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21 Attorneys for Defendant Twitter, Inc.

22 **UNITED STATES DISTRICT COURT**  
 23 **CENTRAL DISTRICT OF CALIFORNIA**  
 24 **WESTERN DIVISION**

25 GENEVIEVE MORTON,  
 26 an individual,  
 27  
 28 Plaintiff,  
 v.  
 TWITTER, INC.,  
 a Delaware corporation, et. al,  
 Defendants.

Case No. 2:20-cv-10434-GW-JEM  
~~PROPOSED~~ PROTECTIVE  
 ORDER  
 DISCOVERY MATTER  
 Hon. John E. McDermott

1 Defendant Twitter, Inc. (“Twitter”) hereby requests that this Court enter the  
2 following Protective Order (“Order”) governing the production and use of  
3 confidential information, which is based substantially on the Central District of  
4 California’s form protective order:

5 1. A. PURPOSES AND LIMITATIONS

6 Discovery in this action is likely to involve production of confidential,  
7 proprietary or private information for which special protection from public disclosure  
8 and from use for any purpose other than prosecuting this litigation may be warranted.  
9 This Order does not confer blanket protections on all disclosures or responses to  
10 discovery and that the protection it affords from public disclosure and use extends  
11 only to the limited information or items that are entitled to confidential treatment  
12 under the applicable legal principles.

13 B. GOOD CAUSE STATEMENT

14 This action is likely to involve confidential user data and information, as well  
15 as valuable financial and/or proprietary information for which special protection  
16 from public disclosure and from use for any purpose other than prosecution of this  
17 action is warranted. Such confidential and proprietary materials and information  
18 consist of, among other things, confidential business or financial information,  
19 information regarding confidential business practices, information regarding  
20 confidential user data, or other confidential commercial information (including  
21 information implicating the privacy rights of third parties), information otherwise  
22 generally unavailable to the public, or which may be privileged other otherwise  
23 protected from disclosure under state or federal statutes, court rules, case decisions,  
24 or common law. Accordingly, to expedite the flow of information, to facilitate the  
25 prompt resolution of disputes of confidentiality of discovery materials, to adequately  
26 protect information the Parties are entitled to keep confidential, to ensure that the  
27 Parties are permitted reasonable necessary uses of such material in preparation for  
28 and in the conduct of trial, to address their handling at the end of the litigation, and

1 serve the ends of justice, a protective order for such information is justified in this  
2 matter. Information will not be designated as confidential for tactical reasons and that  
3 nothing be so designated without a good faith belief that it has been maintained in a  
4 confidential, non-public manner, and there is good cause why it should not be part of  
5 the public record in this case.

6 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

7 As set forth in Section 12.3, below, this Protective Order does not entitle them  
8 to file confidential information under seal; Local Civil Rule 79-5 sets forth the  
9 procedures that must be followed and the standards that will be applied when a party  
10 seeks permission from the court to file material under seal. There is a strong  
11 presumption that the public has a right of access to judicial proceedings and records  
12 in civil cases. In connection with non-dispositive motions, good cause must be shown  
13 to support a filing under seal. *See Kamakana v. City and County of Honolulu*, 447  
14 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-  
15 11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D.  
16 Wis. 1999) (even stipulated protective orders require good cause showing), and a  
17 specific showing of good cause or compelling reasons with proper evidentiary  
18 support and legal justification, must be made with respect to Protected Material that  
19 a party seeks to file under seal. The parties' mere designation of Disclosure or  
20 Discovery Material as CONFIDENTIAL does not—without the submission of  
21 competent evidence by declaration, establishing that the material sought to be filed  
22 under seal qualifies as confidential, privileged, or otherwise protectable—constitute  
23 good cause. Further, if a party requests sealing related to a dispositive motion or trial,  
24 then compelling reasons, not only good cause, for the sealing must be shown, and the  
25 relief sought shall be narrowly tailored to serve the specific interest to be protected.  
26 *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each  
27 item or type of information, document, or thing sought to be filed or introduced under  
28 seal in connection with a dispositive motion or trial, the party seeking protection must

1 articulate compelling reasons, supported by specific facts and legal justification, for  
2 the requested sealing order. Again, competent evidence supporting the application to  
3 file documents under seal must be provided by declaration. Any document that is not  
4 confidential, privileged, or otherwise protectable in its entirety will not be filed under  
5 seal if the confidential portions can be redacted. If documents can be redacted, then  
6 a redacted version for public viewing, omitting only the confidential, privileged, or  
7 otherwise protectable portions of the document, shall be filed. Any application that  
8 seeks to file documents under seal in their entirety should include an explanation of  
9 why redaction is not feasible.

