



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

ATUL VERMA, derivatively on behalf	)	
of nominal defendant, TWITTER, INC.,	)	Civil Action No. 2018-0509-TMR
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
RICHARD COSTOLO, ANTHONY	)	
NOTO, JACK DORSEY, MARJORIE	)	
SCARDINO, DAVID ROSENBLATT,	)	
EVAN WILLIAMS, PETER CURRIE,	)	RWDNKE'XGTUKQP
PETER FENTON, and PETER	)	JULY 17, 2018
CHERNIN,	)	
	)	
Defendants,	)	
	)	
<i>and</i>	)	
	)	
TWITTER, INC.,	)	
	)	
Nominal Defendant	)	
	)	

**VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT FOR BREACH OF FIDUCIARY DUTY AND UNJUST ENRICHMENT**

Plaintiff Atul Verma brings this derivative complaint for the benefit of nominal defendant, Twitter, Inc. (“Twitter” or the “Company”), against current and former members of its Board of Directors (the “Board”) and executive officers seeking to remedy defendants’ breaches of fiduciary duty and unjust enrichment. The allegations herein are derived from publicly available information and

documents produced in response to a demand made by plaintiff on Twitter to produce books and records pursuant to Section 220 of the Delaware General Corporation Law. All facts relating to plaintiff and his own acts are pled on personal knowledge, while other facts are pled upon information and belief.

### **NATURE AND SUMMARY OF THE ACTION**

1. Twitter is a social media company. Twitter measures its financial health and growth prospects by tracking three elements of its business: (i) the size of its user base, (ii) the amount its users engage with the Twitter platform, referred to as “user engagement,” and (iii) the Company’s ability to turn user engagement into advertising revenue. This action arises from management’s public misrepresentation of the first two elements, each of which are critical to Twitter’s core business.

2. Growth in user base and user engagement are critically important to Twitter’s financial prospects. Twitter earns money by selling advertising. The greater Twitter’s user base, and the higher the level of user engagement, the more ads will be seen, increasing Twitter’s revenue.

3. Twitter measures the size of its user base by a metric called “monthly active users” (“MAU”). An MAU is a user who logged into Twitter during a given month.

4. From its initial public offering in 2013 through the fourth quarter of 2014, Twitter reported user engagement results by a metric called “timeline views.” When a user logs into Twitter, the user is presented with a timeline showing recent tweets by other users. The timeline views metric was the total number of timelines requested and delivered when users visited Twitter’s platform, refreshed the website, or viewed search results while logged onto the Twitter platform.

5. In November 2014, Twitter’s management held an analyst day at which defendants presented their new strategic plan for Twitter’s growth. At the event, Twitter’s then-Chief Executive Officer, defendant Richard Costolo (“Costolo”) and its Chief Financial Officer, defendant Anthony Noto (“Noto”), projected large MAU growth over the next few years, which they claimed would increase Twitter’s revenue by \$4.6 billion.

6. Twitter, through Costolo and Noto, also told investors that management had decided it would no longer report user engagement in timeline views. They told investors that management evaluated user engagement by looking at several metrics, and that the Company did not rely upon one primary user engagement metric. As a result, they claimed that reporting specific data on user engagement would be confusing.

7. Nevertheless, Costolo and Noto told investors that growing user engagement was fundamental to their corporate strategy. They said that increasing the ratio of “daily active users” (“DAU”) to monthly active users (“DAU/MAU”) was key to the Company’s success and that a three percent increase in the DAU/MAU ratio would yield additional revenue of \$500 million. DAU and DAU/MAU were not publicly reported.

8. Between February 2015 and July 28, 2015, defendants repeatedly told investors that user engagement was a key metric and central to Twitter’s success, but they did not disclose specific user engagement data. Instead, they issued earnings releases and conducted earnings calls during which they claimed that Twitter was on track to achieve the goals they had set at Analyst Day: MAU was experiencing strong growth, and user engagement results were also strong.

9. Unbeknownst to the public, Twitter’s public disclosures were not truthful and severely misrepresented the Company’s results and growth prospects:

10. First, there was in fact a primary user engagement metric relied on by management: DAU. As demonstrated by subsequent disclosures and the books and record production obtained by plaintiff, [REDACTED]

[REDACTED]

[REDACTED]

11. Second, DAU and DAU/MAU were trending negatively and had been for over a year. [REDACTED]

[REDACTED] And, the DAU/MAU ratio Noto disclosed at the Company's Analyst Day, the only time Twitter had publicly disclosed that metric, was false. The Board knew this fact directly because, [REDACTED]

12. Third, the Board knew that the Company's public statements about MAU growth were inaccurate. [REDACTED]

13. Further demonstrating its knowledge of Twitter's undisclosed negative user engagement trend and stagnant MAU growth, the Board [REDACTED]

[REDACTED] The Chief Financial Officer, Noto, was permitted to keep nearly \$80 million equity compensation, the majority of which was not vested when he was misrepresenting Twitter's results and when the Board fired Costolo.

14. On July 28, 2015, the Company publicly admitted what the Board had known for months: that MAU growth was stagnant with no growth expected for a

considerable period, and that user engagement was declining. Months later, Noto admitted that DAU was the primary user engagement metric relied on by management.

15. On September 16, 2016, a securities class action was filed in the United States District Court for the Northern District of California alleging that the Company, Costolo, and Noto had committed securities fraud in connection with their concealment of the DAU metric, their misrepresentation of user engagement trends, and their concealment of negative MAU trends, among other things, *Shenwick v. Twitter, Inc., et al.*, C.A. No. 16-cv-05314-JST (N.D. Cal.) (the “Securities Class Action”).

16. On October 16, 2017, U.S. District Judge Jon S. Tigar issued an order denying the defendants’ motions to dismiss the Securities Class Action with respect to most of the claims. The Securities Class Action is currently in discovery and a hearing on plaintiffs’ motion for class certification was recently held.

17. On November 17, 2017, plaintiff served a books and records demand on the Company seeking documents related to, among other things, Board review of MAU and DAU. After negotiations, the Company produced certain, highly redacted documents from the class period in the Securities Class Action, between February

25, 2015 and July 28, 2015. The Company made its final production on June 8, 2018 and informed plaintiff that it would not be producing additional documents.

18. The documents produced form the basis of the allegations herein.

[REDACTED]

19. Plaintiff has not made a demand on Twitter's Board because doing so would have been a futile and useless act. Five of Twitter's nine current directors could not disinterestedly and independently respond to a demand. Four current Board members are defendants in this action and face a substantial likelihood of liability because they knew Twitter's public disclosures regarding its most critical operating metrics were misleading but permitted their continued issuance. An additional director is reliant on the goodwill of his fellow directors for his position and his access to over six million dollars in unvested equity compensation which he

would lose if his employment ceased. As a result, and for the additional reasons set forth herein, demand is excused.

## **THE PARTIES**

### **A. Plaintiff**

20. Plaintiff is, and was at all times relevant hereto, an owner and holder of Twitter common stock.

### **B. Defendants**

21. Nominal defendant Twitter is a Delaware corporation maintaining its principal executive offices at 1355 Market Street in San Francisco, California. The Company operates a popular social media platform. According to its public filings, Twitter is “the best place to see what’s happening and what people are talking about. Every day, instances of breaking news, entertainment, sports, politics, big events and everyday interests happen first on Twitter.” Twitter’s common shares trade on the New York Stock Exchange under the symbol “TWTR.”

22. Defendant Costolo served as Twitter’s Chief Executive Officer from October 2010 to July 2015, its Chief Operating Officer from September 2009 to October 2010, and a director from September 2009 to September 2015. Costolo is a defendant in the Securities Class Action.



23. Defendant Noto has served as Chief Financial Officer since August 2014, and as Chief Operating Officer since November 2016. Noto is a defendant in the Securities Class Action.

24. Defendant Jack Dorsey (“Dorsey”) is one of Twitter’s founders and has served as Twitter’s Chief Executive Officer since July 2015 and a director since 2007. Dorsey previously served as Twitter’s Chief Executive Officer from May 2007 to October 2008 and Chairman of the Board from October 2008 to September 2015.

25. Defendant Marjorie Scardino (“Scardino”) has served as a director of Twitter since December 2013. At relevant times, Scardino was a member of the Audit Committee.

26. Defendant David Rosenblatt (“Rosenblatt”) has served as a director of Twitter since December 2010. At relevant times, Rosenblatt was a member of the Nominating and Governance Committee and the Compensation Committee.

27. Defendant Evan Williams (“Williams”) is one of Twitter’s founders. He served as a director of Twitter since May 2007 and was the Company’s President and Chief Executive Officer from October 2008 to October 2010, and its Chief Product Officer from February 2008 to October 2008.

28. Defendant Peter Fenton (“Fenton”) was a director of Twitter from February 2009 to May 2017. While on the Board, Fenton was a member of the Audit Committee and the Chair of the Compensation Committee.

29. Defendant Peter Chernin (“Chernin”) was a director of Twitter from November 2012 to May 2016. Chernin served as Chairman of Twitter’s Nominating and Corporate Governance Committee from May 1, 2015 until he left the Board.

30. Defendant Peter Currie (“Currie”) was a director of Twitter from November 2010 to May 2016. Currie was the Chair of the Audit Committee from until he left the Board.

31. The defendants referenced in paragraph twenty-two through thirty are referred to herein as the “Individual Defendants.”

**C. Non-Defendant Directors**

32. Omid Kordestani (“Kordestani”) has served as Twitter’s Executive Chairman since October 2015.

33. Martha Lane Fox has served as a director of Twitter since April 2016.

34. Patrick Pichette has served as a director of Twitter since December 2017.

35. Bret Taylor has served as a director of Twitter since July 2016.

36. Debra L. Lee has served as a director of Twitter since May 2016.

## **DEFENDANTS' DUTIES**

37. By reason of their positions as officers or directors of Twitter, or both, and because of their ability to control its business and corporate affairs, the Individual Defendants owed Twitter and its stockholders fiduciary obligations of good faith, loyalty, candor, and care. The Individual Defendants were, and are, required to act in furtherance of the best interests of Twitter and its stockholders to benefit all stockholders equally and not in furtherance of their personal interest or benefit.

38. The Individual Defendants, because of their positions of control and authority as directors and officers of Twitter, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public statements issued by the Company. Because of their advisory, executive, managerial, and directorial positions with Twitter, each Individual Defendant had knowledge of material non-public information regarding the Company.

39. By virtue of such duties, the Individual Defendants were required to, among other things:

- a. Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

- b. Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority;
- c. Exercise good faith to ensure that the Company's communications with the public and with stockholders are made with due candor in a timely and complete fashion; and
- d. When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

40. At times relevant hereto, Twitter reported two principal user metrics to measure its financial health and growth prospects: (i) MAU; and (ii) user engagement. Although the two metrics are interrelated, they measure different user characteristics and were both considered key metrics by the Company and heavily scrutinized by the public and management alike.

41. Between going public in 2013 and the fourth quarter of 2014, Twitter's publicly reported user engagement metric was "timeline views," which, according to Company representatives were "kind of a proxy for the amount of content our users consume."

42. Information about Twitter’s user engagement is fundamental to understanding its MAU growth potential. Each month, on social media platforms like Twitter, new users sign up for the service and some existing users quit the service. User attrition is referred to as “churn.” The net of new users and churn is reflected in MAU growth.

