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14
                    UNITED STATES DISTRICT COURT
15
                 NORTHERN DISTRICT OF CALIFORNIA
16
                         OAKLAND DIVISION
17
    In re TWITTER INC. SECURITIES   ) Case No. 4:16-cv-05314-JST (SK)
18 LITIGATION   )
) CLASS ACTION
19 _____)
) JOINT DECLARATION OF DANIEL S.
20   ) DROSMAN AND LANCE V. OLIVER IN
    This Document Relates To:) SUPPORT OF: (1) CLASS REPRESENTATIVES'
21   ) MOTION FOR FINAL APPROVAL OF
        ALL ACTIONS.   ) SETTLEMENT AND PLAN OF ALLOCATION,
22 _____) AND (2) CLASS COUNSEL'S MOTION FOR AN
                                          AWARD OF ATTORNEYS' FEES, EXPENSES,
23   AND AWARDS TO CLASS REPRESENTATIVES
                                          PURSUANT TO 15 U.S.C. §78u-4(a)(4)
24
                                          JUDGE: Hon. Jon S. Tigar
25   DATE: November 17, 2022
                                          TIME: 2:00 p.m. (via videoconference)
26

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4854-6055-6339.v2

1   WE, DANIEL S. DROSMAN and LANCE V. OLIVER, declare as follows pursuant to 28

2 U.S.C. §1746:

3   1.   I, Daniel S. Drosman, am an attorney duly licensed to practice before all courts of the

4 State of California. I am a partner of the law firm of Robbins Geller Rudman & Dowd LLP

5 ("Robbins Geller"), and counsel for National Elevator Industry Pension Fund ("NEIPF"). I have

6 been actively involved in the prosecution and settlement of this action since 2016 and am closely

7 familiar with its proceedings (the "Litigation").[1] I have personal knowledge of the majority of the

8 matters set forth herein based upon my active participation in and supervision of all material aspects

9 of this Litigation. As to the remaining matters, I have reviewed our litigation files and consulted

10 with other attorneys and support staff who have worked on this case. I could and would testify

11 competently to the matters set forth herein if called upon to do so.

12   2.   I, Lance V. Oliver, am an attorney duly licensed to practice before all courts of the

13 states of Alabama, Florida, and South Carolina, and in the District of Columbia. I am a member of

14 the law firm of Motley Rice LLC ("Motley Rice"), and counsel for KBC Asset Management NV

15 ("KBC"). I have been actively involved in the prosecution and settlement of this Litigation and have

16 personal knowledge of a significant number of the matters set forth herein based upon my active

17 participation in and supervision the Litigation and, as to the remaining matters, I have reviewed our

18 litigation files, consulted with other attorneys and support staff who worked on this case, and could

19 and would testify competently to the matters set forth herein if called upon to do so.

20   3.   Motley Rice and Robbins Geller, together, are "Class Counsel." KBC and NEIPF,

21 together, are "Class Representatives" or "Plaintiffs."

22   4.   We submit this declaration in support of Class Representatives' motion for approval

23 of: (a) the $809,500,000.00 all-cash settlement reached on behalf of the Class (the "Settlement"); (b)

24 the proposed Plan of Allocation (the "Plan"); (c) Class Counsel's application for an award of

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27 [1]   Unless otherwise noted, all capitalized terms have the meaning ascribed to them in the
Stipulation of Settlement. ECF 653-4.

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1 attorneys' fees and expenses; and (d) awards to Class Representatives in accordance with 15 U.S.C.

2 §78u-4(a)(4).

3 **I.   PRELIMINARY STATEMENT**

4   5.   This declaration does not seek to – nor could it – detail every event that occurred

5 since the Litigation commenced in 2016. Rather, it provides the Court with key highlights of the

6 Litigation, the extensive fact and expert discovery, Class Counsel's unwavering preparation for trial,

7 the events leading up to the Settlement, and the bases upon which Class Counsel and Class

8 Representatives recommend the Settlement's approval.

9   6.   The $809,500,000.00 proposed Settlement is the culmination of more than five years

10 of tireless, hard-fought litigation. As detailed below, Class Counsel zealously prosecuted their

11 claims at every stage of the Litigation and successfully defended their claims against Defendants'

12 repeated dismissal attempts before this Court. The Settlement, representing approximately 24% to

13 30% of the estimated recoverable damages, is an excellent result for the Class and falls significantly

14 above the typical range of approvals.

15   7.   As detailed herein, proceeding to a jury trial presented substantial risks. In agreeing

16 to settle the action just days before trial, Class Representatives and Class Counsel were fully

17 informed about the various strengths of their case, as well as the substantial risks they would face at

18 trial. In opting to settle, Class Representatives and Class Counsel concluded that settlement on the

19 terms they obtained was in the Class's best interest. Representatives of KBC and NEIPF – who

20 supervised Class Counsel and remained well informed throughout the settlement negotiations –

21 ultimately approved the settlement. *See generally* Declaration of Robert Betts on behalf of NEIPF

22 ("NEIPF Decl.") and Declaration of Bart Elst on behalf of KBC ("KBC Decl."), attached hereto as

23 Exs. E and F, respectively.

24   8.   Class Counsel achieved the proposed Settlement after more than five years of

25 litigation, during which time Class Counsel, *inter alia*:

26   •   successfully moved for appointment of KBC as Lead Plaintiff, Motley Rice as Lead
            Counsel, and Bleichmar, Fonti & Auld as "Liaison Counsel," in December 2016;

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- conducted an extensive investigation, including the review of publicly available information and interviews of confidential witnesses, culminating in the filing of the detailed Consolidated Amended Complaint for Violations of the Federal Securities Laws (ECF 81) (the "Complaint") filed on March 2, 2017;

- prepared extensive briefing and conducted oral argument to defeat Defendants' motion to dismiss the Complaint in October 2017;

- conducted extensive party and third-party fact discovery, including: (a) obtaining nearly a quarter-million documents (encompassing many millions of pages) from over 50 custodians; (b) taking and defending 27 fact witness depositions; (c) responding to Defendants' various discovery requests; and (d) exchanging thousands of pages of admissions and sworn interrogatory responses;

- achieved certification, in July 2018, of a class of all persons who purchased or otherwise acquired shares of the publicly traded common stock of Twitter during the time period from February 6, 2015, through July 28, 2015, inclusive, and were damaged thereby (the "Class");

- moved successfully for appointment of KBC and NEIPF as Class Representatives and Motley Rice and Robbins Geller as Class Counsel;

- engaged in multiple lengthy and contentious discovery related disputes concerning the scope of fact discovery and document production, Defendants' privilege log and assertions of privilege over various materials, and several other issues discussed below;

- conducted complex expert discovery on a variety of issues (including loss causation, damages, social media user and engagement metrics, stock trading plans, corporate disclosure requirements and processes, and analyst, investor, and advertiser perceptions of Twitter), such as serving and responding to 19 expert reports and preparing for and taking (or defending) 14 expert depositions;

- briefed and defeated Defendants': (a) motion for summary judgment; and (b) motions to exclude the testimony of: (i) Plaintiffs' loss causation/damages expert; and (ii) Plaintiffs' expert on social media user metrics in April 2020;

- briefed and received rulings on seven additional motions to exclude expert testimony in April 2020 and 19 motions *in limine* in March 2021;

- prepared for a six-week jury trial by: (a) analyzing and selecting nearly 900 trial exhibits; (b) reviewing and designating deposition testimony; (c) identifying and subpoenaing Class Counsel's trial witnesses; (d) challenging Defendants' exhibit lists and designations of deposition testimony; (e) researching, drafting, and negotiating jury instructions and verdict forms; (f) compiling various witness files and exhibits; (g) creating detailed trial examination outlines; (h) creating numerous trial demonstratives; (i) preparing opening statements; (j) submitting a joint pretrial statement; (k) briefing and arguing several additional pretrial motions; (l) defeating

Defendants' motion for reconsideration of the summary judgment order; (m) litigating First Amendment-related issues in connection with a journalist trial witness; and (n) appearing before this Court for pretrial conferences on June 21, July 12, and August 5, 2021.

9.   The substantial fact and expert discovery, motion practice, and trial preparation outlined herein informed Class Counsel of both their case's many strengths and its potential weaknesses. Class Counsel considered this information in determining the best course of action for the Class.

10.   The proposed Settlement of $809,500,000.00 is the direct product of Class Representatives' and Class Counsel's efforts over the past five-plus years, including those described in this Declaration. The Settlement is also the product of the parties' numerous arm's-length negotiations and in-person mediation sessions facilitated by the Honorable Layn R. Phillips (Ret.), one of the nation's foremost mediators. These negotiations were conducted by experienced counsel with an intimate understanding of the case.