10 2. DEFINITIONS

11 2.1 Action: this pending federal lawsuit.

12 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
13 of information or items under this Order.

14 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
15 how it is generated, stored or maintained) or tangible things that qualify for protection  
16 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good  
17 Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
19 their support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information or  
21 items that it produces in disclosures or in responses to discovery as  
22 “CONFIDENTIAL.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless  
24 of the medium or manner generated, stored, or maintained (including, among other  
25 things, testimony, transcripts, or tangible things) that are produced or generated in  
26 disclosures or responses to discovery in this matter.

1           2.7 Expert: a person with specialized knowledge or experience in a matter  
2 pertinent to the litigation who has been retained by a Party or its Counsel to serve as  
3 an expert witness or as a consultant in this Action.

4           2.8 House Counsel: attorneys who are employees of a Party to this Action.  
5 House Counsel does not include any Outside Counsel of Record or any other outside  
6 counsel.

7           2.9 Non-Party: any natural person, partnership, corporation, associations,  
8 or other legal entity not named as a Party to this action.

9           2.10 Outside Counsel of Record: attorneys who are not employees of a party  
10 to this Action but are retained to represent or advise a party to this Action and have  
11 appeared in this Action on behalf of that party or are affiliated with a law firm that  
12 has appeared on behalf of that party, and includes support staff.

13           2.11 Party: any party to this Action, including all of its officers, directors,  
14 employees, consultants, retained experts, and outside counsel of record (and their  
15 support staff).

16           2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
17 Discovery Material in this action.

18           2.13 Professional Vendors: persons or entities that provide litigation support  
19 services (e.g., photocopying; videotaping; translating; preparing exhibits or  
20 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and  
21 their employees and subcontractors.

22           2.14 Protected Material: any Disclosure or Discovery Material that is  
23 designated as “CONFIDENTIAL.”

24           2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
25 from a Producing Party.

26 3. SCOPE

27           The protections conferred by this Protective Order cover not only Protected  
28 Material (as defined above), but also (1) any information copied or extracted from

1 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
2 Material; and (3) any testimony, conversations, or presentations by Parties or their  
3 Counsel that might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the  
5 trial judge. This Order does not govern the use of Protected Material at trial.

6 4. DURATION

7 Once a case proceeds to trial, information that was designated as  
8 CONFIDENTIAL or maintained pursuant to this protective order used or introduced  
9 as an exhibit at trial becomes public and will be presumptively available to all  
10 members of the public, including the press, unless compelling reasons supported by  
11 specific factual findings to proceed otherwise are made to the trial judge in advance  
12 of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”  
13 showing for sealing documents produced in discovery from “compelling reasons”  
14 standard when merits-related documents are part of court record). Accordingly, the  
15 terms of this protective order do not extend beyond the commencement of the trial.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection:

18 Each Party or Non-Party that designates information or items for protection under  
19 this Order must take care to limit any such designation to specific material that  
20 qualifies under the appropriate standards. The Designating Party must designate for  
21 protection only those parts of material, documents, items, or oral or written  
22 communications that qualify – so that other portions of the material, documents,  
23 items, or communications for which protection is not warranted are not swept  
24 unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations  
26 that are shown to be clearly unjustified or that have been made for an improper  
27 purpose (e.g., to unnecessarily encumber or retard the case development process or  
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1 to impose unnecessary expenses and burdens on other parties) expose the  
2 Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it  
4 designated for protection do not qualify for protection, that Designating Party must  
5 promptly notify all other Parties that it is withdrawing the inapplicable designation.

6 5.2 Manner and Timing of Designations: Except as otherwise provided in  
7 this Order (see, e.g., section 5.2(a) below), or as otherwise stipulated or ordered,  
8 Disclosure or Discovery Material that qualifies for protection under this Order must  
9 be clearly so designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires: (a) for information in  
11 documentary form (e.g., paper or electronic documents, but excluding transcripts of  
12 depositions or other pretrial or trial proceedings), that the Producing Party affix at a  
13 minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"),  
14 to each page that contains protected material. If only a portion of the material on a  
15 page qualifies for protection, the Producing Party also must clearly identify the  
16 protected portion(s) (e.g., by making appropriate markings in the margins). A Party  
17 or Non-Party that makes original documents available for inspection need not  
18 designate them for protection until after the inspecting Party has indicated which  
19 documents it would like copied and produced. During the inspection and before the  
20 designation, all of the material made available for inspection shall be deemed  
21 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants  
22 copied and produced, the Producing Party must determine which documents, or  
23 portions thereof, qualify for protection under this Order. Then, before producing the  
24 specified documents, the Producing Party must affix the "CONFIDENTIAL legend"  
25 to each page that contains Protected Material. If only a portion of the material on a  
26 page qualifies for protection, the Producing Party also must clearly identify the  
27 protected portion(s) (e.g., by making appropriate markings in the margins). (b) for  
28 testimony given in depositions that the Designating Party identifies the Disclosure or