43. As Twitter became larger and more established, new users became harder to find and MAU growth slowed. User engagement helps increase user retention and reduce churn, which drives MAU growth. Stagnant user engagement growth would eventually cause MAU growth to stall.

44. Additionally, information about user engagement is essential to understanding Twitter’s revenue potential. Twitter’s main source of income is advertising. The more often users are on the platform viewing advertisements, the more likely they are to engage with the advertisements and the higher Twitter’s advertising revenue. Twitter’s Form S-1 Registration Statement filed with the Securities and Exchange Commission on October 3, 2013 (the “Registration Statement”), signed by defendants Costolo, Dorsey, Chernin, Currie, Fenton, Rosenblatt, and Williams stated: “User growth trends in the number of MAUs [and] user engagement trends . . . are key factors that affect our revenue.”

45. Due to the interaction between MAU and user engagement, neither metric alone can provide a complete picture of Twitter's business. For example, if Twitter had enormous MAU growth but each new user only logged in once per month and did not meaningfully engage with the platform, the Company would sell fewer ads and generally have less opportunities to monetize the new users. Twitter's Registration Statement confirmed as much, stating: "To the extent our user growth rate slows, our success will become increasingly dependent on our ability to increase levels of user engagement."

46. For these reasons, MAU alone cannot provide an accurate picture of Twitter's financial health without the related user engagement data. MAU only tells investors the total growth in Twitter's user base, it does not provide meaningful insight regarding the frequency of users' interaction with the platform. MAU therefore does not by itself provide sufficient data to measure advertising opportunity and, by extension, revenue. As explained by tech research firm Jackdaw Research:

Monthly usage metrics [MAUs] indicate very little about true engagement on a platform, because using an app every 30 days isn't that much different from never using it at all. For social and communication apps, the key is daily usage because it tells you how people are really engaging.

47. As a result, Twitter’s public disclosures consistently disclosed that user growth and user engagement were the two indicators most important to its financial health. For example, the Registration Statement disclosed that “Growth in our user base and user engagement is a fundamental driver to the growth of our business . . . ,” “[t]he size of our user base and our users’ level of engagement are critical to our success . . .” and:

User growth trends reflected in the number of MAUs, user engagement trends reflected in timeline views and timeline views per MAU and monetization trends reflected in advertising revenue per timeline view are key factors that affect our revenue. As our user base and the level of engagement of our users grow, we believe the potential to increase our revenue grows.

48. Confirming the relationship between user base and user engagement, Twitter’s peers in the social media space, including Facebook, LinkedIn, Snapchat, Instagram, Medium, Pandora, and Yelp each consistently report both total users and user engagement.

#### **Analyst Day in November 2014**

49. During the second and third quarters of 2014, the Individual Defendants caused Twitter to disclose a trend of declining user engagement as measured by timeline views. In the quarterly earnings calls announcing the Company’s results for both quarters, the Individual Defendants attempted to downplay the reduced user engagement by claiming that the “predominant driver” of the declines was

“changes” to Twitter’s platform that “allow[ed] users to more efficiently access our content.” According to the Individual Defendants, the product changes that reduced timeline views would also lead to more satisfied users, which would cause MAU and user engagement to increase.

50. In November 2014, the Individual Defendants caused Twitter to hold an “Analyst Day” event promoting their vision to reinvigorate Twitter’s user growth. Twitter refused to produce to plaintiff any Board materials prior to February 2015, accordingly plaintiff was unable to view the Board minutes for the meeting at which the Board reviewed the Analyst Day presentation before issuance. [REDACTED]

[REDACTED]

[REDACTED] The subject matter of Analyst Day was a new growth strategy and the decision to cease reporting timeline views, both of which the Board was certainly aware of and approved. [REDACTED]

[REDACTED]

[REDACTED] Finally, it is standard practice for boards of directors to review similar “road show” presentations prior to their issuance. Accordingly, plaintiff infers that the Board reviewed the Analyst Day presentation prior to its issuance.



51. At Analyst Day, defendants Noto and Costolo announced the Individual Defendants' growth plan by which they claimed Twitter would double its MAU from 284 million MAU to 550 million MAU in the "intermediate term" and eventually reach one billion users. Costolo and Noto presented three MAU growth projections at Analyst Day, with the most conservative projecting 15% annual MAU growth and over 500 million MAUs by 2018.

52. Defendant Noto explained that Twitter would achieve this MAU goal by increasing user engagement: "building an engaging experience . . . to have those users be engaged [and] stay engaged." Noto stated that by "driv[ing] engagement," users could be "monetized," resulting in a projected incremental increase in revenue of \$4.6 billion. This goal was achievable only if Twitter experience strong growth in user engagement.

53. Costolo and Noto emphasized the importance user engagement generally, and, although they disclosed that the Individual Defendants had decided Twitter would cease reporting timeline views. Costolo and Noto alluded repeatedly to DAU as the driver of the Company's growth. They claimed that Twitter was setting the operational goal of "building the world's largest daily audience." About this goal, Noto stated that "aspir[ing] for anything less than daily would not be

putting ourselves in a position to maximize value for you.” For example, they presented to investors the following slide:


**COMPONENTS OF TWITTER'S STRATEGY**

**OBJECTIVE**

- Largest daily audience in the world
- Be one of the top revenue generating Internet companies in the world

**SCOPE**

**COMPETITIVE ADVANTAGES**



54. Another slide Noto and Costolo presented highlighted user engagement, and the DAU/MAU ratio in particular, as a “major growth driver,” and falsely claimed that the Company’s then-current DAU/MAU ratio in its top twenty markets was 48%:

## MAJOR GROWTH DRIVERS


 **284M**  
Monthly Active Users


 **1.3%**  
Ad Load

 **48%**  
Top 20 Markets DAU/MAU  
Ratio

 **~60K**  
Number of Advertisers

 **500M+**  
Logged Out Visitors<sup>1</sup>

 **45%**  
Percent User Base Covered  
by Self-Serve Ad Platform

 **~185B+**  
Quarterly Impressions  
through Syndication<sup>2</sup>

 **60 Countries**  
Sales Presence



All metrics are as of Q3 2014 except Top 20 DAU/MAU markets, which are based on 2014YTD averages

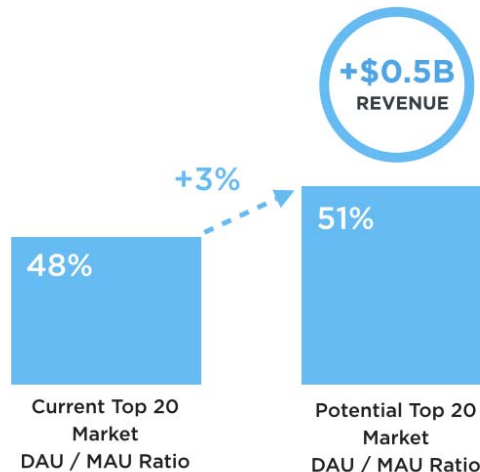
<sup>1</sup> Estimate based on internal company data and Google Analytics

<sup>2</sup> Q3 2014 impression estimates based on Twitter internal data and data provided by various syndication partners

55. The Individual Defendants stated that the DAU/MAU ratio was a material component of achieving annual revenue goals. In another slide, Noto and Costolo tied a projected increase of \$500 million in revenue to a projected 3% increase in the DAU/MAU ratio in Twitter's top twenty markets from 48% to 51%:

## FREQUENCY

Increasing frequency of use as measured by DAU/MAU may increase our Revenue by **\$0.5B<sup>1</sup>**



<sup>1</sup> Assumes 560M MAUs and 5% Ad Load at same CPE and CTR as in Q3 2014



The purpose of this presentation is to share with you our thinking on potential opportunities, markets and users. We put numbers next to these outlooks to illustrate what we believe we can achieve if we are able to execute successfully. This presentation should not be treated as a forecast, projection or financial guidance. These are structural scenarios. There is no timeline for these opportunities and we cannot assure you that we will be able to accomplish any of these opportunities, plans or metrics, all of which are subject to risks and uncertainties, known and unknown, including, but not limited to risks discussed in our Annual Report on Form 10-K and other SEC filings.

\* \* \*

## SUMMARY OF GROWTH OPPORTUNITIES

	Current	Opportunity	Annualized Revenue	Key Drivers
<b>Ad Load Factor</b>	1.3%	5.0%	\$5.0B	<ul style="list-style-type: none"> <li>Innovative Ad Formats</li> <li>Grow Advertiser Base</li> <li>Grow SMB Advertisers</li> <li>Grow Global Sales Presence</li> </ul>
<b>Monthly Active Users</b>	284M	560M	+ \$4.6B	<ul style="list-style-type: none"> <li>Industry Growth</li> <li>Product Innovations</li> </ul>
<b>DAU/MAU Ratio</b>	48%	51%	+ \$0.5B	<ul style="list-style-type: none"> <li>Increase Frequency of Use in all Markets, with Particular Focus on Top 20 Markets</li> </ul>
<b>Logged Out Visitors</b>		500M+ Visitors	+ \$1.3B	<ul style="list-style-type: none"> <li>Create Unique Logged Out Experience</li> </ul>
<b>Total Potential Opportunity:</b>			<b>\$11.4B</b>	

*This table is not our long-term model or forecast.* The purpose of this presentation is to share with you our thinking on potential opportunities, markets and users. Potential opportunities in ad load, monthly active users and the DAU/MAU ratios assume the same CPE and CTR as in Q3 2014. Monthly active users and the DAU/MAU ratio also assume a 5% ad load. We put numbers next to these outlooks to illustrate what we believe we can achieve if we are able to execute successfully. This presentation should not be treated as a forecast, projection or financial guidance. These are structural scenarios. There is no timeline for these opportunities and we cannot assure you that we will be able to accomplish any of these opportunities, plans or metrics, all of which are subject to risks and uncertainties, known and unknown, including, but not limited to risks discussed in our Annual Report on Form 10-K and other SEC filings.

56. The foregoing representations were important to analysts and investors trying to understand the Individual Defendants' new strategy. For example, an analyst from Janney Capital Markets wrote: "TWTR set some ambitious goals as it aims to have the largest DAU in [the] world with over \$14 billion of annual revenue." An analyst from Sterne Agee wrote, "DAU as a % of MAU is currently 48%, but management thinks this can increase to 51% as users become more engaged with the platform, particularly in the top 20 markets. This would yield an additional \$500M in revenue."

#### **Fourth Quarter 2014 Results**

57. On February 5, 2015, the Individual Defendants announced Twitter's results for the fourth quarter of 2014. In the press release reporting the results, defendants blamed lower than expected MAU growth on "changes in third party integrations." The press release stated that timeline views reached over 182 billion in the quarter, an increase of 23% year-over-year, and that advertising per thousand timeline views reached \$2.37 in the further quarter, an increase of 60% year-over-year. The press release also quoted Costolo stating:

*We closed out the year with our business advancing at a great pace. Revenue growth accelerated again for the full year, and we had record quarterly profits on an adjusted EBITDA basis... In addition, the trend thus far in Q1 leads us to believe that the absolute number of net users*

*added in Q1 will be similar to what we saw during the first three quarters of 2014.*

(emphasis added).

