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13 **UNITED STATES DISTRICT COURT**
 14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 15 **SAN FRANCISCO DIVISION**

16 X CORP.,

17 Plaintiff,

18 v.

19 CENTER FOR COUNTERING DIGITAL
 20 HATE, INC., et al.,

21 Defendants.

Case No. 3:23-cv-03836-CRB

**DEFENDANTS CENTER FOR
 COUNTERING DIGITAL HATE,
 INC. AND CENTER FOR
 COUNTERING DIGITAL HATE
 LTD.’S MOTION TO DISMISS,
 ANTI-SLAPP MOTION TO
 STRIKE, AND MEMORANDUM
 OF POINTS AND AUTHORITIES
 IN SUPPORT**

Date: February 23, 2024

Time: 10:00 a.m.

Courtroom: 6 – 17th Floor

Judge: Hon. Charles R. Breyer

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1 **NOTICE OF MOTION AND RELIEF SOUGHT**

2 PLEASE TAKE NOTICE that at 10:00 a.m. on February 23, 2024, or as soon thereafter as
3 the matter may be heard, in Courtroom 6 of the above-captioned Court, Defendants Center for
4 Countering Digital Hate, Inc. (“CCDH US”) and Center for Countering Digital Hate Ltd. (“CCDH
5 UK,” and, together with CCDH US, the “CCDH Defendants”) will and hereby do move to dismiss
6 Plaintiff X Corp.’s Amended Complaint, Dkt. 10, with prejudice pursuant to Federal Rules of Civil
7 Procedure 12(b)(6) and 9, and move to strike Counts 1, 3, and 4 of the Amended Complaint as
8 legally deficient pursuant to Cal. Civ. Proc. Code § 425.16. This motion is based on this Notice of
9 Motion; the accompanying Memorandum of Points and Authorities; the Declaration of Roberta A.
10 Kaplan and attached exhibits; the pleadings, papers, and records on file in this case; and any further
11 argument or evidence that may be received by the Court at the hearing.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 Despite all the window dressing, this is fundamentally a case about speech. Plaintiff X Corp.
15 is a multibillion-dollar, privately-held corporation that operates “X,” formerly known as Twitter—
16 one of the world’s largest and most influential social media platforms. The CCDH Defendants are
17 nonprofit organizations with the mission of protecting human rights and civil liberties online,
18 founded after a white supremacist (radicalized online) murdered a colleague of their founder and
19 CEO. The CCDH Defendants and other nonprofit groups have researched, authored, and published
20 reports and articles documenting how major social media companies, including X Corp., protect or
21 fail to protect against hate speech and false narratives relating to public health, climate change, and
22 other topics of public concern. In turn, the companies, including X Corp., and their respective
23 executives have spoken to defend their policies and critique these reports’ methodologies. Users,
24 advertisers, and the public are obviously free to compare the arguments marshaled by both sides.
25 And after evaluating each side’s speech, users and advertisers can decide for themselves whether
26 and how to continue using the companies’ platforms.

27 Apparently unhappy with how it is faring in the marketplace of ideas, X Corp. asks this
28 Court to shut that marketplace down—to punish the CCDH Defendants for their speech and to

1 silence others who might speak up about X Corp. in the future. Thus, X Corp. seeks “at least tens
2 of millions of dollars” in damages based on how advertisers reacted to what the CCDH Defendants
3 said about X Corp. in their public reports. Conspicuously, X Corp. has not asserted a defamation
4 claim—understandably so, since it cannot allege that the CCDH Defendants said anything
5 knowingly false, nor does it wish to invite discovery on the truth about the content on its platform.
6 Instead, X Corp. has ginned up baseless claims purporting to take issue with how the CCDH
7 Defendants gathered data that formed the basis for their research and publications. Each theory is
8 flimsier and more absurd than the last. More specifically, X Corp.’s Amended Complaint asserts a
9 claim for breach of contract against CCDH US (Count 1, claiming that CCDH US breached
10 Twitter’s Terms of Service when it used Twitter’s own search function to collect publicly available
11 information); a federal Computer Fraud and Abuse Act (CFAA) claim against the CCDH
12 Defendants and unnamed Doe Defendants who are supposedly their “funders, supporters, and other
13 entities” (Count 2, asserting that the CCDH Defendants’ use of a data analytics platform called
14 Brandwatch somehow amounted to a federal hacking violation); and tort claims for intentional
15 interference with contractual relations and inducing breach of contract against the same Defendants
16 (Counts 3 and 4, arising out of the Brandwatch data collection and its use in three CCDH reports).

17 X Corp.’s claims are riddled with legal deficiencies on their own terms. They also all share
18 one fundamental flaw: at its core, X Corp.’s grievance is not that the CCDH Defendants gathered
19 public data in violation of obscure (and largely imagined) contract terms, but that they criticized X
20 Corp. (forcefully) to the public. In essence, X Corp. seeks to dodge the requirements that the First
21 Amendment imposes on defamation claims by asserting other claims that are no less entwined with
22 the CCDH Defendants’ speech.

23 Fortunately, state and federal free speech protections cannot be so easily evaded. X Corp.’s
24 attempted end-run falls flat, not only due to these vital protections, but also because it fails to state
25 any plausible claim upon which relief can be granted. And, under California’s anti-SLAPP statute,
26 X Corp. cannot establish a probability of prevailing on its state-law causes of action. For the reasons
27 below, X Corp.’s complaint must be stricken or dismissed, with prejudice and in its entirety.

28

1 **II. BACKGROUND**

2 The CCDH Defendants are nonprofit organizations with the mission of protecting human
3 rights and civil liberties online. They conduct research and publish “publicly available and free”
4 reports about major social media platforms. Amended Complaint (“AC”), Dkt. 10, ¶ 17.¹ Their
5 reports concern the major platforms’ content moderation policies and practices relating to “widely
6 debated topics” of “paramount public concern” such as “hate speech,” “COVID-19 vaccinations,
7 reproductive healthcare, and climate change.” AC ¶¶ 17, 26, 72. These reports have garnered
8 attention from, and sparked debate among, both the press and the public at large. AC ¶ 56.

9 The CCDH Defendants’ reports have also prompted responses from the social media
10 companies themselves, who have at times critiqued the reports as having “flawed . . .
11 methodologies,” using “inappropriately small” sample sizes, defining “hate speech” too broadly,
12 relying on metrics other than “impressions,” and not discussing social media posts that are not
13 problematic. AC ¶¶ 18-24. X Corp. has gone a step further, claiming that the CCDH Defendants
14 are “activist organizations masquerading as research agencies.” AC ¶ 1.² Prior to filing this lawsuit,
15 Elon Musk, X Corp.’s owner, chairman, and CTO, posted on the X platform that the CCDH
16 Defendants are “[t]ruly evil” and that their CEO, Imran Ahmed, is a “rat.”³

17 On July 20, 2023, X Corp. sent a letter to the CEO of the CCDH Defendants criticizing their
18 reports and threatening litigation under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125. The
19 CCDH Defendants responded on July 31, 2023, calling X Corp.’s threat “bogus” and “a transparent
20

21 ¹ The factual allegations in the Amended Complaint are accepted as true for purposes of this motion,
22 but not to the extent that they are contradicted by more specific allegations, documents incorporated
23 by reference, or matters of public record subject to judicial notice. *See In re Finjan Holds., Inc.*, 58
24 F.4th 1048, 1052 n.1 (9th Cir. 2023).

25 ² Numerous independent sources have reached conclusions that align with those of the CCDH
26 Defendants. *See, e.g.*, Steven Lee Myers, Stuart A. Thompson, & Tiffany Hsu, *The Consequences*
27 *of Elon Musk’s Ownership of X*, N.Y. Times (Oct. 27, 2023), <https://www.nytimes.com/interactive/2023/10/27/technology/twitter-x-elon-musk-anniversary.html> (“[D]ozens of studies from multiple
28 organizations . . . demonstrat[e] on issue after issue a similar trend: an increase in harmful
content”—including hate speech, antisemitism, climate change misinformation, and COVID-19
disinformation—“on X during [Elon] Musk’s tenure.”).

³ Elon Musk, X (July 18, 2023, 8:26 a.m.), <https://twitter.com/elonmusk/status/1681279195253551104>; Elon Musk, X (July 18, 2023, 8:30 a.m.), <https://twitter.com/elonmusk/status/1681280344870342657>.

1 attempt to silence honest criticism.”⁴ Later that day, X Corp. filed this lawsuit, asserting altogether
 2 different claims and represented by a new lawyer. *See* Dkt. 1. X Corp. subsequently amended its
 3 complaint on August 7, 2023. *See* Dkt. 10. The Amended Complaint presents two categories of
 4 allegations about three specific reports by the CCDH Defendants dated March 24, 2021, *see* AC
 5 ¶¶ 44-45; November 10, 2022, *see* AC ¶¶ 46-48; and February 9, 2023, *see* AC ¶¶ 49-55.

6 *First*, X Corp. alleges that CCDH US improperly “scraped” data for use in the February 9,
 7 2023 report. AC ¶¶ 49-55. CCDH US, as a user of X, was required to agree to X’s Terms of Service
 8 (ToS) when it created an account. Although X Corp. does not allege when CCDH US did so, the
 9 ToS at all relevant times allowed users to “access or search or attempt to access or search the
 10 Services . . . through our currently available, published interfaces that are provided by Twitter” and
 11 provided, by contrast, that “scraping the Services without the prior consent of Twitter is expressly
 12 prohibited.”⁵ Although the February 9, 2023 report stated that CCDH US “used the social media
 13 web-scraping tool SNScrape, which *utilizes Twitter’s search function* to enable data collection,”
 14 AC ¶ 54 (emphasis added), X Corp. alleges that this constituted a breach of the ToS, AC ¶ 52.

