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July 26, 2022

BY HAND DELIVERY & eFILING

The Honorable Kathaleen St. J. McCormick
Chancellor
Court of Chancery
Leonard L. Williams Justice Center
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

RE: *Twitter, Inc. v. Musk, et al.*,
C.A. No. 2022-0613-KSJM (Del. Ch.)

Dear Chancellor McCormick:

Defendants Elon Musk, X Holdings I, Inc., and X Holdings II, Inc. (“Defendants”) write to respectfully request that the Court adopt Defendants’ attached proposed schedule and, subject to the Court’s availability, set trial for October 17-21, 2022. Given the compressed timeframe, guidance from the Court is necessary to break the impasse to allow things to move forward promptly.

Following this Court's expedition ruling on July 19th, Defendants proceeded with due haste to abide by this Court's order. Defendants served document requests on Plaintiff Twitter, Inc. ("Twitter") that day, followed the next day by their second set of RFPs and first set of interrogatories. Defendants immediately reached out to Twitter's counsel to schedule a meet and confer to discuss the discovery process and schedule. Defendants' efforts to make sure this case is trial-ready by October, have not been reciprocated by Twitter, who at every turn has sought to delay. Despite Defendants' best efforts to work through these obstacles, three critical issues remain, which require the Court's guidance.

First, subject to the Court's availability, trial should be set for the week of October 17, 2022. Twitter has offered no reason that an October 17 trial presents any hardships, nor has it identified any scheduling conflicts for this date; yet it has continued to insist upon an October 10 trial without justification. Twitter has also attempted to use the lack of a decided trial date to delay all other scheduling discussions. An October 17 trial date comports with the Court's expedition order, and given that the additional week is highly meaningful to Defendants in a ninety day

trial schedule, there is no reason to adopt a different date if the Court is available.

Second, Twitter refuses to begin immediate rolling document productions of certain categories of documents requested by Defendants that are plainly relevant, do not require electronic searching, and are easily collected and produced.¹ Defendants' request for the immediate production of these documents is more than reasonable in light of the expedited schedule in this case. Twitter has resisted producing these documents for several days, offering only the vague excuse that "a number of the categories" are not relevant, without identifying to which categories

¹ The bulk of the documents are "core documents" or readily available information, including "board meeting minutes and related materials regarding the Merger; certain organizational charts; documents cited or referenced in the Complaint and Motion to Expedite; manuals and policies regarding mDAU, ad sales, advertising metrics, growth metrics, suspension rules, machine learning, and AI; documents responsive to RFP 1 in Defendants' Second RFPs [which concerns data regarding certain actions taken on Twitter from 2020 through 2021]; documents that Twitter agreed to produce in a July 15 letter; all OC consent requests and responses; all items in the data room; all exchanged drafts of the Credit Agreement, Limited Guarantee, and Debt Commitment Letter."

it is referring. While Twitter agreed to make an initial production by the end of the week of some documents “from categories that Twitter agrees are responsive,” Twitter will not agree to (1) identify what documents it purports are not relevant, (2) explain why it is only producing “some of” the documents it concedes are responsive, or (3) agree to produce anything earlier than “the end of the...week.” Twitter also will not confirm whether this initial production will include data and documents that Twitter said were available a week ago, on July 15, 2022 (albeit with strictures on Defendants’ access),² nor will Twitter make any other rolling productions beyond this initial production before it serves responses and objections. Twitter has also conditioned its agreement to provide an initial production on Defendants’ agreement to make an initial production. Defendants are willing to do so if Twitter explains why it will not produce certain

² This information relates to Defendants’ claims that Plaintiff’s disclosures regarding the number of false and spam accounts included within its calculation of its monetizable daily average users (“mDAU”) are false. It includes (i) certain data regarding how Twitter calculates its mDAU figures and (ii) the guidance provided to human reviewers who identify false and spam accounts at Twitter.

documents and agrees to the August 1 deadline discussed below. Twitter has refused these conditions, calling them “unreasonable.”

