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Case **24-cv-06664** (Removed from SF Superior Court CGC-24-617303); Nov 18, 2024

## **Plaintiff's Opposition to Defendants' Motion to Dismiss**

**(replacing duplicate filing docket #16 or #20; unintended duplicate)**

### **BACKGROUND ON FILINGS**

1. The Plaintiff mailed a copy of the original Motion to Amend + Opposition to Dismissal to both the Defendants and Clerk at the US District Court of Northern CA. The copy mailed to the Clerk was filed as Motion to Amend dated 11/5/24 (docket #20). However somehow the same document was also filed on 10/18/24 as Opposition to Dismissal (docket #16)
2. The Plaintiff is unsure how the 10/18/24 docket ended up being filed, but entering two identical documents for 2 separate important filings doesn't seem fair to the Plaintiff, so the Plaintiff will write the actual Opposition here.

### **ARGUMENTS BY THE PLAINTIFF AND DEFENDANTS THUS FAR**

1. In the Identifying Causes of Actions filing (docket #19 entry date 11/5/24), the Plaintiff made two legal arguments for causes of action. The first one was against Twitch as an organization because the Plaintiff alleged that any judge or juror taking a random look at the Twitch homepage could see that Twitch is nothing more than a disease-promotion platform for Gaming Disorder + comorbid disorders. The Plaintiff argued that an addictive disease-causing platform + Twitch "partners" whom Twitch offered the "material support" standard (Gonzalez vs Google 2023) violated all 3 prongs of California's Business and Professions Code section 17200 et seq. (the UCL)

The Identifying Causes of Action + Opposition to the Defendants' assertion of Section 230 and First Amendment protection really should have replaced the original Complaint. The Plaintiff had zero legal experience when writing the Complaint and thus did not know how to make a strong legal argument but rather included a sampling of the worst that Twitch has to offer.

2. The Plaintiff also identified a Cause of Action regarding defendant Ms. Briasco-Stewart's lies or reasonable-doubt raising actions in her Statement, submitted

by the Defendants as evidence supporting their Motion to Dismiss. However, the Plaintiff admits that he had zero legal experience and only added Ms. Briasco-Stewart as a co-defendant when she seemed to have sided with the Plaintiff's numerous stalkers/harassers from the Twitch Community. The Plaintiff served Ms. Briasco-Stewart with roughly 20 pages of evidence in his CH-120 response to the restraining order petition CH-110. Nevertheless, Ms. Briasco-Stewart is a minor player in the actions of Twitch Interactive Inc. and should have never been included as a co-defendant.

The Defendants also allege that the Plaintiff's interactions with Ms. Briasco-Stewart was fueled by "psychological disorders, mental illness, and drug abuse." However the Plaintiff has at least hundreds of pieces of evidence detailing how the Twitch product caused all of the Plaintiff's mental health issues described by the Defendants. Due to the disturbing nature of the harassment and the large volume of incidences of harassment, Plaintiff will include just one piece of hate crime he suffered at the hands of Twitch's product, which exemplifies most of the abuse the Plaintiff has suffered because Twitch designed their product in such abusive ways. (**Exhibits 4 and 5**)

3. In the Motion to Dismiss (document #8 9/30/24), the Defendants argued alleged Section 230 and the First Amendment immunity for actions done by the Twitch Community which caused great harm to the Plaintiff in particular. However the Plaintiff is arguing that Twitch as an organization and their employees intentionally built an addictive disease-causing platform, and it was Twitch's actions that seemed to have damaged the brains of all of the Plaintiff's stalkers/harassers, which was why the Plaintiff was harassed in the first place. The Plaintiff has at least hundreds of pieces of evidence of this harassment, and will post 2 in the (**Exhibits 4 and 5**) below demonstrating just one incidence of hate crime the Plaintiff suffered because the Twitch platform was so infested by diseased users, which was caused by Twitch itself.
4. In the Opposition to Plaintiff's Motion to Amend (document #25 11/18/24) the Defendants did NOT object to the Plaintiff's main or only argument that Twitch was nothing more than a disease-causing platform, and thus with "material support" added for their "partners" streaming illicit content, violated all 3 prongs of California's Business and Professions Code section 17200 et seq. (the UCL)