11.   Class Counsel also seek approval of the proposed Plan, which Class Counsel submit is fair and reasonable. Class Counsel drafted the Plan with the assistance of their damages and loss causation expert, Professor Steven P. Feinstein, Ph.D., CFA. As further described below and in the Notice, the Plan provides formulas for calculating the recognized claim of each Class Member that submits a Proof of Claim form based on when the Claimant purchased and/or sold their Twitter common stock on the open market. Each Authorized Claimant, including the Class Representatives, will receive a *pro rata* distribution pursuant to the Plan, and Class Representatives will be subject to the same formula for distribution of the Net Settlement Fund. Importantly, the Plan does not treat the Class Representatives nor any other Class Member preferentially.

12.   Class Counsel prosecuted the Litigation on a wholly contingent basis, advancing and incurring substantial litigation expenses, charges, and costs over the years. Class Counsel shouldered substantial risk in doing so, and, to date, have not received any compensation for their efforts. Accordingly, in consideration of Class Counsel's extensive efforts on behalf of the Class, Class Counsel are applying for an award of attorneys' fees in the amount of 22.5% of the Settlement

1 Amount and an award of $3,570,056.21 in litigation expenses, and any interest on such amounts at

2 the same rate and for the same period as earned by the Settlement Fund.

3   13.   As set forth in the accompanying Memorandum of Points and Authorities in Support

4 of an Award of Attorneys' Fees, Expenses, and Awards to Class Representatives Pursuant to 15

5 U.S.C. §78u-4(a)(4) (the "Fee Memorandum"), the requested fee is within the range of fees awarded

6 in large Private Securities Litigation Reform Act ("PSLRA") securities class action settlements, is

7 below the Ninth Circuit's presumptively reasonable 25% benchmark rate, and is justified in light of

8 the substantial benefits conferred on the Class, the risks undertaken, the quality of representation,

9 and the nature and extent of the legal services Class Counsel performed in this complex litigation.

10 To date, no class members have objected. Class Counsel submit that the fee application is fair to the

11 Class, under all applicable standards, and warrants the Court's approval.

12   14.   Class Counsel also seek an award in the amount of $3,570,056.21 (plus interest

13 accrued thereon) for expenses, costs, and charges reasonably and necessarily committed to the

14 prosecution of the Litigation over the last five years. These expenses include: (a) the substantial fees

15 and expenses of experts and consultants whose services were required for the successful prosecution

16 and resolution of this case; (b) the costs of conducting and defending dozens of fact and expert

17 witness depositions over the years, which included court reporter and videographer fees and travel

18 expenses; (c) photocopying, imaging, shipping, and managing a database of nearly a quarter of a

19 million documents; (d) online factual and legal research; and (e) mediation expenses.

20   15.   Finally, Class Representatives seek awards in the amount of $6,531.00 for NEIPF and

21 $28,000.00 for KBC, pursuant to 15 U.S.C. §78u-4(a)(4), for reasonable costs and expenses directly

22 relating to Class Representatives' representation of the Class. Class Representatives actively

23 monitored the Litigation and supervised Class Counsel. Class Representatives also dedicated time

24 and resources to discovery, which included gathering documents and information responsive to

25 Defendants' discovery requests, as well as designating representatives to prepare for and sit for

26 depositions as part of the class certification process (*see infra* ¶¶21-23). Finally, Class

27 Representatives participated in mediation and approved the ultimate settlement.

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II.   HISTORY OF THE ACTION

16.   The following summarizes the principal events during the Litigation and the legal services Class Counsel provided to Class Representatives and the Class.

A.   KBC Is Appointed Lead Plaintiff and Defeats Defendants' Motion to Dismiss

17.   Following Robbins Geller's initial filing of this action on September 16, 2016 (ECF 1), the Court consolidated this and another later-filed action and appointed KBC as Lead Plaintiff, Motley Rice as Lead Counsel, and Bleichmar, Fonti & Auld as Liaison Counsel. ECF 72. On January 18, 2017, KBC associated Robbins Geller as additional counsel to assist in the prosecution of the action. ECF 80. The case subsequently was recaptioned as *In re Twitter Inc. Securities Litigation*, No. 4:16-cv-05314-JST. ECF 127.

18.   Class Counsel conducted an extensive factual investigation prior to filing the Complaint, analyzing years of Twitter's public filings with the Securities and Exchange Commission (the "SEC"), media reports, analyst reports, and trading data. As part of its investigation, Class Counsel also located and spoke with several witnesses who had first-hand knowledge of the alleged fraud, including various confidential witnesses whose allegations were detailed in the Complaint. Following Class Counsel's investigation, Lead Plaintiff filed the Complaint on March 2, 2017. ECF 81.

19.   The 83-page Complaint alleges violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder on behalf of all persons who purchased or otherwise acquired Twitter's publicly traded securities between February 6, 2015 and July 28, 2015, inclusive. *Id.* at 1. The Complaint alleges that Defendants violated the securities laws by making materially false and misleading statements and omissions pertaining to Twitter's user growth and engagement. The Complaint further alleges that when the true facts regarding the alleged misstatements were revealed through a partial disclosure in April 2015, and the ultimate disclosure in July 2015, artificial inflation escaped Twitter's share price, causing the Class to suffer damages.

20.   Defendants moved to dismiss the Complaint on May 2, 2017, raising various challenges under Federal Rule of Civil Procedure 9(b) and the PSLRA. ECF 91-1. Among other things, Defendants vehemently challenged: (a) Plaintiffs' position that they were required to disclose certain engagement metrics; and (b) whether the Complaint adequately alleged falsity and scienter. ECF 104. Defendants also moved for judicial notice of certain Twitter SEC filings, earnings call transcripts, and news articles. ECF 92. Plaintiffs opposed Defendants' motions on June 21, 2017 (ECFs 94, 96), and Defendants replied on August 7, 2017. ECFs 104, 105. Eleven days after the Court heard oral argument on October 5, 2017 (ECF 109), the Court denied (in part) Defendants' motion to dismiss, paving the way for the Litigation to proceed and formal discovery to begin. ECF 113.

B.   Class Counsel Begin Discovery and Achieve Class Certification

21.   Defendants answered the Complaint on November 17, 2017. ECF 118. Less than one month later, on December 8, 2017, Defendants filed an amended answer substantially denying Class Counsel's allegations while raising five affirmative defenses. ECF 119. The parties exchanged initial disclosures on December 1, 2017. Shortly thereafter, the parties filed a joint case management conference statement on January 8, 2018. ECF 125. The parties appeared before this Court on January 17, 2018 for a Rule 26(f) conference, and on January 24, 2018, the Court issued a scheduling order setting forth deadlines for class certification briefing, fact and expert discovery, dispositive motion briefing, and trial. ECF 129.

22.   Shortly after defeating Defendants' motion to dismiss the Complaint, Class Counsel drafted and propounded on Defendants document requests and an interrogatory. Defendants responded in kind, serving their own document requests on Lead Plaintiff KBC and proposed class representative NEIPF.

23.   In responding to Defendants' requests, Class Counsel worked closely with KBC and NEIPF in identifying, reviewing, and producing to Defendants documents and information responsive to Defendants' requests. Class Counsel also formulated responses and objections to Defendants' requests, and engaged in written and telephonic conferrals with Defendants regarding various discovery issues.

1   24.   Class Counsel drafted and filed a motion to certify the Class, appoint Class

2 Representatives, and approve Class Counsel on February 15, 2018. ECF 140. Class Counsel

3 detailed in their motion why all the requirements of Rule 23(a) were satisfied as well as how all five

4 of the *Cammer v. Bloom*, 711 F. Supp. 1264 (D.N.J. 1989) factors – which courts routinely consider

5 in addressing class certification – were met. *Id.* Class Counsel also served an expert report in

6 connection with their motion for class certification, by Steven P. Feinstein, Ph.D., CFA. Dr.

7 Feinstein prepared and submitted a report on February 15, 2018, in which he opined the market for

8 Twitter stock was efficient during the Class Period.

9   25.   The parties appeared before this Court for a case management conference on

10 March 21, 2018. ECF 149. Shortly thereafter, Defendants moved for additional time to oppose class

11 certification (ECF 153), which Class Counsel opposed. ECF 154. In the meantime, the parties

12 conducted depositions in connection with class certification in April 2018. Class Counsel prepared

13 for and defended the depositions of KBC's representative (Vanessa Moens) and NEIPF's

14 representative (Robert Betts).

15   26.   Defendants finally opposed the motion to certify the class, appoint Class

16 Representatives, and approve Class Counsel on April 16, 2018. ECF 162. After the case schedule

17 was amended on May 23, 2018 (ECF 172), Lead Plaintiff filed a reply brief on May 29, 2018, which

18 addressed and disputed each of Defendants' arguments against class certification, the appointment of

19 Class Representatives, and the approval of Class Counsel. ECF 174. The parties argued the class

20 certification motion before this Court on July 12, 2018. ECF 178. Less than one week later, on July

21 17, 2018, the Court certified the Class, appointed KBC and NEIPF as Class Representatives, and

22 approved Robbins Geller and Motley Rice as Class Counsel. ECF 181.

23   27.   Following class certification, Class Counsel distributed notice of the pendency of the

24 Litigation to potential members of the Class. ECF 238 (February 21, 2019, order approving a

25 stipulated plan for class notice procedures). Class Counsel received 20 timely and valid requests to

26 opt-out of the Litigation. ECF 305.

