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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**IN RE TWITTER, INC. SECURITIES
LITIGATION**

CASE NO. 19-cv-07149-YGR

**ORDER GRANTING DEFENDANTS’ MOTION
TO DISMISS THE CONSOLIDATED CLASS
ACTION COMPLAINT**

Re: Dkt. No. 53

United States District Court
Northern District of California

Lead plaintiffs the Weston Family Partnership LLLP and the Twitter Investor Group bring this consolidated securities class action litigation alleging false and misleading statements and omissions between July 26, 2019 and October 23, 2019 (the “Class Period”) against defendants Twitter, Inc. (“Twitter” or the “Company”), chief executive officer Jack Dorsey (“Dorsey”), and chief financial officer Ned Segal (“Segal”). Specifically, plaintiffs raise two causes of action, namely, violation of (1) Section 10(b) of the Securities Exchange Act (“Exchange Act”) and Rule 10b-5 against all defendants, and (2) Section 20(a) of the Exchange Act against the individual defendants.

All defendants move to dismiss pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) and the Private Securities Litigation Reform Act of 1995 (“PSLRA”). Defendants challenge plaintiffs’ Section 10(b) and Rule 10b-5 claim on three grounds: plaintiffs fail to (i) allege statements that are materially false or misleading, or otherwise actionable; (ii) establish a strong inference of scienter; and (iii) establish loss causation. Without a primary violation of Section 10(b), defendants argue plaintiffs’ Section 20(a) claim similarly fails.

Having considered the papers submitted and the pleadings in this action, the hearing held on November 10, 2020, and for the reasons set forth below, the Court hereby **GRANTS** the motion

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1 to dismiss **WITH LEAVE TO AMEND**.¹

2

3 ¹ In connection with their motion to dismiss, defendants submitted a request for judicial
 4 notice (Dkt. No. 55) for the following documents attached as exhibits to the Declaration of Susan
 5 E. Engel dated June 12, 2019 (Dkt. No. 54): (i) Ex. 1, Twitter’s Annual Report on Form 10-K for
 6 the period ended December 31, 2018 (the “2018 Form 10-K”); (ii) Ex. 2, a screenshot entitled
 7 “Twitter Support on Twitter,” <https://twitter.com/TwitterSupport/status/1158876245716697089>
 8 (last accessed June 10, 2019) (the “August 6 Tweet”); (iii) Ex. 3, a webpage entitled “An issue
 9 with your settings choices related to ads on Twitter,” available at [https://help.twitter.com/en/ads-](https://help.twitter.com/en/ads-settings)
 10 [settings](https://help.twitter.com/en/ads-settings) (last accessed June 3, 2020) (the “August 6 Blog Post”); (iv) Ex. 4, Twitter’s Quarterly
 11 Report on Form 10-Q for the period ended September 30, 2019 (the “Q3 2019 Form 10-Q”); (v)
 12 Ex. 5, Twitter’s Q2 2019 Shareholder Letter dated July 26, 2019 (the “Q2 2019 Shareholder
 13 Letter”); (vi) Ex. 6, Twitter’s Quarterly Report on Form 10-Q for the period ended June 30, 2019
 14 (the “Q2 2019 Form 10-Q”); (vii) Ex. 7, the transcript of Twitter’s Question and Answer
 15 Presentation at the Citi Global Technology Conference dated September 4, 2019, available for
 16 download from [https://s22.q4cdn.com/826641620/files/doc_downloads/2019/Citi-2019-](https://s22.q4cdn.com/826641620/files/doc_downloads/2019/Citi-2019-Transcript.pdf)
 17 [Transcript.pdf](https://s22.q4cdn.com/826641620/files/doc_downloads/2019/Citi-2019-Transcript.pdf) (downloaded on June 3, 2020) (the “CGTC Tr.”); (viii) Ex. 8, Twitter’s Responses
 18 and Objections to KBC Asset Management NV’s Fifth Set of Interrogatories, dated May 31, 2019
 19 and filed as Ex. 20 to Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment in *In*
 20 *re Twitter, Inc. Sec. Litig.*, Case No. 4:16-CV-5314 (JST) (N.D. Cal. filed. Sept. 16, 2016) (Dkt.
 21 No. 413-6) (the “May 2019 Discovery Responses”); (ix) Ex. 9, the Declaration of Michael
 22 Nierenberg dated September 12, 2019, filed as Exhibit 1 to Defendants’ Administrative Motion to
 23 File Under Seal Defendants’ Motion for Summary Judgment in *In re Twitter, Inc. Sec. Litig.*, Case
 24 No. 4:16-CV-5314 (JST) (N.D. Cal. filed. Sept. 16, 2016) (Dkt. No. 340-1) (“Nierenberg Decl.”);
 25 (x) Ex. 10, Statement of Changes of Beneficial Ownership of Securities on Form 4 of Twitter on
 26 behalf of Ned Segal dated August 4, 2019; (xi) Ex. 11, Statement of Changes of Beneficial
 27 Ownership of Securities on Form 4 of Twitter on behalf of Ned Segal dated September 3, 2019;
 28 (xii) Ex. 12, Statement of Changes of Beneficial Ownership of Securities on Form 4 of Twitter on
 29 behalf of Ned Segal dated September 12, 2019; and Ex. 13, Statement of Changes of Beneficial
 30 Ownership of Securities on Form 4 of Twitter on behalf of Ned Segal dated October 9, 2019
 (collectively, with Exs. 10, 11, and 12, the “Form 4s”). Plaintiffs do not oppose.

