



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-10-503630

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1ST AMENDED COMPLAINT FILED BY PLAINTIFF

JANE DOE VS. TWITTER, INC., A CALIFORNIA CORPORATION et al

001C03032740

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14 JANE DOE

15 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**

17 JANE DOE, individually and on behalf of)
18 all similarly situated California residents,)

19 Plaintiff,)

20 v.)

21 TWITTER, Inc., a California Corporation,)
22 and DOES I-XX,)

23 Defendants.)

Civil No. CGC-10-503630

CLASS ACTION

**FIRST AMENDED
COMPLAINT FOR
DAMAGES AND
INJUNCTIVE RELIEF**

JURY DEMAND

24 Plaintiff JANE DOE ("Named Plaintiff"), individually and on behalf of all other
25 similarly situated residents of the State of California (the "Class Members"), alleges as
26 follows:

FILED
Superior Court of California
County of San Francisco
NOV. 15 2010
CLERK OF THE COURT
BY: *[Signature]*
Deputy Clerk

PARTIES, JURISDICTION & VENUE

1
2 1. Named Plaintiff is a competent adult individual who is a citizen and a
3 resident of the City & County of San Francisco, California. Named Plaintiff has chosen to
4 file this lawsuit anonymously in effort to avoid further publication of private and
5 confidential financial and other information relating to Named Plaintiff. All Class Members
6 are also residents of the State of California.

7 2. Defendant Twitter, Inc. (“Defendant” or “Twitter”) is a California
8 corporation and a resident of, and conducts its relevant business in, the City & County of
9 San Francisco, California. The true names of defendants sued as “DOES I-XX” are
10 unknown to Named Plaintiff at present. On information and belief, such Defendants were at
11 all relevant times the agents of, or were acting in concert with, Twitter. Plaintiff will seek
12 leave to amend the Complaint to add the true names of any DOE Defendants to be served,
13 when these become known.
14

15 3. This Court has personal jurisdiction over Twitter given that it is located in, its
16 principal place of business is in, and it is generally present in, the City & County of San
17 Francisco, California. Moreover, Twitter’s wrongful contractual, common law tort and
18 statutory acts and omissions complained of occurred, at least in part, within the City &
19 County of San Francisco, California and caused Named Plaintiff’s (and other Class
20 Members’) damage in that same venue. Twitter is also a California corporation authorized
21 to do, and doing, business in this state and otherwise intentionally avails itself of the benefits
22 and protections of California law.
23
24

25 4. Venue is proper in the City & County of San Francisco because Named
26 Plaintiff, other Class Members and Defendant reside in the County, Defendant conducts its

1 business in the County, a substantial portion of the events and conduct giving rise to the
2 violations of law complained of occurred in the County, and Named Plaintiff and other Class
3 Members were and are being damaged in the County.

4 5. Named Plaintiff's, and the Class Members', damages, exclusive of attorneys'
5 fees, litigation costs and punitive damages, exceed the sum of \$25,000 as will be proven at
6 trial.

7 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

8 6. Twitter is a very widely used internet instant messaging service whose
9 coverage is worldwide. Its service broadcasts instant messages, often including links to
10 other content. Messages purportedly may be sent privately as "Direct Messages" to other
11 specific users, semi-privately as "tweets" to each user's approved "followers," or publicly as
12 tweets which are published on Twitter's website and via Twitter's distribution network
13 throughout the world.

14 7. Indeed, on information and belief based upon a New York Times article on
15 the subject dated April, 2010, Twitter earns revenue from licensing the *public* messages to
16 others, including the major U.S. search engine and online advertising companies Google,
17 Yahoo! and Microsoft. Twitter also sells advertising, priced in significant part upon the
18 volume of public tweets of Twitter users, and thus is further incentivized to ensure as many
19 of the users' messages as possible are public rather than private. In short, Twitter's
20 profitability is dependent on the widest possible public distribution of its users' messages.
21

22 8. On or about September 15, 2009, Named Plaintiff registered for Twitter's
23 service. Twitter's user instructions, privacy and security policies and terms of service were
24 posted on its website. These materials, however, and Twitter's related user interface, were
25
26

1 both vague and ambiguous related to the "private versus public" distribution of users'
2 messages and failed to adequately explain the process of how a user could maintain privacy
3 (even with respect to so-called "Direct Messages" and "private" tweets).