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C.   Class Counsel Pursue Evidence of the Fraud Through Fact Discovery

28.   Fact discovery in this Litigation was complex, comprehensive, replete with technical subjects, and always zealously litigated.

29.   Document discovery was voluminous. Class Counsel propounded six sets of document requests (totaling 45 requests) on Defendants, collectively seeking various categories of documents necessary for proving the alleged fraud and its impact on Twitter's share price. The parties conferred extensively over each set of requests, negotiating over such matters as Defendants' objections to the requests, the temporal and subject matter scope of document discovery with respect to each of the requests, production custodians and search terms, and Defendants' assertions of privilege and work product.

30.   In addition to requests for production to Defendants, Class Counsel prepared and propounded document request subpoenas on 46 non-parties to obtain additional documentary evidence of the alleged fraud and its impact on the market for Twitter shares. These non-parties included various current and former employees of Twitter, members of Twitter's Board of Directors, and assorted securities and market analysts who followed and reported on Twitter during the Class Period. Class Counsel identified those non-parties most likely to possess relevant information, crafted document requests, and located and served the non-parties. Class Counsel then negotiated the scope of document productions with each non-party and reviewed the extensive information the non-parties produced.

31.   In all, approximately a quarter-million documents (encompassing many millions of pages) were produced in this Litigation by the parties and third-parties. To effectively prosecute this complex action, Class Counsel organized and executed a meticulous review of these documents by a team of skilled attorneys, including those from Class Counsel, as well as additional assistance from attorneys at Liaison Counsel Bleichmar, Fonti & Auld LLP, and from Labaton Sucharow LLP,[2] to assist with the document review and discovery efforts and to help evaluate the merits of Plaintiffs'

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[2]   Motley Rice has agreed to share its portion of any awarded attorneys' fees with Labaton. Any such payment made to Labaton by Motley Rice will in no way increase the amount of fees that are deducted from the Settlement Fund.

1   allegations and Defendants' defenses. Defendants' production documents featured highly technical

2   metrics and technology-related subject matters, amplifying the challenges in efficiently and

3   intelligently analyzing and synthesizing the production documents.

4   32.   This universe of documentary evidence proved critical in Class Counsel's preparation

5   for the numerous fact witness depositions taken by Class Counsel between October 2018 and May

6   2019. The deponents in this matter included both of the Individual Defendants, the Company itself,

7   and various current and former Twitter employees and board members. One of these depositions

8   was conducted pursuant to Federal Rule of Civil Procedure 30(b)(6), requiring Class Counsel to

9   negotiate in advance the scope of the deposition topics. Ultimately, the parties drafted and filed a

10 joint discovery letter concerning the scope for the Rule 30(b)(6) deposition of Twitter's

11 representative. ECF 278. Two of the fact depositions required more than one deposition day – an

12 issue that required briefing to Magistrate Judge Sallie Kim and the Court. ECFs 239, 292. That

13 many of these deponents were Defendants themselves and/or were represented by Defendants'

14 counsel illustrates the challenges Class Counsel faced in obtaining testimony supporting the case

15 from these adverse witnesses. Moreover, during the pendency of depositions, Class Counsel were

16 forced to raise privilege objections from defense counsel with Mag. Judge Kim. ECFs 236, 253,

17 274.

18   33.   One such privilege dispute concerned the common-interest privilege.   After a

19 conference with Mag. Judge Kim, the parties briefed the issue. ECFs 253, 256, 259, 260. Twitter's

20 former Vice President of Marketing and Communications, Gabriel Stricker, a central witness who

21 allegedly advocated that Twitter "come clean" to Wall Street, retained separate counsel for his

22 deposition.   Nevertheless, Mr. Stricker met with defense counsel and his separate counsel in

23 preparation for his deposition. When Class Counsel questioned Mr. Stricker on what was discussed

24 at those preparation meetings, both defense counsel and Mr. Stricker's separate counsel claimed

25 attorney-client privilege, and Mr. Stricker refused to answer on that basis. Class Counsel asserted

26 that the attorney-client privilege was waived as defense counsel did not have an attorney-client

27 relationship with Mr. Stricker, and defense counsel's presence at the preparation meeting destroyed

28 any privilege Mr. Stricker had with his own separate counsel. Defendants and Mr. Stricker argued

that they had a "common interest" and therefore the attorney-client privilege was preserved. When Mag. Judge Kim issued an order upholding the "common-interest" privilege, Class Counsel briefed and won a motion for relief from Mag. Judge Kim's discovery order, in which this Court held the common-interest privilege did not apply and allowed questioning into the witness' preparation with defense counsel. ECFs 270, 292.

34.   Class Counsel also successfully sought additional depositions above the number provided for by the Federal Rules of Civil Procedure. After the issue was briefed on two separate occasions (ECFs 203, 232), Mag. Judge Kim allowed Class Counsel to take 20 depositions – 10 more than provided for under the federal rules. ECF 233. Class Counsel took all 20 fact witness depositions between October 2018 and May 2019.

35.   Each of these depositions required extensive preparation on Class Counsel's part. This preparation included spending weeks or months searching for, identifying, and analyzing documentary evidence that could be used during depositions or otherwise utilized in preparing for them. Simultaneously, Class Counsel prepared for and defended eight depositions of certain confidential witnesses identified in the Complaint, which took place in April and May 2019.

36.   Class Counsel capably and efficiently reviewed and analyzed large volumes of documents in compressed timeframes, while preparing to take and defend a host of fact witness depositions on a variety of complex topics. Class Counsel also litigated defense counsel's privilege assertions during the course of depositions, ultimately resulting in resolution in Class Counsel's favor by Mag. Judge Kim. ECFs 253, 256, 259, 260, 264, 265, 266, 270, 292.

37.   Fact discovery also included interrogatories served by both sides. As mentioned above, Class Counsel received and responded to various interrogatories as part of class certification discovery. Moreover, Class Counsel received additional interrogatories during fact discovery, including a set of contention interrogatories in April 2019. These interrogatories sought a wide breadth of information regarding the false statements alleged in the Complaint, including all information supporting Class Counsel's allegations of falsity, scienter, and loss causation. After substantial conferral on these interrogatories, Class Counsel crafted detailed responses and identified hundreds of documents in response to the interrogatories in June 2019 and September 2019.

38.   The parties also prepared a joint case management conference statement and appeared before this Court for a discovery related case management conference. ECFs 170, 171.

39.   There can be no question that the $809,500,000.00 Settlement was, in large part, achieved because Class Counsel amassed a significant amount of inculpatory evidence, and were prepared to present that evidence at trial.

D.   Class Counsel Pursue Relevant Documents, Sparring with Defendants over Several Discovery Disputes

40.   Numerous additional fact discovery disputes arose between the parties, requiring extensive written correspondence, countless telephonic conferrals, and hours upon hours of negotiations between the parties. Numerous discovery motions ultimately were filed. Set forth below are examples of some additional significant disputes that arose during fact discovery.

41.   It is worth noting that these discovery motions were often accompanied by administrative motions to file documents under seal, some of which Class Counsel opposed, arguing that the documents did not qualify for protection from public disclosure. *See e.g.,* ECFs 197, 245, 247, 253, 258.   These discovery motions and the resultant sealing of documents created a cumbersome path for resolving disputes via written motions, often requiring cross referencing of prior sealing orders. Class Counsel also prepared for and argued some of the discovery disputes before Mag. Judge Kim. ECFs 218, 236, 250, 253, 274.

1.   Disputes over Defendants' Document Production

42.   The parties briefed multiple disputes concerning Defendants' document production. The disputes included: (a) the timing and scope of document production (ECFs 134, 157); (b) the selection of custodians and search terms (ECF 134); and (c) the production of hyperlinked documents (ECF 190). To provide some context to the hyperlink dispute, Defendant Twitter utilized a "Google Suite" environment which created a situation where Twitter's employees were hyperlinking documents in emails, instead of utilizing conventional email attachments. Defendants produced thousands of relevant emails containing embedded hyperlinks to critical source materials that Defendants withheld. Class Counsel asserted that relevant email communications required the embedded hyperlinks to understand and analyze the information conveyed in the email

communications. When Defendants continued to refuse to produce these hyperlinked documents, the parties filed a joint discovery letter with Mag. Judge Kim on September 14, 2018. ECF 190. Mag. Judge Kim ordered Defendants to produce documents referenced in hyperlinks from 200 documents selected by Class Counsel. ECF 192.

43.   Separate from Defendants' production, several of Twitter's board members failed to timely produce documents responsive to document subpoenas served on July 16, 2018. Despite assurances by defense counsel, who represented the subpoenaed board members, no documents had been produced by April 16, 2019, and the parties filed a joint letter brief on the issue on April 17, 2019. ECF 273. Mag. Judge Kim ordered the board members subject to depositions later that month to produce documents no later than April 23 and April 25, 2019. ECF 276.

