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July 14, 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 @andrewbostom Twitter Account
Reinstatement Request**

Dear Ms. Gadde:

We represent Andrew G. Bostom, M.D., M.S. We write to demand that Twitter, Inc. immediately reinstate Dr. Bostom's account, @andrewbostom, which your company suspended on June 22, 2022 in violation of its own COVID-19 misinformation policy.

Dr. Bostom is a medical doctor and scientist who has dedicated his career to improving and saving lives. Our client currently serves as a research physician at the Center for Primary Care and Prevention at Kent-Memorial Hospital of Rhode Island. For more than twenty-four years, Dr. Bostom served as a member of the faculty at the Brown University School of Medicine, with his last role being Associate Professor of Medicine and Family. Our client's curriculum vitae is voluminous, having authored or co-authored 117 peer-reviewed publications, including in world-renowned journals like *JAMA* and *Lancet*, on topics ranging from renal disease to the cardiovascular system. Dr. Bostom has earned tens of millions of dollars in research grants. Our client even designed and completed the largest randomized, controlled trial ever conducted in chronic kidney transplant recipients. This is a track record many strive for, others covet, and even fewer actually accomplish.

Until recently, Dr. Bostom maintained an active Twitter account with a large following through which he shared scientific information. As of February 16, 2022, Dr. Bostom's Twitter account had forty-six thousand followers, and he had published more than eighty thousand tweets during the previous nine years. Throughout the COVID-19 pandemic, Dr. Bostom tweeted analyses of various studies related to the SARS-CoV-2 virus.

On the morning of June 22, 2022, Dr. Bostom learned that his Twitter account had been suspended. In its suspension notice, your company cited Twitter's policy on "spreading misleading and potentially harmful information related to COVID-19." Twitter identified the

June 19, 2022 tweet below as the sole cause for Dr. Bostom's suspension, and it included a link to contact Twitter's support team if he wished to appeal the suspension.



Andrew Bostom, MD, MS

@andrewbostom

Primary Covid-19 BNT162b mRNA
vaccination temporarily impairs semen
concentration & total motile count
among semen donors, with apparent
rebound by ~5mos, but no data on
boostering effect. Does boostering yield
another decline?, followed by??

<https://t.co/k33KmpIvZz>

Jun 19, 2022, 3:52 AM

In the tweet itself, Dr. Bostom linked to a peer-reviewed study published in the journal *Andrology*. The study, the work of seven Israeli researchers, “found a selective temporary decline of sperm concentration and total motile count 3 months post-vaccination followed by recovery.” Gat I, Kedem A, Dviri M, Umanski A, Levi M, Hourvitz A, Baum M. Covid-19 vaccination BNT162b2 temporarily impairs semen concentration and total motile count among semen donors. *Andrology*. 2022 Jun 17. doi: 10.1111/andr.13209. Epub ahead of print. PMID: 35713410. The authors noted that “these results may seem concerning,” but that “our findings should support vaccinations [sic] programs.” *Id.* at 5-6. Nevertheless, they encouraged “[f]urther studies concentrating on different vaccines and populations (ex. subfertile patients),” which they said “are urgently required.” *Id.* 6.

Dr. Bostom linked to this study, and accurately reported that it “temporarily impairs semen concentration” and “total motile count among semen donors,” but that there is an “apparent rebound.” Our client noted the lack of data on boostering. Taking the authors up on their invitation for further research, Dr. Bostom asked “[d]oes boostering yield another decline” and whether the same rebound effect would be found. Dr. Bostom did not advance the view in this tweet that the COVID-19 vaccines cause infertility. Our client was citing research and asking questions. In other words, he was doing work people dedicated to the scientific method do. This is how once-accepted views in the scientific community like phlogiston theory met their demise. *See generally* Thomas Kuhn, *The Structure of Scientific Revolutions*.

Given this background, Dr. Bostom thought Twitter's suspension was an error, and that his account would be reinstated immediately on appeal. Unfortunately, that did not happen, and our client's Twitter account remains suspended to this day.

These are not academic questions for our client—or for your company. Twitter could have taken any number of approaches to moderating discussion about COVID-19. Twitter could have remained silent. Instead, Twitter created a speech code, namely its “COVID-19 misleading information policy” (dated from December 2021), which states that users “may not use Twitter’s services to share false or misleading information about COVID-19 which may lead to harm.” *COVID-19 misleading information policy*, <https://help.twitter.com/en/rules-and-policies/medical-misinformation-policy> (last visited July 14, 2022). For an account to violate this policy, and for Twitter to take disciplinary action, “*it must*” (emphasis added) publish content that does all three of the following things:

- advance a claim of fact, expressed in definitive terms;
- be demonstrably false or misleading, based on widely available, authoritative sources; and
- be likely to impact public safety or cause serious harm.

Id. Accounts that accrue five strikes under the policy are permanently suspended. What is more, your company defined what does not violate the policy, specifically “[p]ublic debate about the advancement of COVID-19 science and research, including debate about research related to COVID-19, such as the effectiveness of treatments and mitigation measures, so long as the claims don’t intentionally misrepresent research findings.” *Id.*

Dr. Bostom did not violate Twitter’s policy. At a minimum, nothing in our client’s tweet was “demonstrably false or misleading,” nor was it “likely to impact public safety or cause serious harm.” Again, Dr. Bostom tweeted findings from a peer-reviewed study, and he summarized its content within the 280 character limit Twitter’s platform allows. Dr. Bostom’s questions about further research regarding the study are not only responsive to the authors themselves, but are also expressly protected by Twitter’s own policy, which embraces “public debate . . . about the advance of COVID-19 science and research.” Our client did not violate Twitter’s stated five-strikes rule.

What is more, Twitter suspended our client for nearly a month, and apparently permanently, without following its own progressive discipline policy. Again, Twitter failed to follow its own rules. Further, Dr. Bostom’s tweets do not come close to satisfying the standard for an immediate suspension. Nothing Dr. Bostom tweeted provides a basis for Twitter to maintain that he “repeatedly violate[d] the COVID-19 misinformation policy over a 30-day time period.” Even if it wanted to, Twitter cannot retrofit what our client said into Twitter’s narrow immediate suspension framework.

By violating its own COVID-19 misinformation policy, Twitter breached its contract with Dr. Bostom, blocking access to his following and causing damage in the process. It is no answer to Dr. Bostom’s concerns that Twitter’s Terms of Service provide that your company can terminate accounts “for any or no reason.” The court in *Berenson v. Twitter, Inc.*, 2022 WL

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1289049 (N.D. Cal. Apr. 29, 2022), rejected that argument, holding that the plaintiff in that case had, among other things, “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. That is what happened here. 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. Moreover, section 230 of the Communications Decency Act provides no refuge for Twitter here, since under a breach of contract theory, Dr. Bostom “does not seek 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).

Dr. Bostom is interested in pursuing his scientific and research interests, and in engaging in the very public conversation your company says it wants regarding COVID-19. He asks that Twitter immediately reinstate his account with zero strikes, its entire pre-suspension history, and following. We ask for the account to be reinstated by 5 PM PT on July 21, 2022.

While our client trusts that litigation will be unnecessary in this case, he is prepared to sue Twitter if necessary. If your company forces Dr. Bostom into that situation, he will seek to invalidate Twitter’s one-sided waiver of consequential damages and the company’s \$100 cap on liability under Cal. Civ. Code § 2175. We trust that our client will not have to resort to the courts, and that Twitter will reinstate his account as requested.

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

Sincerely,

A handwritten signature in blue ink that reads "JRL III". The letters are stylized and cursive.

James R. Lawrence, III