4 9. Twitter breached its agreement with Named Plaintiff by intentionally
5 publishing to millions of people throughout the internet her name, anonymous internet
6 "Twitter Name" or "User Name," and confidential financial and other information and, on
7 information and belief, that of the other Class Members (and other Twitter users as well).
8 Twitter's wrongful publications related to Named Plaintiff occurred on several occasions, at
9 least between mid-September and October, 2009. They were posted not only on Twitter's
10 internet site but also throughout Twitter's third party distribution network, including via
11 Google's dominant search engine, and were thus even more pronounced in appearance and
12 effect. The publications may have remained posted on the internet for at least several days
13 and may still be available (as electronically archived) through Twitter's search features,
14 through its third party distribution network, and/or otherwise via the internet.
15

16 10. As a result, Named Plaintiff and the other Class Members suffered, among
17 other damage, general damage including for emotional distress, anxiety, fear,
18 embarrassment, shame, stress, and reputational harm, and special damages for out of pocket
19 expenses related to the use of Twitter's service, remedial and mitigation activities, and for
20 potentially lost wages and economic opportunities. Named Plaintiff's and the other Class
21 Members' privacy rights have been irreparably injured and will be again in the future should
22 Twitter's wrongful conduct be repeated.
23

24 11. Twitter failed the Named Plaintiff and the Class Members in at least three
25 wrongful manners. First, Twitter represented and agreed contractually, and Named Plaintiff
26

1 and the other Class Members relied upon the representations and agreements, that their
2 privacy would be securely protected because messages sent on Twitter's service would carry
3 with them only the users' "Twitter Name" or "User Name," selected by Plaintiff and other
4 Class Members as users of the service. Like many users, Named Plaintiff purposefully
5 selected a User Name that was anonymous, in a deliberate effort to further protect her
6 confidential information and privacy. Despite Named Plaintiff's efforts and Twitter's
7 representations and agreements, Twitter published her real name, her anonymous Twitter or
8 User Name, her identifying information and her confidential financial and other information
9 on the open internet and throughout its distribution network, all with knowledge of the wide
10 distribution these messages would receive. Twitter's publication of Named Plaintiff's (and
11 other Class Members') anonymous Twitter or User Name, her real name, and her
12 confidential financial information, rendered her own privacy protection efforts futile.

13 Without limitation, Twitter also misrepresented, and breached its contractual obligations
14 regarding to whom it would distribute Named Plaintiffs' and the other Class Members
15 private information; regarding the effective temporal application of its privacy policy;
16 regarding its notice to its users upon making changes to its privacy policy; and regarding its
17 intentions in collecting Named Plaintiff's and the other Class Members' private information.

18
19
20 12. Second, and wholly separate and independent of its "Twitter Name" or "User
21 Name" and other contractual breaches and misrepresentations, Twitter failed to adequately
22 disclose, instruct and warn its users that messages intended to be private, confidential and of
23 limited distribution would be published publicly and openly all over the worldwide web
24 unless the users properly understood and utilized an "opt-out" mechanism with respect to
25 "private" tweets, or prefaced their instant messages with a "d" symbol to designate them as
26

1 “Direct Messages.” Those mechanisms were neither sufficiently conspicuous nor
2 adequately explained, nor appropriately emphasized. Twitter’s user instructions and
3 warnings were thus sub-standard, and failed to conform to industry privacy standards and
4 the law. Moreover, on information and belief, messages intended as private tweets or Direct
5 Messages were also, and perhaps still are, distributed publicly even when the Twitter user
6 has “opted out” of public tweets, and/or has used the “d” symbol for a Direct Message. The
7 gravity of these failures is compounded given the sensitivity of Named Plaintiff’s and the
8 other Class Members’ (and all Twitter users’) private and confidential information, and
9 Twitter’s intention and ability to publish it literally worldwide in an instant.
10

