

1 JOHNSON & WEAVER, LLP
 FRANK J. JOHNSON (174882)
 2 frankj@johnsonandweaver.com
 PHONG L. TRAN (204961)
 3 phongt@johnsonandweaver.com
 600 West Broadway, Suite 1540
 4 San Diego, CA 92101
 Telephone: (619) 230-0063
 5 Facsimile: (619) 255-1856

6 -and-

7 ROBBINS ARROYO LLP
 BRIAN J. ROBBINS (190264)
 8 brobbins@robbinsarroyo.com
 FELIPE J. ARROYO (163803)
 9 farroyo@robbinsarroyo.com
 SHANE P. SANDERS (237146)
 10 ssanders@robbinsarroyo.com
 600 B Street, Suite 1900
 11 San Diego, CA 92101
 Telephone: (619) 525-3990
 12 Facsimile: (619) 525-3991

13 [Proposed] Co-Lead Counsel for Plaintiffs

14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 15 **SAN FRANCISCO DIVISION**

16 JIM PORTER, derivatively on behalf of)
 TWITTER, INC.,)

17 Plaintiff,)

18 v.)

19 RICHARD COSTOLO, ANTHONY NOTO,)
 20 JACK DORSEY, PETER FENTON,)
 MARTHA LANE FOX, HUGH F.)
 21 JOHNSTON, OMID KORDESTANI, DEBRA)
 L. LEE, DAVID ROSENBLATT, MARJORIE)
 22 SCARDINO, BRET TAYLOR, and EVAN)
 WILLIAMS,)

23 Defendants,)

24 -and-)

26 TWITTER, INC., a Delaware corporation,)
 27 Nominal Defendant.)

Case No.: 3:16-cv-06136-JST

STIPULATION AND [PROPOSED]
ORDER TO CONSOLIDATE
DERIVATIVE ACTIONS, APPOINT
CO-LEAD COUNSEL FOR
PLAINTIFFS, AND RESET INITIAL
CASE MANAGEMENT
CONFERENCE AND RELATED
DATES

Judge: Honorable Jon S. Tigar
 Courtroom: 9
 Date Action Filed: October 24, 2016

28 [Caption continued on next page.]

1 **WHEREAS**, there are presently three related stockholder derivative actions currently
2 pending before the Court against Richard Costolo, Anthony Noto, Jack Dorsey, Peter Fenton,
3 David Rosenblatt, Marjorie Scardino, Evan Williams, Peter Chernin, and/or Peter Currie (the
4 “Individual Defendants”)¹, who are certain current and former directors and officers of
5 nominal defendant Twitter, Inc. (“Twitter”) (Twitter, together with the Individual Defendants,
6 being collectively referred to herein as “Defendants”): Porter v. Costolo, et al., Case No. 3:16-
7 cv-06136-JST (“Porter”); Espinoza v. Dorsey, et al., Case No. 3:16-cv-06457-JST
8 (“Espinoza”); and Fleming v. Costolo, et al., Case No. 4:16-cv-06492-JST (“Fleming”)
9 (together, the “Related Derivative Actions”);

10 **WHEREAS**, under Fed. R. Civ. P. 42(a), when actions involve “a common question of
11 law or fact,” the Court may “(1) join for hearing or trial any or all matters at issue in the
12 actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or
13 delay”;

14 **WHEREAS**, the Related Derivative Actions challenge similar alleged misconduct by
15 Twitter’s directors and executive officers and involve common questions of law and fact;

16 **WHEREAS**, on November 30, 2016, plaintiffs in the Related Derivative Actions filed
17 with this Court a Stipulation and [Proposed] Order Consolidating Derivative Actions, and
18 Appointing Co-Lead Counsel for Plaintiffs (“Stipulation Regarding Consolidation and
19 Appointment of Co-Lead Counsel”) (ECF No. 18), which sought consolidation of the Related
20 Derivative Actions into a single consolidated action (hereinafter referred to as the
21 “Consolidated Derivative Action”) to avoid potentially duplicative actions and to prevent any
22 waste of the Court’s resources;

23 **WHEREAS**, on December 2, 2016, the Court issued an Order indicating its receipt of
24 the Stipulation Regarding Consolidation and Appointment of Co-Lead Counsel, but deferring
25 consideration of the Stipulation until the parties filed an administrative motion to relate the

26 _____
27 ¹ Omid Kordestani, Martha Lane Fox, Hugh F. Johnston, Debra L. Lee, and Bret Taylor were
28 inadvertently included in the caption of the Porter action. They are not intended to be
defendants.

