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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

JOHNNY HOSEY, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

RICHARD COSTOLO, MIKE GUPTA, LUCA  
BARATTA, JACK DORSEY, PETER  
CHERNIN, PETER CURRIE, PETER FENTON,  
DAVID ROSENBLATT, EVAN WILLIAMS,  
and TWITTER, INC.,

Defendants.

Case No. 16-CIV-02228

CLASS ACTION

**NOTICE OF UNOPPOSED MOTION  
AND UNOPPOSED MOTION FOR  
FINAL CERTIFICATION OF  
SETTLEMENT CLASS AND FOR  
FINAL APPROVAL OF SETTLEMENT**

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

Hearing Date: August 16, 2018  
Hearing Time: 9:00 a.m.  
Hearing Judge: Hon. Marie S. Weiner  
Hearing Dept: Dept. 2

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

1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

2 PLEASE TAKE NOTICE that on August 16, 2018, at 9:00 a.m., or as soon thereafter as  
3 the matter may be heard, in the courtroom of the Honorable Marie S. Weiner in Department 2,  
4 located at 400 County Center, Redwood City, California 94063, Plaintiff Johnny Hosey will, and  
5 hereby does, move the Court, pursuant to Rules 3.769 and 3.770 of the California Rules of Court,  
6 for an order: (1) finally certifying a settlement class, appointing Plaintiff as the class representative,  
7 and appointing Plaintiff's co-counsel as class co-counsel; (2) finally approving the settlement of  
8 this class action; (3) approving the proposed Plan of Allocation; and, (4) dismissing claims against  
9 Defendants, approving the release of claims against all released parties, and entering judgment.  
10

11 The above motion will be made and is based upon this Notice of Unopposed Motion;  
12 Unopposed Motion, the attached Memorandum of Points and Authorities; the attached Joint  
13 Declaration of Laurence Rosen and Ronen Sarraf, together with all exhibits thereto, including the  
14 Declarations of Laurence Rosen, Ronen Sarraf, Sarah Evans, and Johnny Hosey, and all exhibits  
15 attached thereto; all pleadings, records, and papers on file with the Court in this action; and any  
16 further oral and documentary evidence that may be produced and oral argument that may be heard  
17 at the hearing.  
18

19 Plaintiff makes this motion following the conference of counsel conducted on June 28-29,  
20 2018, during which Defendants' counsel advised that Defendants do not oppose this motion.

21 Dated: July 3, 2018

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CLASS ACTION

**MEMORANDUM OF POINTS  
& AUTHORITIES IN SUPPORT  
OF PLAINTIFF'S UNOPPOSED  
MOTION FOR CERTIFICATION  
OF SETTLEMENT CLASS AND  
FOR FINAL APPROVAL  
OF SETTLEMENT**

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1           **I.       INTRODUCTION**

2           Plaintiff Johnny Hosey (“Plaintiff”), respectfully submits this Memorandum of Points and  
3 Authorities in support of his motion for final approval of settlement.<sup>1</sup> The Settlement proposes to  
4 resolve the claims against Twitter Inc. (“Twitter” or the “Company”) and certain officers and  
5 directors of Twitter in exchange for a cash payment of \$2.5 million. Since the Settlement is fair,  
6 reasonable, and adequate, it warrants final approval.

7           The Settlement is informed by Plaintiff’s Counsel’s thorough understanding of the  
8 strengths and weaknesses of the claims set forth in the Complaint, as well as of the risks and  
9 expenses that they would likely confront or incur were they to proceed further with the litigation.  
10 By the time that the Parties had reached an agreement in principle to settle this case, Plaintiff’s  
11 Counsel had, among other things: (a) conducted an investigation of the claims, including a  
12 detailed review of SEC filings, press releases, analyst reports, news reports, and other public  
13 information, and consultation with loss causation and damages experts; (b) prepared a detailed  
14 Complaint based on this investigation; (c) successfully opposed Twitter’s demurrer seeking  
15 dismissal of the Complaint; (d) after the Court’s denial of Twitter’s demurrer, conducted  
16 substantial discovery, which included negotiating for the production of more than 10,000  
17 documents, consisting of approximately 100,000 pages, followed by analysis of such documents;  
18 (e) successfully opposed Twitter’s motion for summary judgment on Twitter’s statute-of-  
19 limitations defense; (f) prepared for and defended the deposition of Plaintiff, Johnny Hosey and  
20 Plaintiff’s expert witness; and, (f) engaged in a mediation process that involved the exchange of  
21 detailed written submissions concerning liability and damages followed by a full-day formal  
22 mediation session.

23           While Plaintiff and his counsel believe the claims asserted are strong, the Settlement is  
24 fair, reasonable, and provides an excellent result for the Settlement Class, particularly in light of  
25 the substantial risks and costs of prosecuting this litigation through trial and likely appeals.

