

~~Original~~

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2 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
3 **IN AND FOR THE COUNTY OF SAN FRANCISCO**  
4 **UNLIMITED JURISDICTION**

5 **JAMES VARGA,**

6 Plaintiff,

7 v.

8 **TWITCH INTERACTIVE, INC. a/k/a**  
9 **TWITCH.TV, INC.,**

10 Defendant.

11 **TWITCH INTERACTIVE, INC.,**  
12 **ERRONEOUSLY NAMED AS TWITCH**  
13 **INTERACTIVE, INC. a/k/a TWITCH.TV, INC.,**

14 Cross-Complainant,

15 v.

16 **JAMES VARGA,**

17 Cross-Defendant.  
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Case No. CGC-18-564337

**TWITCH INTERACTIVE, INC.'S AND**  
**JAMES VARGA'S JOINT **SPECIAL****  
****VERDICT FORM****

**FILED**  
*San Francisco County Superior Court*

APR 23 2021

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

1 Plaintiff and Cross-Defendant James Varga is referred to in this Verdict  
2 Form as “Varga.” Defendant and Cross-Complainant Twitch Interactive, Inc. is  
3 referred to as “Twitch.”

4 **CLAIMS MADE BY VARGA AGAINST TWITCH:**

5 We, the jury, find the following special verdict on the questions submitted to  
6 us:

7 **A. BREACH OF CONTRACT**

8  
9 1. The parties have agreed that they entered into the 2012 Content  
10 License and Base Network Agreement (the “Partnership Agreement”).

11 No response is required here; answer question 2.

12  
13 2. Did Varga do all, or substantially all, of the significant things that the  
14 Partnership Agreement required him to do?

15 Yes \_\_\_ No

16 If your answer to question 2 is yes, then skip question 3 and answer question 4. If  
17 you answered no, then answer question 3.

18  
19 3. Was Varga excused from having to do all, or substantially all, of the  
20 significant things that the Partnership Agreement required him to do?

21 Yes  No \_\_\_

22 If your answer to question 3 is yes, then answer question 4. If you answered no,  
23 then skip to question 9.

1 4. Did Twitch breach the Partnership Agreement, meaning did Twitch  
2 either: (a) fail to do something that the Partnership Agreement required it to do; or  
3 (b) do something the Partnership Agreement prohibited it from doing?

4 Yes  No

5 If your answer to question 4 is yes, then answer question 5. If you answered no,  
6 then skip to question 7.

7  
8 5. Was Twitch's breach(es) of the Partnership Agreement excused by  
9 Varga's prior material breach of the Partnership Agreement?

10 Yes  No

11 If your answer to question 5 is no, then answer question 6. If you answered yes,  
12 then skip to question 7.

13  
14 6. Was Varga harmed by Twitch's breach(es) of the Partnership  
15 Agreement?

16 Yes  No

17 Regardless of your answer to question 6, answer question 7. If your answer to  
18 question 6 is yes, also be sure to answer Section F below entitled Contract  
19 Damages and Section H below entitled All Damages.

20  
21 **B. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND**  
22 **FAIR DEALING**

23 7. Did Twitch unfairly interfere with Varga's right to receive the benefits  
24 of the Partnership Agreement?

25 Yes  No

26 If your answer to question 7 is yes, then answer question 8. If you answered no,  
27 then skip to question 9.

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8. Was Varga harmed by Twitch's interference?

Yes  No

Regardless of your answer to question 8, answer question 9. If your answer to question 8 is yes, also be sure to answer Section F below entitled Contract Damages and Section H below entitled All Damages.

C. **INTENTIONAL MISREPRESENTATION**

9. Did Twitch make any representation(s) of fact to Varga?

Yes  No

If your answer to question 9 is yes, then answer question 10. If you answered no, then skip to Section E below entitled Damages Instructions.

10. Were any of Twitch's representation(s) of fact to Varga false?

Yes  No

If your answer to question 10 is yes, then answer question 11. If you answered no, then skip to Section E below entitled Damages Instructions.