5. The Defendants ONLY objected to the Plaintiff's allegations of fraudulent deception by Ms. Briasco-Stewart, writing nothing more than that the Defendants viewed the allegation as "nonsensical." Unfortunately, the Plaintiff feels awful accusing Ms. Briasco-Stewart of fraudulent deception via perjury because ONLY Ms. Briasco-Stewart signed an 8-page Statement under Californian perjury law, and NOT her lawyer. The Statement read overly lawyerly and many of the false accusations seemed to be typed by a lawyer in very lawyerly jargon. The Plaintiff plans to appeal the restraining order and will add the appeal as evidence once done, detailing the numerous provably false and probable false statements in Ms. Briasco-Stewart's Statement. However the Plaintiff really hopes the Defense could split up the Defendants so the Plaintiff could file a motion to dismiss with prejudice against Ms. Briasco-Stewart. The Plaintiff never actually intended to harass Ms. Briasco-Stewart at all, and only did it from the then-unknown side effects of amphetamine, so feels really awful maintaining any civil claims against Ms. Briasco-Stewart.

## **California's Business and Professions Code section 17200 et seq. (the UCL)**

1. What is gaming disorder?

Gaming disorder is defined in the 11th Revision of the International Classification of Diseases (ICD-11) as a pattern of gaming behavior ("digital-gaming" or "video-gaming") characterized by impaired control over gaming, increasing priority given to gaming over other activities to the extent that gaming takes precedence over other interests and daily activities, and continuation or escalation of gaming despite the occurrence of negative consequences.

For gaming disorder to be diagnosed, the behaviour pattern must be of sufficient severity to result in significant impairment in personal, family, social, educational, occupational or other important areas of functioning and would normally have been evident for at least 12 months.

2. Since a random sampling of Twitch's homepage clearly displays that they're nothing more than a disease-causing platform (the length of Twitch streams, almost 100% are gaming related or done by gamers, meets the Gaming Disorder diagnostic criteria), Twitch clearly meets the "unfair" prong of UCL because Twitch "offends an

established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.”

3. Twitch meets the “fraudulent” prong of UCL because most users look like they’re being deceived by Twitch’s claims that their product is “entertaining” rather than a disease-causing platform by definition of Gaming Disorder.
  
4. Twitch meets the “unlawful” prong of UCL because Twitch offers the “material support” standard relating to Section 230 (Gonzalez vs Google 2023) to numerous “partners” of Twitch who stream illicit content. The Plaintiff brought up one example of thousands of “partners” streaming illicit cryptocurrency gambling, thereby violating the Federal criminal statutes 18 US 1955 Prohibition of illegal gambling businesses and 18 USC 1084 Transmission of wagering information, among numerous other state and international criminal and civil statutes. When the Plaintiff raised this issue to Andy Jassy CEO of Amazon (Twitch’s parent company), the Plaintiff received a positive response from Amazon HR who told the Plaintiff that Mr. Jassy forwarded them the Plaintiff’s concerns.

## The Elements of a UCL Claim

1. An “unlawful” business act is an act that violates some other law or regulation. (*Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1383.) Thus, the “unlawful” prong of the UCL borrows violations of *other laws* and makes those unlawful practices actionable under the UCL. (*Ibid.*) Virtually any law or regulation—federal or state, statutory or common law—can serve as the predicate for an “unlawful” business act claim under the UCL. (*Ibid.*) An “unlawful” business act can include inserting a provision in a contract that a party is prohibited from enforcing. (See *People v. McKale* (1979) 25 Cal.3d 626, 635 [acknowledging potential claim for “unlawful” business practice where mobile home park required tenants to sign rules that the park was prohibited by law from enforcing].) This must be emphasized. UCL is, in and of itself, not grounds for seeking civil relief unless a violation of some other law, regulation or statute is also alleged.
  