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26           <sup>1</sup> Unless otherwise set forth, this Memorandum incorporates by reference the definitions in the  
27 Stipulation and Agreement of Settlement (the “Stipulation”), filed in connection with Plaintiff’s  
28 Unopposed Motion for Preliminary Certification of Settlement Class and for Preliminary  
Approval of Settlement.

1 Plaintiff's Counsel were rightly concerned that continued prosecution might result in either a  
2 much smaller recovery than Plaintiff sought or no recovery at all. Defendants presented strong  
3 evidence that this action was untimely based on the applicable statute of limitations. Defendants  
4 also intended to mount a vigorous defense at trial based on the absence of a legal duty to disclose  
5 the omitted details of Twitter's stock-based compensation system.

6 Even were Plaintiff and his counsel successful in overcoming these defenses, they faced  
7 the prospect of total estimated damages being limited to just a small fraction of Plaintiff's original  
8 estimate of approximately \$43.2 million. Plaintiff also faced the risk that damages could be  
9 reduced even further based on Defendants' negative causation defense: that other negative  
10 information about Twitter caused the drops in the Company's stock prices on the dates in question.  
11 And hovering ominously above any and all discussions of the strength of Plaintiff's case was the  
12 specter that the U.S. Supreme Court might issue a decision, in a then-pending case involving the  
13 jurisdiction of state courts over Securities Act claims, that would effectively and immediately  
14 deprive this Court of jurisdiction over the case.

15 In light of all of these risks, and the significant expenses Plaintiff's Counsel were certain  
16 to incur were litigation to proceed further, the Settlement of \$2.5 million represents an excellent  
17 result for the Class and lies well above the median percentage of investor losses recovered in  
18 similar securities class action settlements. Accordingly, Plaintiff respectfully requests that the  
19 Court grant final approval of the Settlement.

## 20 **II. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL**

21 Whether to grant final approval of a class action settlement is within the Court's discretion.  
22 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1145 (2000). In  
23 exercising such discretion, however, the Court must avoid substituting its judgment for that of  
24 counsel who negotiated the settlement:

25 Due regard should be given to what is otherwise a private  
26 consensual agreement between the parties. The inquiry must be  
27 limited to the extent necessary to reach a reasoned judgment that  
28 the agreement is not the product of fraud or overreaching by, or

1 collusion between, the negotiating parties, and that the settlement,  
2 taken as a whole, is fair, reasonable and adequate to all concerned.

3 *Dunk v. Ford Motor Co.* 48 Cal.App.4th 1794, 1801 (1996).

4 **A. The *Dunk* Presumption of Fairness Applies Here**

5 In determining whether a settlement is “fair, reasonable and adequate to all concerned,”  
6 this Court should consider a non-exhaustive list of factors, including “the strength of plaintiffs’  
7 case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining  
8 class action status through trial, the amount offered in settlement, the extent of discovery  
9 completed and the stage of the proceedings, the experience and views of counsel, the presence of  
10 a governmental participant, and the reaction of the class members to the proposed settlement.”  
11 *Dunk*, 48 Cal.App.4th at 1801. In considering these factors, which amounts to “nothing more than  
12 ‘an amalgam of delicate balancing, gross approximations and rough justice,’” *Id* (citation  
13 omitted), this Court should apply a presumption of fairness if the following conditions are met:  
14 (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are  
15 sufficient to allow counsel and the court to act intelligently; (3) counsel [are] experienced in  
16 similar litigation; and (4) the percentage of objectors [is] small.” *Id.* at 1802.

17  
18 **B. Each of the Applicable *Dunk* Factors Supports Final Approval**

19 The Court’s evaluation of each of the relevant *Dunk* considerations confirms that the  
20 Settlement is fair, adequate, and reasonable.

21  
22 **1. The Strength of Plaintiff’s Case Favors Approval**

23 While it may be true that a plaintiff “need only show a material misstatement or omission  
24 to establish his *prima facie* case,” *Hildes v. Arthur Andersen LLP*, 734 F.3d 854, 859 (9th Cir.  
25 2013), “[c]ourts experienced with securities fraud litigation ‘routinely recognize that securities  
26 class actions present hurdles to proving liability that are difficult for plaintiffs to clear.’ ” *Redwen*  
27 *v. Sino Clean Energy, Inc.*, No. CV11—3936 PA (SSx), 2013 WL 12303367, at \*6 (C.D. Cal.  
28

1 July 9, 2013) (citation omitted). In light of such difficulty, a court will find that the strength of the  
2 plaintiff’s case favors approval if it determines that “a legitimate controversy exists on a legal  
3 point, if that legal point significantly affects the valuation of the case for settlement purposes.”  
4 *Clark v. Am. Residential Services LLC* (2009)175 Cal.App.4th 785, 803.

