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Richard Costolo, Mike Gupta, Luca Baratta,
11 *Jack Dorsey, Peter Chernin, Peter Currie,*
Peter Fenton, David Rosenblatt, and Evan Williams
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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN MATEO

15 JOHNNY HOSEY and GEORGE SHILLIARE,
individually and on behalf of all others similarly
16 situated,

17 Plaintiffs,

18 v.

19 RICHARD COSTOLO, MIKE GUPTA, LUCA
BARATTA, JACK DORSEY, PETER
20 CHERNIN, PETER CURRIE, PETER
FENTON, DAVID ROSENBLATT, EVAN
21 WILLIAMS, GOLDMAN, SACHS & CO.,
MORGAN STANLEY & CO. LLC, J.P.
22 MORGAN SECURITIES LLC, TWITTER,
INC., MERRILL LYNCH, PIERCE, FENNER
23 & SMITH INCORPORATED, DEUTSCHE
BANK SECURITIES INC., ALLEN &
24 COMPANY LLC, and CODE ADVISORS
LLC,

25 Defendants.
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Case No. 16-CIV-02228

CLASS ACTION

**TWITTER DEFENDANTS' ANSWER
AND AFFIRMATIVE DEFENSES TO
PLAINTIFFS' COMPLAINT FOR
VIOLATIONS OF THE SECURITIES
ACT OF 1933**

Assigned for All Purposes to Hon. Marie S.
Weiner, Dept. 2

Date Action Filed: Nov. 4, 2016
Trial Date: Not Set

1 Defendants Twitter, Inc. (“Twitter”), Richard Costolo, Mike Gupta, Luca Baratta, Jack
2 Dorsey, Peter Chernin, Peter Currie, Peter Fenton, David Rosenblatt, and Evan Williams
3 (collectively with Twitter, the “Twitter Defendants”) hereby answer Plaintiffs’ Complaint for
4 Violations of the Securities Act of 1933 (the “Complaint”), dated November 4, 2016, as follows:

5 **GENERAL DENIAL**

6 Pursuant to Sections 431.30(b) and (d) of the California Code of Civil Procedure, the
7 Twitter Defendants hereby generally, conjunctively, and disjunctively deny each and every
8 allegation in the Complaint, including any Headings, Footnotes, and Exhibits, and each and every
9 cause of action set forth therein. The Twitter Defendants further deny that they are liable for any
10 sum alleged or any part thereof, or that Plaintiffs have sustained or will sustain any damages
11 whatsoever as a result of any act or omission by the Twitter Defendants.

12 **AFFIRMATIVE DEFENSES**

13 Without admitting any facts alleged by Plaintiffs, the Twitter Defendants assert the
14 following affirmative defenses to the Complaint. In asserting these defenses, the Twitter
15 Defendants do not assume the burden of proving any fact, issue, or element of a cause of action
16 where such burden properly belongs to Plaintiffs. All defenses are pled in the alternative and none
17 constitutes an admission of liability or that Plaintiffs are entitled to any relief whatsoever.

18 The Twitter Defendants reserve their rights to assert any additional defenses, cross-claims,
19 or third-party claims and to otherwise supplement, amend, modify, or withdraw their Answer, in
20 whole or in part, as additional information becomes available during discovery or other
21 proceedings in this case.

22 **First Defense**

23 **(Statute of Limitations)**

24 Plaintiffs cannot recover because their claims are barred by the applicable statute of
25 limitations.

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Second Defense
(Lack of Jurisdiction)

Plaintiffs' claims are barred, in whole or in part, because the Court lacks jurisdiction over this action, which brings claims under the Securities Act of 1933.

Third Defense
(Failure to State a Claim)

Plaintiffs' claims are barred, in whole or in part, because the Complaint fails to state a claim upon which relief can be granted.

Fourth Defense
(No Actionable Misstatements or Omissions)

Plaintiffs' claims are barred, in whole or in part, because the offering documents at issue in the Complaint did not contain any false or misleading statements or omissions of material fact.

Fifth Defense
(Immateriality)

Plaintiffs' claims are barred, in whole or in part, because the facts that Plaintiffs allege were misstated in or omitted from the offering documents at issue in the Complaint were not material to the investment decisions of a reasonable investor and/or Plaintiffs.

Sixth Defense
(No Duty to Disclose)

Plaintiffs' claims are barred, in whole or in part, because at all relevant times Twitter had no duty to disclose the allegedly omitted information.

Seventh Defense
(Risk Disclosures Bespoke Caution)

Plaintiffs' claims are barred, in whole or in part, because the offering documents at issue in the Complaint bespoke caution about the risks of investing in the securities issued.

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Eighth Defense

(Conduct Not Likely to Mislead)

Plaintiffs' claims are barred, in whole or in part, because the conduct of the Twitter Defendants was not likely to mislead.

Ninth Defense

(Truth on the Market)

Plaintiffs' claims are barred, in whole or in part, because the facts that Plaintiffs allege were misstated in or omitted from the offering documents at issue in the Complaint were known to Plaintiffs and/or were publicly available or were widely known in the market for such securities, and were at all times reflected in the price of Twitter's securities.