58. For the first time since Twitter went public, and after two quarters in which they reported declining user engagement in the form of timeline views, the Individual Defendants did not report timeline views. Even though they continued to emphasize the importance of user engagement to Twitter's prospects, the Individual Defendants did not identify a new metric by which Twitter would report user engagement data.

59. Also on February 5, 2015, the Individual Defendants conducted a conference call with analysts and investors to discuss the results. During the call, Noto attempted to explain why defendants would no longer report Twitter's timeline views:

In terms of engagement metrics, as I mentioned, we're no longer going to provide the metric of timeline view. And the reason for that is it's really a measurement that doesn't reflect the initiatives that we're doing. In fact, if anything, we're taking specific initiatives and product changes that will hurt timeline view.

60. Noto also claimed that management did not use one primary user engagement metric:

And so that's why we decided to eliminate the timeline view metric, given that we have specific product changes that will hurt that metric. More broadly, as we think about engagement, *there are a number of*

*different ways that we measure engagement – there’s no one perfect way. When it comes to advertising, it’s going to be click-through rate. And it’s actually different by each format. A mobile app download click-through rate is very different than a regular Promoted Tweet that could be either re-tweeted or favorited as a measurement of payment.*

*And so as we get to a point where we have a metric that’s going to really reflect what we’re trying to do, we’ll share that with you. But, at this point, there’s a number of them that we look at, and no one metric to share.*

(emphasis added).

61. Costolo acknowledged lower than projected MAU growth in the end of 2014, but misleadingly told investors there were signs of a rebound in early 2015:

We ended the quarter with 288 million monthly active users. We added 4 million users this quarter and 47 million across 2014. There are quarter-specific factors that impacted our net adds in Q4, which includes seasonality and a couple issues related to the launch of iOS 8. We’ll discuss that in more detail later in this call. *Importantly, I want to highlight that the user numbers we saw in January of this year indicate that our MAU trend has already turned around and our Q1 trend is likely to be back in the range of absolute net adds that we saw during the first three quarters of 2014.*

(emphasis added).

62. When an analyst asked Costolo about the supposed improvement in MAU growth, Costolo reiterated his previous statement and said, “*the MAU trend has already turned around,*” “we’re in a great place there,” and added that the supposed first quarter 2015 improvement was due to “a combination of seasonality

or return to organic growth and the set of product initiatives we've created to drive growth." (Emphasis added).

63. The public received Costolo's message and an analyst from Morgan Stanley opined that the takeaway was "reduced MAU growth targets but still [] very strong growth for the remainder of 2015."

**February 2015 Board Meetings**

64. On February 24, 2015, the Audit Committee conducted a regular meeting. Present at the meeting were defendants Curie, Fenton, and Scardino. At the meeting, the Audit Committee members reviewed disclosures in Twitter's forthcoming Form 10-K for the 2014 fiscal year. The Audit Committee reviewed the entire Form 10-K, and, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

65. Also on February 24, 2015, the Compensation Committee conducted a regular meeting. Attending the meeting were director defendants Fenton, Chernin and Rosenblatt. Defendant Noto was also present. [REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

66. On February 26, 2015, Twitter's Board conducted a regular meeting. Present at the meeting were defendants Costolo, Currie, Dorsey, Fenton, Rosenblatt, Williams, Scardino, Chernin, and Noto.<sup>1</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>1</sup> In the copy of meeting minutes produced to plaintiff, the names of sixteen non-director attendees are redacted. [REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

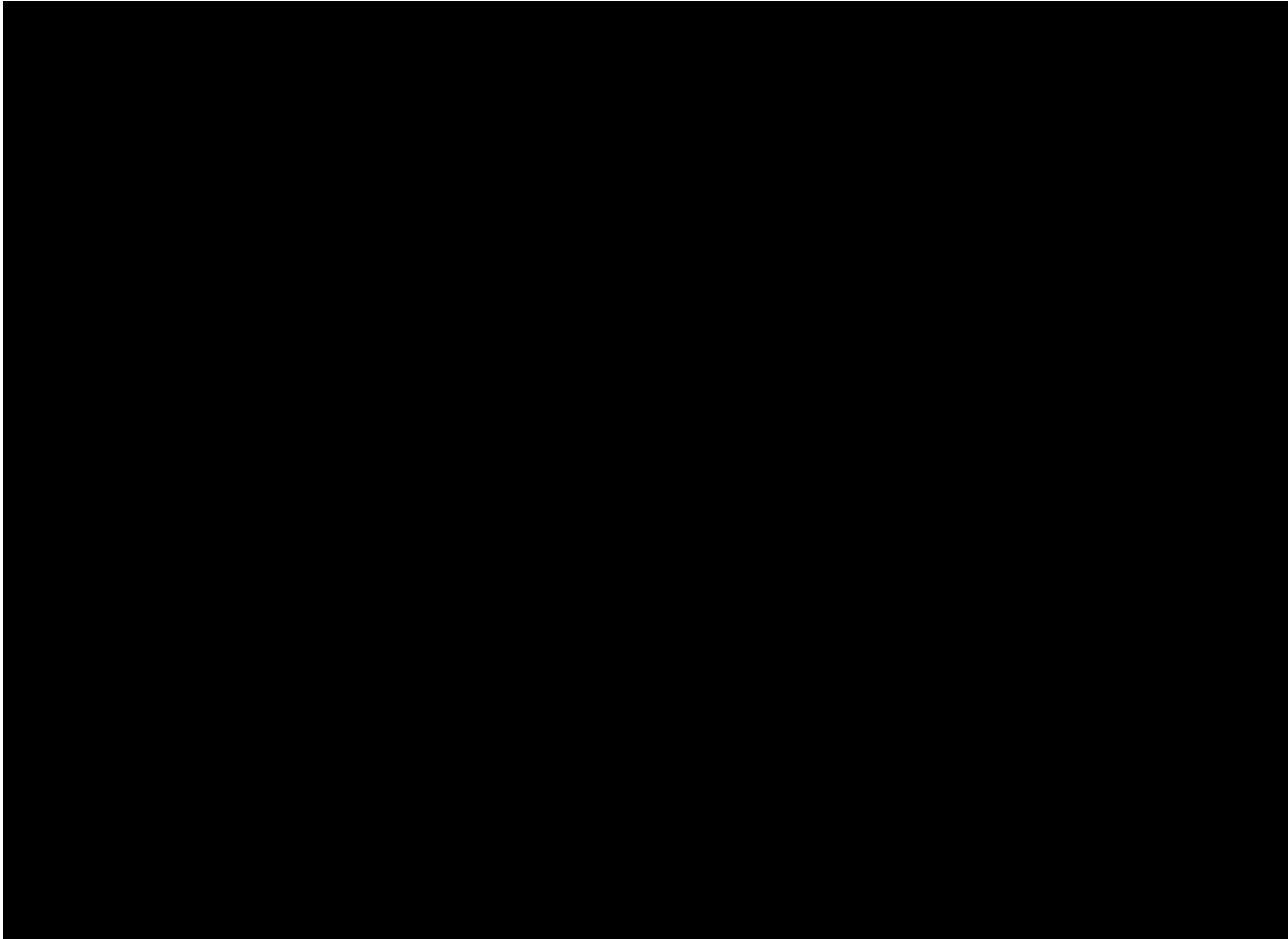
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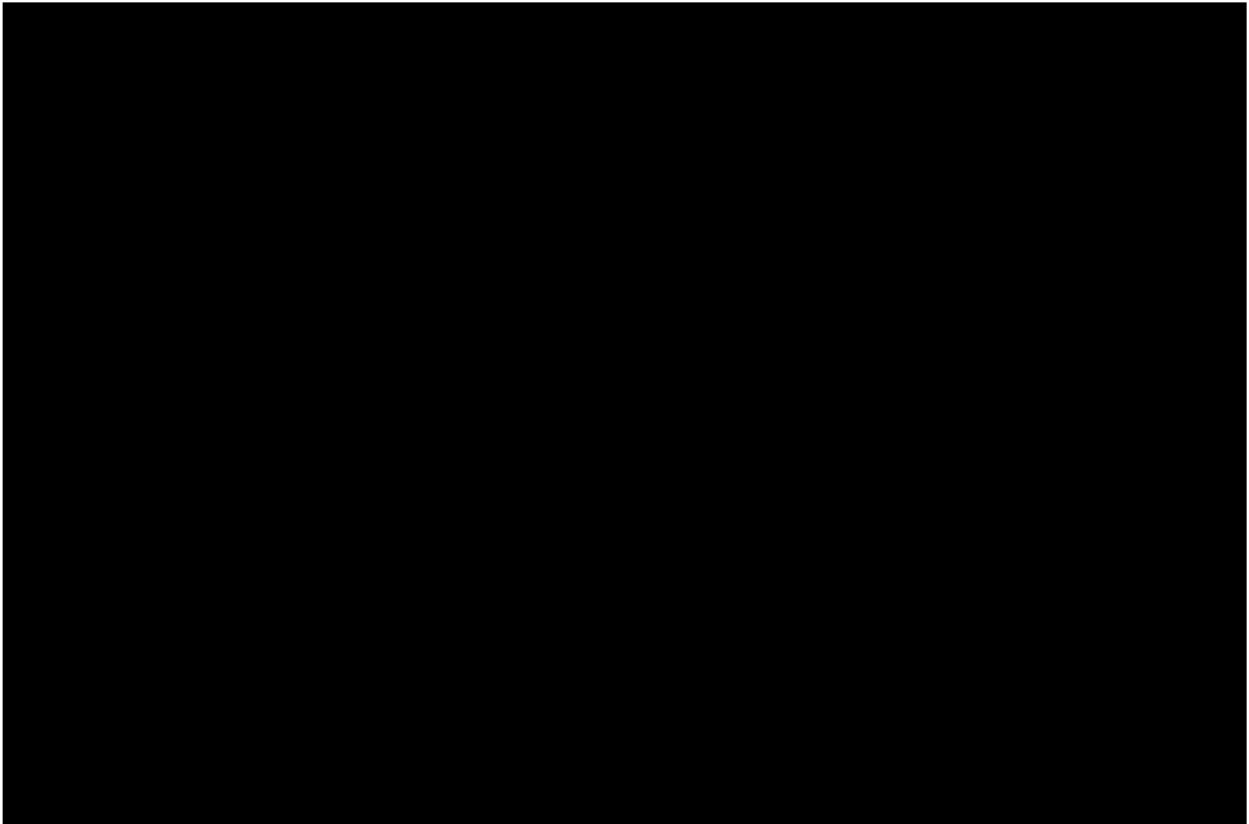
69.