11 13. Third, as noted, Twitter’s service requires that users actively “opt-out” of
12 Twitter’s default scheme, whereby every Twitter users’ instant messages are immediately
13 posted on Twitter’s website and throughout its paid distribution network. If the user hopes
14 to maintain private communications, they must “opt out” of that scheme, rather than “opt-in”
15 to immediate, global, public disclosure of their private information. This policy is
16 wrongheaded. Again, industry standards, the law, and common sense all dictate that privacy
17 be presumed. Plainly stated, Twitter should have started with the presumption that
18 everything was private unless the user “checked the box” to then make it public. But
19 Twitter’s chosen bent to the contrary is plainly designed to allow it to increase its profits by
20 increasing public distribution of its users’ messages, at the expense of Named Plaintiff’s and
21 the other Class Members’ (and other Twitter users’) privacy rights -- and notwithstanding
22 the attendant, manifest, privacy and security issues that Twitter acknowledges, and claims to
23 address. Moreover, Twitter’s purposefully chosen user interface also does nothing to
24 automatically warn users that they have not appropriately opted-out so as to maintain their
25
26

1 privacy; it uses no warnings, no “pop-up” windows, no colors, no flags, nothing. Instead,
2 for its own commercial purposes Twitter has intentionally designed its interfaces to
3 obfuscate users’ privacy choices, and instead increase the number and frequency of its users’
4 public messages.

5 14. When Twitter’s failings were brought to its attention, it became recalcitrant,
6 and its behavior worsened. First Twitter failed to respond at all, then it refused to
7 acknowledge. Then Twitter refused to take any corrective action. Then it repeated that
8 wrongful conduct. Ultimately, Twitter admitted its wrongful conduct, at least in part. To
9 this day, however, Twitter has made no material changes to its service, instructions or user
10 interface that appear designed to avoid further unlawful intrusions into users’ privacy. It
11 has, however, made changes that prove the inaccuracy and inadequacy of its published
12 policies, instructions and user interface at the time Named Plaintiff (and other Class
13 Members) were injured.
14

15 15. By its wrongful acts, Twitter intentionally invaded Named Plaintiff’s and all
16 other Class Members’ constitutional and statutory rights to privacy.
17

18 16. As iterated, Twitter also breached its own agreements with Named Plaintiff
19 and the other Class Members, and was negligent and/or grossly negligent in the handling
20 and security of their confidential information and in the provision of its other services to
21 them (including in the provision of defective software, instructions and warnings).
22

23 17. Twitter also misrepresented and/or concealed material facts related to, and
24 falsely and misleadingly advertised, its services to Named Plaintiff and the other Class
25 Members, thus committing negligent, grossly negligent and/or intentional
26 misrepresentations, and also violating various sections of the California Business &

1 Professions Code, including the Unfair Competition Law, California Business & Professions
2 Code sections 17200 *et seq.*, section 17500, and California Business & Professions Code
3 section 22575.

4 18. Twitter's conduct also violated the California Consumer Legal Remedies
5 Act, California Civil Code sections 1750 *et seq.*

6 19. On information and belief, Twitter has engaged in a pattern of similar
7 wrongful conduct with respect to many other users, committing unlawful, unfair and
8 fraudulent business acts and practices on a large number of unwitting users, in violation of
9 the laws alleged above and below. All of these actions were undertaken for Twitter's
10 financial gain but at the expense of the privacy of its users and the security of their
11 confidential information.
12

13 20. Named Plaintiff and the other Class Members seek monetary damages and, to
14 ensure that they (and others similarly situated) are not further harmed irreparably in the
15 future, both prohibitory and mandatory injunctive relief as to the underlying conduct and
16 also as to Twitter's service, instructions, warnings and user interface. Statutory penalties
17 and attorneys fees are also sought under California Civil Code 1781(e) and California Code
18 of Civil Procedure section 1033.5. That Twitter has been recalcitrant in correcting its
19 wrongful conduct toward at least Named Plaintiff, and has acted with malice, fraud and
20 oppression, underscores the need for injunctive relief and also supports the imposition of an
21 award of punitive damages in an amount to be proven at trial.
22