Tenth Defense

(Good Faith)

Plaintiffs' claims are barred, in whole or in part, because the Twitter Defendants at all times acted with proper justification and in a reasonable and appropriate manner, in good faith, for a fair, honest and lawful reason, and in compliance with legal requirements, including the Securities Act of 1933, and all applicable rules and regulations promulgated thereunder. The Twitter Defendants did not know, and could not have known, that the offering documents at issue in the Complaint contained any material misstatements or omissions. The Twitter Defendants acted in good faith and did not materially assist in any violation of law or directly or indirectly induce any act or acts constituting any alleged violations or causes of action.

Eleventh Defense

(Reasonable Basis in Fact)

Plaintiffs' claims are barred, in whole or in part, because the statements alleged in the Complaint, if any were in fact made, had a reasonable basis in fact at the time they were made.

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Twelfth Defense
(Limitation on Damages)

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs are limited to only those damages authorized by the Securities Act of 1933 with respect to the claims brought in the Complaint. Plaintiffs may not recover damages in excess of those authorized by statute.

Thirteenth Defense
(Speculative Damages)

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs' claimed damages, if any, are speculative and because of the impossibility of the ascertainment and allocation of the alleged damages.

Fourteenth Defense
(No Reliance)

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs did not reasonably rely on any alleged misstatements or omissions.

Fifteenth Defense
(Negative Causation)

Plaintiffs' claims are barred, in whole or in part, because neither the Twitter Defendants nor the alleged misrepresentations or omissions were the cause of the alleged injury, loss, or damages suffered by Plaintiffs. Plaintiffs' claims cannot be maintained to the extent that any portion or all of the alleged depreciation value of Plaintiffs' securities resulted from factors other than the alleged acts and/or omissions of the Twitter Defendants, such as Plaintiffs' own conduct, the conduct of non-parties, and/or market, economic, or other superseding or intervening events over which the Twitter Defendants did not exercise any control.

Sixteenth Defense
(Knowledge)

Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs purchased their securities with actual or constructive knowledge of the risks involved, of the alleged misstatements or omissions, and/or of adverse events in the market for such securities. Plaintiffs

1 assumed the risk that the price or value of the securities would decline if such risks materialized;
2 as a consequence, their damages, if any, are not recoverable as a matter of law.

3 **Seventeenth Defense**

4 **(Assumption of the Risk)**

5 Plaintiffs' claims are barred, in whole or in part, because Plaintiffs assumed the risks
6 disclosed in the offering documents at issue in the Complaint and any losses Plaintiffs experienced
7 were caused because those risks came to fruition. Plaintiffs who purchased with knowledge of
8 those risks, or knowledge of adverse events in the market, likewise assumed the risks that there
9 would be deterioration or further deterioration in the price or value of Twitter's shares, such that
10 their damages are not recoverable as a matter of law.

11 **Eighteenth Defense**

12 **(No Cognizable Injury)**

13 Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have incurred no legally
14 cognizable injury or damages, including, but not limited to, any legally cognizable injury or
15 damages attributable to any conduct by the Twitter Defendants.

16 **Nineteenth Defense**

17 **(Failure to Mitigate)**

18 Plaintiffs are barred from recovering for their injury or damage, if any, because they have
19 failed to make reasonable efforts to mitigate such injury or damage, which would have prevented
20 their injury or damage, if any.

21 **Twentieth Defense**

22 **(Tax Benefits Offset Any Damages)**

23 Any recover for damages allegedly incurred by Plaintiffs, if any, is subject to offset in the
24 amount of any benefits, and the amount of any tax benefits, actually received by Plaintiffs.

25 **Twenty-First Defense**

26 **(No Attorneys' Fees)**

27 The Twitter Defendants deny that Plaintiffs are entitled to recovery of attorneys' fees,
28 accountants' fees, experts' fees, or other costs and disbursements.

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Twenty-Second Defense
(Improper Class Action Claims)

Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs' claims are not properly maintainable as class action claims.

Twenty-Third Defense
(Lack of Standing)

Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs are not real parties in interest or lack standing to pursue the claims against the Twitter Defendants in this action.

Twenty-Fourth Defense
(Equitable Doctrines)

Plaintiffs' claims are barred, in whole or in part, by the equitable doctrines of laches, waiver, estoppel, unjust enrichment, unclean hands, and/or other equitable doctrines.

REQUEST FOR RELIEF

WHEREFORE, the Twitter Defendants pray that the Court:

1. Enter judgment for the Twitter Defendants dismissing the Complaint in its entirety, with prejudice, as to the Twitter Defendants;
2. Enter judgment for the Twitter Defendants against Plaintiffs for all reasonable out-of-pocket expenses, including attorneys' fees, costs, and disbursements, incurred by the Twitter Defendants in connection with this action;
3. Award to the Twitter Defendants such other and further relief as the Court may deem just and proper.

Dated: April 17, 2017

SIMPSON THACHER & BARTLETT LLP

By: 
SIMONA G. STRAUSS (SBN 203062)

Attorneys for the Twitter Defendants