2.   Disputes over Defendants' Assertions of Attorney-Client Privilege and Work Product

44.   Several discovery disputes concerned Defendants' assertions of attorney-client privilege and work product over thousands of documents Defendants withheld or redacted. ECFs 196, 215, 293. These included disputes over whether Defendants' assertions of privilege and work product were over inclusive and whether Defendants had waived their assertions of privilege or work product over withheld information.

45.   Defendants produced their privilege log on July 27, 2018, listing the documents Defendants had withheld on privilege and work product grounds. The privilege log listed over 8,000 entries. Class Counsel closely evaluated each of the privilege log's entries to assess the propriety of Defendants' asserted claims of privilege and work product. With respect to documents Defendants redacted, Class Counsel analyzed each of the documents' redactions to determine whether they were justified.

46.   Initially, Class Counsel identified to Defendants approximately 2,500 earnings and user-metrics-related documents for which Defendants had failed to carry their burden to establish privilege.   Following extensive correspondence and conferral regarding these documents, Defendants chose to stand on their privilege designations. Accordingly, Class Counsel served Defendants with a discovery dispute letter seeking to compel a representative subset of 84

1   documents from Class Counsel's initial list, while reserving their right to seek production of

2   additional withheld documents. Defendants voluntarily de-designated 19 of the 84 documents, and

3   after a request from Class Counsel to review the entire privilege log, de-designated an additional 130

4   documents. Class Counsel then moved to compel 64 of the remaining challenged exemplar entries

5   as being improperly designated as privileged or on the ground that the privilege was waived by the

6   presence of third-parties. ECF 196. Mag. Judge Kim ordered Defendants to produce 33 of the 64

7   challenged documents. ECFs 202, 205, 208. After 52 of the 84 documents specifically identified by

8   Class Counsel as improperly designated proved to not be privileged, Class Counsel requested an *in*

9   *camera* review of 3,240 documents by a special master. ECF 215. The parties argued the motion

10   before Mag. Judge Kim on December 19, 2018. ECFs 218, 220. Though Mag. Judge Kim did not

11   appoint the special master, she required Defendants to conduct a thorough review of their privilege

12   log in light of her prior orders on privilege. ECF 222.

13   47.   Class Counsel's efforts paid off; either Mag. Judge Kim or Defendants eventually

14   determined about 2,000 documents had been improperly withheld or redacted and produced those

15   documents along with an amended privilege log. Defendants stood on their assertions of privilege or

16   work product with respect to the remainder, prompting Class Counsel to move Mag. Judge Kim on

17   these issues once again.

18   48.   The parties briefed the privilege log dispute again on May 10, 2019. ECF 293. Mag.

19   Judge Kim engaged in an *in camera* review of 100 sample documents and determined that 11% of

20   the documents were not privileged. ECFs 295, 299.

21   **3.   Disputes over the Identity of Confidential Witnesses and**
22   **Whether Attorney Work Product Was Waived**

23   49.   The parties also sought Mag. Judge Kim's guidance on a dispute arising from

23   Defendants' request for Class Counsel's factual investigation materials, including the identities of

24   the 11 confidential witnesses referred to in the Complaint. ECF 206. Class Counsel vigorously

25   defended these materials as attorney work product, but offered a compromise to avoid potential

26   harassment and retaliation against the confidential witnesses: Class Counsel offered to contact the

27   confidential witnesses to request consent to disclose their identities, and if they agreed, Class

28

1   Counsel would provide them to Defendants. Should any confidential witness not agree to the

2   disclosure of his or her identity, then Class Counsel would direct him or her to file an *ex parte*

3   motion with the Court providing their basis for their objections and concerns of disclosure.

4   Defendants rejected the proposal.

5   50.   Mag. Judge Kim issued a ruling on November 27, 2018, ordering Class Counsel to

6   provide the identities of the confidential witnesses and their last known address and telephone

7   number, but denied Defendants' requests for additional information and the factual investigation that

8   Class Counsel undertook. ECF 207.

9   51.   On April 18, 2019, during a deposition of one of the confidential witnesses, the

10 parties again appeared before Mag. Judge Kim on the issue of whether discussions with the third-

11 party confidential witnesses constituted waiver of Class Counsel's work product privilege. ECF 274.

12 Class Counsel continued to assert that the attorney work product doctrine protected from disclosure

13 those communications between the witnesses and Class Counsel's agents. Mag. Judge Kim held that

14 any written memoranda detailing the conversations between Class Counsel's agents and the

15 confidential witnesses would be protected from disclosure, but ruled that Defendants could ask the

16 confidential witnesses about their oral communications to Class Counsel, but not about the questions

17 Class Counsel asked.

18   **E.   The Parties Engage in Extensive Expert Discovery**

19   52.   During the summer and fall of 2019, the parties conducted expert discovery covering

20 a wide range of areas, including loss causation, social media user and engagement metrics, stock

21 trading plans, corporate disclosure requirements and processes, and analyst, investor, and advertiser

22 perceptions of Twitter.

23   53.   Expert discovery began in June 2019 when the parties exchanged a total of seven

24 expert reports. For their part, Class Counsel produced four opening expert reports to Defendants.

25 Defendants produced three expert reports to Class Counsel. On August 7, 2019, the parties

26 exchanged a total of nine rebuttal expert reports, three by Class Counsel and six by Defendants.

27 Between July 2019 and September 2019, Class Counsel deposed all six of Defendants' experts and

28 defended the depositions of Class Counsel's six experts. Class Counsel also exchanged and

1 analyzed thousands of documents the experts cited in their reports or relied upon in forming their

2 opinions.

3   54.   Defendants also moved to substitute their expert John Coates on the precipice of trial

4 because of his appointment to serve as the SEC's Acting Director of the Division of Corporation

5 Finance. Defendants served an additional expert report on August 5, 2021, which was amended on

6 August 10, 2021. In response, Class Counsel served a supplemental rebuttal report on August 16,

7 2021. Class Counsel deposed Defendants' new expert, Charles K. Whitehead, on August 17, 2021,

8 and Class Counsel defended rebuttal expert, Frank Partnoy, for a second time on August 21, 2021.

9   55.   Class Counsel's efforts during expert discovery was notable considering the sheer

10 breadth of Defendants' experts' opinions. Defendants' 10 expert reports spanned 666 pages

11 (including exhibits and appendices), and overflowed with wide-ranging opinions on the issues listed

12 above in ¶50. Class Counsel were tasked with understanding and cross-examining each of

13 Defendants' experts' opinions during their depositions.

14   56.   Certain of Defendants' experts' reports were particularly lengthy. Defense expert

15 Martin Dirks' reports, for instance, listed over 500 analyst reports as materials that he considered in

16 support of his opinion that additional disclosures of user engagement metrics would have been

17 unimportant to investors. Defense expert Paul Gompers, Ph.D., meanwhile, paired his extensive

18 report with a 32-page list of materials he considered in forming his opinions on damages and loss

19 causation.

20   57.   The examples above merely illustrate the breath of materials Class Counsel waded

21 through in their overall efforts to dissect the experts' reports, unpack their conclusions, and prepare

22 to effectively depose Defendants' experts. These examples also demonstrate the sheer volume of

23 expert opinions and testimony that Defendants intended to present to jurors during the six-week trial.

24   **F.   Class Counsel Prevail at Summary Judgment**

25   58.   Summary judgment was also hard fought. On September 13, 2019, Defendants

26 moved for summary judgment on all the Class's claims. ECF 314. Defendants' motion and exhibits

27 were re-filed on September 18, 2019 to comply with the Court's filing rules. ECFs 338-357.

28 Defendants submitted 145 exhibits and a dozen declarations, including declarations from both

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1   Individual Defendants, each of their experts, and certain employees of Twitter. ECFs 316-318, 320,

2   322, 330, 334. Defendants also filed a motion for judicial notice, requesting the Court take notice of

3   tweets and other documents. ECF 355. Defendants also moved to file most of their exhibits and

4   large portions of their brief under seal. ECF 330. Class Counsel opposed that motion to seal on

5   September 17, 2019. ECF 336.

6   59.   Class Counsel opposed Defendants' summary judgment motion on October 28, 2019,

7   supporting their 30-page opposition brief with 100 exhibits, as well as the declaration of each of

8   Class Counsel's experts on the issues of loss causation, social media user and engagement metrics,

9   stock trading plans, corporate disclosure requirements and processes, and analyst, investor, and

10   advertiser perceptions of Twitter. ECFs 362-365, 370-372. Class Counsel's opposition brief was

11   laden with evidence regarding Defendants' concealment and misrepresentations of the deterioration

12   of Twitter's user growth and engagement metrics and their substantial impact on the Company's

13   business and stock price. Class Counsel also opposed portions of Defendants' motion for judicial

14   notice. ECF 361. Class Counsel also filed their own motion requesting judicial notice of publicly

15   available analyst reports, news articles, and SEC filings. ECF 369.