15 *Second*, X Corp. alleges that the CCDH Defendants gathered data using a tool by
 16 Brandwatch, a social media analytics company, for use in all three reports. AC ¶¶ 44-48. X Corp.
 17 alleges that X Corp. entered into a written “Master License Agreement” with Brandwatch on May
 18 1, 2020, which prohibited Brandwatch from “allow[ing] others to” access “Licensed Material” and
 19 provided that Brandwatch “w[ould] keep ‘Twitter Content’ secure.” AC ¶¶ 29-31.⁶ Co-Defendant
 20 Stichting European Climate Foundation (ECF) is a subscriber to Brandwatch’s analytics tool, and
 21 ECF provided login credentials that allowed the CCDH Defendants to access Brandwatch data, in
 22 purported violation of ECF’s own agreement with Brandwatch. AC ¶¶ 36-38. X Corp. claims that

23
 24 ⁴ *See* Letter from Alex Spiro to Imran Ahmed at 3 (July 20, 2023); Letter from Roberta A. Kaplan
 25 to Alex Spiro at 2-3 (July 31, 2023), both available at <https://counterhate.com/blog/letters-from-the-lawyers-musk-threatens-ccdhd-with-brazen-attempt-to-silence-honest-criticism/>.

26 ⁵ Ex. A at 5-6, Twitter Terms of Service (operative June 10, 2022 to May 18, 2023),
 27 <https://twitter.com/en/tos/previous/version-17>; *see* AC ¶ 53 (incorporating the ToS by reference);
 28 *see also O’Handley v. Padilla*, 579 F. Supp. 3d 1163, 1172 n.3 (N.D. Cal. 2022) (taking judicial
 notice of Twitter’s ToS), *aff’d sub nom. O’Handley v. Weber*, 62 F.4th 1145 (9th Cir. 2023). All
 “Ex.” cites are to the exhibits attached to the accompanying declaration of Roberta A. Kaplan.

⁶ X Corp. also alleges that it entered into a second written agreement with Brandwatch on April 27,
 2023, after all the CCDH Defendants’ reports at issue were published. *See* AC ¶¶ 32-33.

1 neither it nor Brandwatch consented to such access, AC ¶ 40, though of course Brandwatch is not
2 a party to this lawsuit.

3 In their first two reports described above (dated March 24, 2021, and November 10, 2022),
4 the CCDH Defendants said that they had collected underlying data using Brandwatch. AC ¶¶ 45,
5 48. In the third report (dated February 9, 2023), X Corp. alleges that the CCDH Defendants “cite[d]
6 several data points for which non-public Brandwatch sources [we]re quoted.” AC ¶ 51.

7 X Corp. does not allege that the CCDH Defendants had actual knowledge of any contracts
8 between X Corp. and Brandwatch. Instead, the Amended Complaint alleges that the CCDH
9 Defendants “knew, based on their experience . . . purporting to analyze data with social media
10 platforms,” that Brandwatch must have contracts with X Corp. that contained the terms outlined
11 above. AC ¶ 91. And X Corp. claims that the CCDH Defendants’ conduct—namely, using login
12 credentials provided by ECF—intentionally “prevented Brandwatch from performing under” its
13 agreements with X Corp., because “Brandwatch failed to secure the data from X Corp.” AC ¶ 93.

14 As a result, X Corp. demands “at least tens of millions of dollars” in damages arising from
15 the CCDH Defendants’ *publication* of critiques of the X platform. More specifically, the Amended
16 Complaint alleges that companies that advertise on X viewed the CCDH Defendants’ various
17 “reports and articles”; that upon reading the CCDH Defendants’ reporting, “at least five” companies
18 paused advertising on X; and that this caused X Corp. to lose an “estimate[d] . . . at least tens of
19 millions of dollars” in revenue, for which X Corp. says Defendants are now liable. AC ¶¶ 65-70,
20 92-93, 97-99. In addition, in pleading its federal hacking claim, X Corp. alleges that it has spent
21 some amount “far exceed[ing] \$5,000” on internal investigations, AC ¶¶ 71, 87, though X Corp.
22 does not allege that the CCDH Defendants’ conduct imposed server costs, data corruption, service
23 interruptions, or anything like that.

24 **III. LEGAL STANDARD**

25 Under California’s anti-SLAPP statute, where a state-law claim “aris[es] from any act of
26 [the defendant] in furtherance of [the defendant]’s right of . . . free speech . . . in connection with a
27 public issue,” the cause of action “shall be subject to a special motion to strike, unless . . . the
28 plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” Cal.

1 Civ. Proc. Code § 425.16(g). Where, as here, “an anti-SLAPP motion to strike challenges only the
2 legal sufficiency of a claim,” a federal court applies the Rule 12(b)(6) standard. *Planned*
3 *Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018).

4 To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain factual
5 allegations that “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662,
6 678 (2009). This Court may consider the complaint, documents incorporated by reference, and
7 matters of public record subject to judicial notice. *See In re Finjan Holds., Inc.*, 58 F.4th at 1052
8 n.1. Although the Court must accept well-pleaded factual allegations as true, it “need not . . . accept
9 as true allegations that contradict matters properly subject to judicial notice or by exhibit,” nor those
10 “that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Spewell*
11 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.), *as amended*, 275 F.3d 1187 (9th Cir. 2001).

12 **IV. SUMMARY OF ARGUMENT⁷**

13 X Corp. complains that the CCDH Defendants gathered information in alleged violation of
14 various contractual provisions, then used that data to publish reporting critical of X Corp. and its
15 platform. Because X Corp.’s state-law claims arise from quintessential newsgathering activity in
16 furtherance of the CCDH Defendants’ speech and reporting, they are subject to a special motion to
17 strike under California’s anti-SLAPP statute. *See, e.g., Iloh v. Regents of Univ. of Cal.*, 312 Cal.
18 Rptr. 3d 674, 682 (Cal. Ct. App. 2023). And because X Corp. fails to state a claim for relief on any
19 of its causes of action (and cannot establish a probability of prevailing on any of its state-law claims
20 for anti-SLAPP purposes), all of its claims must be stricken or dismissed.

21 With respect to Count 1 (breach of contract), X Corp. fails to plead that small-scale data
22 collection for nonprofit reporting purposes violates its ToS. Although the ToS prohibits “scraping,”
23 X Corp. fails to define that term anywhere in the ToS, instead only contrasting it with data collection
24 through functions made available by X Corp. itself. But that is exactly what X Corp. alleges the
25 CCDH Defendants did—gathered data using a tool relying on the X platform’s own search
26 function. Such conduct does not violate X Corp.’s ToS. Independently, X Corp.’s effort to penalize
27

28 ⁷ On November 15, 2023, the Court granted the parties’ stipulated request to extend the page limit
for this motion to 25 pages, exclusive of the required summary of argument. *See* Dkt. 44 at 3, 7.

1 CCDH US for its criticism of the X platform under the guise of a breach of contract claim fails as
2 against public policy, as embodied in constitutional and statutory provisions designed to ensure a
3 robust, unimpeded public debate. And in any event, X Corp. pleads only reputational harm (*i.e.*,
4 lost revenue when advertisers reacted to CCDH US’s speech), which it cannot recover under
5 contract law and constitutional free speech protections. *See, e.g., Lewis Jorge Constr. Mgmt., Inc.*
6 *v. Pomona Unified Sch. Dist.*, 102 P.3d 257, 261 (Cal. 2004); *Planned Parenthood Fed. of Am.,*
7 *Inc. v. Ctr. for Med. Progress*, 402 F. Supp. 3d 615, 644 (N.D. Cal. 2019).

8 Next, on Count 2 (a federal hacking claim under the CFAA), X Corp. fails to plead that the
9 CCDH Defendants accessed any Brandwatch data “without authorization,” as this criminal and
10 civil statute requires. In fact, X Corp. concedes that ECF authorized CCDH to use Brandwatch on
11 its account, and the Brandwatch terms show ECF’s authorization made CCDH a valid Brandwatch
12 “User.” And in any event, even unauthorized password-sharing would fall short of the kind of
13 “breaking and entering” this hacking-focused statute proscribes. *hiQ Labs, Inc. v. LinkedIn Corp.*,
14 31 F.4th 1180, 1197 (9th Cir. 2022). X Corp. also fails to plead the requisite technological harm
15 “to computer systems and data,” “such as the corruption of files,” *Van Buren v. United States*, 141
16 S. Ct. 1648, 1659-60 (2021); it instead alleges only nonrecoverable investigation costs. X Corp.
17 similarly fails to give notice of which of the scores of potential CFAA theories it means to allege.

18 As for Counts 3 and 4 (duplicative tort claims), X Corp.’s pleading fails to allege causation
19 or inducement and, in fact, flips the causal chain on its head. X Corp. makes clear that the CCDH
20 Defendants did not cause or induce Brandwatch to breach its agreements with X Corp. to keep data
21 secure—indeed, the CCDH Defendants did not lead Brandwatch to do anything at all. Instead,
22 Brandwatch’s alleged failure to keep the data secure constituted a condition precedent to the CCDH
23 Defendants’ access. Independently, X Corp. fails to make out any breach by Brandwatch to begin
24 with, as ECF authorized the alleged access; alleges no facts to support its conjecture that the CCDH
25 Defendants were somehow aware of the terms of X Corp.’s agreements with Brandwatch (which
26 the CCDH Defendants have yet to see); and again fails to allege recoverable damages consistent
27 with speech protections and basic principles of proximate cause.