Exhibits 1 through 9 are judicially noticed as documents which are incorporated into the
 complaint by reference. *See, e.g., Gammel v. Hewlett-Packard Co.*, 905 F. Supp. 2d 1052, 1061–
 62 (C.D. Cal. 2012). Exhibits 1, 4, 5, and 6 are also appropriately noticed as documents filed with
 the Securities Exchange Commission (“SEC”). *See In re Silicon Graphics Inc., Sec. Litig.*, 183
 F.3d 970, 986 (9th Cir. 1999), *abrogated on other grounds as rec’d in S. Ferry LP, No. 2 v.*
Killinger, 542 F.3d 776, 784 (9th Cir. 2008); *In re Netflix, Inc. Sec. Litig.*, No. 04-CV-2978
 (FMS), 2005 WL 1562858, at *5 (N.D. Cal. June 28, 2005) (finding that “SEC filings are
 appropriately noticed by the Court” on a motion to dismiss, even when those documents were filed
 with the SEC outside the class period). Exhibits 2 through 3 are noticed in a securities fraud
 action as documents reflecting publicly available information about the company, *see Heliotrope*
Gen., Inc. v. Ford Motor Co., 189 F.3d 971, 981 n.18 (9th Cir. 1999) (holding that it is appropriate
 to take judicial notice of news articles on motion to dismiss); *SEC v. Mozilla*, No. 09-CV-3994
 (JFW), 2009 WL 3807124, at *7 n.2 (C.D. Cal. Nov. 3, 2009) (taking judicial notice of
 “transcripts of earnings conference calls and investor forums, newspaper articles” and other

1 **I. BACKGROUND**

2 Relevant facts based on judicially noticeable documents and allegations from plaintiffs’
3 Consolidated Class Action Complaint (“CCAC”) are set forth below:

4 **A. TWITTER’S ADVERTISING BUSINESS AND THE MAP PRODUCT**

5 Twitter is a “global platform for public self-expression and conversation in real time”
6 centered around short-form text, image, and video content. (CCAC ¶¶ 4, 39, 41.) Users can
7 “tweet” their thoughts to which other users can reply, “like,” or “retweet.” (*Id.* ¶ 39.) Available in
8 more than 40 languages, Twitter can be accessed on the Internet via twitter.com, by mobile device,
9 and through text messages. (*Id.*)

10 Twitter generates the majority of its revenue from the sale of advertisements. (*Id.* ¶¶ 5, 43
11 (citing the 2018 and 2019 Form 10-K’s, each reporting that the Company received approximately
12 86% of its revenue from advertising).) The interactive platform enables Twitter to collect data
13 about its users, which it shares with advertisers to target users with focused advertisements. (*Id.*
14 ¶¶ 5, 42.) Twitter collects this data in two ways. First, Twitter compiles a set of inferences about
15 the user based on their tweets, Likes, Retweets, and accounts the user follows, which helps
16 “determine what topics the user is interested in, the user’s age, the languages the user speaks and
17 other signals.” Second, it accesses users’ data and device setting, which provides “critical insight
18 regarding other websites that the device visits.” (*Id.* ¶¶ 48–51.) Twitter shares this personalized
19 information with advertisers and “measurement partners” who then tailor specific advertisements
20 for the user. (*Id.* ¶ 53.)²

21 To purchase an advertisement, Twitter’s customers place bids on a continuous and

22 _____
23 are noticed as court documents that are already in the public record, *see Harris v. County of*
24 *Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (“We may take judicial notice of undisputed matters
25 of public record, including documents on file in federal or state courts.”), and Exhibits 10 through
26 13, which are SEC Form 4s, are judicially noticed “even when not referenced in the pleading, to
27 prove that stock sales were made pursuant to a Rule 10b5-1 trading plan.” *See City of Royal Oak*
Ret. Sys. v. Juniper Networks, Inc., 880 F. Supp. 2d 1045, 1059 (N.D. Cal. 2012). Accordingly,
the Court **GRANTS** defendants’ requests and takes judicial notice of the exhibits attached to
Docket Number 54.