16   60.   Concurrently, Class Counsel filed a motion to strike two declarations and multiple

17   exhibits filed in support of Defendants' motion for summary judgment. ECF 360. One of the

18   declarations was from a Twitter employee whose identity was not previously disclosed to Class

19   Counsel throughout discovery. *Id.* Defendants opposed Class Counsel's motion to strike on

20   November 8, 2019. ECF 382. The Court held argument on November 15, 2019. ECF 391. On

21   January 30, 2020, the Court granted the motion to strike the undisclosed witness' declaration in

22   support of Defendants' motion for summary judgment. ECF 438.

23   61.   On October 31, 2019, Defendants filed two motions to exclude the testimony of Sam

24   Hui and Steven Feinstein. ECFs 374, 376. Sam Hui was Class Counsel's key expert on social

25   media user growth and engagement metrics. Steven Feinstein was Class Counsel's key expert on

26   loss causation and damages. The exclusion of either one of these experts could have negatively

27   impacted a ruling on summary judgment. Defendants again filed administrative motions to keep

28   certain documents and information filed in connection with their motions under seal. ECFs 373,

375. Class Counsel opposed these administrative motions in favor of public disclosure on November 4, 2019. ECF 378. On November 14, 2019, Class Counsel opposed Defendants' motions to exclude the testimony of Sam Hui and Steven Feinstein. ECFs 385, 387. Defendants filed replies in support of their motions on November 21, 2019. ECFs 394, 395.

62.   Defendants filed a reply in further support of their summary judgment motion on November 25, 2019, offering eight additional exhibits. ECF 398.

63.   On January 28, 2020, the Court denied both of Defendants' motions to exclude the testimony of Class Counsel's experts Sam Hui and Steven Feinstein. ECF 421.

64.   On April 17, 2020, the Court issued a 31-page order denying Defendants' motion for summary judgment. ECF 478. It also issued an order granting in part and denying in part motions filed by the parties to exclude expert trial testimony. ECF 482. On May 6, 2020, Defendants moved for clarification of the April 17, 2020 order. ECF 493. The Court clarified its April 17, 2020 ruling on May 18, 2020. ECF 509. The Court's clarification eliminated a false statement, but had no impact on the original denial of summary judgment. *Id.* Defendants also filed a motion for reconsideration of the summary judgment order on August 3, 2021. ECF 611. Class Counsel opposed the motion while simultaneously preparing for trial on August 17, 2021. ECF 622. After Defendants filed a reply in support of their motion (ECF 625), the Court denied Defendants' motion in full on August 24, 2021. ECF 639.

G.   Class Counsel Prepare for a Six-Week Trial

65.   Class Counsel continued preparations for the six-week jury trial up to the eleventh hour, when the parties reached an agreement to settle the Litigation. On January 21, 2020, the Court granted the parties' joint request to modify the amended scheduling order. ECF 420. The scheduling order set deadlines for additional *Daubert* motions, exchange of witness and exhibit lists, motions *in limine*, jury instructions, verdict forms, and the joint pretrial statement. The final pretrial conference was set for March 3, 2020.

66.   On February 12, 2020, the Court issued another case management scheduling order, delaying trial until June 22, 2020, and re-setting deadlines for exhibit lists, pretrial motions, status reports, and the final pretrial conference. ECF 455. Thereafter, in light of the global COVID-19

1 pandemic, the pretrial and trial deadlines were vacated on May 19, 2020. ECF 515. In the interim,

2 Class Counsel continued to prepare for trial. The Court continued the motion *in limine* hearing and

3 case management conference set for July 8, 2020, to August 19, 2020, which was subsequently

4 pushed to August 27, 2020. ECFs 548, 555. On September 9, 2020, the Court adopted the parties'

5 proposed schedule, setting the pretrial conference for June 21, 2021 and trial for September 20,

6 2021. ECF 567.

7   67.   In anticipation of trial, the parties briefed a total of 19 motions *in limine* and eight

8 additional motions to exclude expert opinions and testimony under *Daubert v. Merrell Dow Pharm.,*

9 *Inc.*, 509 U.S. 579 (1993) and Federal Rule of Evidence 702. The 27 motions required extensive

10 efforts from Class Counsel, from formulating a list of potential motions *in limine* and exclusion, to

11 researching and drafting various memoranda of law in support of Class Counsel's motions (and in

12 opposition to Defendants'), and finally, to preparing for oral argument on the motions, which

13 occurred on August 27, 2020. ECF 560. The Court ruled on the motions prior to trial. ECF 581.

14   68.   Class Counsel also dedicated considerable time and effort to building their

15 preliminary and final trial exhibit lists, as well as formulating objections to documents on

16 Defendants' exhibit lists. Class Counsel analyzed thousands of documents in arriving at its final list

17 of nearly 900 trial exhibits, as well as in analyzing and formulating objections to the 1,400-plus

18 documents Defendants included on their trial exhibit list.

19   69.   Class Counsel poured over dozens of deposition transcripts in preparing for trial.

20 With regard to trial witnesses who were not expected to appear live at trial, Class Counsel designated

21 portions of deposition transcripts that they planned to play for the jury in lieu of the witnesses' live

22 testimony. Additionally, Class Counsel formulated objections to those portions of deposition

23 transcripts that Defendants had designated to play at trial. Meanwhile, with regard to those trial

24 witnesses who were expected to appear live at trial, Class Counsel evaluated those witnesses'

25 deposition transcripts in order to prepare to examine, and if necessary, impeach those witnesses at

26 trial.

27   70.   Class Counsel also dedicated considerable time to drafting and conferring with

28 Defendants over the various sections of the parties' Joint Pretrial Statement, proposed jury

1   instructions, and proposed verdict forms. The parties jointly filed their 351-page Joint Pretrial

2   Statement, the Parties' Joint Set of [Proposed] Jury Instructions, and each parties' respective

3   proposed verdict form on June 14, 2021 (ECFs 584-587), just days before the final pretrial

4   conference on June 21, 2021.

5   71.   Class Counsel's trial preparation efforts included various other tasks not listed above,

6   including: (a) identifying, subpoenaing Class Counsel's trial witnesses; (b) preparing a list of

7   bellwether exhibits allowing the Court to rule on exhibit objections prior to trial; (c) conducting

8   several mock jury studies to gauge the potential reaction to Class Counsel's trial themes and

9   evidence; (d) briefing Defendants' motion to substitute their expert witness; (e) briefing the parties'

10   joint submission on the use of leading questions with witnesses; (f) briefing and arguing two third-

11   party witness' motions to quash their respective trial subpoenas; (g) compiling various witness files

12   and exhibits; (h) drafting detailed trial examination outlines for the various fact and expert witnesses

13   who were expected to testify live; (i) preparing extensive expert demonstratives; (j) preparing

14   proposed juror questionnaires and preparing for *voir dire*; (k) preparing opening statements; and (l)

15   thoroughly preparing for the pretrial conferences held on June 21, 2021, July 12, 2021, and

16   August 5, 2021.

17   72.   In short, Class Counsel prepared intensely at each and every step of the Litigation, all

18   with the goal of achieving a jury verdict in the Class's favor.

19   **III.   THE SETTLEMENT**

20   73.   The Settlement of $809,500,000.00 was the result of extensive arm's-length

21   negotiations between the parties over a period of nearly three years. The Settlement unquestionably

22   provides the Class with a substantial benefit and eliminates the significant risks of a jury trial. Class

23   Counsel believe that the Settlement is fair, reasonable, and an excellent result for Class Members,

24   considering the risk of recovering much less, or even nothing, after a jury trial and any appeals.

25   Further, even if a verdict in favor of Plaintiffs was obtained and ultimately upheld on appeal, this

26   post-trial process would have taken years and substantially delay any recovery for the Class.

27

28

A.   Reaching the Settlement

74.   The parties engaged the Honorable Layn R. Phillips (Ret.) in direct settlement discussions during the course of the Litigation. Class Counsel met with Judge Phillips and counsel for Defendants on three separate occasions and convened multiple teleconferences with Judge Phillips.

75.   The parties attended the first of three in-person meditation sessions on September 26, 2018. In advance of that session, Class Counsel drafted and provided to Defendants and Judge Phillips a comprehensive mediation statement outlining the alleged fraud, citing various documents Defendants had produced in discovery which supported Class Counsel's claims. Defendants, meanwhile, submitted their own mediation statement, emphasizing what they perceived to be the strengths of their case and the weaknesses in Class Counsel's case. The parties also prepared reply mediation statements. The September 2018 mediation session was unsuccessful, and fact discovery continued.

76.   The parties' next in-person mediation session occurred on March 6, 2020, prior to which the parties again drafted and exchanged mediation statements. By this date, summary judgment had been fully briefed, but was undecided, and the parties were preparing for trial. The March 2020 session, like the preceding session in September 2018, ended without a resolution.

77.   Weeks before trial was scheduled to begin, the parties again engaged with Judge Phillips in a third mediation session on August 17, 2021, prior to which the parties again drafted and exchanged mediation statements. Despite their efforts, the parties were unable to reach a resolution, and both sides continued to prepare for trial. Notwithstanding their unsuccessful attempts to resolve the Litigation, the parties remained in contact with Judge Phillips in an ongoing effort to reach a resolution.