[Redacted]

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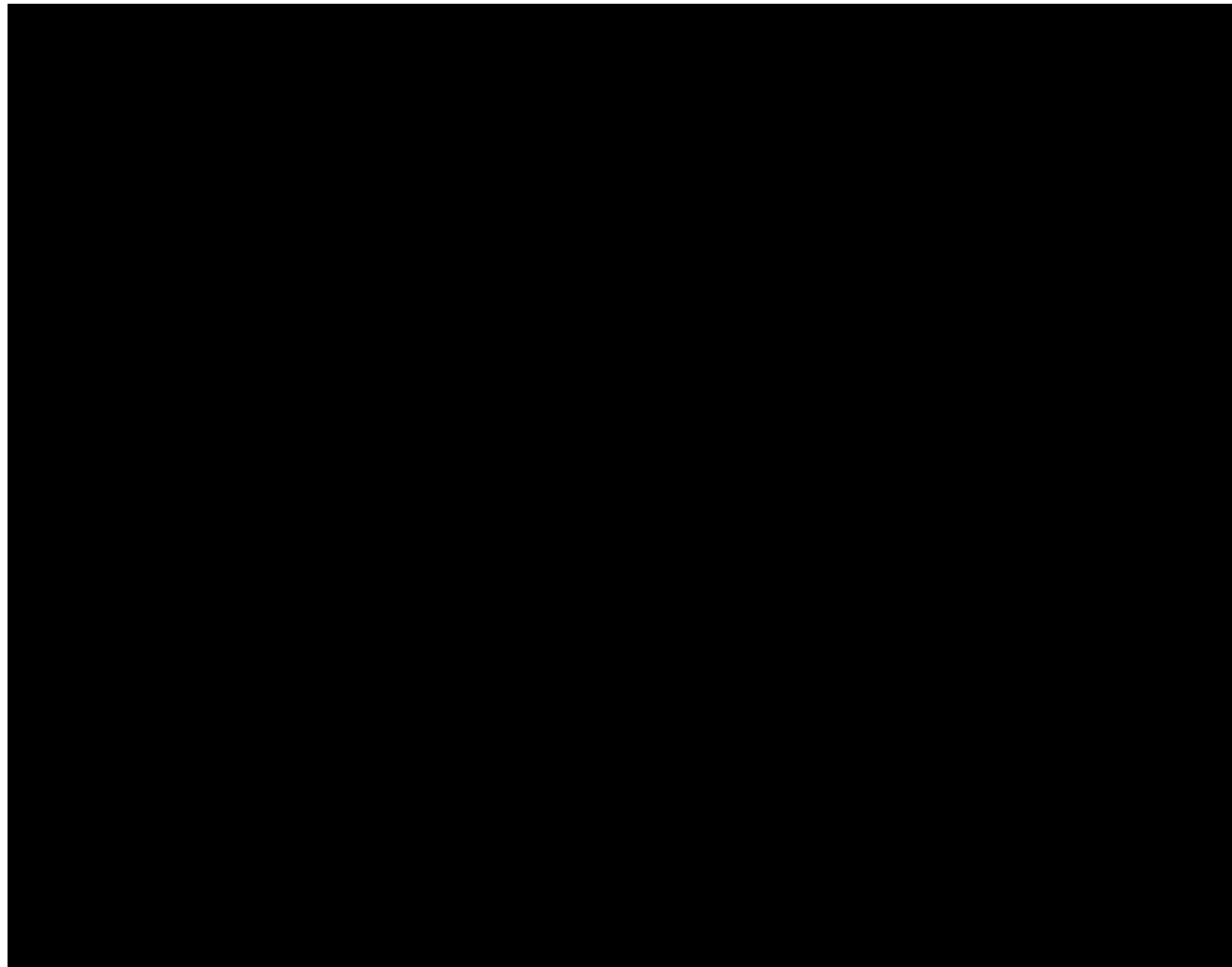
[Redacted]

[Redacted]



70.





71. Defendants Costolo, Currie, Dorsey, Fenton, Rosenblatt, Williams, Scardino, Chernin, and Noto therefore knew the following by February 26, 2015, if not before:

- User engagement was material information and was a critical operating metric that was closely tracked internally.
- DAU was the primary user engagement metric tracked internally at Twitter since the first quarter of 2013, and the Board and management relied on DAU to understand the Company's financial prospects and condition.

- Defendant Noto’s public statements on the fourth quarter 2014 earnings call that “there are a number of different ways that we measure [user] engagement,” and there was “no one [user engagement] metric to share” were misleading [REDACTED]
- Contrary to the public statements issued earlier in February on release of the fourth quarter 2014 earnings and during Investor’s Day in November 2014, user engagement had been trending negatively since 2013, [REDACTED]
- Costolo’s and Noto’s publicly statements regarding DAU/MAU at Investor Day in 2014 misrepresented the Company’s results. [REDACTED] likewise, Noto’s statement that the DAU/MAU ratio was 50% in the “mature” markets misrepresented those results, [REDACTED]
- The DAU/MAU ratio projected at Analyst Day was not growing according to plan.
- Contrary to the public statements emphasizing strong MAU growth, Twitter’s year over year MAU growth had collapsed since the third quarter of 2012 and had been stagnant to declining since the first quarter of 2014.

**2014 Form 10-K**

72. On March 2, 2015, the Individual Defendants caused Twitter to file its Form 10-K for the 2014 fiscal year. The Form 10-K was signed by Costolo, Noto, Dorsey, Chernin, Currie, Fenton, Rosenblatt, Scardino, and Williams and offered no

new hard user engagement data but stated generally that “future revenue growth will depend on . . . our ability to . . . increase user engagement.”

73. The Form 10-K contained a section titled “Key Metrics” that entirely omitted any reference to DAU or DAU/MAU [REDACTED]

[REDACTED] The “Key Metrics” section also stated that the Company would not report timeline views in future periods but misleadingly provided timeline view data “for historical purposes” that appeared to show a positive user engagement trend:

### **Key Metrics**

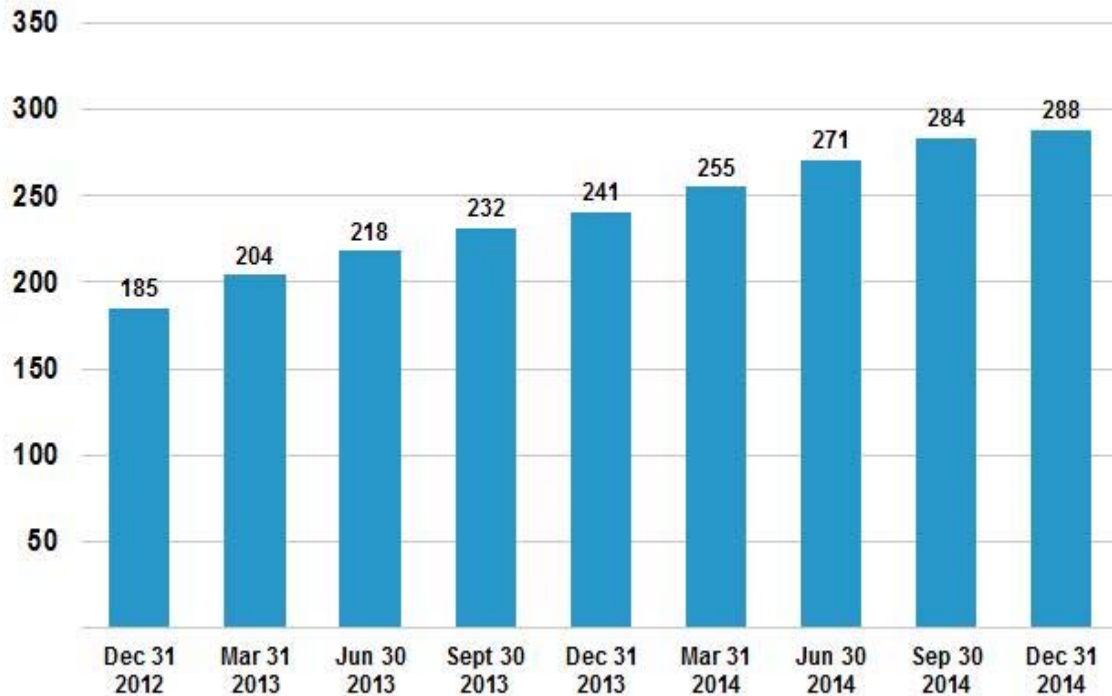
We review a number of metrics, including monthly active users, or MAUs, timeline views, timeline views per MAU and advertising revenue per timeline view, to evaluate our business, measure our performance, identify trends affecting our business, formulate business plans and make strategic decisions.

*Monthly Active Users (MAUs).* We define MAUs as Twitter users who logged in or were otherwise authenticated and accessed Twitter through our website, mobile website, desktop or mobile applications, SMS or registered third-party applications or websites in the 30-day period ending on the date of measurement. Average MAUs for a period represent the average of the MAUs at the end of each month during the period. MAUs are a measure of the size of our active user base. In the three months ended December 31, 2014, we had 288 million average MAUs, which represents an increase of 20% from the three months ended December 31, 2013. The growth in average MAUs was driven primarily by organic growth and growth initiatives. In the three months ended December 31, 2014, we had 63 million average MAUs in the United States and 225 million average MAUs in the rest of the world, which represent increases of 17% and 21%, respectively, from the three

months ended December 31, 2013. For additional information on how we calculate MAUs and factors that can affect this metric, see the section titled “Note Regarding Key Metrics.”

## Monthly Active Users: Worldwide

(quarterly average in millions)



*Timeline Views, Timeline Views Per MAU and Advertising Revenue Per Timeline View.* We define timeline views as the total number of timelines requested and delivered when registered users visit Twitter, refresh a home timeline (but not other timelines) or view search results while such user is logged in or is otherwise authenticated on our website, mobile website or desktop or mobile applications (excluding our TweetDeck and Mac clients, as we do not fully track this data). We believe that timeline views going forward will not be a helpful metric for measuring user engagement because the ongoing optimization of our products has reduced the number of times a user needs to request a timeline view, which has resulted in timeline views becoming an



unrepresentative measure of user engagement with our platform. We do not intend to report timeline views metric in future filings but we present it here for historical purposes. Timeline views per MAU are calculated by dividing the total timeline views for the period by the average MAUs for the last three months of such period. In the three months and year ended December 31, 2014, we had 182.0 billion and 692.5 billion timeline views, respectively, which represent increases of 23% and 17% from the three months and year ended December 31, 2013, respectively. In the three months and year ended December 31, 2014, we had 49.2 billion and 191.1 billion timeline views in the United States, respectively, which represent increases of 20% and 16% from the three months and year ended December 31, 2013, respectively. In the three months and year ended December 31, 2014, we had 132.8 billion and 501.3 billion timeline views in the rest of the world, respectively, which each represent an increase of 24% and 17% from the three months and year ended December 31, 2013, respectively. In the three months ended December 31, 2014, we had 631 timeline views per MAU, which represents an increase of 3% from the three months ended December 31, 2013. In the three months ended December 31, 2014, we had 778 timeline views per MAU in the United States and 590 timeline views per MAU in the rest of the world, which represent increases of 3% from the three months ended December 31, 2013. For additional information on how we calculate the number of timeline views and factors that can affect this metric, see the section titled “Note Regarding Key Metrics.”

74. The section of the Form 10-K titled “Note Regarding Key Metrics” also failed to disclose that DAU and DAU/MAU were the primary user engagement metrics relied on by management:

We review a number of metrics, including monthly active users, or MAUs, timeline views, timeline views per MAU and advertising revenue per timeline view, to evaluate our business, measure our performance, identify trends affecting our business, formulate business plans and make strategic decisions. See the section titled “Management’s Discussion and Analysis of Financial Condition and

Results of Operations—Key Metrics” for a discussion of how we calculate MAUs, timeline views, timeline views per MAU and advertising revenue per timeline view.

