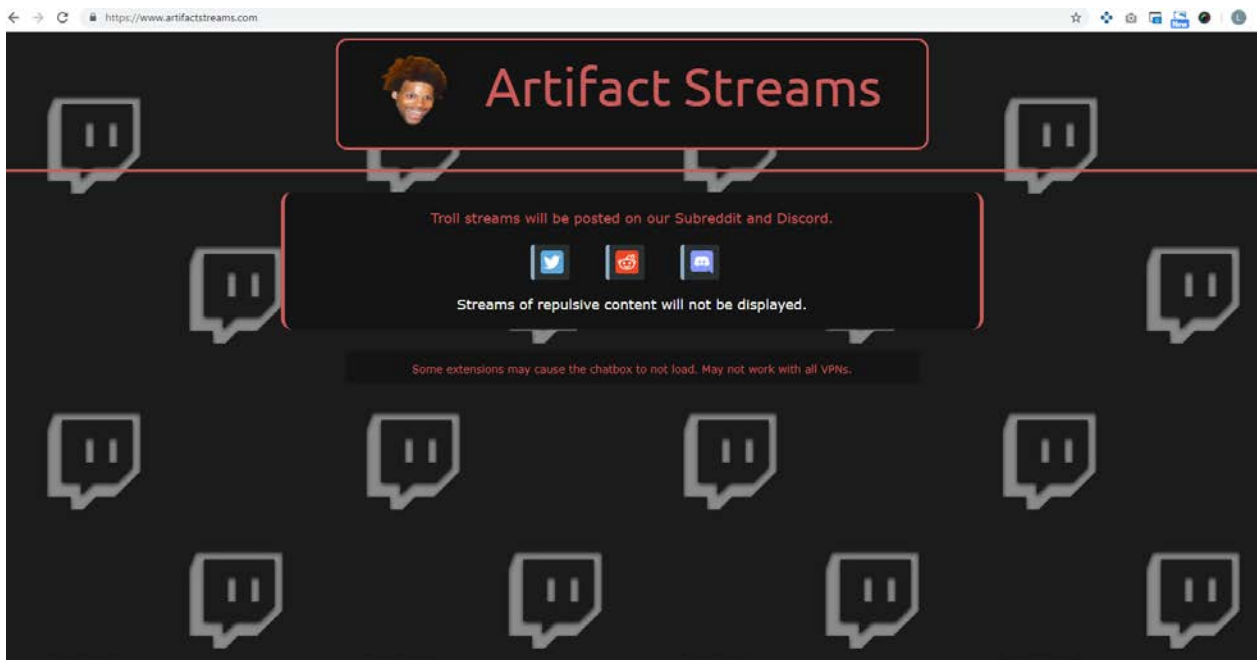
12 37. On information and belief, Defendants formed a group to spread pornography and
13 other obscene, offensive and terrorist videos, or infringing content on Twitch. Defendants shared
14 methods to evade Twitch's takedown measures, including code for bot programs.

15 38. Defendants used bots, software programs that send fake viewers to a streamer's
16 channel, to artificially inflate the viewer statistics associated with the offending videos. As the
17 streamer's viewer count increases, his or her stream becomes easier to find for Twitch viewers
18 seeking content. Defendants manipulated the viewer counts of their streams to promote their
19 prohibited channels.

20 39. Defendants coordinated with one another to quickly re-post the videos once
21 Twitch acted against them. Calling themselves "Artifact Streams," Defendants used third-party
22 websites including, but not limited to, Google, Discord, and Weebly to communicate about the
23 attack on Twitch. When Google and Discord shut Defendants down, Defendants set up additional
24 Discord groups. Defendants finally moved to Weebly where they opened a chat room and
25 displayed pornographic videos. Weebly ultimately took down the page.