78.   On the evening of September 16, 2021, the day before the parties were to argue an additional pretrial motion to quash a trial subpoena served on non-party *Vanity Fair* journalist Nick Bilton, and just four days before a jury was to be empaneled, the parties, with assistance from Judge Phillips, agreed to settle the action for $809,500,000.00. The parties promptly informed the Court of their agreement in principle to settle the action. At the conclusion of the September 17, 2021

1 hearing, the Court continued the trial scheduled to begin on the upcoming Monday, and vacated the

2 hearing on the motion to quash. ECF 647. On September 19, 2021, the parties signed and executed

3 a binding Memorandum of Understating.

4   79.   Thereafter, the parties negotiated a Stipulation of Settlement and filed it along with its

5 exhibits on January 7, 2022. ECF 653-4. That same date, Class Counsel filed their unopposed

6 motion for preliminary approval of the settlement. ECF 653. On August 5, 2022, this Court granted

7 preliminary approval of the parties' Stipulation of Settlement, approved the form and manner of

8 notice to the Class, and scheduled the final approval hearing for November 17, 2022. ECF 658.

9   **B.   Reasons for the Settlement**

10   80.   Class Representatives and Class Counsel both strongly endorse the Settlement. Class

11 Representatives are sophisticated institutional investors who have actively overseen the prosecution

12 of this Litigation since 2016. Class Counsel specialize in complex securities litigation and are highly

13 experienced in such litigation. *See* Declaration of Daniel S. Drosman Filed on Behalf of Robbins

14 Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses

15 ("Robbins Geller Declaration"), Ex. 13; *see also* Declaration of Gregg S. Levin in Support of Class

16 Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed

17 on Behalf of Motley Rice LLC ("Motley Rice Declaration"), Ex. 14. Based on their experience and

18 intimate knowledge from litigating this case for over five years, Class Counsel and Class

19 Representatives determined that the Settlement is in the best interest of the Class.

20   81.   Class Counsel faced numerous risks throughout the Litigation, including up to the

21 date they agreed to settle. One such risk concerned the amount of damages that could be recovered

22 at trial. Dr. Feinstein, Class Counsel's trial expert on market efficiency, loss causation, and

23 damages, estimated total damages were up to $20.34 per share. However, even assuming Class

24 Counsel prevailed at trial, a jury could have awarded much less than the Class's estimated total

25 damages, or no damages at all. Under prevailing case law, damages under §10(b) may be reduced or

26 eliminated if a portion (or all) of the damages are attributable to causes other than the misstatements

27 or omissions. In this case, Defendants repeatedly contended that the alleged fraud did not cause any

28 portion of the alleged stock price declines, and thus the Class's losses.

82.   Defendants undoubtedly planned to press this defense at trial. Paul Gompers, Ph.D., Defendants' damages and loss causation expert, was prepared to testify at trial that there was no evidence that the alleged fraud caused any portion of Twitter's stock price to decline on the alleged corrective disclosure dates. Rather, according to Professor Gompers, non-fraud confounding factors were to blame for the declines in Twitter's stock price in both April and July of 2015. Similarly, Professor Gompers asserted that there was no evidence supporting the allegation that DAU metrics are predictors of MAU growth and that the week-long decline in Twitter's stock price in July 2015 could not be attributed to the alleged fraud. Presented with this testimony, a jury may well have concluded that the Class was entitled to far less than their estimated damages – or no damages at all.

83.   In addition to challenging loss causation and damages at trial, Class Counsel expected Defendants to present evidence that Defendants' alleged misstatements and omissions were not materially false or misleading, that no Defendants acted with *scienter*, and that this case bore none of the hallmarks of a "traditional" fraud. For instance, some of the major themes Defendants touted at summary judgment were: (a) Twitter's statements regarding MAU, TLV, Ad Engagement, and the DAU/MAU ratio were literally accurate and therefore could not be misleading; (b) DAU grew during the Class Period, so there was no adverse user engagement trend to disclose; (c) Twitter was engaged in good faith and robust internal discussions about which metrics best aligned with the Company's publicly disclosed strategies; (d) neither of the individual Defendants sold stock during the Class Period; and (e) loss causation could not be established because non-fraud confounding factors could not be disentangled from the alleged corrective disclosures.

84.   Class Counsel expected Defendants to rely heavily on these and other themes at trial, posing a risk that one or more of those themes would gain traction with a jury and result in a verdict in Defendants' favor.

85.   The fact that nearly all the parties' trial witnesses remained employed by Twitter, retained relationships with one or more Defendants, were represented by Defendants' counsel, or were Defendants themselves, posed another considerable risk to bringing this case to trial. Class Counsel expected these adverse witnesses to attempt to exculpate Defendants at trial.

1   86.   For example, Krista Bessinger – a central fact witness in this Litigation and Twitter's

2   designated Rule 30(b)(6) witness – was Twitter's Vice President of Investor Relations at the time

3   trial was scheduled to commence. Among other things, Class Counsel expected Ms. Bessinger to

4   testify that: (a) Twitter had a robust process for preparing for investor communications; and (b)

5   Twitter was engaged in a discussion of what metrics best represented the Company's publicly stated

6   goals and opportunities. Such testimony, if credited by a jury, could have considerably undermined

7   Class Counsel's claim that DAU/MAU was Twitter's primary user engagement metric.

8   87.   Similarly, Anthony Noto – one of the two Individual Defendants and Twitter's CFO

9   during the Class Period – submitted a declaration in support of Defendants' motion for summary

10 judgment, and was expected to vigorously defend his statements as accurate and testify that the

11 Company was searching for the right user engagement metric that reflected Twitter's goals. In short,

12 Class Counsel had every reason to believe that these and other trial witnesses would have, if

13 provided the opportunity, offered testimony favorable to the defense.

14   88.   The Settlement eliminates these and other risks, enabling the Class to recover a

15 substantial sum of money, while avoiding continued litigation and the unpredictability of a jury trial.

16   **C.   Notice to the Class Meets the Requirements of Due Process and
            Federal Rule of Civil Procedure 23**

17
       89.   In accordance with the Court's August 5, 2022, Preliminary Approval Order (ECF

18
    658), beginning on August 25, 2022, Class Counsel, through Epiq Class Action & Claims Solutions,
19
    Inc. ("Epiq" or the "Claims Administrator"), caused a copy of the Notice and Proof of Claim Form,
20
    substantially in the forms annexed to the Court's Preliminary Approval Order, to be mailed via First-
21
    Class Mail to all Class Members who could be identified with reasonable effort. In total, Epiq has
22
    disseminated over 401,000 copies of the Notice and Proof of Claim Form to potential Class
23
    Members and their nominees as of October 12, 2022. *See* Declaration of Bradford H. Amann
24
    Regarding: (A) Dissemination of the Settlement Notice and Claim Form; and (B) Publication of the
25
    Summary Settlement Notice, ¶10 (Oct. 12, 2022), attached hereto as Ex. D.
26
       90.   On August 30, 2022, Epiq caused the Summary Notice to be published in *The Wall*
27
    Street Journal and on the *PR Newswire. See id.*, ¶12.
28

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91.   In addition, Epiq caused a copy of the Notice and Proof of Claim Form to be posted on the case-designated website, www.TwitterSecuritiesLitigation.com. *Id.*, ¶16. This multi-faceted method of providing notice to the Class, previously approved by the Court, is wholly appropriate because it directs notice in a "reasonable manner to all class members who would be bound by the propos[ed judgment]." Fed. R. Civ. P. 23(e)(1)(B).

92.   Among other things, the Notice advises Class Members of the essential terms of the Settlement, the proposed Plan of Allocation, the general terms of the Fee and Expense Application, the procedure for objecting to the Settlement, and specifics on the date, time, and place of the Final Approval Hearing.

93.   As set forth in the accompanying Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement and Plan of Allocation, the Notice fairly apprises Class Members of their rights and options with respect to the Settlement, is the best notice practicable under the circumstances, and complies with the Court's August 5, 2022 Preliminary Approval Order (ECF 658), Federal Rule of Civil Procedure 23, the PSLRA, and due process.

D.   The Plan of Allocation Is Fair and Reasonable

94.   Class Counsel have proposed a Plan of Allocation to govern the method by which Class Members' claims will be calculated, and the proceeds of the Settlement will be allocated among Class Members who submit valid Proof of Claim forms and suffered economic losses because of the alleged fraud.

95.   Class Counsel engaged Dr. Feinstein to develop the Plan of Allocation based upon the event study and analyses Dr. Feinstein performed in this Litigation. In summary, Dr. Feinstein employed generally accepted and widely used methodologies to determine how much artificial inflation resided in Twitter's stock price on each day of the Class Period. Dr. Feinstein reached this determination by measuring how much the stock price: (a) was inflated by the alleged misrepresentations and omissions; and (b) declined as a result of disclosures that corrected the alleged misrepresentations and omissions.