28

1 Finally, X Corp.’s vague, conspiratorial allegations regarding the Doe Defendants fall
2 woefully short of stating a claim against them. And leave to amend would be inappropriate where,
3 as here, the plaintiff has already had an opportunity to replead; no additional factual allegations
4 could save its claims; and the state-law causes of action are properly stricken under California’s
5 anti-SLAPP statute, which exists to ensure a speedy resolution of claims which impinge on speech.
6 Accordingly, the Court should strike Counts 1, 3, and 4, and dismiss Count 2, with prejudice.

7 **V. ARGUMENT**

8 **A. The Alleged Conduct at Issue Was Newsgathering Activity in Furtherance of**
9 **the CCDH Defendants’ Protected Speech and Reporting**

10 X Corp. alleges that the CCDH Defendants gathered information in violation of various
11 contractual provisions, and then used that data to publish reporting critical of X Corp. X Corp.’s
12 state-law claims thus “aris[e] from” quintessential acts “in furtherance of” the CCDH Defendants’
13 speech and reporting on public issues. Cal. Civ. Proc. Code § 425.16(b)(1). A defendant need only
14 make a “prima facie showing” on this point, *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 261 (9th
15 Cir. 2013), and courts must err on the side of construing California’s anti-SLAPP statute “broadly,”
16 *Mindys Cosmetics, Inc. v. Dakar*, 611 F.3d 590, 596 (9th Cir. 2010) (quoting § 425.16(a)).

17 *First*, the CCDH Defendants’ reporting activities were self-evidently “in furtherance of”
18 their free speech rights. §§ 425.16(b)(1), (e)(4). The same is true of their data collection. Because
19 “[r]eporting the news usually requires the assistance of newsgathering,” newsgathering itself is
20 “undertaken in furtherance of the news media’s right to free speech” for anti-SLAPP purposes.
21 *Lieberman v. KCOP Television, Inc.*, 1 Cal. Rptr. 3d 536, 542 (Cal. Ct. App. 2003); *see also, e.g.*,
22 *Taus v. Loftus*, 151 P.3d 1185, 1203-04 (Cal. 2007) (“conducting an investigation with regard to
23 the validity of” a scholarly article “unquestionably” constituted “conduct in furtherance of their
24 right of free speech”); *Iloh*, 312 Cal. Rptr. 3d at 682 (collecting cases). This principle is not limited
25 to traditional journalists (whatever that term means in today’s world). *See, e.g., Iloh*, 312 Cal. Rptr.
26 3d at 682 (applying the principle to a nonprofit corporation that “promotes transparency and
27 integrity in scientific publishing”). And a defendant cannot evade anti-SLAPP protections by
28 alleging some breach of contract or other wrong relating to data collection. *See, e.g., Navellier v.*

1 *Sletten*, 52 P.3d 703, 712-13 (Cal. 2002) (“[A]ny claimed illegitimacy of the defendant’s acts”
2 pertains only to “the plaintiff’s secondary burden to provide a prima facie showing of the merits.”
3 (cleaned up)).

4 *Second*, X Corp.’s claims “aris[e] from” the CCDH Defendants’ protected newsgathering
5 activity. § 425.16(b)(1). Put another way, “the *principal thrust* or *gravamen* of [the] cause of
6 action,” *Iloh*, 312 Cal. Rptr. 3d at 684, is the CCDH Defendants’ speech. Indeed, every penny in
7 damages X Corp. seeks on its state-law claims was allegedly “in direct response to” or “[a]s a direct
8 . . . result of” the CCDH Defendants’ reports and articles. AC ¶¶ 78, 92, 98. Moreover, the rest of
9 each count is premised on newsgathering activity. *See* AC ¶¶ 77-78 (complaining about CCDH
10 US’s “data collection” for “reports and articles”); AC ¶¶ 92-93 (complaining that the CCDH
11 Defendants “prevented Brandwatch from performing” by “unlawfully accessing [Brandwatch]
12 data” for “reports and articles”); AC ¶¶ 97-99 (complaining that the CCDH Defendants “induc[ed]
13 Brandwatch to breach” by “gaining access to . . . data” for “reports and articles”).

14 *Third*, the CCDH Defendants’ speech was concededly “in connection with a public issue,”
15 § 425.16(b)(1), in that it concerned “broadly debated topics” “of paramount public concern” “such
16 as COVID-19 vaccines, reproductive healthcare, and climate change,” AC ¶¶ 3, 72.

17 Thus, this case is a quintessential SLAPP: it “masquerade[s] as [an] ordinary lawsuit[,]” but
18 is really “intended to deter ordinary people from exercising their . . . rights or to punish them for
19 doing so,” *Makaeff*, 715 F.3d at 261 (cleaned up), by using this Court to impose significant litigation
20 costs and the threat of ruinous liability in damages. As a result, unless X Corp. establishes a
21 probability of prevailing on its state-law claims—and it cannot—the claims must be stricken.

22 **B. X Corp. Fails to State a Claim for Breach of Contract (Count 1)**

23 Because the anti-SLAPP statute applies to Count 1, the burden shifts to X Corp. to establish
24 a probability of prevailing—*i.e.*, in the context of this motion, that it can state a plausible claim for
25 relief under Rule 12(b)(6). *See* § 425.16(b)(1); *Planned Parenthood*, 890 F.3d at 834.

26 X Corp. cannot make that showing on its contract claim, which is as breathtaking as it is
27 unprecedented. Its theory proceeds in three steps: *First*, CCDH US’s use of a tool that “utilizes
28 Twitter’s search function to enable data collection” somehow violates Twitter’s vague and

1 ambiguous ToS. AC ¶¶ 53-54. *Second*, X Corp. can wield its ToS, an adhesion contract that it forces
2 every user to sign, to prohibit and penalize even limited newsgathering activities for First
3 Amendment-protected research and reporting purposes. *See* AC ¶¶ 49-55. *Third*, X Corp. may rely
4 on such supposed violations to demand “at least tens of millions of dollars” of special damages
5 based on the CCDH Defendants’ subsequent public speech and third parties’ independent decisions
6 to pause advertising. AC ¶¶ 78-79. If any of these propositions are legally deficient, this Court
7 should strike or dismiss Count 1; here, they are all legally deficient.

8 **1. X Corp. has not pleaded a breach of its Terms of Service**

9 “[T]he elements of a cause of action for breach of contract are (1) the existence of the
10 contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4)
11 the resulting damages to the plaintiff.” *Oasis West Realty, LLC v. Goldman*, 250 P.3d 1115, 1121
12 (Cal. 2011). Even assuming X Corp. has pleaded the first two elements, it fails to allege facts that
13 would show that CCDH US violated its ToS.

14 In support of its contract claim, X Corp. quotes just twelve words from its ToS: “scraping
15 the Services without the prior consent of Twitter is expressly prohibited.” AC ¶¶ 53, 75. The full
16 provision of the ToS actually reads as follows:

17 You may not do any of the following while accessing or using the Services: . . . (iii)
18 access or search or attempt to access or search the Services by any means
19 (automated or otherwise) other than through our currently available, published
20 interfaces that are provided by Twitter (and only pursuant to the applicable terms
21 and conditions), unless you have been specifically allowed to do so in a separate
22 agreement with Twitter (NOTE: crawling the Services is permissible if done in
accordance with the permissions of the robots.txt file, however, scraping the
Services without the prior consent of Twitter is expressly prohibited)

23 Ex. A at 5-6. X Corp. defines certain key terms in its ToS—it even uses the defined term “Services”
24 in this very provision—but X Corp. does not define the term “scraping,” nor does it mention it
25 anywhere else in its ToS. As the Ninth Circuit has already recognized, some conceptions of
26 “scraping” can, in theory, include a wide range of innocuous conduct, including even “manually”
27 copying “data from a website . . . into a structured format.” *hiQ Labs*, 31 F.4th at 1186 n.4.
28

1 X Corp. fails to plausibly allege that the conduct at issue here constitutes the sort of
2 “scraping” that its ToS prohibits. Here, the allegation is that CCDH US used a web tool called
3 SNScrape, which employs X’s search function, to collect 9,615 tweets from a handful of previously
4 banned user accounts that X reinstated, so that CCDH US could analyze and comment on the tweets
5 in a free, public report dated February 9, 2023. *See* AC ¶ 54; Ex. B at 17, CCDH US & CCDH UK,
6 *Toxic Twitter* (Feb. 9, 2023), [https://counterhate.com/wp-content/uploads/2023/02/Toxic-Twitter_](https://counterhate.com/wp-content/uploads/2023/02/Toxic-Twitter_FINAL.pdf)
7 [FINAL.pdf](https://counterhate.com/wp-content/uploads/2023/02/Toxic-Twitter_FINAL.pdf) (incorporated by reference in AC ¶ 49). Such small-scale data collection for nonprofit
8 research purposes using X Corp.’s own functionality cannot constitute prohibited “scraping” under
9 X Corp.’s adhesive ToS. Three familiar principles of contract interpretation—the need to read all
10 terms as a whole, the presumption against waivers of rights, and the rule that ambiguities in
11 adhesion contracts must be construed against the drafter—compel that conclusion here.