11. Did Twitch know that the representation(s) was false, or did it make the representation(s) recklessly and without regard for its truth (an "Intentional Representation(s)")?

Yes  No

If your answer to question 11 is yes, then answer question 12. If you answered no, then skip to question 15.

12. Did Twitch intend that Varga rely on the Intentional Representation(s)?

Yes  No

If your answer to question 12 is yes, then answer question 13. If you answered no, then skip to question 15.

1        13. Did Varga reasonably rely on the Intentional Representation(s)?

2        Yes \_\_\_ No \_\_\_

3 If your answer to question 13 is yes, then answer question 14. If you answered no,  
4 then skip to question 15.

5  
6        14. Was Varga's reliance on Twitch's Intentional Representation(s) a  
7 substantial factor in causing harm to Varga?

8        Yes \_\_\_ No \_\_\_

9 Regardless of your answer to question 14, answer question 15. If your answer to  
10 question 14 is yes, also be sure to answer Section G below entitled Tort Damages  
11 and Section H below entitled All Damages.

12  
13 **D. NEGLIGENT MISREPRESENTATION**

14        15. Did Twitch have reasonable grounds for believing the false  
15 representation(s) was true when it made it (a "Negligent Representation(s)")?

16        Yes \_\_\_ No ~~X~~

17 If your answer to question 15 is yes, then skip to Section E below entitled Damages  
18 Instructions. If you answered no, then answer question 16.

19  
20        16. Did Twitch intend that Varga rely on the Negligent Representation(s)?

21        Yes ~~X~~ No \_\_\_

22 If your answer to question 16 is yes, then answer question 17. If you answered no,  
23 then skip to Section E below entitled Damages Instructions.

24  
25        17. Did Varga reasonably rely on the Negligent Representation(s)?

26        Yes ~~X~~ No \_\_\_

27 If your answer to question 17 is yes, then answer question 18. If you answered no,  
28 then skip to Section E below entitled Damages Instructions.

1           **18. Was Varga's reliance on Twitch's Negligent Representation(s) a**  
2 **substantial factor in causing harm to Varga?**

3           **Yes**       **No**

4           Regardless of your answer to question 18, proceed to Section E below entitled  
5 Damages Instructions. If your answer to question 18 is yes, also be sure to answer  
6 Section G below entitled Tort Damages and Section H below entitled All Damages.

7  
8           **E. DAMAGES INSTRUCTIONS**

- 9           • If you answered YES to questions 6 and/or 8, then answer question 19 of  
10 Section F below entitled Contract Damages and question 22 in Section H  
11 entitled All Damages.
- 12           • If you answered YES to questions 14 and/or 18, then answer questions 20-21  
13 in Section G entitled Tort Damages and question 22 in Section H entitled All  
14 Damages.
- 15           • If you answered NO to, or skipped, questions 6, 8, 14 **AND** 18, then skip  
16 questions 19-22 and proceed to question 23.

17  
18           **F. CONTRACT DAMAGES**

19           **19. If you answered YES to Questions 6 OR 8, what are Varga's**  
20 **economic damages for breach of contract and/or breach of the implied covenant of**  
21 **good faith and fair dealing? (Each item of damages may be awarded only once as to**  
22 **this question, regardless of the number of legal theories, such as contract or implied**  
23 **covenant, alleged.)**

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a. **Past Lost Earnings** \$ 15,139.34

Please set forth the amount and the time period the lost past earnings relate to:

**First 30 Days** (July 19, 2016 – August 18, 2016): \$ 15,139.34

**First 9 Months** (July 19, 2016 – April 1, 2017): \$ 0

**First 10 Months** (July 19, 2016 – May 19, 2017) \$ 0

**Through Today** (July 19, 2016 – March 29, 2021) \$ 0

b. **Future Lost Earnings** \$ 0.