5 This Court should find that such a “legitimate controversy” existed between the Parties  
6 with respect to several issues on which Plaintiff would be required to prevail at trial. First,  
7 Defendants argued—both in their demurrer and their motion for summary judgment—that  
8 Plaintiff’s claims are untimely and, hence, barred by the applicable statute of limitations.  
9 Although the Court disagreed with Defendants, denying both their demurrer and their summary-  
10 judgment motion based on Defendants’ failure to establish such defense *as a matter of law*, the  
11 Court acknowledged, in denying summary judgment, that “Defendants have submitted evidence  
12 that would support a decision by the trier of fact in favor of Defendants on the affirmative defense  
13 of statute of limitations.” Opinion, dated Oct. 13, 2017, at 3. Were Plaintiff to proceed to trial on  
14 this issue, a jury could easily conclude that Defendants are not liable.  
15  
16

17 Second, Defendants argued in their demurrer that Twitter had no duty to disclose the  
18 omitted information regarding its employee stock-based compensation system. Although Plaintiff  
19 was able to show in opposition to Defendants’ demurrer that Twitter had such a duty when all  
20 reasonable inferences are drawn from his allegations in a light most favorable to him, Plaintiff  
21 would not be able to take advantage of such a legal presumption at trial. Rather, at trial, the Court  
22 may determine that the evidence does not support the existence of a duty on the part of Twitter to  
23 disclose the details of its stock-based compensation system.  
24

25 Third, Defendants dispute Plaintiff’s claim that the estimated damages in this case are  
26 approximately \$43.2 million based upon the statutory damages calculation. Defendants have  
27 argued that damages are limited to only those traceable to Twitter’s issuance of the IPO  
28

1 Registration Statement. According to Defendants, as soon as any shares not issued pursuant to the  
2 Registration Statement were traded publicly, traceability ceased to exist. Defendants presented  
3 information supporting the conclusion that traceability ceased as early as February 15, 2014,  
4 which, if established at trial, would place a substantial cap on damages to which Plaintiff would  
5 be entitled. Assuming Plaintiff were able to establish all elements of his claims, Defendants  
6 argued that, after adjusting for traceability being lost upon the commingling of registered and  
7 unregistered shares, Plaintiff's maximum damages would fall from the roughly \$43.2 million to  
8 no more than \$11 million. From that \$11 million damages ceiling, Defendants then argued that  
9 once their negative causation defense is taken into account, Plaintiff's damages are zero.  
10

11 Fourth, Defendants have argued that they can establish that the damages alleged here were  
12 caused, either in whole or in part, by something other than the omissions regarding Twitter's  
13 stock-based compensation system. *See* 15 U.S.C. 77k(e) (“[I]f the defendant proves that any  
14 portion or all of such damages represents other than the depreciation in value of such security  
15 resulting from such part of the registration statement, with respect to which his liability is asserted,  
16 . . . such portion of or all such damages shall not be recoverable”). Defendants have suggested,  
17 among other things, that some portion of the drops in Twitter's stock prices on the dates of the  
18 corrective disclosures were caused by larger trends in the general market and that negative  
19 information other than the corrective disclosures, such as high-profile departures by Twitter  
20 executives. Were Defendants to persuade the Court of their position at trial, Plaintiff's damages  
21 would be reduced substantially.  
22

23  
24 Fifth, on June 27, 2017, the Supreme Court granted certiorari in *Cyan, Inc. v. Beaver Cty.*  
25 *Emp'ees Ret. Fund*, No. 15-1439, 85 U.S.L.W. 3594, 2016 WL 3040512 (U.S. June 27, 2017), on  
26 the question of “whether state courts lack subject-matter jurisdiction over...class actions...that  
27 allege only claims under the Securities Act of 1933.” Just a few days later, Defendants requested  
28

1 that this Court stay this action in light of *Cyan* because “[i]f the Supreme Court agrees with *Cyan*,  
2 it will find that this Court lacks subject matter jurisdiction to hear Securities Act cases.” Defs.’  
3 Ltr. to Court, dated 6/30/17. From Plaintiff’s Counsel’s perspective, *Cyan* represented an  
4 existential risk to this case in that *Cyan* could potentially deprive the Court of subject matter  
5 jurisdiction. Indeed, the risk posed by *Cyan* was so significant that the Parties sought to ensure  
6 that the Settlement would survive regardless of the Supreme Court’s decision by agreeing upon a  
7 specific written provision that removed any potential impact *Cyan* might have on this action.<sup>2</sup>  
8  
9 Joint Declaration of Laurence Rosen and Ronen Sarraf in Support of Final Approval of Settlement  
10 (“Joint Decl.” or “Joint Declaration”), filed herewith, ¶44.

11 Based on the existence of the foregoing “legitimate controversies” between the Parties,  
12 the Court should conclude that the strength of Plaintiff’s case favors approval of the Settlement.  
13 See *In re Portal Software, Inc. Sec. Litig.*, No. C–03–5138 VRW, 2007 WL 4171201, at \*3 (N.D.  
14 Cal. Nov. 26, 2007) (“Factor (1), the strength of plaintiffs’ case, somewhat favors settlement  
15 because plaintiffs’ remaining claims are tenuous. Plaintiffs assert that establishing liability and  
16 damages at trial would be difficult because of the uncertainties associated with proving its claims,  
17 which are ‘exacerbated by the unpredictability of a lengthy and complex jury trial’ ”).