Third, Twitter refuses to produce raw data that it maintains in the ordinary course, which requires significant machine time and software development to process and analyze, by August 1. The August 1 deadline is necessary to ensure Defendants’ expert witnesses have sufficient time to analyze the enormous amount of relevant data and imposes no undue burden on Plaintiff. The data is easy-to-send, but the “machine time” that it takes to process the data is time consuming, and Defendants will be severely prejudiced in their ability to present their expert case if the materials are not timely produced. Twitter’s proposed case schedule also sets the document production deadline on August 28, less than *two weeks* before opening expert reports are due, an obvious attempt to squeeze Defendants. Defendants’ schedule requires documents to be produced no later than 18 days after a request is served, to ensure sufficient time for expert analysis.³ Twitter has refused to explain why it cannot meet this

³ The parties’ proposed schedules are otherwise largely consistent.

deadline, even though Twitter represented to the Court that it could complete the *entirety of its production* by August 11. Inexplicably, Twitter now claims it cannot complete production until over two weeks later. But Twitter should be able to produce a mere subset of its documents by August 1.

Accordingly, to break the logjam, Defendants respectfully request that the Court enter Defendants' proposed schedule, which (i) sets trial for October 17-21, 2022; (ii) requires Twitter to immediately produce the core documents; (iii) requires Twitter to produce all raw data by August 1; and (iv) sets a document production deadline for 18 days after a request is served. Given the timeline until trial, every day counts.

We are available at the call of the Court if Your Honor has any questions.

Respectfully,

/s/ Edward B. Micheletti

Edward B. Micheletti (ID No. 3794)

Words: 999

The Honorable Kathaleen St. J. McCormick
July 26, 2022
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Enclosures

cc: Register in Chancery (via eFiling)
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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TWITTER, INC.,)
)
 Plaintiff,)
)
 v.) C.A. No. 2022-0613-KSJM
)
 ELON R. MUSK, X HOLDINGS I, INC.,)
 and X HOLDINGS II, INC.,)
)
 Defendants.)

[PROPOSED] ORDER GOVERNING CASE SCHEDULE

WHEREAS, Plaintiff Twitter, Inc. (“Plaintiff”) filed its Verified Complaint (the “Complaint”) on July 12, 2022, against defendants Elon R. Musk, X Holdings I, Inc., and X Holdings II, Inc. (collectively, “Defendants”), as well as a Motion to Expedite Proceedings, which the Court granted on July 19, 2022;

IT IS HEREBY ORDERED as follows:

1. The following schedule shall govern the proceedings in this matter:

	Event	Date
(a)	Plaintiff to commence rolling document productions.	July 26, 2022
(b)	Parties to serve initial requests for production of documents and initial interrogatories, which may be multiple requests.	July 25, 2022

(c)	Defendants to file answer to Complaint. ¹	July 28, 2022
(d)	Parties to serve initial discovery on third parties.	July 28, 2022
(e)	Parties to substantially complete production of material large data sets in response to initial requests.	August 1, 2022
(f)	Deadline to serve final requests for production of documents and interrogatories (later requests permissible for good cause only).	August 15, 2022
(g)	Identification of Opening Expert Witnesses and general subject matter of expert testimony.	August 18, 2022
(h)	Exchange of privilege logs.	August 29, 2022
(i)	Parties to serve initial list of trial witnesses (including adverse and third-party witnesses).	September 5, 2022
(j)	Exchange of Opening Expert Reports and production of all materials relied upon by Experts and not produced previously by the parties.	September 9, 2022
(k)	Identification of Rebuttal Expert Witnesses and general subject matter of expert testimony.	September 13, 2022

¹ Plaintiff will file its responses and objections to Defendants' First and Second Requests for Production within two days thereafter.