\* \* \*

We present and discuss timeline views in this Annual Report on Form 10-K. We have estimated a small percentage of timeline views in the three months ended September 30, 2013 to account for certain timeline views that were logged incorrectly during the quarter as a result of a product update. We believe this estimate to be reasonable, but the actual numbers could differ from our estimate. Additionally, the ongoing optimization of our products has reduced the number of times a user needs to request a timeline view. As a result, our management team believes timeline views have become an unrepresentative measure of, and will not use them internally to measure for, user engagement on our platform. As we announced on November 12, 2014, we do not intend to disclose timeline views for any future period. They are presented here only for historical purposes.

75. The Form 10-K disclosed the following under the heading “Factors Affecting Our Future Performance,” which also omitted any mention of DAU or DAU/MAU and did not disclose the negative trend in user engagement:

*User Engagement.* Two broad measures of user engagement on our platform in 2014 were timeline views and the number of timeline views per MAU. In the three months ended December 31, 2014, timeline views increased 23% and timeline views per MAU increased 3%, compared to the three months ended December 31, 2013. Timeline views per MAU during the three months ended December 31, 2014 stayed relatively flat compared to the three months ended September 30, 2014.

Our most engaged users are generally those who access Twitter via our mobile applications. In the three months ended December 31, 2014, a substantial majority of timeline views were on mobile devices. We

expect this trend of mobile users being more engaged to continue in the near term, and we plan to continue to develop and improve our mobile applications to further drive user adoption of these applications. We intend to continue to optimize our products to improve the overall user experience, and the changes we may make to our products may result in slower growth, or a decline, in the number of timeline views or the number of timeline views per MAU. To the extent user engagement as measured by timeline views and timeline views per MAU does not increase, our revenue growth will depend in large part on our ability to increase MAUs or monetization of our platform.

76. The Form 10-K disclosed the following regarding Twitter's user engagement results in 2014 as compared to 2013:

*2014 Compared to 2013.* Revenue in 2014 increased by \$738.1 million compared to 2013.

In 2014, advertising revenue increased by 111% compared to 2013. *The increase was primarily attributable to a 17% increase in timeline views in 2014 compared to 2013*, as well as an increase in demand from advertisers that drove an increase in advertising revenue per timeline view of 81% in 2014 compared to 2013. The increase in timeline views was driven by a 20% increase in average MAUs despite a 3% decrease in the user engagement levels of MAUs, as measured by timeline views per MAU, in 2014 compared to 2013. The increase in advertising revenue per timeline view was primarily driven by a 136% increase in ad engagements per timeline view, partially offset by a 23% decrease in average cost per ad engagement in 2014 compared to 2013. The increase in ad engagements per timeline view, combined with the increase in timeline views, resulted in a 175% increase in the number of ad engagements in 2014 compared to 2013. Advertising revenue also benefited from sales of our Promoted Products on our mobile applications as well as from an increase in international revenue.

(emphasis added).

77. Defendants Costolo, Currie, Dorsey, Fenton, Rosenblatt, Williams, Scardino, Chernin, and Noto therefore signed and approved the filing of the Form 10-K even though they knew it was misleading for the following reasons:

- The Form 10-K failed to disclose DAU and DAU/MAU as a Key Metric even though it was the most important user engagement metric that the Individual Defendants used to evaluate Twitter's performance, and the Form 10-K repeatedly emphasized the importance of user engagement to Twitter's business.
- The Form 10-K reported only apparently positive user engagement results in the form of timeline views [REDACTED]
- The Form 10-K failed to disclose the adverse change in the MAU growth trend, [REDACTED]

### **The SEC Comment Letter and Ensuing Board Meeting**

78. The SEC noticed the Individual Defendants' failure to cause Twitter to disclose any specific user engagement data even though they simultaneously were publicly stating that user engagement was a core metric. On April 13, 2015, the SEC sent a comment letter to the Company, which stated in part:

We note your disclosures relating to Timeline Views, Timeline Views per Monthly Active User (MAU), and Advertising Revenue Per

Timeline. We also note on page 46 that going forward you intend to cease presenting timeline views in future filings. Please address the following:

- Please describe the alternative metric(s) you anticipate presenting in future filings to explain trends in user engagement and advertising services revenue. Also, please describe your reasons for choosing such metric(s).
- Please tell us your consideration for presenting advertising services revenue related metrics in terms of both number of advertisers and average revenue per advertiser by each channel and geography. Since you cited these as key drivers of revenue growth during your 4th quarter fiscal 2014 earnings call, the inclusion of these metrics may prove informative to investors if you consider them to be material to investors' understanding of those key factors impacting current and prospective levels of advertising services revenue.

We refer you to Section III.B of SEC Release 33-8350.

79. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>2</sup> As alleged in ¶ 92, *infra*, counsel from Wilson Sonsini responded to the SEC comment letter on behalf of the Company.

[REDACTED]

80. On April 24, 2015, the Audit Committee conducted a regular meeting. In attendance were defendants Currie, Fenton, and Scardino. At the meeting, these three defendants reviewed the first quarter 2015 earnings press release in its entirety.

81. On April 27, 2015, *The Wall Street Journal* published an article titled “RIP Twitter’s ‘Timeline Views’ – What Metric Will Replace It?” The article reported in part:

When Twitter reports first-quarter earnings on Tuesday, one metric will be missing from its report card: timeline views.

This earnings period will officially mark the end of Twitter’s only measurement that indicated how engaged its 288 million monthly active users are on the service. A timeline view is counted each time a user visits Twitter, refreshes their timeline to view more tweets or conducts a search.

\* \* \*

By dividing advertising revenue by timeline views, analysts could track Twitter’s ability to make money from user engagement.

If timeline views are out then analysts naturally want a replacement.

“Less disclosure is always a bad thing especially for something that’s important like engagement,” said RBC Capital Markets analyst Mark Mahaney. “I am totally open to the argument that it’s not a useful metric. The question is: What’s that new metric?”

It’s unclear whether Twitter will offer a new measurement in its place come Tuesday. A Twitter spokesman declined to comment, citing the quiet period ahead of earnings.

### **The First Quarter 2015 Results**

82. Defendants issued Twitter’s first quarter 2015 financial results on April 28, 2015. Under a heading titled, “First Quarter 2015 Operational and Product Highlights,” defendants disclosed that “Average Monthly Active Users (MAUs) were 302 million for the first quarter, up 18% year-over-year and compared to 288 million in the previous quarter. Average Mobile MAUs represented approximately 80% of total MAU.” The press release did not disclose a user engagement metric.

The press release announcing the results stated in part:

Twitter’s first quarter revenues were affected by a lower-than-expected contribution from its newer direct response products. The Company expects this revenue impact to continue for the remainder of the fiscal year as outlined in the outlook section below.

“While we exceeded our EBITDA target for the first quarter, revenue growth fell slightly short of our expectations due to lower-than-expected contribution from some of our newer direct response products,” said Dick Costolo, CEO of Twitter. “It is still early days for these products, and we have a strong pipeline that we believe will drive increased value for direct response advertisers in the future. We remain confident in our strategy and in Twitter’s long-term opportunity, and our focus remains on creating sustainable shareholder value by

executing against our three priorities: strengthening the core, reducing barriers to consumption and delivering new apps and services.”

83. The Individual defendants knew that the April 28, 2015 earnings press release was misleading because it failed to disclose that MAU growth was stagnant, the DAU growth trend was negative, and the DAU/MAU ratio was experiencing a negative trend. The earnings release also failed to disclose DAU or DAU/MAU, which the Individual Defendants knew was the key user engagement metric.

84. Also on April 28, 2015, the Individual Defendants conducted a conference call with analysts and investors to discuss the quarterly results. Even though the Individual Defendants had received the SEC’s letter [REDACTED] [REDACTED] during the call, Noto misleadingly told investors that the Company could not provide “visibility” on user engagement. When asked how analysts “should be thinking about monitoring engagement,” Noto stated:

*In terms of engagement metrics, there’s a lot of different metrics that we look at internally. There’s not one metric for engagement. And so I can give you a sense of some of them and quite frankly, we would like to be able to give you more visibility on this, but there’s just a number of different measurements. DAU is one measurement of engagement.*

(emphasis added).

85. Continuing his answer explaining why Twitter would not disclose specific DAU results, Noto falsely stated: “[DAU is] a measurement that is dependent by market and you can have mixed shifts, so it could be a little bit



misleading, *but DAU to MAU ratios in the quarter were similar to what they were by market relative to Analyst Day.*” (Emphasis added). Noto also misleadingly stated that “other [user engagement] metrics that we look at... accelerated on a year over year basis [and] had strong growth . . . . So those metrics were generally all positive.” He misleadingly concluded:

The timeline view metric, we don’t look at internally. It is a metric that we are doing things that actually hurt it and that was one of the reasons why we eliminated it. So we continue to look for metrics that could be helpful to you and we will try to give you color from time to time across these different metrics. *But there is not one, the all-in metric.*

(emphasis added).

86. During the call, Costolo also misleadingly reassured investors that new product initiatives designed to improve user engagement “were quite positive in terms of engagement,” and stated the Company was “seeing... exciting results” from the initiatives, which were “helping” to “drive[] continuous improvements in engagement.”

87. Defendant Noto’s statements at the first quarter 2015 earnings call were misleading because he knew that DAU/MAU ratios were worse than had been disclosed on Analyst Day. Noto knew that DAU was the key user engagement metric reviewed by management [REDACTED] but he stated it was not and refused to disclose DAU results. Defendant Costolo misleadingly stated that user

engagement trends were “quite positive,” and that the Company was “seeing... exciting results,” when he knew that the two most important of Twitter’s operating metrics were trending negatively. Similarly, Costolo knew there was no “continuous improvement” to user engagement.

88. On May 6, 2015, the Audit Committee conducted a regular meeting. In attendance were defendants Currie, Fenton, and Scardino. During the meeting, defendants review Twitter’s Form 10-Q for the first quarter which the Company filed with the SEC five days later. [REDACTED]

[REDACTED]

[REDACTED]

89. On May 11, 2015, defendants caused Twitter to file with the SEC its Form 10-Q for the first quarter of 2015. The Form 10-Q contained the following disclosure regarding “Key Metrics,” which omitted any reference to DAU or user engagement and contained a similar misleading MAU graph to the one included in the 2014 Form 10-K:

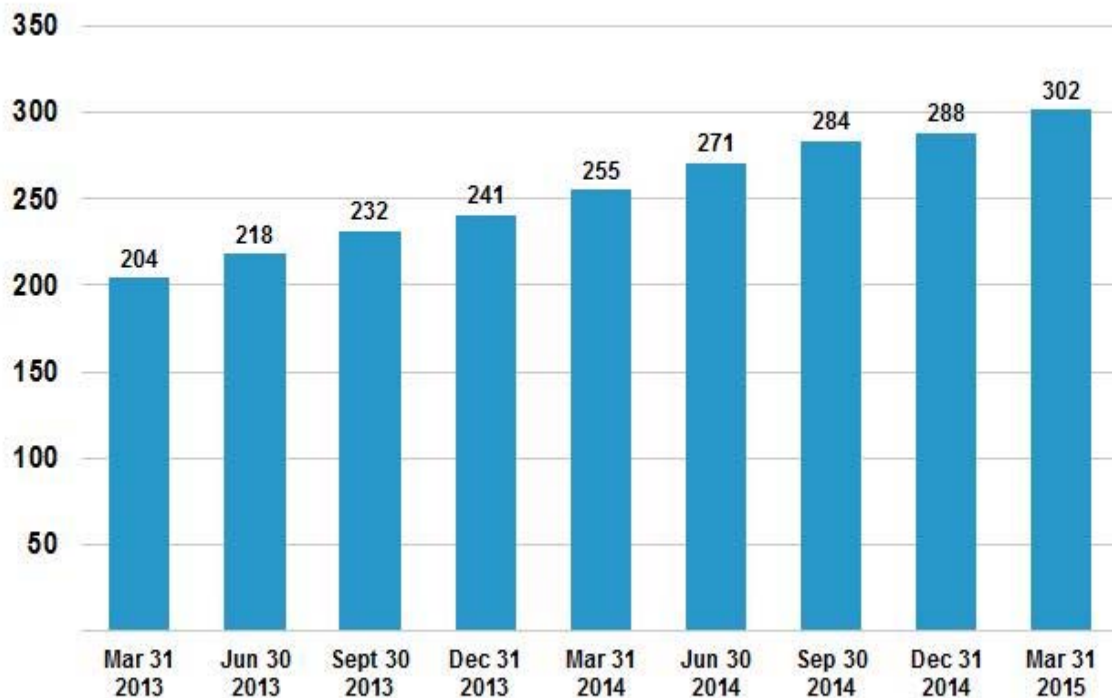
**Key Metrics**

We review a number of metrics, including the following key metrics, to evaluate our business, measure our performance, identify trends affecting our business, formulate business plans and make strategic decisions:

*Monthly Active Users (MAUs).* We define MAUs as Twitter users who logged in or were otherwise authenticated and accessed Twitter through our website, mobile website, desktop or mobile applications, SMS or registered third-party applications or websites in the 30-day period ending on the date of measurement. Average MAUs for a period represent the average of the MAUs at the end of each month during the period. MAUs are a measure of the size of our active user base. In the three months ended March 31, 2015, we had 302 million average MAUs, which represents an increase of 18% from the three months ended March 31, 2014. The growth in average MAUs was driven primarily by organic growth and growth initiatives. In the three months ended March 31, 2015, we had 65 million average MAUs in the United States and 236 million average MAUs in the rest of the world, which represent increases of 15% and 19%, respectively, from the three months ended March 31, 2014. For additional information on how we calculate the number of MAUs and factors that can affect this metric, see the section titled “Note Regarding Key Metrics.

## Monthly Active Users: Worldwide

(quarterly average in millions)



Given our prioritization of growth in emerging markets, we are delivering a more complete product experience to SMS Fast Followers, which are users who sign-up and access Twitter solely via SMS, and will be including SMS Fast Followers as part of our total MAU count going forward. MAUs including SMS Fast Followers would have been 258 million, 274 million, 287 million, 292 million, and 308 million average MAUs in the three month periods ending March 31, 2014, June 30, 2014, September 30, 2014, December 31, 2014, and March 31, 2015, respectively. MAUs including SMS Fast Followers in the United States would have been 57 million, 60 million, 64 million, 64 million, and 66 million average MAUs in the three months ending periods ending March 31, 2014, June 30, 2014, September 30, 2014, December 31, 2014, and March 31, 2015, respectively. MAUs including SMS Fast Followers in the rest of the world would have been 201 million, 214 million, 224 million, 229 million, and 242 million

average MAUs in the three months ending periods ending March 31, 2014, June 30, 2014, September 30, 2014, December 31, 2014, and March 31, 2015, respectively.

90. The Form 10-Q also disclosed:

### **Note Regarding Key Metrics**

We review a number of metrics, including monthly active users, or MAUs, changes in ad engagements and changes in cost per ad engagement, to evaluate our business, measure our performance, identify trends affecting our business, formulate business plans and make strategic decisions. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Metrics” for a discussion of how we calculate MAUs.

The numbers of active users presented in this Quarterly Report on Form 10-Q are based on internal company data. While these numbers are based on what we believe to be reasonable estimates for the applicable period of measurement, there are inherent challenges in measuring usage and user engagement across our large user base around the world. For example, there are a number of false or spam accounts in existence on our platform. We have performed an internal review of a sample of accounts and estimate that false or spam accounts represented less than 5% of our MAUs as of December 31, 2014. In making this determination, we applied significant judgment, so our estimation of false or spam accounts may not accurately represent the actual number of such accounts, and the actual number of false or spam accounts could be higher than we have estimated. We are continually seeking to improve our ability to estimate the total number of spam accounts and eliminate them from the calculation of our active users, and in the past have made improvements in our spam detection capabilities that have resulted in the suspension of a large number of accounts. Spam accounts that we have identified are not included in the active user numbers presented in this Quarterly Report on Form 10-Q. We treat multiple accounts held by a single person or organization as multiple users for purposes of calculating our active users because we permit people and organizations to have more than one account. Additionally,

some accounts used by organizations are used by many people within the organization. As such, the calculations of our active users may not accurately reflect the actual number of people or organizations using our platform.

91. The Individual Defendants knew that the Form 10-Q was misleading because it disclosed that certain key metrics were relied on by Twitter's management but concealed DAU, the key user engagement metric that they reviewed to evaluate the Company's performance. The Individual Defendants additionally knew the Form 10-Q was misleading because it concealed the negative trends in DAU, DAU/MAU, and MAU.

#### **The Individual Defendants' Response to the SEC Comment Letter**

92. Also on May 11, 2015, the Individual Defendants caused Twitter to publicly file its response to the SEC comment letter received April 13, 2015. The Company's response, which was signed by outside counsel from Wilson Sonsini and cc'd to Noto, misleadingly referred the SEC to "ad engagements" as a user engagement metric. However, ad engagements was not a user engagement metric, but was a monetization metric. Further, ad engagements were not representative of user engagement because ad engagements had been trending positively while user engagement metrics relied on by management were trending negatively. The response stated in part:

The Company respectfully advises the Staff that it has included two metrics, changes in ad engagements and changes in cost per ad engagement, on page 25 in the Key Metrics section of its Quarterly Report on Form 10-Q for the quarter ended March 31, 2015, filed on May 11, 2015 (the “Form 10-Q”). These metrics are intended to serve as a measure of user engagement and demand, respectively, on the Company’s platform. Ad engagements measure user interactions with the Company’s Promoted Products and include expanding, retweeting, favoriting or replying to a Promoted Tweet, playing an embedded video, downloading a promoted mobile application or opting in to further communications from an advertiser in a Promoted Tweet, following the account that tweets a Promoted Tweet or following a Promoted Account. Therefore, changes in ad engagements indicate trends in user engagement and, in particular, user engagement with ads, which affects revenue. Changes in cost per ad engagements reflect the changes in the average cost per ad engagement in the period discussed.

The Company’s management internally tracks changes in ad engagements and cost per ad engagement on the Twitter platform to monitor trends in user engagement and advertising services revenue and believes these metrics are helpful to investors to understand the same. The Company uses changes in ad engagements and cost per ad engagements to assess drivers for monetization on its platform in its Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”). In addition, the Company believes the metrics may be a helpful comparison of the Company’s performance against other companies in its market, which also report changes in engagements with advertisements on their platforms.

### **June and July 2015 Board Meetings and the Ouster of Costolo**

93. On June 3, 2015, the Compensation Committee conducted a regular meeting. In attendance were defendants Fenton, Rosenblatt, and Scardino. [REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block containing multiple lines of blacked-out content]



[REDACTED]

95. On June 3 and 4, 2015, the Board conducted a regular meeting. In attendance were Individual Defendants Costolo, Currie, Dorsey, Fenton, Rosenblatt, Williams, Scardino, and Chernin, and defendant Noto.<sup>3</sup> [REDACTED]

[REDACTED]

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<sup>3</sup> In the copy of meeting minutes produced to plaintiff, the names of eleven non-director attendees were redacted. Plaintiff infers that defendant Noto's name was one of those redacted [REDACTED]

[Redacted]

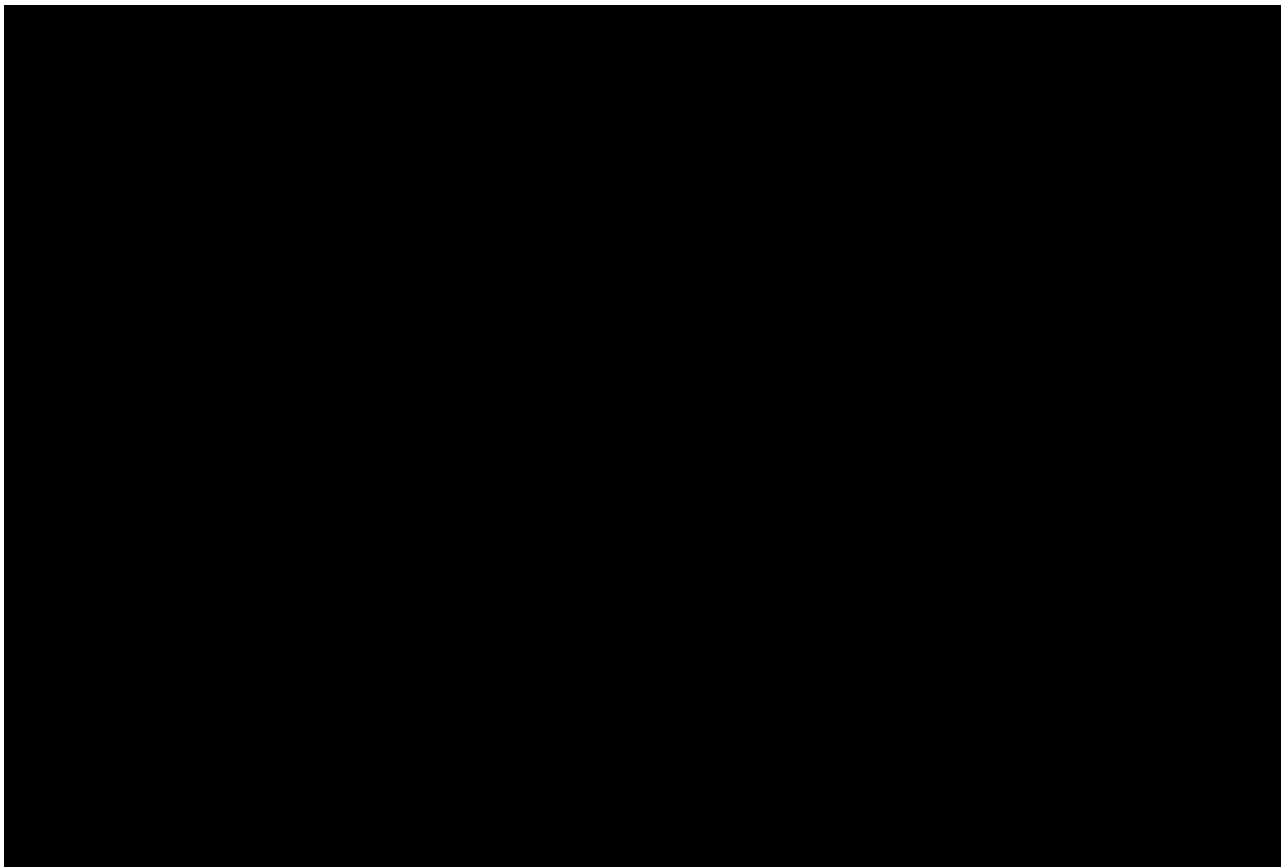
[Redacted]

[Redacted]

[Redacted]

[Redacted]

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97. On June 10, 2015, the Board conducted a special meeting by telephone. Attending the meeting were defendants Costolo, Currie, Dorsey, Fenton, Rosenblatt, Williams, and Chernin. [REDACTED]



98. On June 11, 2015, defendants caused Twitter to disclose that Costolo had “decided to step down as Chief Executive Officer of Twitter, effective July 1, 2015.” The Company also disclosed that Dorsey would replace Costolo as interim CEO.