2. As for the “unfair” prong of the UCL, there is a split of authority as to the test for determining whether a business act is “unfair.” (See *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 907 [describing split of authority].) Some cases hold that a practice is “unfair” if it “offends established public policy, that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to

consumers, or that has an impact on the victim that outweighs defendant's reasons, justifications, and motives for the practice." (*Ibid.*) Other cases require the public policy that is the predicate to the claim to be tethered to specific constitutional, statutory, or regulatory provisions. (*Ibid.*)

3. The "fraudulent" prong of the UCL prohibits conduct that is likely to deceive members of the public. (*Prata v. Superior Court* (2001) 91 Cal.App.4th 1128, 1144.) Thus, the UCL prohibits, not only advertising that is false, but also advertising that, while true, is actually misleading or has a capacity, likelihood, or tendency to deceive or confuse the public. (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 226.) The test is objective and based on a reasonable consumer who is neither the most vigilant nor suspicious of advertising claims nor the most unwary and unsophisticated, but instead is the ordinary consumer within the target population. (*Ibid.*)

**EXHIBIT 1:** Gaming Disorder defined by the World Health Organization, included in the ICD-11 published in 2016, one year before the Plaintiff started using the Twitch platform.


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For gaming disorder to be diagnosed, the behaviour pattern must be of sufficient severity to result in significant impairment in personal, family, social, educational, occupational or other important areas of functioning and would normally have been evident for at least 12 months.

### What is the International Classification of Diseases?

The International Classification of Diseases (ICD) is the basis for identification of health trends and statistics globally and the international standard for reporting diseases and health conditions. It is used by medical practitioners around the world to diagnose conditions and by researchers to categorize conditions.

The inclusion of a disorder in ICD is a consideration which countries take into account when planning public health strategies and monitoring trends of disorders.

WHO released the 11th revision of the International Classification of Diseases (ICD-11) in mid-2018.

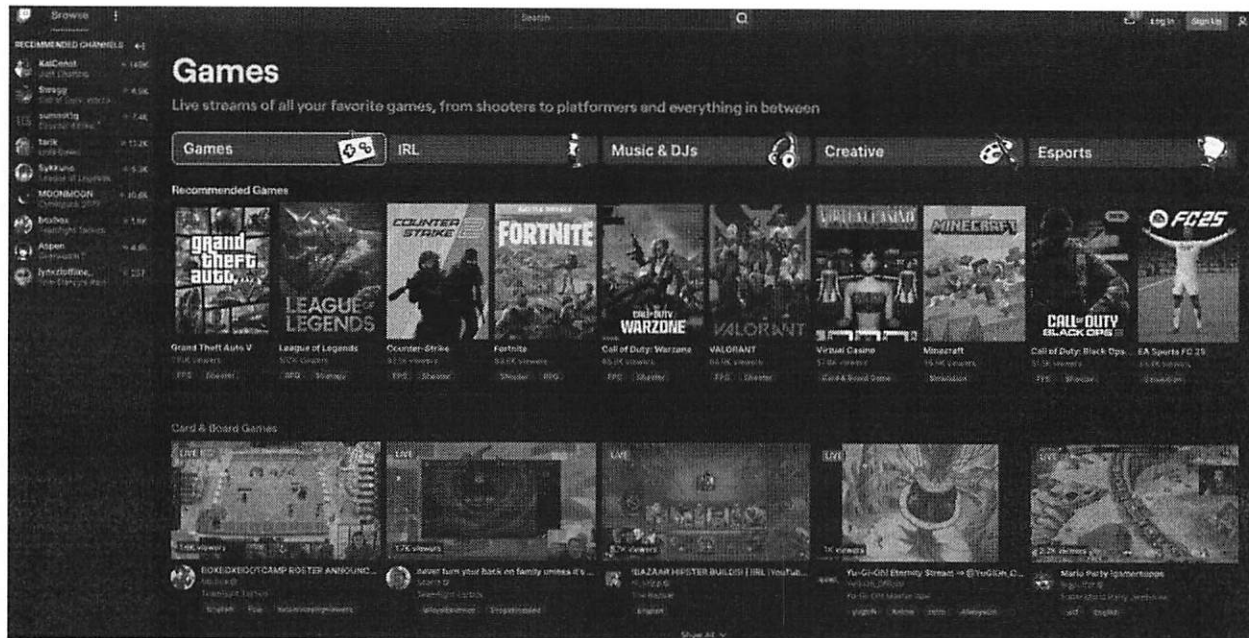
### Why is gaming disorder being included in ICD-11?

