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4   UNITED STATES DISTRICT COURT

5   NORTHERN DISTRICT OF CALIFORNIA

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7   ALI AL-AHMED,   Case No. 21-cv-08017-EMC

8   Plaintiff,

9   v.   **ORDER GRANTING DEFENDANT TWITTER'S MOTION TO DISMISS**

10   TWITTER, INC., et al.,   Docket No. 62

11   Defendants.

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14   I.   **INTRODUCTION**

15   Plaintiff Al-Ahmed is a critic of the Kingdom of Saudi Arabia ("KSA") who has been

16   granted asylum in the United States. Between 2013 and 2015, two of Twitter's (now former)

17   employees accessed user information without authorization and provided it to KSA government

18   officials. The employees were indicted in 2019. On October 13, 2021, Al-Ahmed sued the former

19   employees and Twitter. Specifically, Al-Ahmed sued Twitter for violating the Electronics

20   Communications Privacy Act ("EPCA"); the Computer Fraud and Abuse Act ("CFAA"); the

21   Stored Communications Act ("SCA"); California's Unfair Competition Law ("UCL"); breach of

22   contract; intrusion upon seclusion; unjust enrichment; promissory estoppel; negligence; negligent

23   hiring, supervision, and retention; civil conspiracy; and replevin. *See* Docket No. 1 ("original

24   complaint"). In Al-Ahmed's First Amended Complaint, he adds claims for breach of the duty of

25   loyalty, aiding and abetting breach of fiduciary duty, an additional UCL claim, and interference

26   with prospective economic advantage. *See* Docket No. 55 ("FAC"). Notably, Al-Ahmed does not

27   add a claim under the Lanham Act, for which he was granted leave to amend after this Court

28   dismissed the original complaint. Al-Ahmed alleges that his Twitter account was hacked, which

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1   led to the KSA targeting him and those around him. Furthermore, he alleges that Twitter's

2   suspension of his account in 2018 punishes him—the victim—and demonstrates that Twitter was

3   complicit in their former employees' conduct, or at least that Twitter ratified their conduct.

4   The Court dismissed Al-Ahmed's first complaint with leave to amend. *See Al-Ahmed v.*

5   *Twitter, Inc.*, No. 21-CV-08017-EMC, 2022 WL 1605673, at *5 (N.D. Cal. May 20, 2022). He

6   filed an amended complaint. *See* FAC. Pending now is Twitter's motion to dismiss Al-Ahmed's

7   FAC. *See* Docket No. 62 ("Mot."). Twitter argues that (1) Al-Ahmed lacks Article III standing,

8   (2) his claims are barred by the statute of limitations, (3) he does not plausibly plead that Twitter is

9   vicariously liable for its rogue employees' acts on behalf of the KSA, (4) the Community Decency

10   Act ("CDA") immunity bars many of his claims, (5) Twitter's Terms of Service ("TOS") bars

11   many of his claims, and (6) individual actions fail for numerous claim-specific reasons. The Court

12   only addresses Article III standing, the statute of limitations, and CDA immunity because each of

13   Al-Ahmed's claims fail for one of these three reasons.

II.   **BACKGROUND**

15   A.   <u>Factual Background</u>

16   Al-Ahmed alleges as follows in his FAC:

17   Al-Ahmed is one of the leading critics of the KSA who resides and has been granted

18   asylum in the United States. FAC ¶ 17. Between August 2013 and December 2015, Twitter

19   employees accessed user data without authorization and provided the data to KSA government

20   officials. *Id.* ¶¶ 22–23. Twitter failed to detect these breaches for more than a year. *Id.* ¶ 26. Al-

21   Ahmed's Arabic Twitter account, which has over 36,000 followers worldwide, was one of the

22   accounts breached during this time. *Id.* ¶ 21. Al-Ahmed contends that Twitter's conduct resulted

23   in the compromising of his private information, including his "email addresses, contacts, phone