## 18 19 **2. The Substantial Risks and Expenses Associated With Continued** 20 **Litigation Favor Approval**

21 In *Dunk*, the Court of Appeal cited the risks arising from plaintiffs’ belief that “there were  
22 statute of limitation and other potential problems that would negatively impact the chances of  
23 recovery” as favoring approval of the settlement. 48 Cal.App.4th at 1802. Similarly here, the  
24 considerable risk posed by Defendants’ statute of limitations defense, when combined with the  
25

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26  
27 <sup>2</sup> Just prior to the Parties’ finalization of the Settlement papers, the Supreme Court resolved *Cyan*  
28 by holding that state courts have jurisdiction over certain Securities Act claims, as here. The  
Parties thereafter removed the provisions in the Settlement papers relating to *Cyan*.

1 significant risks and expenses associated with the continued litigation of the issues concerning  
2 Defendant's duty to disclose the details of Twitter's compensation system, the potential cap on  
3 damages asserted by Defendants, and Defendants' defense of negative causation, all counseled  
4 Plaintiff and his attorneys to consider carefully the merits of their case before proceeding with  
5 discovery, trial, and likely appeals, despite the perceived strength of Plaintiff's case.

6 Beyond these specific concerns, Plaintiff and his counsel also considered the general risks  
7 and the expensive nature of further litigation in determining whether to continue with their  
8 prosecution of this case. It is well known that class action litigation is inherently complex. *See,*  
9 *e.g., Nobles v. MBNA Corp.*, No. C 06-3723 CRB, 2009 WL 1854965, at \*2 (N.D. Cal. June 29,  
10 2009) (finding a proposed settlement proper "given the inherent difficulty of prevailing in class  
11 action litigation"). Courts recognize that securities class actions, in particular, are typically  
12 complex and expensive to prosecute. *See, e.g., In re Heritage Bond Litig.*, No. 02-ML-1475 DT,  
13 2005 WL 1594403, at \*6 (C.D. Cal. June 10, 2005). This Action is no exception.

14  
15  
16 Prior to reaching agreement on the proposed Settlement, Plaintiff's Counsel had already  
17 expended substantial efforts in litigating this Action. Plaintiff's Counsel had investigated the  
18 Settlement Class's claims thoroughly, successfully defeated Defendants' demurrer and summary  
19 judgment, reviewed and analyzed approximately 100,000 pages of documents, consulted with  
20 experts on loss causation and damages, and prepared a detailed mediation statement. Joint Decl.  
21 ¶7. Had the Action continued, Plaintiff's Counsel would have had to continue to expend  
22 significant time and resources in litigating Plaintiff's claims. These efforts would have included  
23 conducting further factual discovery, conducting expert discovery, likely engaging in motions to  
24 compel discovery, filing a motion for class certification and a reply to Defendants' opposition  
25 thereto, responding to likely motions for summary judgment on the merits of the claims, litigating  
26 *Daubert* motions, and proving Plaintiff's claims at trial. Throughout these efforts, Plaintiff's  
27  
28

1 Counsel would have faced a vigorous defense from Defendants’ experienced counsel. *See In re*  
2 *Alloy, Inc. Sec. Litig.*, No. 03 Civ. 1597, 2004 WL 2750089, at \*2 (S.D.N.Y. Dec. 2, 2004) (noting  
3 that securities fraud issues are “likely to be litigated aggressively, at substantial expense to all  
4 parties”).

5 Even if Plaintiff and Plaintiff’s Counsel were to successfully navigate the above hazards  
6 and obtained a significant judgment at trial, any recovery would likely be delayed for years  
7 through post-trial motions and appeals. *See In re Am. Apparel S’holder Litig.*, No. CV 10-06352  
8 MMM (JCGX), 2014 WL 10212865, at \*10 (C.D. Cal. July 28, 2014) (“Because both parties  
9 would have had to engage in extensive, expensive summary judgment and pretrial activities,  
10 because both faced the prospect that they would not prevail, and because any outcome would  
11 likely have been appealed, this factor supports approval of the settlement”); *In re Sony SXR*  
12 *Rear Projection Television Class Action Litig.*, No. 06 CIV. 5173 (RPP), 2008 WL 1956267, at  
13 \*6 (S.D.N.Y. May 1, 2008) (“Not only would Plaintiffs spend substantial sums in litigating this  
14 case through trial and appeals, it could be years before class members saw any recovery, if at  
15 all”); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y.  
16 2003) (“[E]ven if a shareholder or class member was willing to assume all the risks of pursuing  
17 the actions through further litigation and trial, the passage of time would introduce yet more risks  
18 in terms of appeals and possible changes in the law and would, in light of the time value of money,  
19 make future recoveries less valuable than this current recovery”).