99. Several other Twitter executives were forced out of the Company in the following weeks. In late June 2015, the Company’s Vice President of Corporate Development and Strategy, Rishi Garg resigned. On July 16, 2015, Twitter’s chief of corporate communications, Gabriel Stricker, left the Company. As alleged *infra* ¶ 106, facts indicate that Stricker was ousted after urging defendant Dorsey and other members of management to “come clean” about poor user engagement. Shortly before the second quarter earnings release on July 28, 2015, Twitter’s Vice President of Product Management, Christian Oestlien, and a product director, Todd Jackson left the Company.


100. On July 21, 2015, the Board conducted a special meeting via telephone. In attendance were defendants Costolo, Currie, Dorsey, Scardino, Rosenblatt, Williams, and Fenton. [REDACTED]

[REDACTED]

[REDACTED]



101. On July 24, 2015, the Audit Committee conducted a regular meeting.

In attendance were defendants Currie, Fenton, and Scardino. 



## **The Truth Begins to be Revealed**

102. On July 28, 2015, defendants caused Twitter to issue its second quarter 2015 financial results and conducted its earnings call to discuss the results. The press release stated in part:

“Our Q2 results show good progress in monetization, but we are not satisfied with our growth in audience,” said Jack Dorsey, interim CEO of Twitter. “In order to realize Twitter’s full potential, we must improve in three key areas: ensure more disciplined execution, simplify our service to deliver Twitter's value faster, and better communicate that value.”

\* \* \*

### **Second Quarter 2015 Operation and Product Highlights**

**Monthly Active Users** – Average Monthly Active Users (MAUs) were 316 million for the second quarter, up 15% year-over-year, and compared to 308 million in the previous quarter. The vast majority of MAUs added in the quarter on a sequential basis came from SMS Fast Followers. Excluding SMS Fast Followers, MAUs were 304 million for the second quarter, up 12% year-over-year, and compared to 302 million in the previous quarter. Mobile MAUs represented approximately 80% of total MAUs.

103. During the subsequent earnings call, Noto departed from the encouraging growth projections he had previously issued and stated that “we do not expect to see sustained meaningful growth in MAUs... [for] a considerable period of time.” Noto also stated that investors should not “expect a change in our growth rate . . . for a while.” Dorsey admitted that the product initiatives that would

supposedly drive the Company's strong user engagement, "ha[d] not yet had a meaningful impact on growing our audience or participation." Noto disclosed that contrary to defendants' statements over the previous four months, user engagement as measured by Twitter's DAU/MAU ratio had dropped from 48% on Analyst Day in November 2014 to 44%.

104. In light of the July 28, 2015 disclosures and departure of defendant Costolo, the departures the key executives with responsibilities related to growth initiatives identified in ¶ 99, *supra*, were noticed by the media. For example, a *Tech Crunch* article published on July 28, 2015 observed that "only 9 of the 13 @Twitter execs that presented at their Nov 2014 analyst day are left," and "their timing is very curious, to say the least."

105. On July 28, 2015, *The Wall Street Journal* reported that shares had closed 15% lower, "[p]ersistent questions regarding the size of Twitter's use base came back into full view after the Company reported its worst three-month growth rate to date... [and] a less frequently disclosed metric added to Twitter's woes: regular users are signing in less often."

### **Subsequent Media Reports**

106. On June 1, 2016, *Vanity Fair* published an article titled "Twitter Is Betting Everything on Jack Dorsey. Will it Work?" The article is based on

interviews with Twitter's senior management, including Dorsey, and was written by Nick Bilton, the author of a book about Twitter. The article reports in part:

One of the first meetings Dorsey organized regarded what he, as interim C.E.O., was going to say to investors at Twitter's upcoming quarterly-earnings call, which was just a few weeks away. This would require some delicate choreography. Dorsey couldn't exactly criticize everything Costolo had done. Since 2010, after all, Dorsey, as a board member, had technically overseen Costolo's performance.

This conundrum led to a tempestuous discussion among members of the Staff. "We have zero credibility with Wall Street right now," Gabriel Stricker, the director of communications, said in a meeting with Dorsey and top managers. "We have to come clean" about the company's stagnant growth numbers.

Anthony Noto, the chief financial officer, agreed, but he had another solution. He wanted to blame the current state of the company on marketing and messaging, essentially throwing Stricker under the bus. When Stricker threatened to quit over the verdict, he was fired.

\* \* \*

I have been told by people close to the company that, in the face of mounting pressure from Wall Street, Twitter occasionally resorted to what most start-ups do when they need to goose the numbers: they kind of faked it. This happens at virtually all social networks; the company sends an e-mail to inactive users who haven't been on the service in a few months, informing them there is a problem with their username or account, which leads people to log in to fix the situation. Magically, those people become monthly active users even if they were not.

107. Eventually, defendants publicly admitted that DAU was the most important measure of Twitter's user engagement that management had for months



relied on, and in reality, it had not been true that the Company looked at a “number” of user engagement metrics of equal value.

108. At the Barclays Global Technology Brokers Conference on December 8, 2015, Noto stated: “[I]nvestors are constantly asking us for an update on engagement of our users. And there are a lot of different measurements on Twitter engagement . . . but *ultimately the thing that we have found probably is the best encapsulation of engagement is DAU.*” (Emphasis added).

109. During the earnings call on February 10, 2016 to discuss the Company’s fourth quarter 2015 results, Noto stated: “*The one engagement metric that we look at holistically is daily active users.*” (Emphasis added).

110. During the earnings call on April 26, 2016 to discuss the Company’s first quarter 2016 results, Noto stated: “[A]s it relates to engagement, we have a number of factors that we look at as it relates to engagement. *The one that is probably the most important is daily active users, and it’s the one that we continue to focus on . . . .*” (Emphasis added).

**Williams and Dorsey Sold Over \$276 Million in Twitter Stock While in Possession of Material Non-Public Information**

Williams

111. At the beginning of February 2015, Williams owned approximately 9.5 million shares of Twitter stock.

112. Williams is a co-founder of Twitter with a highly sophisticated understanding of the Company's results and their import.

113. As set forth herein, between February 2015 and July 28, 2015, Williams possessed material negative information which he knew was being concealed from investors. Williams consciously acted to exploit his knowledge by improperly selling over 6 million shares of Twitter stock to his substantial benefit as follows:

<b>Date:</b>	<b>Shares:</b>	<b>Price:</b>	<b>Proceeds:</b>
February 18-26, 2015	1,319,900	\$47.88-49.88	\$63,882,358.41
March 5-17, 2015	936,000	\$41.62-48.33	\$43,963,936.66
April 1-24, 2015	1,404,000	\$50.22-51.78	\$71,058,866.13
May 20-29, 2015	1,103,128	\$36.37-37.82	\$40,536,342.77
June 9-23, 2015	744,000	\$35.57-36.14	\$26,612,814.86
July 8-22, 2015	743,730	\$34.66-36.74	\$26,432,780.39
<b>Total:</b>	<b>6,250,758</b>		<b>\$273,177,755.34</b>

114. Williams thus used his fiduciary position to enrich himself and failed to discharge his fiduciary duties by causing the Company to candidly reveal the truth of its business condition.

Dorsey

115. Dorsey is a co-founder of Twitter with a highly sophisticated understanding of the Company's results and their import.

116. As set forth herein, between February 2015 and July 28, 2015, Dorsey possessed material negative information which he knew was being concealed from investors. Dorsey consciously acted to exploit his knowledge by improperly selling 126,047 shares of Twitter stock between February 3 and 6, 2015 at prices between \$39.87 and \$47.66 for a combined benefit of \$5,614,934.

117. Dorsey thus used his fiduciary position to enrich himself and failed to discharge his fiduciary duties by causing the Company to candidly reveal the truth of its business condition.

**The Securities Class Action**

118. On September 16, 2016, the Securities Class Action was filed in the U.S. District Court for the Northern District of California alleging that the Company, Costolo, and Noto had committed securities fraud in connection with their concealment of the DAU metric, their misrepresentation of user engagement trends, and their concealment of negative MAU trends, among other things.

119. On October 16, 2017, U.S. District Judge Jon S. Tigar issued an order denying in part the defendants' motions to dismiss the Securities Class Action (the "Order").

120. The Order held that the heightened pleading standard of Fed. R. Civ. P. 9(b) is fulfilled by the Securities Class Action plaintiffs' allegations because, among other things, they plausibly allege that: (i) daily and monthly active users were so integral to Twitter's success that it would be "absurd" to argue that Twitter's management was unaware of the two metrics or that they were unaware the undisclosed daily active user numbers contradicted the picture of Twitter's business painted by its public disclosures regarding monthly active users; (ii) Twitter's management had access to the daily active user numbers even though it was not publicly reporting them; and (iii) Twitter's management concealed and misrepresented the negative trend in MAU.

121. The Securities Class Action is currently in discovery. The plaintiffs' motion for class certification is fully briefed and arguments were heard on July 12, 2018.

### **DAMAGES TO THE COMPANY**

122. Twitter has been, and will continue to be, severely damaged by the Individual Defendants' misconduct. Such harm includes, but is not limited to: (a)

legal costs incurred defending against claims in the securities class action; (b) enormous equity compensation paid to defendant Noto while he was breaching his fiduciary duties and committing securities fraud; (c) any eventual settlement of the securities class action. In addition, Twitter's business, goodwill, and reputation with its business partners, regulators, and stockholders have been gravely impaired.

123. The actions complained of herein have damaged Twitter's corporate image and goodwill. For at least the foreseeable future, Twitter will suffer from what is known as the "liar's discount," a term applied to the stocks of companies who have been implicated in illegal behavior and have misled the investing public, such that Twitter's ability to raise equity capital or debt on favorable terms in the future is now impaired.

#### **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

124. Plaintiff brings this action derivatively in the right and for the benefit of the Company to redress the Individual Defendants breaches of fiduciary duties.

125. Plaintiff is a stockholder of Twitter and held Twitter shares at all times relevant hereto.

126. Plaintiff will adequately and fairly represent the interests of the Company and its stockholders in enforcing and prosecuting its rights.