23 CLASS ACTION ALLEGATIONS

24 21. Named Plaintiff incorporates by reference the allegations contained within
25 paragraphs 1-20, above.
26

1 22. Named Plaintiff and the other Class Members bring this suit as a class action
2 pursuant to the California Consumer's Legal Remedies Act, California Civil Code sections
3 1750 *et seq.*, 1781, California Code of Civil Procedure section 382, California Rules of
4 Court, Rules 3.760 *et seq.* and other applicable law.

5 23. The Class is defined as: All California residents whose private information
6 was made public on the internet by Twitter (including through its third party distribution
7 network), and DOES I-XX: (1) contrary to its agreements with such users, including its
8 privacy and security policies and terms of service; (2) due to its policy and technical practice
9 of routing messages (sometimes erroneously) with a public, versus private, preference; or
10 (3) due to its inadequate user instructions, warnings and/or user interface. Excluded from
11 the Class are the Defendants, any entity in which any Defendant has a controlling interest or
12 which has a controlling interest in any other Defendant, and Defendants' legal
13 representatives, predecessors, successors and employees. Also excluded from the Class are
14 the judge to whom this action is assigned (and his or her staff), and any member of the
15 judge's immediate family.

16 24. Named Plaintiff reserves the right to revise the definition of the Class based
17 on facts gleaned during discovery. Named Plaintiff also reserves the right to incorporate
18 subclasses of plaintiffs as may be required in the interest of fairness and for the efficient
19 administration of the action and judicial economy.

20 25. Named Plaintiff is a member of the Class that she seeks to represent. The
21 other Class Members can be identified using Twitter's databases and other business records.
22 Class Members can also be notified of this class suit through publication and direct
23
24
25
26

1 electronic mailings to email addresses maintained in the usual course of Twitter's business,
2 and/or through tweets to Twitter's users.

3 26. Numerosity: The Class Members are potentially so numerous that both their
4 individual joinder and their individual participation in all aspects of the case are
5 impracticable. The Class may consist of thousands of Twitter users; given the size of
6 Twitter's California user base, even a relatively nominal percentage of aggrieved users could
7 easily number in the thousands. That Twitter's privacy policy at issue in the case of the
8 Named Plaintiff was apparently in place for almost two and one-half years (from May, 2007
9 to November, 2009), further illustrates the likely size of the involved user base and potential
10 class size.
11

12 27. Existence and predominance of common questions: Common questions of
13 law and fact predominate over questions affecting only individual class members. The
14 common legal and factual questions include:

15 (a) Whether Twitter breached its agreements with the Class Members, including
16 its privacy and security policies and its public terms of service.
17

18 (b) Whether Twitter misrepresented or otherwise failed to comply with its
19 privacy and security policies and its public terms of service.

20 (c) Whether Twitter's conduct violated the California Consumer's Legal
21 Remedies Act, California Civil Code sections 1750 *et seq.*

22 (d) Whether Twitter's conduct violated the California Unfair Competition Law,
23 California Business & Professions Code sections 17200 *et seq.*, section 17500.
24

25 (e) Whether Twitter's conduct violated California Business & Professions Code
26 section 22756,

1 (f) Whether Twitter's user instructions and warnings and user interface were
2 adequate under law.

3 (e) Whether Twitter's alleged conduct is continuing, and how.

4 (f) Whether Twitter has been and continues to be unjustly enriched by its alleged
5 conduct.