24   numbers, birth dates, and internet protocol ("IP") addresses;" and his "Tweets, private messages,

25   direct message, online chats, friend requests, file transfers, file uploads, and file downloads." *Id.*

26   ¶¶ 24, 79. He also alleges confidential information provided by his followers and journalistic

27   sources was compromised. *Id.* ¶ 4. Al-Ahmed alleges his private information was used by the

1   attempting to kidnap and kill him on multiple occasions. *Id.* ¶ 18. Al-Ahmed alleges his

2   followers on Twitter and those who otherwise contacted him using Twitter, have disappeared,

3   been arrested, or have been executed. *Id.* ¶ 27. Examples of such third-party harms include the

4   jailing of Saudi dissident Abdullah al-Hamid, whom the KSA jailed in 2013, and the murder of

5   journalist Jamal Khashoggi in 2018, which Al-Ahmed alleges was not uncoincidental to the

6   KSA's espionage against Twitter. *Id.* ¶¶ 27, 57. According to the FAC, "the KSA managed to

7   fully silence Al-Ahmed when [Twitter] . . . suspend[ed his] Arabic Twitter account, without

8   explanation, warning, or justification. *Id.* ¶ 28.

9   On November 19, 2019, the two Twitter employees allegedly responsible for hacking Al-

10   Ahmed's account were indicted for acting as agents of the KSA. *Id.* ¶ 7. Defendant Ahmad

11   Abouammo ("Abouammo") was the Media Partnerships Manager responsible for the Middle East

12   and North Africa region at Twitter. *Id.* ¶ 5. Defendant Ali Hamad A. Alzabarah ("Alzabarah")

13   was a Site Reliability Engineer whose responsibility was maintaining Twitter's hardware and

14   software to ensure uninterrupted service. *Id.* ¶ 6.

15   1.   Twitter's Notice

16   On or about December 11, 2015, Twitter sent the following notice to the users whose data

17   was accessed by Abouammo and Alzabarah:

18   Dear @{{screen_name}}, As a precaution, we are alerting you that
          **your Twitter account is one of a small group of accounts that
19   may have been targeted by state-sponsored actors**. We believe
          that **these actors (possibly associated with a government) may
20   have been trying to obtain information such as email addresses,
          IP addresses, and/or phone numbers**.
21
22   At this time, we have no evidence they obtained your account
          information, but we're actively investigating this matter. We wish
          we had more we could share, but we don't have any additional
23   information we can provide at this time.

24   It's possible your account may not have been an intended target of
          the suspected activity, but we wanted to alert you as soon as
25   possible. We recognize that this may be of particular concern if you
          choose to Tweet using a pseudonym. For tips on protecting your
26   identity online, you may want to visit the Tor Project or EFF's
          Protecting Yourself on Social Networks.
27

28   *Id.* ¶ 45.

1   According to Al-Ahmed, this notice was insufficient to inform him of the scope and nature

2   of the problem because it did not indicate that Abouammo and Alzabarah committed these data

3   breaches at the direction of Twitter, and while located on Twitter's premises, employed by

4   Twitter, and using Twitter's resources. *Id.* ¶ 46. Therefore, Al Ahmed alleges he did not, and

5   could not have reason to know of Twitter's involvement until the public indictment of the

6   employees in 2019. *Id.* ¶ 47. Further, Al-Ahmed alleges for the first time in his FAC that he did

7   not in fact receive the notice. *Id.* ¶ 48.

8   2.   Twitter's Alleged Actions in Aid of the KSA

9   Al-Ahmed alleges that Twitter provided Abouammo and Alzabarah with access to

10   Twitter's resources with the full knowledge that they were improperly accessing user data, that

11   Twitter helped them provide the information to the KSA, and Twitter helped them cover their

12   tracks by purging its internal database of incriminating evidence. *Id.* ¶ 25.

13   Al-Ahmed also alleges that Twitter's Privacy Policy suggests that a user can adjust their

14   account settings so their Tweets can only be viewed by the user's Twitter followers. *Id.* ¶¶ 31–32.

