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 Xavier Becerra*  
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12 IN THE UNITED STATES DISTRICT COURT  
 13 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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15 **THE UNITED STATES OF AMERICA,**  
 16  
 Plaintiff,  
 17  
 v.  
 18  
 19 **THE STATE OF CALIFORNIA, et al.,**  
 20  
 Defendants.

2:18-cv-02660-JAM-DB  
 2:18-cv-02684-JAM-DB

**DECLARATION OF ALEXIS OHANIAN  
 IN SUPPORT OF OPPOSITION TO  
 PRELIMINARY INJUNCTION MOTIONS**

Judge: The Hon. John A. Mendez  
 Actions Filed: Oct. 1, 2018; Oct. 3, 2018

21 **AMERICAN CABLE ASSOCIATION,  
 22 CTIA – THE WIRELESS ASSOCIATION, et  
 al.,**  
 23  
 Plaintiffs,  
 24  
 v.  
 25 **XAVIER BECERRA, in his official capacity  
 26 as Attorney General of California,**  
 27  
 Defendant.  
 28

1 I, Alexis Ohanian, hereby declare and state as follows:

2 1. I make this declaration of my own personal knowledge and if called to testify, I could  
3 and would testify competently to the matters stated herein. I declare the following in support of  
4 Defendants' Opposition to the Motions for Preliminary Injunction in these consolidated matters.

5 2. I am a co-founder and Board Partner at Initialized Capital, a venture capital firm that  
6 invests in startups at the earliest possible stages of development. Initialized Capital was founded  
7 in 2011 and, although I'm a Floridian, is based in San Francisco, California. It now manages  
8 more than \$730 million in investment capital and has invested in more than 200  
9 companies. These companies include real estate platform Opendoor, grocery delivery startup  
10 Instacart, creator membership platform Patreon, and digital coin trader Coinbase, all based in San  
11 Francisco. I would estimate that around 75% of our companies are based in California.

12 3. At Initialized Capital, we pride ourselves on being the very first investor in startups  
13 that have the potential to grow into the next billion-dollar company. The open Internet has  
14 allowed for an environment where such development is possible, and in a shorter timeframe than  
15 ever before. A company that makes a good product or service that people want can now grow  
16 from a brand new startup to a billion-dollar company in little over a year because they are able to  
17 reach a vast audience via the Internet—at least as long as the large ISPs are prevented from  
18 charging such companies to reach their subscribers or prioritizing their own content.

19 4. The absence of net neutrality protections will affect Initialized Capital's past  
20 investments, particularly in companies offering Internet-based services that are very dependent on  
21 Internet speed. In areas such as video on mobile, online gaming, and virtual reality, milliseconds  
22 in data delivery make a difference. For example, Patreon is a platform that lets artists get  
23 sustainable income from their fans and it depends on fast Internet speed to provide a high-quality  
24 and uninterrupted streaming experience, as well as a level playing field that allows fans to access  
25 any of their favorite artists' content, no matter what website it's shared on. PlanGrid provides  
26 construction software that provides access to plans, specifications and other important documents  
27 from a construction site and is dependent on reliable mobile Internet access for their product to  
28 function. Coinbase offers a secure online platform for buying, selling, transferring and storing

1 digital currency, which is also dependent on reliable and fast Internet access. When it invested in  
2 these companies, Initialized relied on the expectation of the continued existence of an open  
3 internet where net neutrality protections (at the time enforced by the FCC) would maintain a  
4 level playing field.

5 5. The slightest discrimination or paid prioritization significantly affects startups, as  
6 microseconds matter with both webpage-loading and real-time content. But if our portfolio  
7 companies are relegated to minimum service (often metaphorically referred to as a “slow lane”),  
8 they would struggle to compete against deep-pocketed incumbents that are able to afford to pay to  
9 be put in an Internet “fast lane.” Even if a startup’s product is better, the incumbent’s advantage  
10 in loading time and user experience would likely win out.