6 28. Defendant Twitter engaged in a continuing course of wrongful conduct
7 giving rise to the legal rights sought to be enforced by Named Plaintiff and the other Class
8 Members. Similar or identical statutory and common law violations, and similar or identical
9 agreements, representations, business practices and injuries, are involved. The injuries
10 sustained by the Class Members, moreover, flow in each instance from Twitter's similar or
11 identical misconduct.
12

13 29. Typicality: Named Plaintiff's claims are typical of the claims of the other
14 Class Members. In example only, on information and belief, Named Plaintiff contracted for
15 Twitter's service under the identical or similar material terms as the other Class Members,
16 regarding use of her anonymous Twitter or User Name and otherwise. Similarly, Named
17 Plaintiff utilized the same or similar instructions and warnings and user interface as the other
18 Class Members. Named Plaintiff and the other Class Members were also damaged by
19 identical or similar misrepresentations Twitter made in its privacy and security policies and
20 terms of service.
21

22 30. Fairness/Adequacy: Named Plaintiff will fairly and adequately protect the
23 interests of the Class. Named Plaintiff is familiar with the basic facts that form the bases of
24 the Class Members' claims, which also inform her own claim. Named Plaintiff's interests do
25 not conflict with the interests of the other Class Members that she seeks to represent. To the
26

1 contrary, one of Named Plaintiff's underlying concerns in seeking redress is that other
2 similarly aggrieved persons also obtain redress, and also that the harm caused her not also be
3 caused to other unwitting members of the public. Named Plaintiff intends to prosecute the
4 action vigorously. Named Plaintiff's counsel has litigated complex actions to their
5 conclusion and with success. Named Plaintiff and Named Plaintiff's counsel will thus fairly
6 and adequately protect the interests of the Class Members.

7
8 31. Superiority: Class suit is superior to other available means for the fair and
9 efficient adjudication of the claims of Named Plaintiff and the other Class Members, if not
10 the only viable means. The relief sought by any individual member of the Class is, likely,
11 small relative to the burden and expense of individual prosecution of the potentially
12 extensive litigation necessitated by the conduct of the Defendants. This renders individual
13 prosecution of each claim virtually impossible. Moreover, even if each Class Member could
14 sue individually, the claims may well overwhelm the Court, requiring complex
15 administration of the litigation in all events. Individual litigation of the legal and factual
16 issues raised by the Defendants' conduct would also increase delay and expense to all
17 parties and to the Court, and could lead to inconsistent findings regarding the same conduct
18 or to disputes over the doctrine of collateral estoppel. The class action device presents far
19 fewer management difficulties and provides the benefits of a single, uniform adjudication,
20 economies of scale and comprehensive supervision by a single court. Further, the
21 Defendants have acted or refused to act on grounds generally applicable to the Class,
22 thereby making it appropriate for the Court to enter final and injunctive relief with respect to
23 the Class as a whole.
24
25
26

1 Members', damages -- exclusive of attorneys' fees, litigation costs and punitive damages --
2 exceed the sum of \$25,000 as will be proven at trial.

3 37. Wherefore, Named Plaintiff and the other Class Members pray for judgment
4 against Defendants as more specifically set forth below in the prayer for relief.

5 **Second Cause of Action**
6 **(Intentional Invasion of Privacy -- Wrongful Publication of Private Facts)**

7 38. Named Plaintiff incorporates by reference the allegations contained within
8 paragraphs 1-37, above.

9 39. To increase its public user base and advertising revenues, and thus its profits,
10 Twitter intentionally published Named Plaintiff's and the other Class Members' private
11 identification, financial and other information on the internet. Twitter's publication of such
12 private facts was also contrary to its own stated, but false and misleading, privacy and
13 security policies and terms of service, and its agreements with Named Plaintiff and the other
14 Class Members. Twitter also republished such private information even after being advised
15 by at least Named Plaintiff of the first publication, underscoring that its conduct was
16 intended and in knowing disregard of Named Plaintiff's rights, privacy, reputation and well-
17 being. When advised of its acts, Twitter also denied all responsibility and in fact tried to
18 blame Named Plaintiff.
19

20 40. As a direct, proximate and foreseeable result of Twitter's intentional invasion
21 of privacy, Named Plaintiff and the other Class Members suffered, without limitation, the
22 injuries and damage alleged in Paragraph 10, above. Named Plaintiff's, and the other Class
23 Members', damages, exclusive of attorneys' fees, litigation costs and punitive damages,
24 exceed the sum of \$25,000 as will be proven at trial.
25
26

1 41. Twitter's acts were also done knowingly and intentionally, and with malice,
2 fraud and oppression as defined in California Civil Code section 3294; at a very minimum
3 Twitter acted with conscious disregard of Named Plaintiff's and the other Class Members'
4 substantial rights. Named Plaintiff and the other Class Members are thus also entitled to an
5 award of punitive damages in an amount to be proven at trial.