96.   Under the Plan, for each Class Period purchase of Twitter common stock that is properly documented, a "Recognized Loss Amount" will be calculated according to the formulas

described in the Notice. As set forth in greater detail in the Notice, the calculation of a Claimant's Recognized Loss Amount is based upon a formula that takes into account such information as: (a) when a Claimant's share was purchased and if and when it was sold; (b) the amount of the alleged artificial inflation per share; (c) the purchase price of the share; and (d) the purchase price minus the average closing price for Twitter common stock during the 90-day look-back period described in §21(D)(e)(1) of the Exchange Act. Because the alleged corrective disclosures reduced the artificial inflation in stages over the course of the Class Period, the damages suffered by any particular Claimant will vary.

97.   In sum, the Plan of Allocation represents a reliable method by which to weigh, in a fair and equitable manner, the claims of Authorized Claimants against one another for the purpose of making *pro rata* allocations of the Net Settlement Fund. To date, there have been no objections filed to the Plan of Allocation.

IV.   THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

98.   The successful prosecution of this Litigation required Plaintiffs' Counsel and their para-professionals to perform more than 73,400 hours of work and incur $3,570,056.21 in expenses, as detailed in the accompanying Robbins Geller Declaration, Motley Rice Declaration, the Declaration of Lesley E. Weaver in Support of Class Counsel's Motion for Attorneys' Fees and Litigation Expenses on Behalf of Bleichmar Fonti & Auld LLP ("Bleichmar Declaration"), and the Declaration of Jonathan Gardner Filed on Behalf of Labaton Sucharow LLP in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Labaton Declaration") filed herewith.

99.   Based on Class Counsel's extensive efforts on behalf of the Class, including those described herein, Class Counsel are applying for compensation from the Settlement Fund on a percentage basis in the amount of 22.5% of the Settlement Fund, and for $3,570,056.21 in litigation expenses, plus interest at the same rate and for the same time as that earned on the Settlement Fund. In addition, Class Representatives seek awards in the amount of $6,531.00 for NEIPF and $28,000.00 for KBC, pursuant to 15 U.S.C. §78u-4(a)(4), for reasonable costs and expenses directly relating to their representation of the Class.

100.   For the reasons set forth herein and in the Fee Memorandum, Class Counsel and Class Representatives respectfully submit that the application for fees and expenses described above should be granted.

A.   Application for Attorneys' Fees

1.   The Requested Fee of 22.5% of the Settlement Fund Is Fair and Reasonable

101.   For their extensive efforts on behalf of the Class, Class Counsel are applying for compensation from the Settlement Fund on a percentage basis. As set forth in the accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the Class in achieving the maximum recovery in the shortest amount of time required under the circumstances, is supported by public policy and the PSLRA, has been recognized as appropriate by the United States Supreme Court for cases of this nature, and represents the prevailing trend in the Ninth Circuit.

102.   The fact Class Counsel were able to obtain such an exceptional result for the Class supports the requested fee. As explained in the Fee Memorandum, the $809,500,000.00 cash Settlement represents approximately 24% to 30% of estimated recoverable damages, is 7.5 to 9 times the size of the median percentage recovery for cases settled with estimated damages of $1 billion or more in 2020 (*see* ECF 653-7 at 6 (finding median settlement recovery as a percentage of estimated damages was 3.2% in 2020)); and 18 to 23 times the median recovery of similar cases settled in 2019 (*see* ECF 653-6 at 6 (indicating median settlement recovery as a percentage of estimated damages was 1.3% in 2019)). It also greatly exceeds the median settlement as a percentage of estimated damages in the Ninth Circuit from 2012 through 2021 (4.9%) as well as in 2021 (4.2%) in cases involving over $1 billion in damages. *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2021 Review and Analysis* at 6, 19 (Cornerstone Research 2022), attached as hereto as Ex. A. Moreover, according to a 2022 report issued by ISS Securities Class Action Services, the Settlement is projected to rank as the second- largest settlement obtained in 2022, worldwide. *See also* Jeff Lubitz, *Twitter's $809.5 Million Settlement Close to the Goal Line*, at 3, 4 (ISS Securities Class Action Services 2022), attached hereto as Ex. B. A 22.5% fee is fair and

1 reasonable for attorneys' fees in common fund cases such as this, is below the benchmark rate of

2 25% that courts in the Ninth Circuit find presumptively reasonable, and is well within the range of

3 the percentages typically awarded in securities class actions in the Ninth Circuit. *See* Fee

4 Memorandum, §III.B., C.

2.   The Complexity and Risk Inherent in the Litigation

6   103.   The requested fee is also reasonable in light of the various risks Class Counsel faced

7 over the years, as well as the complexity of the Litigation.

8   104.   The Litigation was highly complex, both procedurally and factually, which rendered

9 the path to resolution long, time-consuming, extremely challenging, and fraught with risk. As set

10 forth above, Class Counsel vigorously prosecuted the Class's claims for five years against two top-

11 tier law firms with virtually unlimited resources to defend the case. In doing so, Class Counsel

12 engaged in substantial briefing of complex legal and factual issues on, *inter alia*, motions to dismiss,

13 to compel, for class certification, for reconsideration, and for summary judgment.

14   105.   Class Counsel conducted an extensive pre-filing investigation, filed a comprehensive

15 Complaint, engaged in complex document discovery and discovery disputes, deposed dozens of fact

16 and expert witnesses, and relocated nearly two dozen lawyers and professional staff to San Francisco

17 and Oakland, California to prepare for a six-week jury trial. The Litigation settled on the eve of trial,

18 only after Class Counsel overcame a relentless stream of complex legal and factual challenges.

19   106.   The requested fee is also reasonable considering the substantial risks Class Counsel

20 faced. Defendants were given various opportunities to chip away at, or defeat entirely, the Class's

21 claims, including at the pleadings stage in 2017 and the summary judgment stage in 2019. Class

22 certification also presented a challenge – one Class Counsel overcame despite Defendants' vigorous

23 opposition.

24   107.   Jury trials are notoriously unpredictable, and Class Counsel expected a bevy of risks

25 at trial. As discussed above, during the liability portion of the trial, Class Counsel expected

26 Defendants to present to the jury a variety of defenses, a lineup of friendly witnesses, and a squad of

27 highly qualified experts. Moreover, Class Counsel knew that Defendants had to defeat only a single

28 element of the Class's §10(b) claim to prevail. Further, even if Class Counsel prevailed in proving

1   fraud at trial, a jury could have awarded damages that paled in comparison to the damages Class

2   Counsel sought. And the trial itself was planned to be bifurcated – meaning even if Plaintiffs

3   succeeded at the "Phase One" (liability) portion of the trial and met their burdens with respect to

4   falsity, materiality, scienter, class-wide reliance under the "fraud on the market" presumption, loss

5   causation, the measure of per-share damages (if any), and control person liability, the case would

6   still be far from over. In this respect, during the "Phase Two" component of the case, Defendants

7   would have had the opportunity to challenge an individual Class Member's membership in the Class,

8   challenge the presumption of reliance as to each Class Member (including Plaintiffs), and challenge

9   the amount of damages due each Class Member. *See, e.g.*, ECF 499 at 1. Such a process would

10   have been lengthy, complex, and extremely costly. Finally, any favorable verdict could have been

11   reversed on appeal.

12   108.   In light of the uncertain nature and prolonged extent of the Litigation, the complexity

13   of the factual and legal issues presented at all stages of the Litigation, the substantial risks that Class

14   Counsel overcame at the pleading, class certification, fact discovery, expert discovery, and pretrial

15   phases of the Litigation, and the other factors described in the accompanying Fee Memorandum,

16   Class Counsel submit that the requested 22.5% fee is fair, reasonable, and should be approved.

                        **3.   The Contingent Nature of the Fee and the Financial Burden
17   Carried by Class Counsel**

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19   109.   Class Counsel prosecuted this Litigation on an "at-risk" contingent-fee basis. At the

20   outset in 2016, Class Counsel knew they were embarking on complex and expensive litigation with

21   no guarantee of compensation for the time, resources, and effort they poured into this case over its

22   five-plus-year lifespan. Accordingly, Class Counsel fully assumed the risk of an unsuccessful result

23   and has received no compensation to date for services rendered or the significant expenses incurred

24   in litigating this action.

25   110.   In undertaking the responsibility for prosecuting the Litigation, Class Counsel assured

26   that sufficient attorney resources were dedicated to advancing the Class's claims over the years, and

27   that sufficient funds were available to advance the expenses required to zealously pursue such

28

1   complex litigation. Class Counsel received no compensation and, in total, incurred $3,570,056.21 in

2   litigation expenses in prosecuting this Litigation for the benefit of the Class.

3   111.   Class Counsel also shouldered the risk that no recovery would be achieved. Class

4   Counsel know from experience that success in contingent-fee litigation is never assured, and that the

5   commencement of a securities class action in no way guarantees a recovery. Instead, it takes

6   diligence, commitment, and years of tireless work by skilled counsel to develop the facts, theories,

7   and evidence necessary to prevail on the merits. The Class's claims could have been dismissed at

8   the pleadings stage in 2017 or at summary judgment in 2019. Instead, their claims survived at each

9   step of the way as a result of Class Counsel's vigorous and unwavering efforts and litigation

10   expertise.