28 ² Measurement partners help advertisers plan and manage advertising campaigns. (Compl

1 automated real-time bidding auction platform. (*Id.* ¶ 44.) The bidding process begins when a user
2 logs-in to Twitter. (*Id.* ¶ 45.) After being provided with data about the user, advertisers who have
3 a matching advertisement submit their bids and are entered into the auction. (*Id.*) The
4 personalized advertisement of the highest bidder is then shown to the user at the exact moment
5 that it is relevant. (*Id.*) This process happens in less than a second. (*Id.*) According to discovery
6 produced in an unrelated litigation involving the Company, for a period in 2015, Dorsey, the then-
7 chief financial officer (not Segal), and other senior executives at Twitter received daily reports
8 about certain key metrics (as defined in Twitter’s SEC filings), including cost per ad engagement
9 (“CPE”). (*Id.* ¶¶ 13–14, 46, 88; May 2019 Discovery Responses (Response to Interrogatory No.
10 17).) CPE measures demand for Twitter’s advertising products on the auction platform. (CCAC
11 ¶ 46.)

12 One such advertising product is the Mobile Application Promotion (“MAP”), which, rather
13 than simply generating brand awareness, prompts users to install an advertiser’s mobile
14 application on their devices, or re-engage with a mobile application that the user has already
15 downloaded. (*Id.* ¶¶ 8, 56–58.) As a “direct-response” advertisement, MAP is most effective
16 when an advertiser knows information about the user’s device settings. (*Id.* ¶ 8.) Advertisers only
17 pay for each click on the “install” or “open” buttons in the advertisement. (*Id.* ¶¶ 47, 59.) To
18 evaluate the product’s performance, Twitter tracks various MAP-specific metrics. (*Id.* ¶¶ 60–61.)

19 According to the declaration of one of Twitter’s sales finance managers filed in another
20 unrelated litigation, new direct-response products like MAP were “the primary source of expected
21 revenue growth” for Twitter in 2015. (*Id.* ¶ 62; Nierenberg Decl. ¶ 13.) Further, a confidential
22 witness (“CI-1”), “a former AdOps Specialist for Twitter from 2014 through 2018[,] who worked
23 with Twitter’s advertising customers[] during 2014 [through] 2016,” claims that MAP itself
24 accounted for approximately 20% of the Company’s global revenue. (CCAC ¶ 63.) At various
25 times prior to the Class Period, defendants represented that they planned to improve the MAP
26 product given that such direct-response advertisements were viewed as revenue drivers for the
27 Company. (*Id.* ¶¶ 9, 64, 74.)

1 with advertisers, Twitter permits its users to opt-out of the data sharing program. (*Id.* ¶¶ 5, 7, 54–
2 55, 65–71.) Users are also able to opt-out of receiving targeted advertising. (*Id.*)

3 **B. EVENTS DURING THE CLASS PERIOD**

4 On July 26, 2019, the start of the Class Period, defendants disclosed Twitter’s financial
5 results for the quarter ended June 30, 2019 in a letter to shareholders. (*Id.* ¶¶ 10, 104.) Both in the
6 letter and during a same-day conference call with investors, Dorsey and Segal represented that
7 improvements to MAP’s stability, performance, and scale were ongoing and would have a positive
8 gradual impact on revenue. (*Id.*; *see also* Q2 2019 Shareholder Letter.) The Company’s Q2 2019
9 Form 10-Q dated July 31, 2019 repeated the substance of these statements. (CCAC ¶ 107; Q2
10 2019 Form 10-Q.) In the Q2 2019 Form 10-Q, both Segal and Dorsey certified the following
11 risks: “Our products and services may contain undetected software errors, which could harm our
12 business and operating results[]”; “If new or enhanced products, product features or services fail to
13 engage users, content partners and advertisers, we may fail to attract or retain users or to generate
14 sufficient revenue or operating profit to justify our investments, and our business and operating
15 results could be affected[]”; and “[C]hanges to existing products, services and initiatives could fail
16 to attract users, content partners, advertisers and platform partners or generate revenue.” (CCAC
17 ¶¶ 109, 111; Q2 2019 Form 10-Q.)

18 On August 6, 2019, Twitter announced to its users that it had “recently discovered and
19 fixed issues related to your setting choices for the way we deliver personalized ads, and when we
20 share certain data with trusted measurement and advertising partners.” (*Id.* ¶¶ 15, 113; *see also*
21 August 6 Tweet.) More specifically, the Company explained:

22
23 “(a) If you clicked or viewed an advertisement for a mobile
24 application and subsequently interacted with the mobile
25 application since May 2018, we may have shared certain data . . .
26 with trusted measurement and advertising partners, even if you
27 didn’t give us permission to do so.

28 (b) As part of a process we use to try and serve more relevant
advertising on Twitter and other services since September 2018,
we may have shown you ads based on inferences we made about

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