Please set forth the amount and the time period the future lost earnings relate to:

1 Year (March 29, 2021 – December 31, 2021) \$ 0

3 Years (March 29, 2021 – December 31, 2024) \$ 0

5 Years (March 29, 2021 – December 31, 2026) \$ 0

10 Years (March 29, 2021 – December 31, 2031) \$ 0

15 Years (March 29, 2021 – December 31, 2036) \$ 0

Other \$ 0

c. **Lost Earning Capacity** \$ 0.

d. **Loss of Donations** \$ 3,060.

i. If you entered an amount of damages for loss of donations, do you find that loss of donations inevitably flow from similar breach(es) of similar Twitch partnership agreements?

Yes  No

e. **Loss of Sponsorships and Endorsement Deals** \$ 2,521.

Regardless of your responses to question 19, answer question 22. If you answered YES to questions 14 and/or 18, also answer question 20 (see Section E above entitled Damages Instructions).

1 **G. TORT DAMAGES**

2 20. If you answered YES to Questions 14 **OR** 18, what are Varga's  
3 economic damages from Twitch's negligent and/or intentional misrepresentation?  
4 (Each item of damages may be awarded only once as to this question, regardless of  
5 the number of legal theories, such as negligent misrepresentation or intentional  
6 misrepresentation, alleged.)

- 7 a. Past Lost Earnings \$ 0.
- 8 b. Future Lost Earnings \$ 0.
- 9 c. Lost Earning Capacity \$ 0.
- 10 d. Loss of Donations \$ 0.
- 11 e. Loss of Sponsorships and Endorsement Deals \$ 0.

12 Regardless of your responses to question 20, answer question 21.

13  
14 ~~21. If you answered YES to Question 14, did Twitch engage in the  
15 conduct of Intentional Misrepresentation with malice, oppression, or fraud? (If you  
16 skipped or answered NO to Question 14, leave this blank).~~

17 Yes \_\_\_ No \_\_\_

18 Regardless of your answer to question 21, answer question 22.

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1 **H. SUMMARY OF ALL DAMAGES**

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3 **22.** What is the total amount of damages, for all claims the jury awards to  
4 Varga? (Each item of damages may be awarded only once in response to this  
5 question, regardless of the number of legal theories, such as contract or implied  
6 covenant, or misrepresentation, alleged.)

7 **Lost Past Earnings:** \$ 15,139.34

8 **Future economic loss:** \$ 0

9 **Lost earning capacity:** \$ 0

10  
11 **Loss of Donations:** \$ 3,060  
12 (not to be included in any figure immediately above)

13 **Loss of Sponsorships and Endorsements:** \$ 2,521  
14 (not to be included in any figure immediately above)

15 **TOTAL DAMAGES of Varga:** \$ 20,720.34

16 Regardless of your response to question 22, proceed to question 23.

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1 **CLAIMS MADE BY TWITCH AGAINST VARGA:**

2  
3 **A. BREACH OF CONTRACT – PARTNERSHIP AGREEMENT**

4 23. The parties have agreed that they entered into the Partnership  
5 Agreement.

6 No response is required here; answer question 24.

7  
8 24. Did Twitch do all, or substantially all, of the significant things that the  
9 Partnership Agreement required it to do?

10 Yes \_\_\_ No

11 If your answer to question 24 is yes, then skip question 25 and answer question 26.

12 If you answered no, then answer question 25.

13  
14 25. Was Twitch excused from having to do all, or substantially all, of the  
15 significant things that the Partnership Agreement required it to do?

16 Yes \_\_\_ No

17 If your answer to question 25 is yes, then answer question 26. If you answered no,  
18 then skip to question 30.

19  
20 26. Did Varga breach the Partnership Agreement, meaning Varga either:  
21 (a) failed to do something that the Partnership Agreement required him to do; or (b)  
22 did something the Partnership Agreement prohibited him from doing?

23 Yes \_\_\_ No \_\_\_

24 If your answer to question 26 is yes, then answer question 27. If you answered no,  
25 then skip to question 30.

1           27. Was Varga's breach of the Partnership Agreement excused by  
2 Twitch's prior material breach of the Partnership Agreement?

3           Yes \_\_\_       No \_\_\_

4 If your answer to question 27 is no, then answer question 28. If you answered yes,  
5 then skip to question 30.

6  
7           28. Do you find that Twitch freely and knowingly gave up its right to have  
8 Varga perform the obligations under the Partnership Agreement that Varga  
9 breached?