12 *First*, it is axiomatic that contractual terms must be interpreted in light of “the contract as a
13 whole” and “in context, rather than . . . in isolation.” *Am. Alt. Ins. Corp. v. Super. Ct. of L.A. Cnty.*,
14 37 Cal. Rptr. 3d 918, 922 (Cal. Ct. App. 2006); *see* Cal. Civ. Code §§ 1641, 1643. Here, the ToS
15 uses the term “scraping” in contrast to “access[ing] or search[ing] the Services . . . through our
16 currently available, published interfaces that are provided by Twitter.” Ex. A at 5-6. Yet X Corp.
17 recognizes that the tool CCDH US used—however it was described colloquially—“utilize[d]
18 *Twitter’s search function* to enable data collection,” apparently with no technological cost to X
19 Corp. AC ¶ 54 (emphasis added). Thus, CCDH US’s alleged conduct was permitted under any
20 reasonable interpretation of X Corp.’s ToS. At minimum, there clearly could not have been any
21 “meeting of the minds upon the essential features of” X Corp.’s vague ToS clause, as would be
22 necessary to “sufficiently define[]” that clause’s scope and “provide a rational basis for the
23 assessment of damages.” *Scott v. Pac. Gas & Elec. Co.*, 904 P.2d 834, 841 (Cal. 1995) (internal
24 quotation marks omitted).

25 *Second*, under California law, “it is well established that courts closely scrutinize waivers
26 of constitutional rights[] and indulge every reasonable presumption against a waiver.” *Integrated*
27 *Healthcare Holdings, Inc. v. Fitzgibbons*, 44 Cal. Rptr. 3d 517, 529 (Cal. Ct. App. 2006). Applying
28 the ToS’s undefined prohibition on “scraping” to prohibit limited “attempts to record the contents

1 of public websites for [nonprofit] research [and advocacy] purposes,” as X Corp. suggests here,
2 would effect a waiver of CCDH US’s rights “plausibly within the ambit of the First Amendment.”
3 *Sandvig v. Sessions*, 315 F. Supp. 3d 1, 15-16 (D.D.C. 2018). After all, the First Amendment
4 protects not just speech, but also access to “the stock of information from which members of the
5 public may draw.” *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 783 (1978). As a result, “six
6 courts of appeals have found that individuals have a First Amendment right to record at least some
7 matters of public interest, in order to preserve and disseminate ideas.” *Sandvig*, 315 F. Supp. 3d at
8 15-16 & n.4; see *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1203 (9th Cir. 2018) (“easily”
9 holding recordings of agricultural operations were “speech protected by the First Amendment”).
10 Automation is “merely a technological advance that makes [such] information collection easier,”
11 *Sandvig*, 315 F. Supp. 3d at 16—especially here, where only a few thousand public data points
12 were gathered, and admittedly for research and reporting purposes. Moreover, the Liberty of Speech
13 Clause of the California Constitution “independently establishes a zone of protection that is broader
14 still” than its federal counterpart. *Blatty v. N.Y. Times Co.*, 728 P.2d 1177, 1181-82 (Cal. 1986); see
15 Cal. Const. art. I, § 2. “[I]ndulging every reasonable presumption against a waiver” of these rights
16 makes clear that “the phrase [‘scraping’] . . . is not sufficiently clear and definite on its face to imply
17 a waiver” by CCDH US. *Integrated Healthcare Holdings, Inc.*, 44 Cal. Rptr. 3d at 529-30; see also,
18 e.g., *A.H.D.C. v. City of Fresno*, No. 97 Civ. 5498, 2000 WL 35810722, at *10-11 (E.D. Cal. Aug.
19 31, 2000) (possible waiver of First Amendment rights was “entitled to the narrowest construction,”
20 especially because it was within a “contract of adhesion”).

21 *Third*, any “ambiguities in written agreements are to be construed against their drafters.”
22 *Sandquist v. Lebo Automotive, Inc.*, 376 P.3d 506, 514 (Cal. 2016). This “applies with peculiar
23 force in the case of the contract of adhesion.” 1 Witkin, Summary of Cal. Law—Contracts § 780
24 (11th ed. 2023). Under this principle, the vague terms X Corp. uses in its ToS cannot reach isolated
25 collection of publicly available data, by a nonprofit, using X Corp.’s search function, for research
26 and advocacy purposes, that imposes no direct costs on the platform. If X Corp. wished for its form
27 contract to sweep so broadly, it should have drafted its ToS to say so. At a minimum, it could have
28 defined the term “scraping”; its competitors utilize markedly clearer language to prohibit unwanted

1 means of data collection.⁸ X Corp.’s failure to do the same must be held against it, not CCDH US.

2 Given these considerations, courts that have sustained contract claims over “scraping” have
3 done so in dramatically different contexts involving private data sold for profit, significant breaches
4 of user privacy, large-scale collection inflicting technological harm, or several of these factors, all
5 of which are absent here.⁹ Even X Corp.’s own prior suits over “scraping” involve such fact
6 patterns.¹⁰ Whatever the nature of X Corp.’s complaints with CCDH US’s speech, it fails to allege
7 facts sufficient to bring CCDH US’s newsgathering activities within the ambit of any plausible
8 understanding of a contractual prohibition on undefined “scraping.” And in light of X Corp.’s
9 failure to plead any violation of its ToS under state law, Count 1 should be stricken or dismissed.

10 **2. If the anti-scraping provision applies, enforcement violates public policy**

11 Even if X Corp.’s ToS did prohibit efforts to collect small amounts of publicly available
12 data facilitated by X’s search feature for nonprofit research and reporting (and it does not), public
13 policy would render any such prohibition unenforceable. “[A] contract is unlawful, and therefore
14 unenforceable, if it is ‘[c]ontrary to an express provision of law’ or ‘[c]ontrary to the policy of
15 express law, though not expressly prohibited.” *Sheppard, Mullin, Richter & Hampton, LLP v. J-*

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17
18 ⁸ *E.g., hiQ Labs, Inc. v. LinkedIn Corp.*, 639 F. Supp. 3d 944, 959 (N.D. Cal. 2022) (“You agree
19 that you will not . . . [s]crape or copy profiles and information of others through any means
20 (including crawlers, browser plugins and add-ons, and any other technology or manual work);”
21 “[u]se manual or automated software, devices, scripts[,], robots, other means or processes to access,
22 ‘scrape,’ ‘crawl,’ or ‘spider’ the Services or any related data or information;” or “[u]se bots or other
23 automated methods to access the Services, add or download contracts, [or] send or redirect
24 messages”); *see also Meta Platforms, Inc. v. BrandTotal Ltd.*, 605 F. Supp. 3d 1218, 1243 (N.D.
25 Cal. 2022).

26 ⁹ *See, e.g., BrandTotal Ltd.*, 605 F. Supp. 3d at 1232-33 (collecting public and private data at a
27 large scale and for profit); *hiQ Labs, Inc.*, 639 F. Supp. 3d at 955 (large-scale scraping for profit,
28 using tricks to evade platform barriers and prevent detection); *Chegg, Inc. v. Doe*, No. 22 Civ. 7326,
2023 WL 4315540, at *4 (N.D. Cal. July 3, 2023) (collection of private, paywalled information “in
huge quantities” for profit); *Craigslist, Inc. v. 3taps, Inc.*, No. 12 Civ. 3816, 2015 WL 5921212, at
*1 (N.D. Cal. Oct. 11, 2015) (scraping Craigslist content, “without authorization, for profit”).

¹⁰ *See* Complaint at 2, *X Corp. v. Bright Data Ltd.*, No. 23 Civ. 3698 (N.D. Cal. July 26, 2023),
Dkt. 1 (alleging “Bright Data has built an illicit data-scraping business” by “scrap[ing] and sell[ing]
millions of records from” the Twitter/X platform); Original Petition at 4, *X Corp. v. John Doe I*,
No. DC-23-09157 (Tex. Dist. Ct. July 6, 2023) (“flooding Twitter’s sign-up page with automated
requests,” “severely tax[ing] X Corp.’s servers,” “impair[ing] the user experience for millions of
X” users, and “profit[ing] . . . while harming X Corp. and compromising user data”).

1 *M Mfg. Co.*, 425 P.3d 1, 8 (Cal. 2018) (quoting Cal. Civ. Code § 1667). Sources of such law can
2 include constitutions and statutes. *See, e.g., Cariveau v. Halferty*, 99 Cal. Rptr. 2d 417, 420-21 (Cal.
3 Ct. App. 2000). Even absent express law, a provision may be “unenforceable on grounds of public
4 policy if . . . the interest in its enforcement is clearly outweighed in the circumstances by a public
5 policy against [its] enforcement.” *Bovard v. Am. Horse Enters., Inc.*, 247 Cal. Rptr. 340, 344 (Cal.
6 Ct. App. 1988). “Whether or not a contract is contrary to public policy is a question of law to be
7 determined from the circumstances of each particular case.” 14 Cal. Jur. 3d Contracts § 171.

8 Allowing X Corp. to ban the conduct alleged here would contravene settled public policy,
9 in several respects. Most fundamentally, it would violate the speech principles underpinning the
10 federal Free Speech Clause and the state Liberty of Speech Clause, and not just because CCDH
11 US’s data collection and reporting fall within the protection afforded by those guarantees. Even
12 beyond that, “commonplace social media websites like . . . Twitter” constitute “the modern public
13 square.” *Packingham v. North Carolina*, 582 U.S. 98, 101, 107 (2017). Yet X Corp.’s theory would
14 allow it to unilaterally restrict essential forms of newsgathering, speech, and debate both in and
15 about that modern public square. Public policy does not sanction giving X Corp. such broad control
16 over publicly available data that X Corp. does not own, particularly when that data is needed to
17 facilitate free and open debate on issues of public concern.