1 Discovery Material on the record, before the close of the deposition all protected  
2 testimony. (c) for information produced in some form other than documentary and  
3 for any other tangible items, that the Producing Party affix in a prominent place on  
4 the exterior of the container or containers in which the information is stored the  
5 legend "CONFIDENTIAL." If only a portion or portions of the information warrants  
6 protection, the Producing Party, to the extent practicable, shall identify the protected  
7 portion(s).

8       5.3 Inadvertent Failure to Designate: If timely corrected, an inadvertent  
9 failure to designate qualified information or items does not, standing alone, waive  
10 the Designating Party's right to secure protection under this Order for such material.  
11 Upon timely correction of a designation, the Receiving Party must make reasonable  
12 efforts to assure that the material is treated in accordance with the provisions of this  
13 Order.

## 14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15       6.1 Timing of Challenges: Any Party or Non-Party may challenge a  
16 designation of confidentiality at any time that is consistent with the Court's  
17 Scheduling Order.

18       6.2 Meet and Confer: The Challenging Party shall initiate the dispute  
19 resolution process under Local Rule 37.1 *et seq.*

20       6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a  
21 joint stipulation pursuant to Local Rule 37-2.

22       6.4 The burden of persuasion in any such challenge proceeding shall be on  
23 the Designating Party. Frivolous challenges, and those made for an improper purpose  
24 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
25 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
26 the confidentiality designation by failing to file a motion to retain confidentiality as  
27 described above, all Parties shall continue to afford the material in question the level  
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1 of protection to which it is entitled under the Producing Party’s designation until the  
2 Court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles: A Receiving Party may use Protected Material that is  
5 disclosed or produced by another Party or by a Non-Party in connection with this  
6 Action only for prosecuting, defending or attempting to settle this Action. Such  
7 Protected Material may be disclosed only to the categories of persons and under the  
8 conditions described in this Order. When the Action has been terminated, a Receiving  
9 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).  
10 Protected Material must be stored and maintained by a Receiving Party at a location  
11 and in a secure manner that ensures that access is limited to the persons authorized  
12 under this Order.

13 7.2 Disclosure of “CONFIDENTIAL” Information or Items: Unless  
14 otherwise ordered by the court or permitted in writing by the Designating Party, a  
15 Receiving Party may disclose any information or item designated  
16 “CONFIDENTIAL” only to: (a) the Receiving Party’s Outside Counsel of Record in  
17 this Action, as well as employees of said Outside Counsel of Record to whom it is  
18 reasonably necessary to disclose the information for this Action; (b) the officers,  
19 directors, and employees (including House Counsel) of the Receiving Party to whom  
20 disclosure is reasonably necessary for this Action; (c) Experts (as defined in this  
21 Order) of the Receiving Party to whom disclosure is reasonably necessary for this  
22 Action and who have signed the “Acknowledgment and Agreement to Be Bound”  
23 (Exhibit A); (d) the court and its personnel; (e) court reporters and their staff; (f)  
24 professional jury or trial consultants, mock jurors, and Professional Vendors to whom  
25 disclosure is reasonably necessary for this Action and who have signed the  
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A); (g) the author or  
27 recipient of a document containing the information or a custodian or other person  
28 who otherwise possessed or knew the information; (h) during their depositions,

1 witnesses, and attorneys for witnesses, in the Action to whom disclosure is  
2 reasonably necessary provided: (1) the deposing party requests that the witness sign  
3 the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any  
4 confidential information unless they sign the “Acknowledgment and Agreement to  
5 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered  
6 by the court. Pages of transcribed deposition testimony or exhibits to depositions that  
7 reveal Protected Material may be separately bound by the court reporter and may not  
8 be disclosed to anyone except as permitted under this Protective Order; and (i) any  
9 mediator or settlement officer, and their supporting personnel, mutually agreed upon  
10 by any of the parties engaged in settlement discussions.