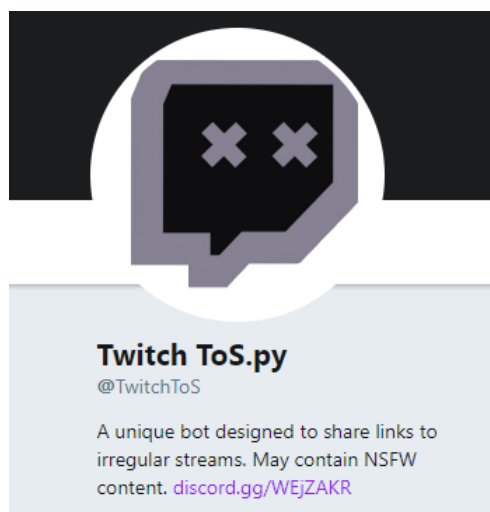


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19 40. Defendants have also coordinated their attacks and activities via a website,
20 www.artifactstreams.com. The Artifact Streams website prominently displays the GLITCH
21 mark, as shown below.
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41. Twitch has not given Defendants permission to use the GLITCH mark in this way. This use is likely to cause confusion as to Twitch's association or affiliation with Defendants.

42. Linked to the Artifact Streams website is a Twitter page, <https://twitter.com/TwitchToS>, that Defendants use to disseminate their prohibited content and direct viewers to that content. The @TwitchToS Twitter account prominently displays the TWITCH mark in its URL, Twitter name, and Twitter page, as shown below.



1 43. Twitch has not given Defendants permission to use the TWITCH mark in this way.
2 This use is likely to cause confusion as to Twitch's association or affiliation with Defendants.

3 44. Defendants' actions have harmed and continue to harm Twitch and its community.

4 45. Viewers seeking legitimate content on Twitch encountered Defendants' streams
5 and were understandably upset. Many viewers Tweeted their reactions to Defendants' streams.
6 The following are a few examples.



1 46. Twitch ultimately suspended streaming for all new Twitch accounts. This was a
2 bold but disruptive step that rippled across the Twitch community as legitimate streamers who
3 joined Twitch to share their original content were unable to stream.

4 47. Defendants then used old Twitch accounts to continue broadcasting the offending
5 videos. On information and belief, Defendants took even took extreme measures of purchasing
6 accounts from third-parties (in violation of the Terms).

7 48. To further curb Defendants' attack, Twitch updated its software to require two-
8 factor authentication for any account that will be used to stream. Twitch lifted its temporary ban
9 on streaming from new accounts once it implemented two-factor authentication.

10 49. Twitch expended significant resources combatting Defendants' attack. It shut
11 down a key part of its services (streaming for new accounts), responded to user comments and
12 concerns, changed its account process to include two-factor authentication, spent time and money
13 researching and taking technological action against Defendants, responded to press inquiries, and
14 hired legal counsel.

15 **FIRST CLAIM FOR RELIEF**
16 **Federal Trademark Infringement**
17 **(15 U.S.C. § 1114)**

18 50. Twitch realleges and incorporates by reference the allegations in the preceding
19 paragraphs as if fully set forth herein.

20 51. Twitch owns the GLITCH mark (U.S. Registration No. 5,769,921) and the
21 TWITCH mark (U.S. Registration Nos. 4,275,948, 5,769,920 and 5,503,626). Twitch uses these
22 marks in commerce in connection with, among other things, the provision of the Twitch Services.
23 Attached hereto as Exhibit A are true and correct copies of the U.S. Patent and Trademark Office
24 registrations for the GLITCH mark and the TWITCH mark.

25 52. As described above, Defendants use the GLITCH and TWITCH marks to advertise
26 and draw viewership to their Twitch.tv streams on which they feature prohibited content.

27 53. Defendants prominently feature the GLITCH mark on www.artifactstreams.com,
28 which Defendants use to promote their unlawful Twitch.tv. streams. Defendants prominently

1 feature the TWITCH mark on a Twitter account, @TwitchToS, which they use to link to and
2 promote the prohibited content on Twitch.

3 54. Defendants' use of the GLITCH and TWITCH marks constitutes a reproduction,
4 counterfeit, copy, or colorable imitation of registered marks for which the use, sale offering for
5 sale, and advertising of their Twitch.tv streams is likely to cause confusion or mistake or lead to
6 deception.

7 55. Defendants have used and continue to use the GLITCH and TWITCH marks
8 without Twitch's authorization.