6 42. Wherefore, Named Plaintiff and the other Class Members pray for judgment
7 against Defendants as more specifically set forth below in the prayer for relief.

8
9 **Third Cause of Action**
10 **(Intentional Infliction of Emotional Distress)**

11 43. Named Plaintiff incorporates by reference the allegations contained within
12 paragraphs 1-42, above.

13 44. Twitter's publication of Named Plaintiff's and the other Class Members'
14 private information, on more than one occasion and even after it was advised by at least
15 Named Plaintiff of the matter, and in contravention of its own privacy and security policies
16 and terms of service and its agreements with Named Plaintiff and the other Class Members,
17 was intentional, extreme, outrageous and unlawful conduct which caused them severe
18 emotional distress. Twitter's denial of all responsibility and its attempt to blame Named
19 Plaintiff for the publications caused her yet further and more severe emotional distress.

20 45. As a direct, proximate and foreseeable result of Twitter's intentional,
21 extreme, outrageous and unlawful conduct, Named Plaintiff and, on information and belief,
22 other Class Members, suffered, without limitation, severe emotional distress with physical
23 manifestations. Named Plaintiff and the other Class Members also suffered the injuries and
24 damage alleged in Paragraph 10, above. Named Plaintiff's, and the other Class Members',
25
26

1 damages, exclusive of attorneys' fees, litigation costs and punitive damages, exceed the sum
2 of \$25,000 as will be proven at trial.

3 46. Twitter's acts were also done knowingly and intentionally, and with malice,
4 fraud and oppression as defined in California Civil Code section 3294; at a very minimum
5 Twitter acted with conscious disregard of Named Plaintiff's and the other Class Members'
6 substantial rights. Named Plaintiff and the other Class Members are thus also entitled to an
7 award of punitive damages in an amount to be proven at trial.

8
9 47. Wherefore, Named Plaintiff and the other Class Members pray for judgment
10 against Defendants as more specifically set forth below in the prayer for relief.

11 **Fourth Cause of Action**
12 **(Negligence and/or Gross Negligence)**

13 48. Named Plaintiff incorporates by reference the allegations contained within
14 paragraphs 1-47, above.

15 49. Twitter owed a duty of care to Named Plaintiff and the other Class Members
16 as users of its service in which they entrusted highly private, confidential identifier,
17 financial, address and other information.

18 50. Twitter negligently, and/or with gross negligence, violated its duty of care to
19 Named Plaintiff and the other Class Members by, without limitation:

20 (a) Wrongfully publishing Named Plaintiff's and the other Class Members'
21 private information on the internet and then republishing at least Named Plaintiff's private
22 information, after being advised by Named Plaintiff of the first wrongful publication.

23 (b) Failing to utilize reasonable, adequate, unambiguous, conspicuous and
24 sufficiently emphasized user instructions, warnings, privacy and security policies and terms
25
26

1 of service which ensured that users were fully apprised that, and how, their private
2 information might be disseminated.

3 (c) Failing to utilize a reasonable and adequate user interface which ensured that
4 users were fully apprised that, and how, their private information might be disseminated.