127. As a result of the facts set forth herein, plaintiff has not made any demand on Twitter's Board to institute this action against the Individual Defendants. Such demand would be a futile and useless act because Twitter's Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

128. As of the filing of this action, Twitter's Board consisted of nine directors: defendants Dorsey, Rosenblatt, Scardino, and Williams, as well as non-defendant directors Kordestani, Fox, Lee, Pichette, and Taylor. Five of these nine directors, a majority, are incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action due to the following:

**Defendants Kordestani and Dorsey are not Independent**

*Kordestani*

129. Kordestani is the Executive Chairman of Twitter and does not meet the Company's own requirements for director independence. According to Twitter's proxy statements, Kordestani is not independent within the meaning of the listing standards of the New York Stock Exchange. Kordestani earns \$50,000 per year in salary. However, if his employment at Twitter continues he is entitled to significant unvested and unearned equity compensation. In October 2015, Kordestani was given 800,000 non-qualified stock options as an inducement to join the Company,

which had a value at the grant date of over \$12 million. Kordestani's options are currently approximately 50% vested and the vesting of the remaining 50% is contingent on his continued employment. Accordingly, Kordestani is reliant on his continued employment to obtain vesting of the remaining approximately \$6 million of his stock options grant.

130. Further, upon joining the Company Kordestani was granted 400,000 performance-based restricted stock units which are subject to vesting in tranches between 2016 and 2019, in a quantity based on the Company's performance and subject to approval of the Compensation Committee. By authorization of the Compensation Committee, Kordestani received 100,000 performance-based restricted stock units in 2016 with a value of approximately \$1 million, and 140,000 performance-based restricted stock units in 2017 with a value of approximately \$2 million. Accordingly, Mr. Kordestani's outstanding performance-based restricted stock units which he cannot earn if he loses his employment as Executive Chairman, and which are subject to Compensation Committee authorization, have an approximate value in excess of \$2.5 million.

131. Accordingly, Twitter's Board concedes that Kordestani is not independent and Kordestani's ability to continue in his current role, and his continued access the enormous compensation he receives at Twitter, including the

options and PRSU grants, are contingent on the goodwill of his fellow directors. If Kordestani were to investigate and decide to sue the Individual Defendants who are currently directors with him, he would risk his continued access to millions in equity compensation. Indeed, the Individual Defendants currently on the Board represent four of the eight directors other than Kordestani. As a result, Kordestani could not disinterestedly and independently consider a demand to sue his fellow directors for the wrongdoing detailed herein.

Dorsey

132. Defendant Dorsey is a co-founder and the CEO of Twitter and does not meet the Company's own requirements for director independence. Twitter's proxy statements acknowledge that Dorsey is not independent within the meaning of the listing standards of the New York Stock Exchange. Although Dorsey does not receive compensation in his role as CEO, he owned 2.39% of Twitter's outstanding stock as of the date of Twitter's last proxy statement in April 2018. His holdings of Twitter stock have a current approximate value of over \$815 million. As CEO, Dorsey exercises significant control over the fate of Twitter, and thus the fate of his considerable holdings of Twitter stock. Were Dorsey to lose his position as CEO and a director of Twitter, he would lose the control that he currently exercises over his fortune.



133. Accordingly, Dorsey's ability to continue in his current role, and his continued access to the enormous compensation he receives at Twitter, including the options and PRSU grants, are contingent on the goodwill of his fellow directors who could terminate his employment if they chose to do so. As a result, Dorsey could not disinterestedly and independently consider a demand to sue his fellow directors for the wrongdoing detailed herein.

**Defendants Dorsey, Rosenblatt, Scardino, and Williams Face a Substantial Likelihood of Liability**

**Concealment of the Key Metric DAU**

134. Defendants Dorsey, Rosenblatt, Scardino, and Williams knew that user engagement was material to Twitter's financial results. They knew that on November 12, 2014, the Company announced it would no longer report timeline views. They knew that in the absence of timeline views, Twitter was not reporting any meaningful user engagement metric. They also knew that the 2014 Form 10-K, which they signed, did not mention DAU or DAU/MAU even though it referred repeatedly to the importance of user engagement and disclosed other metrics that management relied on.

135. While Twitter was not reporting any meaningful user engagement data, defendants Dorsey, Rosenblatt, Scardino, and Williams knew that Twitter's management had an undisclosed primary user engagement metric. [REDACTED]

[REDACTED]

[REDACTED]

defendants Dorsey, Rosenblatt, Scardino, and Williams were able to understand Twitter's user engagement trends and results, which they knew was being concealed from investors.

136. Because defendants Dorsey, Rosenblatt, Scardino, and Williams in fact knew that Twitter's management had an undisclosed primary metric for measuring user engagement and consciously chose to allow the Company to continue concealing that metric, they face a substantial likelihood of liability for such conduct, which was not in good faith and caused the Company to violate the federal securities laws.

*Concealment of the Negative Trend in User Engagement*

137. Defendants Dorsey, Rosenblatt, Scardino, and Williams knew that user engagement was a core element of Twitter's business and was used by investors to understand revenue potential and potential for user growth. Defendants Dorsey, Rosenblatt, Scardino, and Williams also knew that Twitter was not disclosing a meaningful user engagement metric.

138. [REDACTED]

[REDACTED] Dorsey, Rosenblatt, Scardino, and Williams knew that user

engagement growth had been declining since at least mid-2014. They also knew that Noto's statements and Company slides at Analyst Day reported incorrect DAU/MAU figures that were inflated.

139. Defendants Dorsey, Rosenblatt, Scardino, and Williams knew that Company earnings releases, public filings, and statements by Noto and Costolo during earnings calls misleadingly told investors that user engagement growth was strong and misleadingly failed to disclose the negative trend in user engagement as demonstrated by DAU and DAU/MAU results

140. Because defendants Dorsey, Rosenblatt, Scardino, and Williams in fact knew that Twitter's user engagement growth and results were declining, and nevertheless chose to allow the Company to continue concealing that fact while simultaneously making positive statements about user engagement growth, they face a substantial likelihood of liability for such conduct, which was not in good faith and caused the Company to violate the federal securities laws.

*Concealment of the Negative Trend in User Growth*

141. Defendants Dorsey, Rosenblatt, Scardino, and Williams knew that MAU was a critical metric to Twitter's business. They also knew that investors and the market could not accurately understand the meaning of MAU results to Twitter's revenue and growth potential in the absence of the related user engagement data,

which would tell them how engaged the new MAUs were and the quality of the new MAUs. Defendants Dorsey, Rosenblatt, Scardino, and Williams knew that the related user engagement data was not being disclosed.

142. Defendants Dorsey, Rosenblatt, Scardino, and Williams also knew that Twitter was experiencing a stagnant to negative MAU growth trend. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

143. Dorsey, Rosenblatt, Scardino, and Williams knew that Twitter's public statements in press releases, public filings, and earnings calls told investors that MAU growth was strong. They also knew that Twitter had not disclosed that MAU growth was stagnant to negative.

144. Because defendants Dorsey, Rosenblatt, Scardino, and Williams in fact knew that Twitter's MAU growth trend was stagnant to negative, and nevertheless chose to allow the Company to continue concealing that trend while simultaneously making positive statements about MAU growth, they face a substantial likelihood of

liability for such conduct, which was not in good faith and caused the Company to violate the federal securities laws.

145. Because five of the nine directors on Twitter's Board could not disinterestedly and independently consider a demand, demand would be futile as to the entire Board.

**COUNT I**  
**Against Defendants Costolo and Noto for Breach of Fiduciary Duty**

146. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

147. Defendants Costolo and Noto owe and owed to the Company the duty to exercise candor, good faith, and loyalty in the management and administration of Twitter's business and affairs.

148. These Individual Defendants' conduct set forth herein was a breach of their fiduciary duties to protect the rights and interests of Twitter. They personally issued numerous misleading, incomplete, and inaccurate public statements, issued misleading public filings, and misrepresented the state of Twitter's business. Their decisions to misrepresent the key metrics on which management relied, conceal material negative user engagement trends, and conceal a negative user growth trend could not have been good faith exercises of business judgment to protect and promote the Company's interests and lacked candor.

149. In breach of their fiduciary duties owed to Twitter, Costolo and Noto participated in and caused the Company to expend unnecessarily its corporate funds rendering them personally liable to the Company for breaching their fiduciary duties.

150. As a direct and proximate result of Costolo's and Noto's breaches of their fiduciary obligations Twitter has sustained and continues to sustain significant damages. As a result of the misconduct alleged herein, Costolo and Noto are liable to the Company.

**COUNT II**  
**Against Defendants Dorsey, Rosenblatt, Scardino, Williams, Currie, Fenton,**  
**and Chernin for Breach of Fiduciary Duty**

151. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

152. Defendants Dorsey, Rosenblatt, Scardino, Williams, Currie, Fenton, and Chernin owe and owed to the Company the duty to exercise candor, good faith, and loyalty in the management and administration of Twitter's business and affairs.

153. These Individual Defendants' conduct set forth herein was a breach of their fiduciary duties to protect the rights and interests of Twitter. They knew Twitter's public disclosures were misleading, incomplete, and misrepresented material information. Their decisions to misrepresent the key metrics on which management relied, conceal material negative user engagement trends, and conceal

a negative user growth trend could not have been good faith exercises of business judgment to protect and promote the Company's interests and lacked candor.

154. In breach of their fiduciary duties owed to Twitter, Dorsey, Rosenblatt, Scardino, Williams, Currie, Fenton, and Chernin participated in and caused the Company to expend unnecessarily its corporate funds rendering them personally liable to the Company for breaching their fiduciary duties.

155. As a direct and proximate result of these Individual Defendants' breaches of their fiduciary obligations Twitter has sustained and continues to sustain significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

**COUNT III**  
**Against Defendant Noto for Unjust Enrichment**

156. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

157. By his wrongful acts, Noto unjustly retained a benefit at the expense and to the detriment of Twitter. Noto was unjustly enriched by the nearly \$80 million in equity compensation that he obtained and that vested while he was breaching his fiduciary duties owed to Twitter and making misleading and inaccurate statements about Twitter's core business.

158. Plaintiff, as a stockholder and representative of Twitter, seeks restitution from Noto and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by Noto during his wrongful conduct and fiduciary breaches.

159. Plaintiff has no adequate remedy at law.

**COUNT IV**  
**Against Defendants Williams and Dorsey – *Brophy* Claim**

160. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

161. As alleged above, Williams and Dorsey are fiduciaries of Twitter, possessed material, non-public information of Twitter, and used that information improperly to profit from sales of Twitter stock. When Williams and Dorsey directed the stock sales set forth above (¶¶ 111-17, *supra*), they were motivated to do so, in whole or in part, by the substance of the material, non-public information they possessed, and they acted with scienter.

162. When Williams and Dorsey sold their Twitter stock, they knew that the investing public was unaware of the negative material information that they possessed. They also knew that if the information were disclosed, the market price of Twitter stock would be significantly lower. Williams and Dorsey timed their stock sales to take advantage of the investing public's ignorance of the concealed



material facts and obtain a higher price for the stock they sold. They thereby benefitted by misappropriating Twitter's non-public information.

163. Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment in the Company's favor against the Individual Defendants as follows:

A. Declaring that plaintiff may maintain this action on behalf of Twitter and that plaintiff is an adequate representative of the Company;

B. Declaring that the Individual Defendants have breached their fiduciary duties to Twitter;

C. Determining and awarding to Twitter the damages sustained by it as a result of the breaches set forth above from each of the Individual Defendants, jointly and severally, together with pre and post judgment interest thereon;

D. Awarding Twitter restitution from Individual Defendants, and each of them;

E. Awarding plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees, costs, and expenses; and

F. Granting such other and further equitable relief as this Court may deem just and proper.

SMITH KATZENSTEIN & JENKINS, LLP

/s/ Robert K. Beste

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