1 two derivative actions (Espinoza and Fleming) that at the time were not pending before the
2 Court (ECF No. 19);

3 **WHEREAS**, pursuant to the Court’s directive, plaintiffs in the Espinoza and Fleming
4 derivative actions each filed administrative motions to relate their respective cases to the
5 actions before the Court;

6 **WHEREAS**, on December 7, 2016, the Court entered an order relating the three
7 derivative actions;

8 **WHEREAS**, the Court has set the following case management conference dates for the
9 Related Derivative Actions: Porter—February 15, 2017, and Espinoza and Fleming—
10 February 22, 2017;

11 **WHEREAS**, counsel for plaintiffs in the Related Derivative Actions have been
12 advised by counsel for Defendants that the parties in the related securities fraud class action
13 (Shenwick v. Twitter, Inc., et al., Case No. 3:16-cv-05314-JST) have requested that their case
14 management conference be set for April 19, 2017;

15 **WHEREAS**, to avoid potential duplication of efforts and to prevent any waste of the
16 Court’s resources, the parties propose that the current case management conference dates for
17 the Related Derivative Actions be vacated and that the Court set a single case management
18 conference date for the Related Derivative Actions to occur on the same day as the case
19 management conference for the related securities fraud class action.

20 **WHEREAS**, Johnson & Weaver, LLP, and Robbins Arroyo LLP seek to be designated
21 as Co-Lead Counsel in the Consolidated Derivative Action, and Defendants take no position
22 with respect to such designation or with respect to paragraphs 7 and 8 below; and

23 **WHEREFORE**, the parties, through their undersigned counsel, hereby agree,
24 stipulate, and respectfully request that the Court enter an Order as follows:

25 1. Defendants hereby acknowledge service of the summonses and complaints in
26 the Related Derivative Actions. Aside from defenses and objections related to the absence of a
27 summons or of service, Defendants expressly reserve all defenses and objections to the
28 complaints filed in the Related Derivative Actions and any complaints filed in the

1 Consolidated Derivative Action, including but not limited to defenses based on lack of
2 personal jurisdiction and improper venue.

3 2. Defendants need not answer, move or otherwise respond to any of the
4 complaints currently filed in the Related Derivative Actions.

5 3. The following actions shall be consolidated for all purposes, including pre-trial
6 proceedings and trial, into the Consolidated Derivative Action:

<u>Case Name</u>	<u>Case No.</u>	<u>Filing Date</u>
Porter v. Costolo, et al.	3:16-cv-06136-JST	October 24, 2016
Espinoza v. Dorsey, et al,	3:16-cv-06457-JST	November 4, 2016
Fleming v. Costolo, et al.	4:16-cv-06492-JST	November 8, 2016

11 4. Every pleading filed in the Consolidated Derivative Action, or in any separate
12 action included herein, must bear the following caption:

13
14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
15 **SAN FRANCISCO DIVISION**

16 IN RE TWITTER, INC. SHAREHOLDER
17 DERIVATIVE LITIGATION,

18 This Document Relates To:

19 ALL ACTIONS.

Lead Case No.: 3:16-cv-06136-JST

(Consolidated with Nos. 3:16-cv-06457-JST
and 4:16-cv-06492-JST)

(Derivative Action)

Judge: Honorable Jon S. Tigar

Courtroom: 9

Date Action Filed: October 24, 2016

22 5. The files of the Consolidated Derivative Action will be maintained in one file
23 under Lead Case No. 3:16-cv-06136-JST.

1 11. If a case that properly belongs as part of In re Twitter, Inc. Shareholder
2 Derivative Litigation, Lead Case No. 3:16-cv-06136-JST, is hereafter filed in this Court or
3 transferred here from another court, counsel shall promptly call to the attention of the Clerk of
4 the Court the filing or transfer of any case that might properly be consolidated as part of In re
5 Twitter, Inc. Shareholder Derivative Litigation, Lead Case No. 3:16-cv-06136-JST.

6 12. In the interest of efficiency and avoidance of unnecessary duplication of effort
7 or judicial resources by the Court or the parties, it is further Ordered that within sixty (60) days
8 of the entry of an order consolidating the Related Derivative Actions, plaintiffs' Co-Lead
9 Counsel and counsel for Defendants shall meet and confer regarding further proceedings in the
10 Consolidated Derivative Action and shall thereafter submit a stipulation and proposed order
11 regarding further proceedings with the Court or, in the event counsel for the parties are unable
12 to agree on a proposed schedule for the conduct of further proceedings, shall submit a joint
13 status report setting forth their respective views regarding further proceedings in the
14 Consolidated Derivative Action.