20 The Settlement eliminates the inevitable risks of continued litigation and allows the  
21 Settlement Class to recover now. This factor therefore weighs heavily in favor of approval of the  
22 Settlement.  
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### 3. The Stage of the Proceedings Favors Approval

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2 In determining whether the stage of the proceedings here favors approval, “the question is  
3 not whether the parties have completed a particular amount of discovery, but whether the parties  
4 have obtained sufficient information about the strengths and weaknesses of their respective cases  
5 to make a reasoned judgment about the desirability of settling the case on the terms proposed or  
6 continuing to litigate it.” *In re OCA, Inc. Sec. & Deriv. Litig.*, 2009 WL 512081, at \*12 (E.D. La.  
7 Mar. 2, 2009). “[I]f the settlement proponents have taken affirmative steps to gather data on the  
8 claims at issue and the terms of the settlement are not patently unfair, the Court may rely on  
9 counsel's judgment that the information gathered was enough to support a settlement.” *In re OCA,*  
10 *Inc. Sec. & Deriv. Litig.*, Civil Action No. 05–2165, 2009 WL 512081, at \*12 (E.D. La. Mar. 2,  
11 2009).  
12

13 When the parties agreed to settle, Plaintiff and his Counsel had a thorough understanding  
14 of the strengths and weaknesses of their claims and the defenses asserted by Defendants, and  
15 could make an informed appraisal regarding their chances of success. By the time the parties  
16 convened for their mediation, Plaintiff’s Counsel had expended significant time and resources  
17 litigating the Action, which included, among other things: (a) conducting an extensive  
18 investigation of the claims asserted in the Action, including a detailed review of SEC filings, press  
19 releases, analyst reports, news reports, and other public information, and consultation with loss  
20 causation and damages experts; (b) preparing a detailed Complaint based on this investigation;  
21 (c) successfully opposing Twitter’s demurrer seeking dismissal of the Complaint; (d) after the  
22 Court’s denial of Twitter’s demurrer, conducting substantial discovery, which included  
23 negotiating the production of more than 10,000 documents, consisting of approximately 100,000  
24 pages, by Twitter, followed by analysis of such documents; (e) successfully opposing Twitter’s  
25 motion for summary judgment on Twitter’s statute-of-limitations defense; (f) preparing for and  
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1 defending the deposition of Plaintiff, Johnny Hosey; and, (f) engaging in a mediation process  
2 overseen by Jed Melnick, Esq., of JAMS, which involved the exchange of detailed written  
3 submissions concerning liability and damages followed by a full-day formal mediation session.  
4 Joint Decl. ¶7.

5 In addition to performing the above tasks in connection with the litigation of this Action,  
6 Plaintiff and his counsel also considered the Court’s written decision on Defendants’ summary  
7 judgment motion and an independent, experienced mediator’s feedback regarding the strengths  
8 and weaknesses of Plaintiff’s claims. In short, the record before this Court supports the conclusion  
9 that “the parties carefully investigated the claims before reaching a resolution.” *In re Volkswagen*  
10 *“Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB(JSC), 2016 WL  
11 6248426, at \*13 (N.D. Cal. Oct. 25, 2016).

12  
13 The stage of the proceedings, therefore, favors approval of the Settlement.

#### 14 **4. The Settlement Amount Favors Approval**

15 “A settlement need not obtain 100 percent of the damages sought in order to be fair and  
16 reasonable.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250, *disapproved of*  
17 *on other grounds by Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260. Even if “the  
18 proposed settlement is only a small percentage of the total expected recovery at trial, ‘there is no  
19 reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even  
20 a thousandth part of a single percent of the potential recovery.’ ” *Rubio-Delgado v. Aerotek, Inc.*,  
21 No. 13-cv-03105-SC, 2015 WL 3623627, at \*9 (N.D. Cal. June 10, 2015).<sup>3</sup>

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24  
25 <sup>3</sup> See also *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d  
26 615, 628 (9th Cir. 1982) (“It is well-settled law that a cash settlement amounting to only a fraction  
27 of the potential recovery will not *per se* render the settlement inadequate or unfair”); *Knight v.*  
28 *Red Door Salons, Inc.*, No. 08-01520 SC, 2009 WL 248367, at \*3 (N.D. Cal. Feb. 2, 2009) (“The  
immediacy and certainty of the settlement award justifies a recovery smaller than the Class  
Members could seek in the case”).