(l)	Exchange of Rebuttal Expert Reports and production of all materials relied upon in Rebuttal Expert Reports and not produced previously by the parties.	September 23, 2022
(m)	Parties to identify any potential trial witnesses not previously deposed or scheduled for deposition and make such witnesses available for deposition.	September 23, 2022
(n)	Completion of fact discovery, including depositions (except for any fact discovery subject to a motion to compel or motion for protective order pending on this date).	September 29, 2022
(o)	Parties to serve final list of all trial witnesses. Any new witnesses identified on the final witness lists and not previously deposed shall be made available for deposition by the adverse party within seven (7) calendar days following identification of the witness.	September 29, 2022
(p)	Plaintiff's counsel to provide Defendants' counsel with a draft of the pre-trial order.	October 7, 2022
(q)	Completion of expert depositions.	October 7, 2022
(r)	Defendants' counsel to provide Plaintiff's counsel with a markup of the draft pre-trial order.	October 10, 2022
(s)	Filing of motions in <i>limine</i> (if any).	October 11, 2022

(t)	Parties' joint submission of a pre-trial stipulation and proposed order, including identification of trial witnesses and a Joint Exhibit List.	October 12, 2022
(u)	Simultaneous filing of Pre-Trial Briefs, oppositions to motions in <i>limine</i> .	October 13, 2022
(v)	Pre-trial conference.	October 14, 2022
(w)	Trial.	October 17-21, 2022

2. The parties may amend the dates set forth in subparagraphs 1(a)-(r) of this Order by written agreement, without Court approval. All other deadlines, the pre-trial conference date, and the trial dates may be amended only by order of the Court.

3. The parties shall meet and confer promptly regarding search terms, custodians, the form of production of electronically stored information, arrangements for any discovery to be taken from the parties' agents and advisors, and privilege logs.

4. Responses and objections to requests for production and interrogatories requesting the identification of individuals, entities, or sources of information directed to the parties shall be due five (5) calendar days after service, and the production of documents responsive to requests for production (other than requests for material data sets addressed in (e) above) shall be substantially completed within

eighteen (18) calendar days after service of the underlying requests. Written responses and objections to all other interrogatories directed to the parties shall be due ten (10) calendar days after service.

5. In the event any party moves to compel or moves for a protective order, any opposition to such motion will be due by 11:59 p.m. on the third business day after the motion's filing, and any reply in support of such motion will be due by 11:59 p.m. one business day after the opposition's filing. The parties shall meet and confer before filing any such motion and shall work cooperatively in good faith to resolve discovery disputes without Court intervention whenever possible.

6. Production of documents shall commence on a rolling basis upon receipt of requests for production, subject to the deadline in paragraph 4. The parties shall endeavor in good faith to minimize the number of document requests served after July 25, 2022. The parties shall likewise endeavor in good faith to minimize the service of third-party discovery after July 28, 2022.

7. Prior to production, the parties shall use their best efforts to deduplicate any electronic material collected (including identical material transmitted between or among multiple custodians). All documents produced shall be produced in electronic form, in accordance with specifications agreed upon by the parties.

8. Subject to any other objections they may have, the parties will produce for deposition or appearance at trial persons under their respective control, including

their (and their affiliates') respective current directors, officers, employees, and experts on reasonable notice and without the need for subpoena.

9. The parties will cooperate in good faith regarding arrangements for any discovery taken from a party's agents, advisors, or other third parties, including depositions.

10. The parties shall work together in good faith on the scheduling and location of depositions, in the event they do not proceed remotely, which shall be the default rule. To the extent that rolling document production may overlap with the commencement of depositions, the parties will endeavor to stagger the scheduling of depositions to allow custodians for whom document production has been substantially completed to be deposed before custodians for whom production has not been substantially completed. The parties will also endeavor to produce documents relating to any deposition witness reasonably before that witness is deposed.

11. Any witness for trial who has not previously been deposed in this action shall be made promptly available for deposition pursuant to subparagraph 1(o) above. No witnesses shall be included on either party's final witness list who were not included on at least one party's initial witness list unless there is a good faith reason for including the new witness. Following the final identification of trial

witnesses pursuant to subparagraph 1(o), a party may not designate additional witnesses for trial without leave of Court.

12. The parties shall work together to create a single set of trial exhibits and to cite to them in their pre-trial briefs.

IT IS SO ORDERED this ____ day of _____ 2022.

Chancellor Kathaleen St. Jude McCormick