18 In addition, X Corp.’s contract claim violates established statutory policies favoring online
19 transparency and a robust public discourse. The State of California has enacted legislation towards
20 these ends, most powerfully in the decades-old anti-SLAPP statute, which is premised on the belief
21 “that it is in the public interest to encourage continued participation in matters of public
22 significance.” Cal. Civ. Proc. Code § 425.16(a). X Corp.’s effort to use its ToS to punish nonprofits
23 for their reporting on and criticism of the X platform obviously collides with this public policy.¹¹

24 _____
25 ¹¹ Further evidence of these policy commitments is found in the Social Media Transparency and
26 Accountability Act (“SMTAA”), also known as Assembly Bill No. 587, *see* Cal. Bus. & Prof. Code
27 §§ 22675-22681, which will require social media companies to disclose their content moderation
28 policies and practices, and which X Corp. has sued to enjoin, *see* Complaint at 2, *X Corp. v. Bonta*,
No. 23 Civ. 1939 (E.D. Cal. Sept. 8, 2023), Dkt. 1. Congress, too, has acted to shield individuals
from contractual retribution for speech that is critical of products or services. Thus, the Consumer
Review Fairness Act renders a “form contract[.]” that “prohibits or restricts” an individual’s ability
to “assess[.]” or “analy[ze]” the “performance” of a counterparty’s “services” void. 15 U.S.C. § 45b.

1 These foundational policies do not permit enforcement of the ToS against the newsgathering
2 at issue here. Public policy bars enforcement of X Corp.’s ToS against the conduct alleged, which
3 involves an unprecedented confluence of (i) small-scale data collection, (ii) not for sale or for profit,
4 (iii) for research and reporting about matters of public concern, (iv) facilitated by X Corp.’s own
5 search functionality, (v) inflicting no alleged technological harm, and (vi) involving publicly
6 accessible third-party content. Count 1 should be stricken or dismissed.

7 **3. X Corp. does not allege recoverable damages**

8 Even assuming X Corp.’s adhesive ToS prohibits the limited, reporting-oriented conduct
9 alleged here, and that it can be enforced consistent with public policy, the Court should still strike
10 or dismiss Count 1 for yet a third reason: X Corp. fails to allege recoverable damages. *See Oasis*
11 *West Realty, LLC*, 250 P.3d at 1121 (“[T]he elements of a cause of action of breach of contract . . .
12 [include] damages to the plaintiff.”).¹² X Corp. tellingly seeks only reputational damages based on
13 lost revenue from advertisers in response to speech, which it cannot recover for two reasons.

14 *First*, X Corp.’s lost advertising revenue is not recoverable as a matter of state contract law.
15 “[C]ontractual damages are of two types—general damages (sometimes called direct damages) and
16 special damages (sometimes called consequential damages).” *Lewis Jorge Constr. Mgmt.*, 102 P.3d
17 at 261. General damages are “those that flow directly and necessarily from a breach of contract,”
18 while special damages are “secondary or derivative losses arising from circumstances that are
19 particular to the contract or to the parties.” *Id.* Importantly, in order to be recoverable, special
20 damages must have been “foreseen or . . . reasonably foreseeable *when the contract was formed.*”
21 *Highwire Promotions, LLC v. Legend Marketing LLC*, 263 F. App’x 564, 565 (9th Cir. 2008)
22 (emphasis added); *see also Lewis Jorge Constr. Mgmt.*, 102 P.3d at 261. Moreover, the losses at
23 issue must be those “likely to result from a breach,” *i.e.*, “the probable result” of a breach. *Lewis*
24 *Jorge Constr. Mgmt.*, 102 P.3d at 262 (cleaned up).

25
26
27 ¹² In the alternative, because X Corp. does not allege recoverable damages in excess of \$75,000 on
28 Count 1, it fails to establish diversity jurisdiction. And because X Corp. additionally fails to state
claims on Counts 2-4, requiring that those counts be dismissed or struck, this Court should decline
to exercise supplemental jurisdiction over Count 1 even if that count otherwise survives this motion.
See, e.g., Religious Tech. Ctr. v. Wollersheim, 971 F.2d 364, 367-68 (9th Cir. 1992).

1 Here, X Corp.’s claim for damages is that CCDH US breached the ToS by collecting
2 publicly-available data using Twitter’s own search tool; that although the breach caused no direct
3 damages, the CCDH Defendants used the publicly available data collected to publish reports
4 criticizing X Corp.; that their speech, in turn, led X Corp.’s advertisers (all non-parties) to pause
5 spending; and that this, in turn, caused X Corp. to lose “at least tens of millions of dollars” in
6 revenue. AC ¶¶ 77-79. Because these remote damages do not flow directly and necessarily from a
7 breach of an anti-scraping provision, they can only be cognizable as special damages (if at all). *See*
8 *Lewis Jorge Constr. Mgmt., Inc.*, 102 P.3d at 261. Yet X Corp.’s pleading falls triply short of
9 satisfying applicable legal standards for special damages:

10 No knowledge at time of contracting. X Corp. makes no attempt to tie any alleged
11 knowledge on the part of CCDH US back to *the time of contracting*. And it is facially implausible
12 that CCDH US could have known, at whatever time it accepted the ToS, that (for instance) the
13 Twitter/X platform would abruptly change course to restore accounts that it had banned for
14 spreading hate speech, misogyny, and conspiracy theories, *see* AC ¶ 49; that the CCDH Defendants
15 would collect and review public posts on the platform to shed light on these issues, *see* AC ¶ 77;
16 and that the CCDH Defendants’ subsequent reporting based on this data would allegedly affect
17 advertiser revenue to the tune of “at least tens of millions of dollars,” AC ¶¶ 78-79. This lack of
18 foreseeability at the time of contracting is precisely why the courts have resoundingly rejected
19 reputational damages in contract actions. *See, e.g., King v. Facebook, Inc.*, 572 F. Supp. 3d 776,
20 790 (N.D. Cal. 2021) (noting “legion of cases” holding that “damages are not recoverable for . . .
21 injury to reputation resulting from breach of contract,” as such harms are “generally not
22 foreseeable” (cleaned up)); *Frangipani v. Boecker*, 75 Cal. Rptr. 2d 407, 410 (Cal. Ct. App. 1998)
23 (collecting cases showing that an award “in the nature of a recovery for damages to reputation” is
24 “not recoverable in an action for breach”); *Rice v. Cmty. Health Ass’n*, 203 F.3d 283, 287-88 (4th
25 Cir. 2000) (noting reputational damages have been “universally rejected” in contract actions).

26 Disconnected from alleged breach. Independently, although X Corp. claims that CCDH US
27 intended for advertisers to flee and knew that the CCDH Defendants’ *reports* would achieve that
28 result, it never alleges that CCDH US knew that lost advertising revenue was the probable result of

1 CCDH US's *alleged scraping* (the only actual breach it alleges). Understandably so: X Corp.'s lost
2 advertising revenues have nothing to do with CCDH US's data collection methods. For this reason,
3 too, X Corp.'s theory of contract damages flunks the requirements of state law.

4 No specific statement. X Corp. also fails to comply with Rule 9(g), which requires that "[i]f
5 an item of special damage is claimed, it must be specifically stated." "A specific statement of
6 special damages requires not just the total lump sum, but a statement of the specific items which
7 make up the lump sum." *City & Cnty. of S.F. v. Tutor-Saliba Corp.*, No. 02 Civ. 5286, 2005 WL
8 645389, at *17 (N.D. Cal. Mar. 17, 2005). X Corp. alleges neither; it offers only a loose and
9 uncapped "estimate[]" of damages, AC ¶ 70, stretching across all three of its state-law claims.

10 *Second*, the free speech provisions of the federal and state Constitutions bar X Corp. from
11 using non-defamation "cause[s] of action to avoid the strict requirements for establishing a libel or
12 defamation claim" while seeking its "damages for injury to . . . reputation." *Cohen v. Cowles Media*
13 *Co.*, 501 U.S. 663, 671 (1991); *accord Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988)
14 (holding that a public figure could not recover publication damages on a non-defamation claim
15 without showing actual malice); *cf. Kasky v. Nike, Inc.*, 45 P.3d 243, 255 (Cal. 2002) (state Liberty
16 of Speech Clause is "at least as broad as . . . and in some ways broader than" federal Free Speech
17 Clause). The crucial distinction is between "damages . . . result[ing] . . . from the *direct* acts of
18 defendants" and damages "from the acts of third parties who were motivated by the contents of
19 [defendants' speech]." *Planned Parenthood Fed. of Am.*, 402 F. Supp. 3d at 644. Fundamental
20 speech protections allow X Corp. to recover only the former category of damages—for direct harms
21 it would have suffered "even if Appellants had never published" their speech. *Planned Parenthood*
22 *Fed. of Am., Inc. v. Newman*, 51 F.4th 1125, 1134 (9th Cir. 2022); *accord Food Lion, Inc. v. Capital*
23 *Cities/ABC, Inc.*, 194 F.3d 505, 523 (4th Cir. 1999) (rejecting supermarket's attempt to recover
24 "compensation for matters such as loss of good will and lost sales" caused by footage aired in a
25 news program, as these were unrecoverable "reputational damages from publication," even where
26 the news program "obtained the videotapes through unlawful acts"). Yet X Corp. has not pleaded
27 *any* direct damages (such as data corruption or server costs). All it seeks on this claim is precisely
28 what the Constitution forbids: damages based on advertisers' reactions to CCDH US's speech.