11 6. But it isn’t only video streaming or virtual reality companies who suffer negative  
12 effects from discrimination against their Internet traffic or prioritization of other traffic. Any  
13 company with a product or service to sell is placed at a disadvantage if an ISP can simply  
14 prioritize its own traffic, sell prioritization to the highest bidder or even strike exclusivity deals  
15 that foreclose our portfolio companies from an ISP’s customers altogether. The open internet has  
16 allowed small startups that make a better product or service—whether an online service or a  
17 tangible product—to win out over established, well-funded competitors.

18 7. Before co-founding Initialized Capital, I was a partner at Y Combinator, another early  
19 stage investment group in Silicon Valley and the most prestigious seed investment accelerator in  
20 the United States. Y Combinator began investing in early stage startups in 2005. Its 100 top  
21 companies are now valued at \$100 billion and have created over 28,000 jobs. Its current portfolio  
22 includes 93 companies valued at \$100 million or more. Y Combinator was the first investor in  
23 startups that have become household names, including Reddit, Dropbox and Airbnb. The New  
24 York Times once dubbed Y Combinator “Silicon Valley’s Startup Machine” and described its  
25 demo days, where companies present their products and services, as “Silicon Valley’s version of  
26 the N.F.L. Scouting Combine.”

27 8. When determining which companies to invest in, firms like Y Combinator and  
28 Initialized Capital need to be sure of the market in which that company will function. In the past,

1 startups were not required to pay broadband access Internet service providers or obtain their  
2 permission in order to reach specific users. It was inexpensive to create an application and  
3 distribute it over the Internet, and developers did so freely, without needing permission from the  
4 ISPs to do so. In fact, in the early days of the Internet, ISPs could not tell what application or  
5 service its users were using—whether they were playing a game or streaming a video, for  
6 example. Since then, ISPs have developed and implemented technology that allows them to  
7 identify what services users are using which, in turn, allows them to speed up or slow down  
8 particular Internet traffic, or to block it altogether. As such, venture capitalists looking to invest  
9 in the next big thing now have to consider the possibility that the winners in the marketplace can  
10 now be determined by the ISPs that control Internet traffic to their subscribers, not by consumers  
11 themselves.

12 9. Absent net neutrality protections, entrepreneurs whose businesses provide  
13 applications or services that rely on Internet distribution—and those interested in investing in  
14 their businesses—will have to factor into their decision-making the unpredictability of ISPs’  
15 decisions about what content will be prioritized and the price tag for fast and reliable distribution  
16 of their services or applications over the Internet. ISPs will be able to selectively discriminate  
17 against some web services in favor of a paying partner or the ISPs’ own products or  
18 services. Without net neutrality, ISPs are free to become the gatekeepers of new web services  
19 and control which ones will be permitted to reach the ISP’s customers and at what speeds. Such a  
20 landscape would be detrimental to consumer choice as well—if new startups are unable to get  
21 their companies off the ground and offer better products and services than those currently  
22 available, consumers will suffer as a result. Instead, they will have to be content with whichever  
23 products and services ISPs allow them hear about, purchase or download, and use.

24 10. The unpredictability and added expenses that will likely arise in the absence of net  
25 neutrality will fundamentally change decision-making for venture capital firms that invest in  
26 startups. Since the legal battle over the 2017 repeal of all net neutrality protections only finished  
27 at the federal level in June and the U.S. House of Representatives passed a bill in 2019 to restore  
28 the 2015 protections (only to see it languish in the Senate), ISPs have largely been on their best

1 behavior, save for some self-dealing zero-rating and abuses at the point of interconnection.  
2 However if SB 822 is overturned, that would give ISPs a final green light to abuse their  
3 gatekeeping power. If that happens, venture capital decision-making will have to adjust. For  
4 instance, Initialized Capital could face very tough decisions about whether to raise additional  
5 capital in order to protect our existing portfolio companies by making deals with the large ISPs on  
6 their behalf. While that would be an inefficient allocation of capital, Initialized Capital may have  
7 to do so to protect our existing and future portfolio—even at the risk of compromising our stated  
8 goal of investing capital into promising entrepreneurs or using it to support their growth—not  
9 paying off ISPs.