10          Yes \_\_\_       No \_\_\_

11 If your answer to question 28 is yes, then skip to question 30. If you answered no,  
12 then answer question 29.

13  
14          29. Was Twitch harmed by Varga's breach of the Partnership Agreement?

15          Yes \_\_\_       No \_\_\_

16 Regardless of your answer to question 29, answer question 30. If your answer to  
17 question 29 is yes, also be sure to answer Section F below entitled Contract  
18 Damages and Section H below entitled All Damages.

19  
20 **B. BREACH OF CONTRACT - TWITCH'S TERMS OF SERVICE**

21  
22          30. Did Twitch, on one hand, and Varga, on the other, enter into Twitch's  
23 2012 Terms of Service (the "Terms of Service")?

24          Yes        No \_\_\_

25 If your answer to question 30 is yes, then answer question 31. If you answered no,  
26 then skip to question 37.

1           **31. Did Twitch do all, or substantially all, of the significant things that the**  
2 Terms of Service required it to do?

3           **Yes**       **No**

4 If your answer to question 31 is yes, then skip question 32 and answer question 33.

5 If you answered no, then answer question 32.

6

7           **32. Was Twitch excused from having to do all, or substantially all, of the**  
8 significant things that the Terms of Service required it to do?

9           **Yes**       **No**

10 If your answer to question 32 is yes, then answer question 33. If you answered no,  
11 then skip to question 37.

12

13           **33. Did Varga breach the Terms of Service, meaning Varga either: (a)**  
14 failed to do something that the Terms of Service required him to do; or (b) did  
15 something the Terms of Service prohibited him from doing?

16           **Yes**       **No**

17 If your answer to question 33 is yes, then answer question 34. If you answered no,  
18 then skip to question 37.

19

20           **34. Was Varga's breach of the Terms of Service excused by Twitch's**  
21 prior material breach of the Terms of Service?

22           **Yes**       **No**

23 If your answer to question 34 is no, then answer question 35. If you answered yes,  
24 then skip to question 37.

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35. Do you find that Twitch freely and knowingly gave up its right to have Varga perform the obligations under the Terms of Service that Varga breached?

Yes  No

If your answer to question 35 is yes, then skip to question 37. If you answered no, then answer question 36.

36. Was Twitch harmed by Varga's breach of the Terms of Service?

Yes  No

Regardless of how you answered question 36, answer question 37. If your answer to question 36 is yes, also be sure to answer Section F below entitled Contract Damages and Section H below entitled All Damages.

**C. INTENTIONAL MISREPRESENTATION**

37. Did Varga make any representation(s) of fact to Twitch?

Yes  No

If your answer to question 37 is yes, then answer question 38. If you answered no, then skip to question 43.

38. Were any of <sup>Varga</sup> Twitch's representation(s) of fact to <sup>Twitch</sup> Varga false?

Yes  No

If your answer to question 38 is yes, then answer question 39. If you answered no, then skip to question 43.

39. Did Varga know the representation(s) was false or did he make it recklessly and without regard for its truth?

Yes  No

If your answer to question 39 is yes, then answer question 40. If you answered no, then skip to question 43.

1           **40. Did Varga intend that Twitch rely on the** representation(s)?

2           **Yes**       **No**

3 If your answer to question 40 is yes, then answer question 41. If you answered no,  
4 then skip to question 43.

6           **41. Did Twitch reasonably rely on Varga's** representation(s)?

7           **Yes**       **No**

8 If your answer to question 41 is yes, then answer question 42. If you answered no,  
9 then skip to question 43.

11           **42. Was Twitch's reliance on Varga's** representation(s) a substantial factor  
12 in causing harm to Twitch?

13           **Yes**       **No**

14 Regardless of how you answered question 42, answer question 43. If your answer  
15 to question 42 is yes, also be sure to answer Section G below entitled Tort Damages  
16 and Section H below entitled All Damages.

18 **D. CONCEALMENT**

20           **43. Did Varga disclose some facts to Twitch about his** June 25, 2016  
21 Giveaway?