1 Under the Settlement, Defendants will pay \$2.5 million, which represents approximately  
2 5.8% of the roughly \$43.2 million in terms of Plaintiff’s estimated aggregate damages. As a  
3 percentage of Plaintiff’s total estimated damages, the Settlement Amount is well above the median  
4 percentage of investor losses recovered recovery level in securities class action settlements. *See*  
5 *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving 6%  
6 recovery of maximum damages) (citing *Heritage Bond*, 2005 WL 1594403, at \*8–9 (average  
7 recovery between 2-3% of maximum damages)).<sup>4</sup> When viewed from Defendants’ “best case”  
8 damages scenario, of course, the Settlement Amount fares even better. Assuming Plaintiff were  
9 able to establish all elements of his claims, Defendants argued that, after adjusting for traceability  
10 being lost upon the commingling of registered and unregistered shares, Plaintiff’s maximum  
11 damages would fall from the roughly \$43.2 million to no more than \$11 million. From that \$11  
12 million damages ceiling, Defendants then argued that once their negative causation defense is  
13 taken into account, Plaintiff’s damages are zero.  
14

15  
16 The Court should therefore conclude that the reasonableness of the Settlement Amount  
17 favors approval of the Settlement.

### 18 **5. The Experience and Views of Plaintiff’s Counsel Favor Approval**

19 Both state and federal courts in California place “great weight” upon the recommendation  
20 of counsel when considering the fairness of a settlement. *See, e.g., Kullar v. Foot Locker Retail,*  
21 *Inc.*, (2008) 168 Cal.App.4th 116, 129 (the “court undoubtedly should give considerable weight  
22 to the competency and integrity of counsel” when evaluating a settlement); *In re Volkswagen*  
23

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25 <sup>4</sup> *See also, e.g., Vaccaro v. New Source Energy Partners L.P.*, No. 15 CV 8954 (KMW), 2017  
26 WL 6398636, at \*6 (S.D.N.Y. Dec. 14, 2017) (“Co-Lead Plaintiffs estimate that the maximum  
27 recoverable damages would be approximately \$44,000,000. The \$2,850,000 settlement represents  
28 6.5% of the maximum recoverable damages. This settlement amount is reasonable and in line  
with other settlements in securities class actions”); *In re Giant Interactive Grp., Inc. Sec. Litig.*,  
279 F.R.D. 151, 162-63 (S.D.N.Y. 2011) (“the average settlement in securities class actions  
ranges from 3% to 7% of the class’ total estimated losses”).

1 “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig., 2016 WL 6248426, at \*14 (N.D.  
2 Cal. Oct. 25, 2016) (“[c]ourts afford ‘great weight to the recommendation of counsel, who are  
3 most closely acquainted with the facts of the underlying litigation’ ”); *Am. Apparel*, 2014 WL  
4 10212865, at \*14 (“The recommendations of plaintiffs’ counsel should be given a presumption  
5 of reasonableness” because they are “better positioned than courts to produce a settlement that  
6 fairly reflects each party’s expected outcome in litigation”).

7  
8 Plaintiff’s Counsel have many years of experience in litigating securities class actions  
9 throughout the country – including within this State in particular – and in assessing the respective  
10 merits of each side’s case. Joint Decl., Exs. 1-A & 2-A (Plaintiff’s Counsel’s firm resumes).  
11 Additionally, throughout the litigation and settlement negotiations, Defendants have been  
12 represented by very skilled and highly respected counsel, Simpson Thacher & Bartlett LLP, one  
13 of the largest and most respected law firms in the world. Defendants’ counsel brought  
14 considerable experience and expertise to bear and vigorously defended this Action.

15  
16 In the face of this knowledgeable and formidable defense, Plaintiff’s Counsel was  
17 nonetheless able to develop a case that was strong enough to persuade Defendants to settle on  
18 terms that are favorable to the Class. Indeed, “the fact that experienced counsel involved in the  
19 case approved the settlement after hard-fought negotiations is entitled to considerable weight.”

20 *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *see also Riker v. Gibbons*,  
21 No. 3:08-CV-00115-LRH, 2010 WL 4366012, at \*2 (D. Nev. Oct. 28, 2010) (“An initial  
22 presumption of fairness is usually involved if the settlement is recommended by class counsel  
23 after arm’s-length bargaining”). This makes sense, as counsel is “most closely acquainted with  
24 the facts of the underlying litigation,” *Heritage Bond*, 2005 WL 1594403, at \*9, and “[p]arties  
25 represented by competent counsel are better positioned than courts to produce a settlement that  
26 fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enters. Sec. Litig.*, 47 F.3d  
27  
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1 373, 378 (9th Cir. 1995). Thus, “the trial judge, absent fraud, collusion, or the like, should be  
2 hesitant to substitute its own judgment for that of counsel.” *Heritage*, 2005 WL 1594403, at \*9.  
3 The Court should apply the presumption in favor of counsel’s judgment here.

#### 4 **6. The Reaction of the Settlement Class Favors Approval**

5 The reaction of the Class to the Settlement is another factor in determining the adequacy of  
6 the Settlement. *See Omnivision*, 559 F. Supp. 2d at 1043; *In re Rambus Inc. Deriv. Litig.*, No. C  
7 06–3513 JF (HRL), 2009 WL 166689, at \*3 (N.D. Cal. Jan. 20, 2009) (“[T]he absence of a large  
8 number of objections to a proposed class action settlement raises a strong presumption that the  
9 terms of a proposed class settlement action are favorable to the class members”). “In order to  
10 gauge the reaction of the other class members, it is appropriate to evaluate the number of requests  
11 for exclusion, as well as the objections submitted.” *Am. Apparel*, 2014 WL 10212865, at \*15.