9 56. Defendants' infringement of the GLITCH and TWITCH marks is willful.

10 57. As a consequence of Defendants' unauthorized use of the GLITCH and TWITCH
11 marks, Twitch has been and will continue to be irreparably harmed unless enjoined by this Court.
12 Therefore, Twitch has no adequate remedy at law and is entitled to injunctive relief.

13 58. In addition to injunctive relief, Twitch is also entitled to compensatory damages,
14 lost profits, statutory damages, enhanced damages, and/or costs incurred in pursuing this action.

15 59. This is an exceptional case under 15 U.S.C. § 1117(a), entitling Twitch to recover
16 its attorneys' fees incurred in connection with this action.

17 **SECOND CLAIM FOR RELIEF**

18 **Breach of Contract
(California Common Law)**

19 60. Twitch realleges and incorporates by reference the allegations in the preceding
20 paragraphs as if fully set forth herein.

21 61. Access to and use of the Twitch Services is governed by and subject to the Terms.

22 62. At all relevant times, Twitch prominently displayed and/or provided links to the
23 Terms. Twitch users are presented with and must affirmatively accept the Terms to register for a
24 Twitch account.

25 63. The Guidelines are incorporated into the Terms by reference. A violation of the
26 Guidelines is a violation of the Terms.

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1 64. The Terms are binding on Defendants. Each of the Defendants agreed to abide by
2 the Terms by creating a Twitch account, by using the Twitch Services, and/or by accessing the
3 Twitch Services to disseminate the offending videos.

4 65. On information and belief, Defendants regularly accessed the Twitch Services with
5 knowledge of the Terms and the prohibitions contained therein.

6 66. The Terms are valid, enforceable contracts between Twitch and each of the
7 Defendants.

8 67. Defendants have willfully, continuously, and materially breached the Terms by
9 engaging in the conduct described above by, for example, streaming prohibited content on
10 Twitch.tv, evading Twitch’s efforts to ban Defendants’ streams, and accessing the Twitch
11 Services with bots.

12 68. Defendants breached the Terms by, among other things,

- 13 a. streaming content on Twitch.tv that is prohibited by the Terms, including videos
14 depicting violence and gore (most notably, the Christchurch mosque attack), hard
15 core pornography, copyrighted movies and television shows, and videos depicting
16 racist and misogynistic imagery and messages;
- 17 b. manipulating their identifying information (including names and IP addresses) to
18 “disguise the origin of any User Content transmitted through the Twitch Services”;
- 19 c. impairing, interfering with, disrupting, negatively affecting, and/or inhibiting other
20 users’ enjoyment of the Twitch Services by posting obscene, violent, and harassing
21 content in violation of the Terms; and/or
- 22 d. using bots to access the Twitch Services, tamper with (i.e., artificially inflate) their
23 live view statistics, and/or promote their nefarious content to unsuspecting Twitch
24 viewers.

25 69. Twitch has dutifully performed its obligations pursuant to the Terms.

26 70. As a direct and proximate result of Defendants’ material breaches of the Terms,
27 Twitch has been and will continue to be harmed, thereby entitling it to injunctive relief,
28 compensatory damages, attorneys’ fees, costs, and/or other equitable relief against Defendants.

1 Twitch is entitled to special damages in the amount of lost profits and other reasonably
2 foreseeable harms proximately caused by Defendants' breach.

3 **THIRD CLAIM FOR RELIEF**
4 **Trespass to Chattels**
5 **(California Common Law)**

6 71. Twitch realleges and incorporates by reference the allegations in the preceding
7 paragraphs as if fully set forth herein.

8 72. The Terms authorize Defendants to access the Twitch Services for a limited
9 purpose—to stream and watch legitimate content on Twitch.tv. The Terms do not permit
10 Defendants to access the Twitch Services to stream obscene, excessively violent, or pornographic
11 content.

12 73. Defendants intentionally and without authorization exceeded permissible access to
13 the Twitch Services by streaming unauthorized content on Twitch.tv.

14 74. Defendants intentionally and without authorization accessed the Twitch Services
15 with bots designed to artificially inflate the live view statistics associated with their accounts,
16 making it easier for Twitch viewers to find the offending streams.