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
12 IN OTHER LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation  
14 that compels disclosure of any information or items designated in this Action as  
15 “CONFIDENTIAL,” that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall  
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to  
19 issue in the other litigation that some or all of the material covered by the subpoena  
20 or order is subject to this Protective Order. Such notification shall include a copy of  
21 this Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued  
23 by the Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served with  
25 the subpoena or court order shall not produce any information designated in this  
26 action as “CONFIDENTIAL” before a determination by the court from which the  
27 subpoena or order issued, unless the Party has obtained the Designating Party’s  
28 permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material – and nothing in these provisions  
2 should be construed as authorizing or encouraging a Receiving Party in this action to  
3 disobey a lawful directive from another court.

4 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
5 PRODUCED IN THIS LITIGATION

6 (a) The terms of this Order are applicable to information produced by a Non-  
7 Party in this action and designated as “CONFIDENTIAL.” Such information  
8 produced by Non-Parties in connection with this litigation is protected by the  
9 remedies and relief provided by this Order. Nothing in these provisions should be  
10 construed as prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to  
12 produce a Non-Party’s confidential information in its possession, and the Party is  
13 subject to an agreement with the Non-Party not to produce the Non-Party’s  
14 confidential information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the Non-Party  
16 that some or all of the information requested is subject to a confidentiality agreement  
17 with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Protective Order  
19 in this litigation, the relevant discovery request(s), and a reasonably specific  
20 description of the information requested; and

21 (3) make the information requested available for inspection by the Non-  
22 Party.

23 (c) If the Non-Party fails to object or seek a protective order from this Court  
24 within 14 days of receiving the notice and accompanying information, the Receiving  
25 Party may produce the Non-Party’s confidential information responsive to the  
26 discovery request. If the Non-Party timely seeks a protective order, the Receiving  
27 Party shall not produce any information in its possession or control that is subject to  
28 the confidentiality agreement with the Non-Party before a determination by the

1 Court. Absent a Court order to the contrary, the Non-Party shall bear the burden and  
2 expense of seeking protection in this Court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
5 Protected Material to any person or in any circumstance not authorized under this  
6 Protective Order, the Receiving Party must immediately: (a) notify in writing the  
7 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
8 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
9 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
10 request such person or persons to execute the “Acknowledgment and Agreement to  
11 Be Bound” by Protective Order that is attached hereto as Exhibit A.

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
13 PROTECTED MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain  
15 inadvertently produced material is subject to a claim of privilege or other protection,  
16 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
17 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
18 may be established in an e-discovery order that provides for production without prior  
19 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
20 parties reach an agreement on the effect of disclosure of a communication or  
21 information covered by the attorney-client privilege or work product protection, the  
22 parties may incorporate their agreement in the protective order submitted to the court.

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
25 person to seek its modification by the Court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
27 Protective Order, no Party waives any right it otherwise would have to object to  
28 disclosing or producing any information or item on any ground not addressed in this

1 Protective Order. Similarly, no Party waives any right to object on any ground to use  
2 in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any  
4 Protected Material must comply with Local Civil Rule 79-5. Protected Material may  
5 only be filed under seal pursuant to a court order authorizing the sealing of the  
6 specific Protected Material at issue. If a Party's request to file Protected Material  
7 under seal is denied by the court, then the Receiving Party may file the information  
8 in the public record unless otherwise instructed by the court.

9 13. FINAL DISPOSITION

10 After the final disposition of this Action, as defined in paragraph 4, within 60  
11 days of a written request by the Designating Party, each Receiving Party must return  
12 all Protected Material to the Producing Party or destroy such material. As used in this  
13 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
14 summaries, and any other format reproducing or capturing any of the Protected  
15 Material. Whether the Protected Material is returned or destroyed, the Receiving  
16 Party must submit a written certification to the Producing Party (and, if not the same  
17 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
18 (by category, where appropriate) all the Protected Material that was returned or  
19 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
20 abstracts, compilations, summaries or any other format reproducing or capturing any  
21 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
22 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
23 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
24 reports, attorney work product, and consultant and expert work product, even if such  
25 materials contain Protected Material. Any such archival copies that contain or  
26 constitute Protected Material remain subject to this Protective Order as set forth in  
27 Section 4 (DURATION).

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14. VIOLATION

Any violation of his Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

FOR GOOD CAUSE SHOW, IT IS SO ORDERED.

Dated: 7/16/21 \_\_\_\_\_, 2021



\_\_\_\_\_  
Hon. John E. McDermott

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**L.R. 5-4.3.4 Attestation regarding Signature**

The electronic filer attests that all other signatories listed and on whose behalf the filing is submitted concur in the filing's content and have authorized the filing.

Dated: July 16, 2021

By: /s/ Victor Jih

Victor Jih