12 The deadline to file objections to the Settlement is July 13, 2018, and the deadline to request  
13 exclusion from the settlement is July 5, 2018. To date, there have been no objections and only 9  
14 requests for exclusion received, 5 of which are invalid. Declaration of Sarah Evans Concerning  
15 the Mailing of the Notice of Postcard Notice of Proposed Settlement of Class Action, Publication  
16 of Summary Notice, Exclusion Requests Received, and Objections Submitted (“Evans Decl.”)  
17 (Ex. 3 to Joint Decl.), filed herewith, at ¶¶11-12. If necessary, Plaintiff will address any objections  
18 in his reply.

19 Generally, a court will find that this factor strongly favors final approval if the record  
20 establishes a high claims rate accompanied by low opt-out and objection rates. *See, e.g., In re*  
21 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB(JSC),  
22 2016 WL 6248426, at \*14 (N.D. Cal. Oct. 25, 2016) (“Given the high claim rate and the low opt-  
23 out and objection rates, this factor strongly favors final approval”); *McPhail v. First Command*  
24 *Fin. Planning, Inc.*, No. 05cv179-IEG-J MA, 2009 WL 839841, at \*6 (S.D. Cal. Mar. 30, 2009)  
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1 (when over 207,000 notices were sent and five class members objected and 56 opted-out, the court  
2 concluded that “presence of a small minority of objectors strongly supports a finding that the  
3 settlement is fair, reasonable, and adequate”); *In re Bear Stearns Cos. Sec., Deriv. & ERISA Litig.*,  
4 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) (“Given the absence of significant exclusion or  
5 objection—the rate of exclusion is 5.1% and the rate of objection is less than 1%—this factor  
6 weighs strongly in favor of approval.”); *In re AOL Time Warner, Inc.*, No. 02 CIV. 5575 (SWK),  
7 2006 WL 903236, at \*10 (S.D.N.Y. Apr. 6, 2006) (finding that the “small number of objectors  
8 and low percentage of opt-outs strongly favor the Settlement”).  
9

10 Based on the claims, exclusion, and objection rates demonstrated to date, the reaction of  
11 the Class strongly supports approval of the Settlement.

12 **III. THE PROPOSED PLAN OF ALLOCATION WARRANTS APPROVAL**  
13 **BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE**

14 In the Preliminary Approval Order, the Court preliminarily approved the Notice and the  
15 Plan of Allocation. Plaintiff now requests that the Court grant final approval of the Plan of  
16 Allocation, for the purpose of administering the Settlement. The proposed Plan of Allocation was  
17 fully described in the Notice. *See* Joint Decl., Ex. 5.

18 Assessment of the adequacy of a plan of allocation in a class action “is governed by the  
19 same standards of review applicable to approval of the settlement as a whole: the plan must be  
20 fair, reasonable and adequate.” *Omnivision*, 559 F. Supp. 2d at 1045. As a result, “[a]n allocation  
21 formula need only have a reasonable, rational basis, particularly if recommended by experienced  
22 and competent class counsel.” *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344  
23 (S.D.N.Y. 2005). Because they tend to mirror the complaint’s allegations in securities class  
24 actions, “plans that allocate money depending on the timing of purchases and sales of the  
25 securities at issue are common” and generally warrant approval. *In re Datatec Sys., Inc. Sec. Litig.*,  
26 Master File No. 04–CV–525 (GEB), 2007 WL 4225828, at \*5 (D.N.J. Nov. 28, 2007); *see also*  
27  
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1 *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (deeming plan of  
2 allocation where “claimants are to be reimbursed on a *pro rata* basis for their recognized losses  
3 based largely on when they bought and sold their shares of General Instrument stock” as “even  
4 handed”).

5 “ ‘A plan of allocation . . . fairly treats class members by awarding a *pro rata* share to  
6 every Authorized Claimant, [even as it] sensibly makes interclass distinctions based upon, *inter*  
7 *alia*, the relative strengths and weaknesses of class members’ individual claims and the timing of  
8 purchases of the securities at issue.’ ” *Heritage Bond*, 2005 WL 1594403, at \*11. Here, the  
9 proposed Plan of Allocation distributes the settlement proceeds on a *pro rata* basis, calculating a  
10 Claimant’s relative loss proximately caused by Defendants’ alleged false and misleading  
11 statements and material omissions, based on factors such as when and at what prices the Claimant  
12 purchased and sold shares of Twitter common stock. This approach is reasonable under the law.  
13 *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 412 n.8  
14 (upholding approval of settlement that provided each claimant with proportionate share of  
15 settlement fund).  
16  
17