1 To be sure, “the pursuit of journalism does not give a license to break laws of general
2 applicability.” *Planned Parenthood*, 51 F.4th at 1135. But this “well-accepted rule” does not define
3 “where to draw the line between impermissible defamation-like publication damages that were
4 caused by the actions and reactions of third parties [to speech] and permissible damages that were
5 directly caused by the breach[] of contract” and “tortious acts” alleged. *Planned Parenthood*, 402
6 F. Supp. 3d at 643. Here, the answer is clear: because X Corp.’s damages all flow from third parties’
7 reactions to the CCDH Defendants’ speech, they constitute impermissible publication damages.

8 Last but not least, permitting Count 1 to proceed would have staggering implications. X
9 Corp. seeks to hold CCDH US liable for at least tens of millions of dollars in damages, the entirety
10 of which allegedly flows from the CCDH Defendants’ speech on matters of public concern, based
11 on an instance of small-scale data collection that imposed no technological costs on X Corp. and
12 yielded no profit, purportedly in violation of vague and ambiguous contract language drafted by X
13 Corp. itself. Moreover, even if a jury or this Court subsequently ruled against X Corp. on the merits,
14 the CCDH Defendants would be punished in the interim through the significant costs of enduring
15 discovery and litigation in a federal proceeding against a well-resourced adversary with every
16 incentive to impose crushing burdens on the CCDH Defendants. The chill this manipulation of the
17 judicial process would exert on research and honest criticism cannot be overstated. This Court
18 should not be the first to sanction such an effort.

19 **C. X Corp. Fails to State a Claim Under the CFAA (Count 2)**

20 X Corp. alleges that the CCDH Defendants violated the CFAA by accessing private
21 Brandwatch data to prepare reports published on March 24, 2021, November 10, 2022, and
22 February 9, 2023. *See* AC ¶¶ 44-48.¹³ But the CFAA, a federal criminal hacking statute, provides

23 _____
24 ¹³ Although X Corp. alleges that the CCDH Defendants’ February 9, 2023 report “cites several data
25 points for which non-public Brandwatch sources are *quoted*,” AC ¶ 51 (emphasis added), this is
26 demonstrably false. The allegation is contradicted by the report itself, *see* AC ¶ 49 (linking to
27 report), which cites only a *public* blog post by Brandwatch that remains online and available to all.
28 *See* Ex. B at 5, 17 (citing Brandwatch, *How Much Do Social Media Ads Cost on Facebook, Instagram, Twitter, and LinkedIn?* (Feb. 22, 2022), <https://www.brandwatch.com/blog/how-much-do-social-media-ads-cost-on-facebook-instagram-twitter-and-linkedin/>). Thus, there can be no liability in connection with that report. In any event, X Corp.’s allegations fail regardless of whether this report is somehow relevant to Counts 2-4.

1 a private right of action only “under very limited circumstances.” *Fish v. Tesla, Inc.*, No. 21 Civ.
2 60, 2022 WL 1552137, at *8 (C.D. Cal. May 12, 2022). To state a claim, X Corp. must allege (1)
3 a violation of one of the statute’s substantive provisions, 18 U.S.C. § 1030(g), and (2) cognizable
4 “loss to 1 or more persons during any 1-year period . . . aggregating at least \$5,000 in value,”
5 § 1030(c)(4)(A)(i)(I). X Corp. has failed to satisfy either requirement here and does not even give
6 fair notice of which possible CFAA violation it believes Defendants committed. For each of these
7 reasons, this Court should dismiss Count 2.

8 **1. X Corp. cannot allege access “without authorization”**

9 Unlawful access is a necessary element of any CFAA claim. *See Van Buren*, 141 S. Ct. at
10 1658. The CFAA specifically prohibits two forms of unlawful access, including (as relevant here)
11 “access without authorization.” *Id.* But this prong of the statute is narrow—in part because the
12 CFAA is primarily a criminal statute that is interpreted similarly across criminal and civil contexts.
13 *See, e.g., LVRC Holdings LLC v. Brekka*, 581 F.3d 1127, 1134 (9th Cir. 2009). Moreover, the
14 CFAA was “enacted to prevent intentional intrusion onto someone else’s computer—specifically,
15 computer hacking.” *hiQ Labs, Inc.*, 31 F.4th at 1196. Thus, to be prohibited under the CFAA,
16 conduct must be “analogous to ‘breaking and entering’” into computers; a mere violation of terms
17 of service is not enough. *Id.* at 1197.

18 Here, X Corp.’s theory requires the following steps: ECF “was a subscriber to Brandwatch’s
19 applications,” AC ¶ 35; ECF voluntarily gave the CCDH Defendants, which were not themselves
20 customers of Brandwatch, access to ECF’s subscription, AC ¶¶ 38, 43, 84; the CCDH Defendants
21 then used ECF’s subscription for research and journalism purposes, AC ¶ 43; and this was all
22 purportedly in violation of Brandwatch’s terms and conditions for its users, AC ¶¶ 37, 42. This
23 convoluted theory fails for two independent reasons.

24 *First*, the Amended Complaint does not plausibly allege a violation of the Brandwatch user
25 terms because it does not allege that ECF’s subscription was a single-user license. The Brandwatch
26 terms, including the terms quoted by X Corp., distinguish between a “Customer” (ECF) and a
27 “User” (CCDH) and contemplate *multiple users* for each customer account. *See, e.g.,* AC ¶ 37
28 (providing distribution permissions for a “Customer’s (*or User’s*) business purpose” (emphasis

1 added)). Moreover, the incorporated terms expressly define “User[s]” as anyone whom *ECF*—not
 2 X Corp. or Brandwatch—has authorized to use Brandwatch services. *See, e.g.*, Ex. C at 1,
 3 Brandwatch Service Terms (Oct. 15, 2022) (“‘User’ means an individual that Customer (directly
 4 or indirectly) has authorised to use the Services.”), [https://www.brandwatch.com/wp-](https://www.brandwatch.com/wp-content/uploads/2023/04/MSA-Brandwatch-Oct-15-2022.pdf)
 5 [content/uploads/2023/04/MSA-Brandwatch-Oct-15-2022.pdf](https://www.brandwatch.com/wp-content/uploads/2023/04/MSA-Brandwatch-Oct-15-2022.pdf).¹⁴ Notably, the terms were amended
 6 on April 21, 2023—after the alleged Brandwatch access here took place—to add a new restriction
 7 not previously present: “‘User’ means an individual *from the entities within the Customer’s*
 8 *corporate group* that Customer has authorized to use the Services and/or the Resold Services.”¹⁵
 9 This only underscores the fact that during the relevant period, Brandwatch “Customers” like ECF
 10 *could* authorize “Users” beyond their corporate groups to use the services. And X Corp. actually
 11 concedes that ECF permitted the CCDH Defendants to use its subscription. *See* AC ¶¶ 11, 38.
 12 Accordingly, X Corp.’s allegation that their access was “in violation of ECF’s agreement with
 13 Brandwatch” fails on the four corners of the pleading and referenced document. AC ¶ 43.

14 *Second*, even if X Corp. had alleged a violation of the Brandwatch terms (which it has not),
 15 that would at most amount to a violation of a license agreement, not the type of hacking that CFAA
 16 subjects to civil and criminal penalties. *See AtPac, Inc. v. Aptitude Sols., Inc.*, 730 F. Supp. 2d 1174,
 17 1182 (E.D. Cal. 2010) (refusing to “stretch the scope of CFAA” to encompass access-sharing in
 18 “violation of [a] license agreement”). As the Ninth Circuit has instructed, “a violation of the terms
 19 of use of a website—without more—cannot establish liability under the CFAA.” *Facebook, Inc. v.*
 20 *Power Ventures, Inc.*, 844 F.3d 1058, 1067 (9th Cir. 2016); *accord hiQ Labs, Inc.*, 31 F.4th at 1196
 21 (squarely rejecting a “contract-based interpretation of the CFAA’s ‘without authorization’”). All

22 _____
 23 ¹⁴ The Amended Complaint links to and quotes from a version of the Brandwatch terms dated April
 24 21, 2023. AC ¶¶ 35-37. Those terms did not govern the period relevant to X Corp.’s allegations,
 25 *i.e.*, March 2021, November 2022, and February 2023. The applicable Brandwatch terms (Exs. C
 26 through E), which are available on the webpage linked to in the Amended Complaint, are also
 27 incorporated by reference and, in any event, are subject to judicial notice. *See, e.g., Lucky Leather,*
 28 *Inc. v. Mitsui Sumitomo Ins. Grp.*, No. 12 Civ. 9510, 2013 WL 12139116, at *1 (C.D. Cal. Feb. 26,
 2013) (collecting cases); *see also Coffee v. Google, LLC*, No. 20 Civ. 390, 2021 WL 493387, at *4
 (N.D. Cal. Feb. 10, 2021). The operative language defining a “User” was identical across the
 relevant time period. *See* Ex. C at 1; Ex. D at 1; Ex. E at 1.

¹⁵ Ex. F, Brandwatch Service Terms 3 (April 21, 2023) (emphasis added), [https://](https://www.brandwatch.com/legal/terms-and-conditions/)
www.brandwatch.com/legal/terms-and-conditions/ (incorporated by reference in AC ¶¶ 35-37).