15 13. Pursuant to Fed. R. Civ. P. 5(b)(2)(E), all parties consent to service by e-mail of
16 any document required to be served in the Consolidated Derivative Action.

17
18
19
20
21
22
23
24
25
26
27 ///

28 ///

1 14. The case management conference and related dates for the Related Derivative
2 Actions shall be vacated. A case management conference for the Related Derivative Actions
3 will be held on April 19, 2017, or an alternative date convenient to the Court on which the case
4 management conference in the related securities action is also held. The Joint Case
5 Management Conference Statement shall be due seven court days prior to the conference.

6 **IT IS SO STIPULATED.**

7 Dated: January 18, 2017

JOHNSON & WEAVER, LLP
FRANK J. JOHNSON
PHONG L. TRAN

9 By: /s/ Frank J. Johnson

FRANK J. JOHNSON

10
11 600 West Broadway, Suite 1540
San Diego, CA 92101
12 Telephone: (619) 230-0063
Facsimile: (619) 255-1856
13 frankj@johnsonandweaver.com
phongt@johnsonandweaver.com

14 Attorneys for Plaintiff Jim Porter and
15 [Proposed] Co-Lead Counsel for Plaintiffs

16 Dated: January 18, 2017

ROBBINS ARROYO LLP
BRIAN J. ROBBINS
FELIPE J. ARROYO
SHANE P. SANDERS

19 By: /s/ Brian J. Robbins

BRIAN J. ROBBINS

20 600 B Street, Suite 1900
San Diego, CA 92101
21 Telephone: (619) 525-3990
Facsimile: (619) 525-3991
22 brobbins@robbinsarroyo.com
farroyo@robbinsarroyo.com
23 ssanders@robbinsarroyo.com

24 Attorneys for Plaintiff Ernesto Espinoza and
25 [Proposed] Co-Lead Counsel for Plaintiffs

1 Dated: January 18, 2017

PROFY PROMISLOFF & CIARLANTO, P.C.
JOSEPH M. PROFY
JEFFREY J. CIARLANTO
DAVID M. PROMISLOFF

2
3
4 By: /s/ Joseph M. Profy

JOSEPH M. PROFY

5 100 N. 22nd Street, Unit 105
6 Philadelphia, PA 19103
7 Telephone: (215) 259-5156
8 Facsimile: (215) 600-2642

9 BRODSKY & SMITH, LLC
10 EVAN J. SMITH
11 9595 Wilshire Blvd.
12 Beverly Hills, CA 90212
13 Telephone: (310) 300-8425
14 Facsimile: (310) 247-0160

15 LAW OFFICE OF ALFRED G. YATES, JR.,
16 P.C.
17 ALFRED G. YATES, JR.
18 GERALD L. RUTLEDGE
19 519 Allegheny Building
20 429 Forbes Avenue
21 Pittsburgh, PA 15219
22 Phone: (412) 391-5164
23 Facsimile: (412) 471-1033

24 Attorneys for Plaintiff Francis Fleming

25 Dated: January 18, 2017

SIMPSON THACHER & BARTLETT LLP
SIMONA G. STRAUSS

26 By: /s/ Simona G. Strauss

SIMONA G. STRAUSS

27 2475 Hanover Street
28 Palo Alto, CA 94304
Telephone: (650) 251-5203
Facsimile: (650) 251-5002
sstrauss@stblaw.com

Attorneys for Defendants Richard Costolo,
Anthony Noto, Jack Dorsey, Peter Fenton,
David Rosenblatt, Marjorie Scardino, Evan
Williams, Peter Chernin, Peter Currie, and
Nominal Defendant Twitter, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATURE ATTESTATION

I am the ECF user whose identification and password are being used to file the foregoing Stipulation and [Proposed] Order to Consolidate Derivative Actions, Appoint Co-Lead Counsel for Plaintiffs, and Reset Initial Case Management Conference and Related Dates. In compliance with Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained.

Dated: January 18, 2017

/s/ Frank J. Johnson
Frank J. Johnson

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: January 20, 2017


HON JON S. TIGAK
UNITED STATES DISTRICT JUDGE