A decision on inclusion of gaming disorder in ICD-11 is based on reviews of available evidence and reflects a consensus of experts from different disciplines and geographical regions that were involved in the process of technical consultations undertaken by WHO in the process of ICD-11 development.

The inclusion of gaming disorder in ICD-11 follows the development of treatment programmes for people with health conditions identical to those characteristic of gaming disorder in many parts of the world, and will result in the increased attention of health professionals to the risks of development of this disorder and, accordingly, to relevant prevention and treatment measures.

**EXHIBIT 2:** A random sampling of Twitch’s displayed content reveals that the vast majority of their content meets the “Gaming Disorder” diagnostic criteria from the World Health Organization displayed in Exhibit 1.





**EXHIBIT 3:** Twitch on its iOS and Android apps describe their technology where people “come together for our favorite streamers, for the games we love.” This description in Twitch’s mobile advertising (most Twitch users watch on mobile) is clearly distinct from

Twitch's legal description of itself as an agnostic live streaming technology protected by Section 230.

Twitch is where thousands of communities come together for our favorite streamers, for the games we love, for the lulz, for each other, for whatever. Download Twitch and join millions enjoying live games, music, sports, esports, podcasts, cooking shows, IRL streams, and whatever else crosses our community's wonderfully absurd minds. We'll see you in chat.

Here's a convenient list of other awesome things about Twitch:

Everyone is "about" community. We actually are one: Whatever you nerd out about, you can find your people on Twitch.

Give support, get support: Find new streamers and subscribe to your favorites. Plus, unlock exclusive perks for your support.

Start your own channel: The Twitch app is one of the easiest ways to start streaming. Just create an account, go live directly from the app, and bring people together around whatever you're passionate about.

You never know what you'll find: Popular games are always live, but so are music festivals, rocket launches, street tours of Tokyo, and goat yoga. Yes, really.

Dark mode: Y'all love this one. Black and purple have never looked this good together.

Twitch's Terms of Service are available at <https://www.twitch.tv/p/legal/terms-of-service/>

For feedback and assistance, please visit our Support Center: <https://help.twitch.tv>

Please note: This app features Nielsen's proprietary measurement software which contributes to market research, like Nielsen's TV Ratings. Please see <http://priv-policy.imrworldwide.com/priv/mobile/us/en/optout.html> for more information

**EXHIBIT 4:** One example of the hate crimes and other harassment Plaintiff suffered because Twitch designed their products and communities to be disease-causing. In this