1 the more so here, where X Corp. at worst pleads a case of ordinary—and purely voluntary—
2 password-sharing. Were it otherwise, the CFAA “would attach criminal penalties to a breathtaking
3 amount of commonplace computer activity.” *Van Buren*, 141 S. Ct. at 1661. Indeed, countless
4 services—from social media networks to streaming services to news sites—forbid users from
5 sharing accounts. *Cf. United States v. Nosal*, 676 F.3d 854, 861 & n.8 (9th Cir. 2012) (en banc).
6 “Yet it’s very common for people to let” others “access their online accounts . . . [and] few imagine
7 they might be marched off to federal prison for doing so.” *Id.* at 861. Such run-of-the-mill activity
8 does not come close to the kind of “hacking” punished by the CFAA.

9 Given this reality, X Corp. strains to allege something more than ordinary password-
10 sharing. At most, it claims that the CCDH Defendants used Brandwatch data to speak unfavorably
11 of X Corp. *See, e.g.*, AC ¶ 85 (alleging that the CCDH Defendants wanted access to Brandwatch
12 data “to mischaracterize the data in its reports”). But of course, what the CCDH Defendants *did*
13 with the data is irrelevant to whether they accessed that data *without authorization*. *See Van Buren*,
14 141 S. Ct. at 1659 (noting that even the government would not read “purpose-based limits . . . into
15 the threshold question whether someone uses a computer ‘without authorization’”); *AtPac, Inc.*,
16 730 F. Supp. 2d at 1181 (“The CFAA simply does not apply to those who have authority to access
17 specific parts of a computer but do so with an improper purpose.”). Nor can X Corp. use the CFAA
18 as another end-run around a defamation claim. *Nosal*, 676 F.3d at 857 (CFAA is “an anti-hacking
19 statute,” not a “misappropriation statute”).

20 **2. X Corp. has not pleaded the requisite technological loss**

21 X Corp.’s CFAA claim fails for yet another reason: X Corp. does not allege loss from
22 *technological* harms. A civil CFAA claim requires “loss to 1 or more persons during any 1-year
23 period . . . aggregating at least \$5,000 in value.” 18 U.S.C. § 1030(c)(4)(A)(i)(I). This “conception
24 of ‘loss’” is a “narrow” one. *Andrews v. Sirius XM Radio Inc.*, 932 F.3d 1253, 1262 (9th Cir. 2019);
25 *see* 18 U.S.C. § 1030(e)(11). Specifically, the statute requires “a showing of technological harms.”
26 *hiQ Labs, Inc.*, 31 F.4th at 1195 n.12; *see Van Buren*, 141 S. Ct. at 1659-60 (“‘Loss’ focus[es] on
27 technological harms . . . to computer systems and data,” “such as the corruption of files”).

28 X Corp. alleges that it expended “well over \$5,000” “to conduct internal investigations, . . .

1 significant employee resources and time to participate and assist in those investigations, and
2 attorneys’ fees in aid of those investigations and in enforcing the relevant agreements.” AC ¶ 87.
3 But none of this loss “relates to costs caused by harm to computer data, programs, systems, or
4 information services.” *Van Buren*, 141 S. Ct. at 1659-60 (citing 18 U.S.C. § 1030(e)(11)). X Corp.
5 does not allege, for example, any “corruption” of the Licensed Materials, *id.* at 1660; necessary
6 “data restoration,” *Andrews*, 932 F.3d at 1263; or “interruption of service,” *id.* In fact, X Corp. does
7 not even allege that the CCDH Defendants accessed its own—as opposed to Brandwatch’s—
8 servers. AC ¶ 36. And X Corp. does not own the public, user-generated content it shares with
9 Brandwatch. *See* Ex. A at 13 (providing that users own their content and grant X Corp. “a
10 worldwide, non-exclusive, royalty-free license”). On these facts, X Corp. clearly has failed to allege
11 any loss “related to remedying technological harms inflicted on the breached computer or system.”
12 *Fraser v. Mint Mobile, LLC*, No. 22 Civ. 138, 2022 WL 2391000, at *2 (N.D. Cal. July 1, 2022)
13 (dismissing CFAA claim for this reason).

14 At a minimum, X Corp.’s attorney’s fees for “enforcing [its] agreements” with third parties
15 are clearly not the type of loss recognized by the CFAA. *See Delacruz v. State Bar of Cal.*, No. 16
16 Civ. 6858, 2018 WL 3077750, at *8 (N.D. Cal. Mar. 12, 2018) (“[L]egal expenses are not a
17 cognizable loss under the CFAA.”); *Saffron Rewards, Inc. v. Rossie*, No. 22 Civ. 2695, 2022 WL
18 2918907, at *9 (N.D. Cal. July 25, 2022). And X Corp. does not allege that, without counting those
19 immaterial attorney’s fees, its costs would still amount to at least \$5,000. *Domain Name Comm’n*
20 *Ltd. v. DomainTools, LLC*, 449 F. Supp. 3d 1024, 1030 (W.D. Wash. 2020) (dismissing CFAA
21 claim where allegations “provide no basis on which to allocate the alleged losses between” the
22 cognizable and non-cognizable). For this reason, too, Count 2 must be dismissed.

23 3. X Corp. fails to specify the CFAA subsection it alleges was violated

24 This Court should also dismiss Count 2 because X Corp. does not even specify which
25 subsection of the CFAA the CCDH Defendants supposedly violated. *See Song v. Drenberg*, No. 18
26 Civ. 6283, 2019 WL 1998944, at *5-6 (N.D. Cal. May 6, 2019) (dismissing a CFAA claim on this
27 basis). Notably, while X Corp. at times seems to allege *fraud-based* access without authorization,
28 *see* AC ¶ 82, such a claim requires unlawful access to a computer with “intent to defraud” and “by

1 means of such conduct further[ing] the intended fraud,” § 1030(a)(4); *see United States v. Nosal*,
 2 844 F.3d 1024, 1032 (9th Cir. 2016), neither of which X Corp. alleges here with even minimal
 3 specificity, *see* Fed. R. Civ. P. 9(b); *Nowak v. Xapo, Inc.*, No. 20 Civ. 3643, 2020 WL 6822888, at
 4 *3 (N.D. Cal. Nov. 20, 2020) (dismissing a § 1030(a)(4) claim that omitted “the who, what, when,
 5 where, and how of the misconduct”); *Oracle Am., Inc. v. Service Key, LLC*, No. 12 Civ. 790, 2012
 6 WL 6019580, at *6-7 (N.D. Cal. Dec. 3, 2012) (similar).

7 **D. X Corp. Fails to State a Claim in Tort (Counts 3 and 4)**

8 Counts 3 (intentional interference with contractual relations) and 4 (inducing breach of
 9 contract) fare no better. For starters, they are redundant. In California, “inducing breach of
 10 [contract]” is merely “a species of intentional interference with contractual relations.” *1-800*
 11 *Contacts, Inc. v. Steinberg*, 132 Cal. Rptr. 2d 789, 802 (Cal. Ct. App. 2003). The sole difference is
 12 that inducing breach requires a breach, whereas interference may involve disruption short of a
 13 breach. *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 791 P.2d 587, 592 (Cal. 1990). But here, the
 14 only form of “interference” X Corp. pleads in Count 3 is inducement of the breach alleged in Count
 15 4. *See* AC ¶ 93 (alleging that “Defendants’ conduct prevented Brandwatch from performing”);
 16 *Russomanno v. Fox Child.’s Network*, No. B143105, 2004 WL 2137405, at *21 (Cal. Ct. App. Sept.
 17 24, 2004) (allegation that counterparty “fail[ed] to perform” is “the functional equivalent” of
 18 alleging breach). Accordingly, the Court should dismiss Count 4 as duplicative. *See, e.g., Lesnik v.*
 19 *Eisenmann SE*, 374 F. Supp. 3d 923, 954 (N.D. Cal. 2019).

20 In any event, these claims fail for even more basic reasons. X Corp. must adequately plead
 21 (among other elements) that the CCDH Defendants’ intentional acts *caused* or *induced* the alleged
 22 breach by Brandwatch; that Brandwatch actually breached its contracts with X Corp.; that the
 23 CCDH Defendants knew of the relevant contractual terms and intended to induce a breach; and that
 24 X Corp. suffered resulting damage. *See United Nat’l Maint., Inc. v. San Diego Convention Ctr.,*
 25 *Inc.*, 766 F.3d 1002, 1006 (9th Cir. 2014). As explained below, its pleading does not come close.

26 **1. X Corp.’s pleading shows the CCDH Defendants did not cause a breach**

27 To state a claim for relief in tort, X Corp. must allege that each Defendant *induced* or *caused*
 28 any breach by Brandwatch. *See, e.g., Bank of N.Y. v. Fremont Gen. Corp.*, 523 F.3d 902, 909 (9th

1 Cir. 2008); *Moser v. Encore Cap. Grp., Inc.*, 455 F. App'x 745, 748 (9th Cir. 2011). As case after
 2 case illustrates, an interference claim lies where the defendant's acts pushed a contracting party to
 3 act in a way that disrupted the contract.¹⁶ But here, even if X Corp.'s pleading established a breach
 4 by Brandwatch (and, as explained below, it does not), it would not allege facts showing that the
 5 CCDH Defendants *induced* that breach. To the contrary, X Corp.'s allegations show that any breach
 6 occurred independently of (and, by necessity, before) the CCDH Defendants' actions.