10 11. Initialized Capital could also be pushed toward focusing future investments abroad in  
11 markets such as Canada, India or the EU where strong net neutrality protections exist. This would  
12 also be harmful and an inefficient use of capital (at least initially), as our firm has deep  
13 experience in building products for the U.S. market. That would also mean that the vast majority  
14 of jobs our portfolio companies create and the taxes that the companies and their employees pay  
15 would be overseas. We could also find ourselves investing more toward technologies that  
16 distribute software and services not via the Internet, but in conjunction with hardware installation  
17 on customer premises. That model fits countries with lower broadband penetration, which would  
18 shift our focus to areas such as Southeast Asia and India. None of these scenarios is ideal, and all  
19 would harm our firm, our portfolio, entrepreneurs in Silicon Valley and the California economy.

20 12. I myself have benefited from early stage venture capital investment and from net  
21 neutrality. In 2005, I co-founded Reddit, Inc., which is now the third largest website in the  
22 United States according to Alexa, with over 300 million monthly unique visitors. My co-founder  
23 and I started Reddit with \$12,000 in funding, raised from Y Combinator (in fact, we were part of  
24 the very first round of Y Combinator’s investments). We were recent college graduates at the  
25 time, and we started the company with two computers in a small rented apartment. Without net  
26 neutrality, Reddit could not have been as successful as it has been.

27 13. When Reddit launched as a new kind of news site, we competed for user attention  
28 against a wide range of deeper pocketed competitors, including aggregators like Yahoo! News

1 and Google News and traditional media sites such as CNN and the New York Times. If we had to  
2 pay to get to consumers or pay to get in a fast lane, we could not have competed and likely would  
3 not have pursued the idea of Reddit. We even faced fierce competition against a startup with  
4 similar functionality—Digg, which at the time had far more users and \$2.8 million of investment  
5 capital, then a formidable sum. If we'd had to spend our meager capital paying ISPs and legal  
6 fees to negotiate contracts with them, we would not have been able to eventually bury Digg by  
7 building a better product. In other words, the fate and existence of Reddit would have been  
8 radically different if ISPs had been allowed to discriminate against our little two-person startup in  
9 favor of a major media companies' news portals, search engine aggregators, and better-funded  
10 startups.

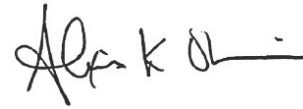
11 14. Net neutrality protections keep the level playing field that let me—and so many  
12 others—succeed as entrepreneurs. The reason so much innovation, job growth and wealth creation  
13 has happened in tech over the last decade is that any entrepreneur with a laptop and an Internet  
14 connection could build a startup and compete with established businesses (and even beat them)  
15 without a large budget to pay for priority service or even access from last-mile ISPs. The fate of  
16 Reddit may have been very different if an ISP had been allowed to discriminate against our little  
17 two-person-startup in favor of a major media company's news portal and the sites of other news  
18 giants. If ISPs are permitted to charge for access to their networks or to prioritize paid traffic, the  
19 Internet environment that allowed Reddit to flourish will no longer be available to those looking  
20 to launch new startups. I travel the United States telling young people that if they work hard they  
21 can make something new and, if it is better than anything already offered in the market, they can  
22 be successful even when they compete against established businesses with access to large  
23 amounts of funding. But that advice depends on having the same kind of open Internet  
24 environment that has been the standard in the past.

25 15. Net neutrality is critical to small businesses and entrepreneurs in the state of  
26 California. Silicon Valley in particular, as the home of so many successful startups, would suffer  
27 from the lack of net neutrality, which would put its startups at a disadvantage not only in  
28 competing with established corporations but also in obtaining the necessary capital to start or

1 grow their company in the first place. Silicon Valley has been the envy of the world for decades,  
2 transforming how people live their day-to-day lives, because there is a concentration of  
3 investment capital, engineering talent, and a culture of entrepreneurship that joined together on  
4 the fertile grounds of an open internet where innovation did not require permission from or  
5 payment to gatekeepers. Without net neutrality protections keeping that field open for all, capital,  
6 engineers and entrepreneurs will be forced to look elsewhere to build their collective visions.

7 I declare the foregoing under penalty of perjury under the laws of the United States of  
8 America. Executed this 14th day of September, 2020, at Nice, France.

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Alexis Ohanian