22           **Yes**       **No**

23 If your answer to question 43 is yes, then answer question 44. If you answered no,  
24 then skip to Section E below entitled Damages Instructions.

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1           **44.** At the same time, **did Varga intentionally fail to disclose other facts**  
2 **about the June 25, 2016 Giveaway** related to his promotion of the website  
3 CSGOShuffle during the Giveaway, **and his ownership of and conduct on**  
4 **CSGOShuffle, making what he did disclose deceptive?**

5           **Yes** \_\_\_           **No**

6 If your answer to question 44 is yes, then answer question 45. If you answered no,  
7 then skip to Section E below entitled Damages Instructions.

8  
9           **45.** Did Twitch know of the concealed facts when they were concealed?

10           **Yes** \_\_\_           **No** \_\_\_

11 If your answer to question 45 is no, then answer question 46. If you answered yes,  
12 then skip to Section E below entitled Damages Instructions.

13  
14           **46.** Could the concealed facts have been reasonably discovered by  
15 Twitch?

16           **Yes** \_\_\_           **No** \_\_\_

17 If your answer to question 46 is no, then answer question 47. If you answered yes,  
18 then skip to Section E below entitled Damages Instructions.

19  
20           **47.** Did Varga intend to deceive Twitch by concealing the facts?

21           **Yes** \_\_\_           **No** \_\_\_

22 If your answer to question 47 is yes, then answer question 48. If you answered no,  
23 then skip to Section E below entitled Damages Instructions.

24  
25           **48.** Would Twitch reasonably have behaved differently if Varga had  
26 disclosed the concealed facts?

27           **Yes** \_\_\_           **No** \_\_\_

28

1 If your answer to question 48 is yes, then answer question 49. If you answered no,  
2 then skip to Section E below entitled Damages Instructions.

3 **49.** Was Varga's concealment of the facts a substantial factor in causing  
4 Twitch harm?

5 **Yes** \_\_\_ **No** \_\_\_

6 Regardless of how you answered question 49, proceed to Section E for Damages  
7 Instructions. If your answer to question 49 is yes, also be sure to answer Section G  
8 below entitled Tort Damages and Section H below entitled All Damages.

9

10 **E. DAMAGES INSTRUCTIONS**

- 11 • If you answered YES to questions 29 and/or 36, then answer question 50 in  
12 Section F below entitled Contract Damages and question 52 in Section H  
13 below entitled All Damages.
- 14 • If you answered YES to questions 42 and/or 49, then answer question 51 in  
15 Section G below entitled Tort Damages and question 52 in Section H below  
16 entitled All Damages.
- 17 • If you answered NO to, or skipped, questions 29, 36, 42 **AND** 49, then skip  
18 questions 50-52 and sign the verdict form.

19

20 **F. CONTRACT DAMAGES**

21 **50.** If you answered YES to Question 29 OR 36, what are Twitch's  
22 damages for breach of contract?

23 **Total economic loss:** \$\_\_\_\_\_.

24 Regardless of how you answered question 50, answer question 52. If you answered  
25 YES to questions 42 and/or 49, also answer question 51 (see Section E above  
26 entitled Damages Instructions).

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**G. TORT DAMAGES**

**51.** If you answered YES to Question 42 OR 49, what are Twitch's damages for Varga's misrepresentation and/or concealment?

**Total Economic Loss:** \$ \_\_\_\_\_.

Regardless of how you answered question 51, answer question 52.

**H. SUMMARY OF ALL DAMAGES**

**52.** What is the total amount of damages, for all claims the jury awards to Twitch? (Each item of damages may be awarded only once in response to this question, regardless of the number of legal theories, such as contract or misrepresentation, alleged.)

**TOTAL DAMAGES of Twitch:** \$ \_\_\_\_\_.

Regardless of your answer to 52, sign below.

Signed: *Paula Skye*  
Presiding Juror

Dated: 4/23/21, 2021

After this verdict form has been signed, notify the Bailiff that you are ready to present your verdict in the Courtroom.