7 Because inducement and causation are questions of law, this Court need not accept as true
 8 X Corp.'s conclusory assertions of causation couched as factual allegations. *See Iqbal*, 556 U.S. at
 9 678. Setting aside those assertions, the relevant factual allegations are as follows:

- 10 • Brandwatch agreed in a contract with X Corp. not to "allow others to . . . transfer or provide
 11 access to . . . the Licensed Material" and to generally "keep 'Twitter Content' secure." AC
 12 ¶ 31.
- 13 • The CCDH Defendants did not cause Brandwatch to undertake any act or omission in
 14 breach of the contract, nor to change its behavior in any way, as their access was allegedly
 15 "unknown to Brandwatch . . . until recently." AC ¶ 41.
- 16 • Nevertheless, the CCDH Defendants "necessarily obtained access to and accessed the
 17 Licensed Materials improperly and without authorization," *id.*, and that access, in and of
 18 itself, "prevented Brandwatch from performing" because it meant that "Brandwatch failed
 19 to secure the data." AC ¶ 92.

20 The glaring flaw in this logic is that the CCDH Defendants' alleged actions did not induce
 21 or cause Brandwatch to do anything at all. In fact, taking X Corp.'s factual allegations as true, the
 22 causal chain is precisely backwards: the access did not cause the breach, the breach caused the
 23 access. The Court should therefore dismiss or strike Counts 3 and 4.

24 **2. X Corp. has not pleaded any disruption or breach**

25 Separately, X Corp. does not plead a breach of the "Brandwatch Agreements." AC ¶ 32. To
 26 begin with, X Corp. fails to attach the Brandwatch Agreements (which Defendants have never seen)

27 ¹⁶ *See, e.g., Jenni Rivera Enters., LLC v. Latin World Ent. Holdings, Inc.*, 249 Cal. Rptr. 3d 122,
 28 129 (Cal. Ct. App. 2019) (defendant induced counterparty to breach nondisclosure agreement);
Savage v. Pac. Gas & Elec. Co., 26 Cal. Rptr. 2d 305, 315 (Cal. Ct. App. 1993) (defendant
 persuaded plaintiff's employer to terminate employment agreement); *SCEcorp v. Super. Ct. of San
 Diego Cnty.*, 4 Cal. Rptr. 2d 372, 373-74, 378 (Cal. Ct. App. 1992) (defendant forced counterparty
 to abandon merger).

1 to its Amended Complaint, and it quotes only a few phrases purportedly from those agreements.
2 See AC ¶¶ 29-33 & n.1. And even X Corp.’s limited quotations of the Brandwatch Agreements do
3 not establish any breach by Brandwatch. According to X Corp., the Brandwatch Agreements
4 prohibit Brandwatch from “allow[ing] others to . . . transfer or provide access to . . . the Licensed
5 Material to any third party.” AC ¶¶ 31, 33. But, as noted in Section V.C.1, *supra*, under X Corp.’s
6 allegations and the Brandwatch terms, CCDH was not a “third party,” but rather a “User.” Because
7 X Corp. fails to plead facts showing that any “Licensed Material” was accessed by a “third party,”
8 AC ¶¶ 31, 33, as opposed to a “User,” it has not pleaded a breach by Brandwatch.

9 **3. X Corp. fails to plausibly allege the CCDH Defendants’ knowledge**

10 Even more obviously, X Corp.’s non-conclusory allegations do not establish the CCDH
11 Defendants’ knowledge of the Brandwatch Agreements (which the CCDH Defendants have never
12 seen), nor their intent to cause any breach. X Corp. alleges in conclusory fashion that “CCDH knew
13 at all relevant times that the Brandwatch Agreements prohibit Brandwatch from allowing third
14 parties to . . . access, distribute, create derivative works from, or otherwise transfer the Licensed
15 Materials.” AC ¶ 42. But X Corp.’s only purported basis for this allegation is that the CCDH
16 Defendants “knew, based on their experience . . . purporting to analyze data associated with social
17 media platforms,” that “X Corp. must have contracts with Brandwatch, and that Brandwatch would
18 be prohibited under the terms of [those contracts] from providing access to unauthorized parties.”
19 AC ¶ 91. That speculation is facially implausible—particularly because, as explained in Section
20 V.C.1, *supra*, the Brandwatch terms show that the CCDH Defendants could be, and were, a valid
21 “User” on ECF’s account, not an “unauthorized part[y].” AC ¶ 91. Because this “deduction[] of
22 fact” is “unwarranted,” this Court “need not . . . accept [it] as true.” *Sprewell*, 266 F.3d at 988.

23 **4. X Corp. again fails to allege recoverable damages**

24 Counts 3 and 4 also fail because X Corp. once again fails to allege recoverable damages.
25 As with X Corp.’s claim in contract, “resulting damage” is a necessary element of its tort claims.
26 *United Nat’l Maint., Inc.*, 766 F.3d at 1006. And again, the only damages X Corp. seeks are “tens
27 of millions of dollars” in revenue it says it lost based on how advertisers reacted to the CCDH
28 Defendants’ speech. AC ¶¶ 92-93, 98-99. But these damages are unrecoverable twice over.

1 *First*, the same constitutional principles that prohibit X Corp. from recovering publication
2 damages on its contract claim, *see* Section V.B.3, *supra*, apply with equal force to its tort claims.
3 Once again, X Corp. seeks damages not for direct costs inflicted by the CCDH Defendants’ use of
4 Brandwatch, but for the independent acts of third parties in response to the CCDH Defendants’
5 speech regarding issues of public concern. For the reasons explained above, this is impermissible.

6 *Second*, X Corp. fails to allege that any breach by Brandwatch proximately caused the
7 damages it seeks. Indeed, X Corp.’s attempt to claim damages for lost advertising revenue is utterly
8 disconnected from the specific breach X Corp. alleges: Brandwatch’s supposed failure to secure
9 data. After this purported breach, the CCDH Defendants allegedly used the data to publish articles,
10 AC ¶ 65, which non-party advertisers “viewed,” AC ¶ 67, after which they decided to “pause[] paid
11 advertising,” AC ¶¶ 67, 70, leading X Corp. to lose revenue, AC ¶ 70. Compare that to an individual
12 inducing someone to violate a nondisclosure agreement, entitling the counterparty to seek damages
13 for lost “economic opportunities to publish a book or produce or sell a television show . . .
14 containing the information” that was supposed to be confidential but is now public. *Jenni Rivera*
15 *Enters., LLC*, 249 Cal. Rptr. 3d at 147. By contrast, the supposed causal chain that X Corp. tries to
16 trace here is far too attenuated to constitute proximate cause.

17 **E. X Corp. Fails to State Any Claim Against the Doe Defendants**

18 Finally, X Corp. does not come close to stating any plausible, non-conclusory claim against
19 the Doe Defendants. “A claim has facial plausibility when the plaintiff pleads factual content that
20 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
21 alleged.” *Iqbal*, 556 U.S. at 678. Here, X Corp. alleges that “CCDH is acting . . . at the behest of
22 and in concert with” dozens of Doe Defendants “in the course and scope of . . . agency and/or acting
23 with the permission, consent, authorization or ratification of these unknown funders, supporters,
24 and other entities, who are aware of and knowingly participating in the unlawful conduct alleged
25 herein.” AC ¶ 63. This allegation, even vaguer than the attempts to plead conspiracies in *Twombly*
26 and *Iqbal*, is “nothing more than a ‘formulaic recitation’” of legal elements and is “disentitle[d] . . .
27 to the presumption of truth” based on its “conclusory nature” (let alone its facial implausibility).
28 *Iqbal*, 556 U.S. at 682 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

* * *

This Court should not allow X Corp. another opportunity to replead. X Corp. has already exercised an opportunity to amend, yet its pleading remains woefully deficient. Moreover, leave to amend is inappropriate where alleging additional facts would be futile. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). As explained above, each of X Corp.’s claims suffers fatal deficiencies that cannot be fixed by adding new allegations. In fact, the CCDH Defendants have provided information to X Corp. that squarely disproves its already-insufficient allegations as to unauthorized Brandwatch use, without which Counts 2, 3, and 4 of the Amended Complaint lack any basis at all. Finally, leave is especially unwarranted after a successful motion under the anti-SLAPP statute, “the purpose of which is to eliminate ‘sham [or] facially meritless’ allegations at the pleading stage,” *Flores v. Emerich & Fike*, No. 5 Civ. 291, 2006 WL 2536615, at *7 (E.D. Cal. Aug. 31, 2006) (quoting *Simmons v. Allstate Ins.*, 112 Cal. Rptr. 2d 397, 400 (Cal. Ct. App. 2001)), and “provide for a speedy resolution of claims which impinge on speech protected by the First Amendment,” *Smith v. Santa Rosa Democrat*, No. 11 Civ. 2411, 2011 WL 5006463, at *7 (N.D. Cal. Oct. 20, 2011). “In these circumstances, leave to amend is not necessary or appropriate.” *Id.*

VI. CONCLUSION

For the foregoing reasons, the Court should grant the undersigned Defendants’ special motion to strike Counts 1, 3, and 4 and grant the undersigned Defendants’ motions to dismiss Count 2 with prejudice. Alternatively, the Court should dismiss the Amended Complaint in full and with prejudice or, at minimum, strike X Corp.’s allegations pertaining to damages based on the undersigned Defendants’ speech and reporting.

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