15   This created an illusion of security and safety relied upon by Al-Ahmed and others. *Id.* Al-

16   Ahmed alleges that Twitter failed to safeguard user data, evidenced by its disclosure to the

17   Securities and Exchange Commission in 2020 that it received a draft complaint from the Federal

18   Trade Commission alleging "violations…[r]elate[d] to the Company's use of phone number

19   and/or email address data provided for safety and security purposes [ostensibly for targeted

20   advertising] during periods between 2013 and 2019." *Id.* ¶ 38. Thus, he argues Twitter

21   negligently failed to implement policies, practices, and safeguards that would have prevented the

22   acts of its former employees. *Id.*

23   3.   Twitter's Relationship with the KSA

24   In 2011, Saudi Prince Alwaleed Bin Talal purchased $300 million worth of stock in

25   Twitter. *Id.* ¶ 3. In 2015, Bin Talal made an additional investment, and now owns 5.2% of the

26   company, more than Twitter's founder and former CEO, Jack Dorsey ("Dorsey"). *Id.* Bin Talal

27   later signed over many of his assets to Crown Prince of Saudi Arabia Mohammed Bin Salman. *Id.*

1   mastermind" behind the Twitter spy scandal. *Id.* ¶ 39. He claims that Asaker is "Foreign Official-

2   1" in the United States Attorneys Offices' indictment against Abouammo and Alzabarah. *Id.* ¶ 41.

3   Al-Ahmed alleges that Asaker provided Abouammo and Alzabarah with "gifts, cash payments,

4   and promises of future employment in exchange for nonpublic information about Twitter uses,

5   which constituted valuable property..." *Id.* Furthermore, Dorsey met with both Asaker and Bin

6   Salman at Twitter's headquarters on June 25, 2016, and at least one additional time in Riyadh

7   thereafter. *Id.* ¶ 43. Dorsey and Asaker follow each other on Twitter. *Id.* ¶ 44.

8   4.   Twitter's Suspension of Al-Ahmed's Account

9   In 2018, Al-Ahmed's Twitter account was suspended, preventing him from accessing his

10   followers. *Id.* ¶¶ 28, 30. The basis of his suspension was an allegedly abusive direct message

11   ("DM") Al-Ahmed sent using his Arabic language Twitter account. *Id.* ¶ 50. Al-Ahmed alleges

12   that as a result, he lost significant revenue and earning potential related to his work as a journalist,

13   as much of his work was contingent on his online presence. *Id.* ¶ 59. Al-Ahmed further alleges

14   that his appeal of the suspension failed despite Alzabarah and Abouammo's indictment. *Id.* ¶ 29.

15   According to Al-Ahmed, preventing access to his account, punishes the victim and "ratifie[s] the

16   actions of its supposedly errant employees and show[s] [Twitter's] continuing allegiance to the

17   KSA." *Id.*

18   Al-Ahmed also alleges that his suspension is the result of Twitter and the KSA's campaign

19   against him. *Id.* ¶ 50. He asserts "agents of the KSA or other Twitter employees accessed his

20   "private Twitter accounts to read and manipulate content, including, but not limited to, purported

21   private/direct exchange messages that were then used as a pretext by Twitter" to suspend his

22   Arabic-language account. *Id.* Al-Ahmed claims he does not recognize the statement attributed to

23   him, the message was a "fabrication," and is an incorrect translation. *Id.* ¶¶ 50–51. The English

24   translation of the message provided by Twitter reads, "Damn your mother, you Ahmari, you

25   mountain monkey, you Ethiopian, you slave, you pagan, you cow, you beast of burden! … I see

26   your face and your teeth sticking out. Damn your father and Khomeini, you slave, you beast of

27   burden, you animal!" *Id.* ¶ 50; *see* Docket No. 31, Ex. 5. According to Al-Ahmed, "Twitter's

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