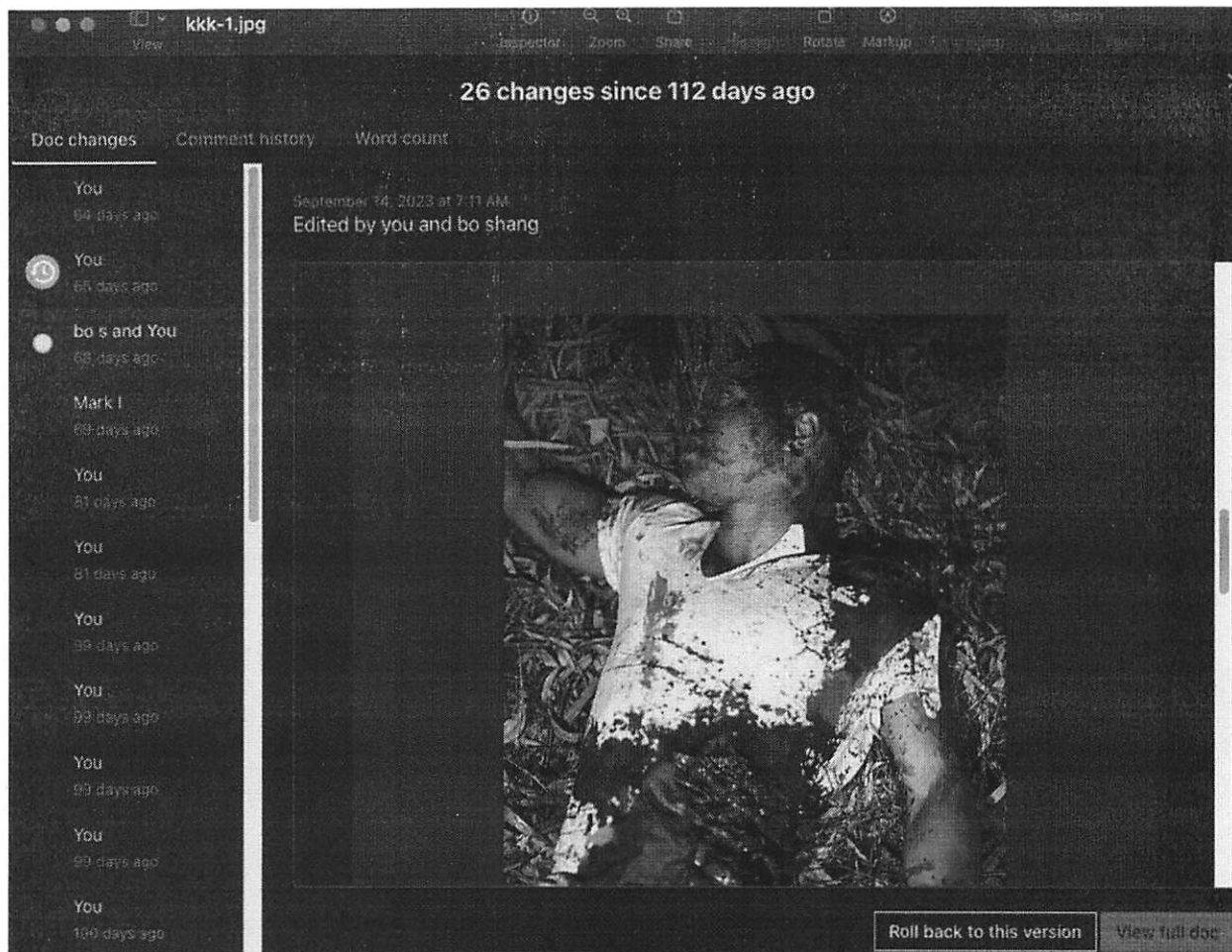
picture that was inserted into the Plaintiff's Dropbox account, a member of the Twitch Community argues that KKK hangings toward Asians constituted "states' rights."

9/15/23, 7:16 AM

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EXHIBIT 5: The subsequent document submitted by members of the Twitch Community is a bloodied and dead Asian man.



## CLOSING STATEMENT

The Defendants have a tendency to divert from facts and law regarding the Claim, and the Plaintiff chooses to ignore whatever irrelevant things the Defendants bring up. If the Plaintiff sticks with talking only about the merits of the Claim, and a judge deems that the Claim has merits, then the claim wouldn't be dismissed as an alleged "frivolous" lawsuit aimed at "harassing" the Defendants.