5 (d) Failing to ensure privacy by structuring its service to presume private or
6 limited dissemination of users' instant messages, as opposed to global public dissemination
7 of those messages. Twitter's presumption of "public" should have been a presumption of
8 "private," especially given the inherent nature of other popular instant messaging services,
9 the sensitivity of Named Plaintiff's and the other Class Members' (and all Twitter users')
10 private and confidential information, and Twitter's intention and ability to publish it literally
11 worldwide, literally in an instant. Moreover, Twitter does nothing to automatically warn
12 users that they have not appropriately opted-out so as to maintain their privacy; it uses no
13 warnings, no "pop-up" windows, no colors, no flags, nothing.
14

15 (e) Wrongfully publishing Named Plaintiff's and the other Class Members'
16 private and confidential identification, financial and other information throughout the
17 internet, rather than using only Named Plaintiff's and the other Class Members' purposely
18 chosen anonymous Twitter Names or User Names, rendering even the users' own enhanced
19 privacy protection efforts futile.
20

21 51. As a direct, proximate and foreseeable result of Twitter's negligent and/or
22 grossly negligent conduct, Named Plaintiff and the other Class Members suffered, without
23 limitation, the injuries and damage alleged in Paragraph 10, above. Named Plaintiff's, and
24 the other Class Members', damages, exclusive of attorneys' fees, litigation costs and
25 punitive damages, exceed the sum of \$25,000 as will be proven at trial.
26

1 52. Wherefore, Named Plaintiff and the other Class Members pray for judgment
2 against Defendants as more specifically set forth below in the prayer for relief.

3
4 **Fifth Cause of Action**
5 **(Negligent and/or Grossly Negligent Infliction of Emotional Distress)**

6 53. Named Plaintiff incorporates by reference the allegations contained within
7 paragraphs 1-52, above.

8 54. Twitter owed a duty of care to Named Plaintiff and the other Class members
9 as users of its service in which they entrusted highly private, confidential identifier,
10 financial, address and other information.

11 55. Twitter's publication of Named Plaintiff's and the other Class Members'
12 private information, on more than one occasion and even after it was advised by Named
13 Plaintiff of the matter, and in contravention of its own privacy and security policies, terms
14 of service, and agreements with Named Plaintiff and the other Class Members, was
15 negligent and/or grossly negligent conduct which fell below any reasonable standard of care
16 given the sensitivity of Named Plaintiff's and the other Class Members' (and other Twitter
17 users') private and confidential information and Twitter's intention and ability to publish it
18 worldwide in an instant. Twitter's wrongful publication caused Named Plaintiff and, on
19 information and belief, other Class Members, severe emotional distress. Twitter's initial
20 denial of all responsibility and its attempt to blame Named Plaintiff for the publications
21 negligently and/or grossly negligently caused Named Plaintiff yet further and more severe
22 emotional distress.
23

24 56. As a direct, proximate and foreseeable result of Twitter's negligent and/or
25 grossly negligent and unlawful conduct, Named Plaintiff and, on information and belief,
26

1 other Class Members, suffered, without limitation, severe emotional distress with physical
2 manifestations. Named Plaintiff and the other Class Members also suffered the injuries and
3 damage alleged in Paragraph 10, above. Named Plaintiff's, and the other Class Members',
4 damages, exclusive of attorneys' fees, litigation costs and punitive damages, exceed the sum
5 of \$25,000 as will be proven at trial.

6 57. Wherefore, Named Plaintiff and the other Class Members pray for judgment
7 against Defendants as more specifically set forth below in the prayer for relief.
8

9 **Sixth Cause of Action**
10 **(Intentional Misrepresentations)**

11 58. Named Plaintiff incorporates by reference the allegations contained within
12 paragraphs 1-57, above.

13 59. Before and on September 15, 2009, and continuing thereafter, on and through
14 its published website, Twitter intentionally misrepresented its privacy and security policies
15 and its terms of service to Named Plaintiff and the other Class Members, and its intentions
16 to not publish their private information publicly on the internet. Twitter also concealed
17 related material facts, disclosure of which was required to make accurate the facts Twitter
18 did represent. More specifically, but without limitation:

19 (a) Twitter misrepresented what protections would be afforded Named Plaintiff's
20 and the other Class Members' messages, i.e., to whom and in what form they would be
21 published.
22

23 (b) Twitter misrepresented that, irrespective of whether a message was private
24 (i.e., to designated recipients only) or public (i.e., open on Twitter's website or through its
25 third party distribution network), Named Plaintiff's and the other Class Members' personal
26