11   112.   Courts have repeatedly held it is in the public's interest to have experienced and able

12   counsel enforce the securities laws. Vigorous private enforcement of the federal securities laws can

13   occur only if private plaintiffs – particularly institutional investors like Class Representatives – can

14   obtain some parity in representation with that available to large corporate defendants. If this

15   important public policy is to be carried out, courts should award fees that will adequately

16   compensate private plaintiffs' counsel, while accounting for the enormous risks inherent in

17   prosecuting securities class actions on a contingent-fee basis to the degree of success shown here.

18   113.   Class Counsel recognizes that the Court's amended standing order of July 28, 2022,

19   states that it will "typically withhold between 10% to 25%" of attorneys' fees until "after the post

20   distribution accounting has been filed." If the Court holds back a significant portion of Class

21   Counsel's fee here, that portion will likely remain unpaid for some significant time, beyond the six

22   years that Class Counsel has already waited for compensation. Accordingly, as discussed herein,

23   given that this Litigation is anything but "typical," there is no compelling need here to defer any

24   portion of Class Counsel's fee, for a number of reasons. The payments to the Class in this case are

25   all cash, and are not contingent or variable – once approved, the Class will receive the entirety of the

26   Settlement Fund, outside of Class Counsel's expenses and fees and costs to administer the

27   Settlement. The approximate value of the claims is set by the Plan of Allocation and will not

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1   change. Nor is there any concern about the value to the Class. Judged by any measure, the value to

2   the Class presented by this Settlement far exceeds the norm in such cases.

3   114.   Nor is there any concern that Class Counsel will not faithfully fulfill its duties to the

4   Class throughout the distribution process. Class Counsel are comprised of professional firms with

5   long histories of specializing in securities fraud class actions and other complex civil litigation,

6   including the efficient and timely distribution of the proceeds of settlements and judgements. Each

7   firm is familiar with its obligations to discharge it duties to the Class until distribution is completed

8   and each firm – including the undersigned signatories to this declaration – have fulfilled those duties

9   repeatedly over the years in many cases, nearly all of which involved no fee deferral. Class Counsel

10 submits that this case will prove to be no exception and request the Court withhold no portion of the

11 attorneys' fees requested here.

4.   The Standing and Expertise of Class Counsel

13   115.   Class Counsel are among the most experienced and skilled securities litigation law

14 firms in the field, as illustrated by Class Counsel's firm biographies attached as Exhibit 13 to the

15 Robbins Geller Declaration, Exhibit 14 to the Motley Rice Declaration, Exhibit 10 to the Bleichmar

16 Declaration, and Exhibit 9 to the Labaton Declaration. Indeed, Class Counsel have consistently

17 obtained significant recoveries for defrauded investors, including (among many others) in: *In re*

18 *Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.) (recovering in excess of $7.2 billion for

19 investors); *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc., et al.*, No. 02-c-05893 (N.D. Ill.)

20 (largest securities class action settlement following a trial: $1.575 billion); *In re Am. Realty Cap.*

21 *Props., Inc.*, No. 15-cv-00040 (recovering $1.025 billion for investors); *In re Valeant Pharms. Int'l,*

22 *Inc. Sec. Litig.*, No. 3:15-cv-07658 (D.N.J.) (recovering $1.21 billion); *In re UnitedHealth Group,*

23 *Inc. PSLRA Litig.*, No. 06-cv-1691 (D. Minn.) (recovering over $925 million); *In re Cardinal*

24 *Health, Inc. Sec. Litig.*, No. C2-04-575 (S.D. Ohio) (recovering $600 million); *In re HealthSouth*

25 *Corp. Sec. Litig.*, No. cv-03-BE-1500-S (N.D. Ala.) (obtaining a combined recovery of $671

26 million); *In re Citigroup Inc. Sec. Litig.*, No. 07 civ. 9901 (SHS) (DCF) (S.D.N.Y.) ($590 million

27 settlement); *In re Barrick Gold Sec. Litig.*, No. 1:13-cv-03851-RMB (S.D.N.Y.) ($140 million

28 settlement); *Alaska Elec. Pension Fund v. Pharmacia Corp.*, No. 03-1519 (D.N.J.) ($164 million

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settlement); *Bennett v. Sprint Nextel Corp.*, No. 2:09-cv- 02122-EFM-KMH (D. Kan.) ($131 million settlement); *Minneapolis Firefighters' Relief Ass'n v. Medtronic, Inc.*, No. 08-6324 (PAM/AJB) (D. Minn.) ($85 million settlement).

116.   The quality of work Class Counsel provided in attaining the Settlement should also be evaluated by considering the quality of opposing counsel in this Litigation. Over the course of the Litigation, Defendants were well represented by teams of experienced attorneys from the well-regarded and prestigious law firms of Cooley LLP and Simpson Thatcher & Bartlett LLP. Faced with knowledgeable, experienced, and zealous opposing counsel, Class Counsel were nonetheless able to develop a strong case that proceeded to the eve of trial and persuaded Defendants to settle the action for $809,500,000.00.

5.   The Class's Reaction to the Settlement

117.   The Notice advises the Class that Class Counsel intend to request an award of attorneys' fees in an amount not to exceed of 22.5% of the Settlement Amount, for payment of litigation expenses reasonably incurred not to exceed $4,000,000, plus interest, and for awards to Class Representatives (pursuant to 15 U.S.C. §78u-4(a)(4)) not to exceed $40,000. The Notice provides Class Members until October 27, 2022, to submit objections to Class Counsel's fee and expense application.

118.   While the time to object to the fee and expense application has not passed, it is our understanding that to date, no Class Members have objected to the fee amount.

B.   Application for Litigation Expenses, Charges and Costs

119.   Class Counsel request $3,570,056.21 for expenses, charges and costs reasonably and necessarily incurred in prosecuting the Class's claims for the past five years. Class Counsel respectfully submit that this amount is appropriate, fair, and reasonable and should be approved.

120.   Since 2016, Class Counsel have known they may never recover any of the expenses they incurred in prosecuting this case. Class Counsel also understood that, even assuming the case was ultimately successful, an award of expenses would not compensate them for the lost use of the funds they had dedicated to this Litigation. Accordingly, Class Counsel were motivated to, and did,

1   take steps to minimize expenses where practicable without jeopardizing the vigorous and efficient

2   prosecution of this Litigation.

3   121.   As set forth in the Robbins Geller Declaration, the Motley Rice Declaration, the

4   Bleichmar Declaration, and the Labaton Declaration, the expenses, charges and costs incurred were

5   necessary and appropriate in light of the complex nature of the action and were associated with,

6   among other things, hiring experts and consultants, service of process, reporting services for

7   depositions, travel, online legal and factual research, trial preparation, and mediation.

8   122.   Class Representatives also seek awards in the amount of $6,531.00 for NEIPF and

9    $28,000 for KBC, pursuant to 15 U.S.C. §78u-4(a)(4), for their time and expenses directly relating to

10   their representation of the Class. In addition to monitoring the developments in the Litigation, Class

11   Representatives dedicated time and resources to gathering documents and information responsive to

12   Defendants' discovery requests, prepared representatives to sit for depositions to obtain class

13   certification, and participated in mediations and other settlement negotiations. *See* NEIPF Decl. and

14   KBC Decl., submitted herewith.

15   **V.   MISCELLANEOUS EXHIBITS**

16   123.   Attached hereto as Ex. C is a true and correct copy of Janeen McIntosh and Svetlana

17   Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review* (NERA Jan.

18   25, 2022).

19   124.   Attached hereto as Ex. G is the Expert Declaration of Professor William B.

20   Rubenstein.

21   **VI.   CONCLUSION**

22   125.   In light of the $809,500,000.00 Settlement obtained, the substantial risks Class

23   Counsel faced, the exceptional quality of Class Counsel's work, the contingent nature of the

24   requested fee, and the substantial complexity of the case, as described above and in the

25   accompanying memoranda in support of their motions, Class Representatives and Class Counsel

26   respectfully submit that the Court should: (a) approve the Settlement and Plan of Allocation as fair,

27   reasonable, and adequate; (b) approve Class Counsel's application for an award of attorneys' fees

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1 and expenses; and (c) approve the awards to Class Representatives for their time and expenses

2 pursuant to 15 U.S.C. §78u-4(a)(4).

3 * * *

4 *I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th*

5 *day of October, 2022, at San Diego, California.*

6

7 _____
   DANIEL S. DROSMAN

8

9 *I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th*

   day of October, 2022, at Mount Pleasant, South Carolina.

10

11 _____
    LANCE V. OLIVER

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 13, 2022, I authorized the

electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will

send notification of such filing to the email addresses on the attached Electronic Mail Notice List,

and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service

to the non-CM/ECF participants indicated on the attached Manual Notice List.

<div style="margin-left:40%">

s/ DANIEL S. DROSMAN
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Mailing Information for a Case 4:16-cv-05314-JST In re Twitter Inc. Securities Litigation

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- (No manual recipients)