18 The reasonableness of the Plan finds further support in its development by Plaintiff’s  
19 experienced counsel in consultation with a damages expert. “With respect to the formula used in  
20 a Plan, courts recognize that ‘[a]n allocation formula need only have a reasonable, rational basis,  
21 particularly if recommended by experienced and competent counsel.’ ” *Nguyen v. Radiant*  
22 *Pharmaceuticals Corp.*, No. SACV 11–00406 DOC (MLGx), 2014 WL 1802293, at \*5 (C.D. Cal.  
23 May 6, 2014). As explained in the Joint Declaration, Plaintiff engaged a damages expert to assist  
24 in developing a plan to allocate the Settlement proceeds among Claimants. Joint Decl. ¶¶41, 56.  
25 The Plan of Allocation was formulated by Plaintiff’s Counsel, in consultation with a damages  
26 expert, with the goal of reimbursing Class members in a fair and reasonable manner. *Id.*; *see also*  
27  
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1 *Riker*, 2010 WL 4366012, at \*5 (“Class counsel has consistently consulted with experts  
2 throughout this litigation, and based on these consultations, has determined that the terms agreed  
3 upon in the settlement represent a fair, adequate, and reasonable settlement of plaintiffs’ claims”).

4 For these reasons, the Court should approve the Plan of Allocation.

5 **IV. THE COURT SHOULD AFFIRM ITS CERTIFICATION OF THE CLASS**

6 On May 3, 2018, this Court issued its Preliminary Approval Order, in which it preliminarily  
7 certified the following Class: “all persons or entities (“Persons”) that purchased or otherwise  
8 acquired Twitter, Inc. (“Twitter”) common stock between November 7, 2013 and February 18,  
9 2014, inclusive, pursuant or traceable to the Registration Statement for Twitter’s November 7,  
10 2013 Initial Public Offering (the “IPO”) (the “Class”).”<sup>5</sup> The Court also found, for purposes of  
11 the Settlement only, that:  
12

13 (a) the number of Class Members is so numerous that joinder of all  
14 members thereof is impracticable; (b) there are questions of law and  
15 fact common to the Class; (c) the claims of Plaintiff are typical of  
16 the claims of the Class he seeks to represent; (d) Plaintiff and  
17 Plaintiff’s Counsel will fairly and adequately represent the interests  
18 of the Class; (e) the questions of law and fact common to the  
19 members of the Class predominate over questions affecting only  
individual members of the Class; and (f) a class action is superior  
to other available methods for the fair and efficient adjudication of  
this controversy.

20 <sup>5</sup> The Preliminary Approval Order further provided as follows: “The Class is limited to Persons  
21 who purchased or otherwise acquired Twitter common stock before February 19, 2014 because  
22 Twitter stock that was not issued pursuant to the Registration Statement was publicly trading by  
23 February 19, 2014, making it difficult or impossible for persons who purchased on or after  
24 February 19, 2014 to trace their stock to the Registration Statement, as required for the Section  
25 11 claim in the Action. Also excluded from the Class are (i) Twitter, (ii) the Individual  
26 Defendants, (iii) any current or former officers and directors of Twitter, (iv) the Underwriters, and  
27 (v) all such excluded Persons’ immediate family members, legal representatives, heirs, parents,  
28 wholly-owned subsidiaries, successors, and assigns. Notwithstanding the foregoing sentence, the  
Class shall include any investment company or pooled investment fund, including, but not limited  
to, mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which the  
Underwriters, or any of them, have, has or may have a direct or indirect interest, or as to which  
any Underwriter’s affiliates may act as an investment advisor, but as to which any Underwriter  
alone or together with any of its respective affiliates is neither a majority owner nor the holder of  
a majority beneficial interest. Also excluded from the Class are Persons otherwise meeting the  
definition of the Class who submit valid and timely requests for exclusion from the Settlement.”  
Preliminary Approval Order ¶1.



1 Preliminary Approval Order ¶2.

2 Since the issuance of the Preliminary Approval Order, there have been no material changes  
3 that would call into question the propriety of the Court's preliminary findings. Therefore, the  
4 Court should affirm its preliminary findings, and, for purposes of the Settlement only, certify the  
5 Class and appoint Plaintiff as Class Representative and Plaintiff's Counsel as Lead Counsel for  
6 the Class. *See In re Bear Stearns Cos. Sec., Deriv. & ERISA Litig.*, 909 F. Supp. 2d 259, 267  
7 (S.D.N.Y. 2012) (granting final certification of class "[s]ince there have been no material changes  
8 to alter the propriety of these findings regarding the Settlement Class").  
9

10  
11 **V. CONCLUSION**

12 For reasons set forth above and in the declarations submitted in conjunction with this  
13 motion, the Court should grant Lead Plaintiff's Unopposed Motion for Final Approval of  
14 Settlement, approve the Plan of Allocation, and finally certify the Class.

15 Dated: July 3, 2018

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