17 75. Defendants' intentional interference with Twitch's possession of the Twitch
18 Services proximately caused Twitch injury.

19 76. Defendants' unauthorized access to the Twitch Services impaired the condition,
20 quality, or value of the Twitch Services by degrading the quality of the content on Twitch, forcing
21 Twitch to suspend streaming for all new accounts, and exposing Twitch users to offensive and
22 unwanted content.

23 77. Twitch is entitled to all remedies available at law or equity, including injunctive
24 relief, compensatory damages, attorneys' fees, and/or other equitable or monetary remedies.

25 **FOURTH CLAIM FOR RELIEF**
26 **Fraud**
27 **(California Common Law)**

28 78. Twitch realleges and incorporates by reference the allegations in the preceding
paragraphs as if fully set forth herein.

1 79. Beginning on or about May 25, 2019, Defendants registered Twitch accounts to
2 post obscene, violent, terrorist and pornographic content on Twitch in violation of the Terms.

3 80. Defendants had no intention of abiding by the Terms and made fraudulent
4 representations to the contrary to Twitch, knowing them to be false and with the intent of
5 defrauding Twitch. For instance, Defendants represented and agreed not to upload to the Twitch
6 Services “any content that is inaccurate, unlawful, infringing, defamatory, obscene, pornographic,
7 invasive of privacy or publicity rights, harassing, threatening, abusive, inflammatory, or
8 otherwise objectionable.”

9 81. Twitch immediately shut down the accounts Defendants used to stream the
10 obscene, violent, terrorist and pornographic content.

11 82. Knowing that Twitch had barred them from further accessing the Twitch Services,
12 Defendants created additional Twitch accounts; agreed to the Terms, thereby falsely representing
13 to Twitch that they would not post content that violated the Terms; and then violated their
14 promise by immediately posting obscene, violent, terrorist and pornographic videos.

15 83. On information and belief, Defendants misrepresented and concealed their
16 identities and other personally identifying information (such as IP addresses) to create accounts
17 on Twitch from which to disseminate the objectionable videos. Defendants likewise used Twitch
18 accounts belonging to third-parties to stream the prohibited content on Twitch.tv, further
19 misrepresenting to Twitch their identities and intent to use the Twitch Services.

20 84. Twitch justifiably relied on Defendants’ representations and granted Defendants
21 access to the Twitch Services.

22 85. As a direct and proximate result of Defendants’ conduct, Twitch suffered damage
23 to its goodwill and lost resources, such as money, technical capacity, and personnel, which
24 Twitch would not have been forced to expend but for Defendants’ fraud.

25 86. Twitch is entitled to all remedies available at law or equity, including injunctive
26 relief, compensatory damages, punitive damages, and/or other equitable or monetary remedies.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff Twitch prays for the following relief:

1 1. That Defendants and their officers, agents, representatives, servants, employees,
2 successors and assigns, and all others in active concert or participation with Defendants be
3 preliminarily and permanently enjoined from:

- 4 a. Using or accessing the Twitch Services;
- 5 b. Posting content on the Twitch Services that is prohibited by the Terms,
6 including violent, pornographic, or offensive content.
- 7 c. Creating, writing, developing (either directly or indirectly) any robot,
8 crawler, spider, or other software that interacts, either directly or indirectly,
9 with the Twitch Services;
- 10 d. Using the GLITCH or TWITCH marks in any way; or
- 11 e. Assisting any individual or company in engaging in the conduct described
12 in 1(a)-(d) above.

13 2. An award to Twitch of restitution and damages, including, but not limited to,
14 enhanced, liquidated, compensatory, special, statutory and punitive damages, and all other
15 damages permitted by law.

16 3. An award to Twitch of its costs incurred in this suit, including, but not limited to,
17 reasonable attorneys’ fees.

18 4. Such other relief as this Court deems just and proper.

DEMAND FOR A JURY TRIAL

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20 Plaintiff hereby demands a trial by jury of all issues so triable.
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DATED: June 14, 2019

PERKINS COIE LLP

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