



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.)

ORDER GOVERNING CASE SCHEDULE

WHEREAS,

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

B. The Court granted Plaintiff’s Motion to Expedite Proceedings on July 19, 2022.

IT IS HEREBY ORDERED as follows:

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

	Event	Date
(a)	Deadline to answer Complaint and file counterclaims. Plaintiff shall answer any counterclaims by August 4, 2022, at 5:00 p.m.	July 29, 2022, 5:00 p.m.
(b)	Deadline for serving initial requests for production of documents and initial interrogatories. The parties shall use best efforts to be complete in their initial requests.	July 29, 2022, 12:00 p.m.

	Later requests will be permitted for good cause only.	
(c)	Deadline for serving initial discovery requests on third parties.	August 1, 2022, 5:00 p.m.
(d)	Deadline to serve final request for production of documents and final interrogatories, permitted for good cause only.	August 12, 2022, 12:00 p.m.
(e)	Deadline for identifying opening expert witnesses and the general subject matter of their testimony.	August 15, 2022, 5:00 p.m.
(f)	Parties to substantially complete document productions.	August 29, 2022, 5:00 p.m.
(g)	Parties to exchange privilege logs.	September 5, 2022, 5:00 p.m.
(h)	Deadline for moving to compel or moving for a protective order in connection with written discovery or document discovery. Any motion must be presented pursuant to the protocol established in Paragraph 14 below.	September 7, 2022, 5:00 p.m.
(i)	Parties to exchange opening expert reports along with all materials relied upon by the experts. Any materials relied upon by the experts previously produced to the opposing party in discovery need not be re-produced but must be identified by Bates number.	September 9, 2022, 12:00 p.m.
(j)	Parties to serve initial list of trial witnesses. The parties shall use best efforts to be complete in their initial lists, which should include adverse and third-party witnesses). A party will be permitted to identify witnesses at a later time for good cause only.	September 12, 2022, 5:00 p.m.
(k)	Parties to complete fact discovery, including depositions, except for any fact discovery subject to a motion to compel or motion for	September 12, 2022, 5:00 p.m.

	a protective pending as of this date.	
(l)	Parties to identify rebuttal expert witnesses and general subject matter of rebuttal testimony.	September 14, 2022, 5:00 p.m.
(m)	Deadline for moving to compel or moving for a protective order as to any fact discovery issues not subject to the deadline set forth in Paragraph 1(h) above. Any motion must be presented pursuant to the protocol established in Paragraph 14 below.	September 15, 2022, 5:00 p.m.
(n)	Parties to exchange rebuttal expert reports along with all materials relied upon by the experts. Any materials relied upon by the experts previously produced to the opposing party in discovery need not be re-produced but must be identified by Bates number.	September 21, 2022, 5:00 p.m.
(o)	Parties to identify any potential trial witnesses not previously identified along with a statement of good cause for not previously identifying the witness. The parties shall work together in good faith to schedule the deposition, within seven calendar days following their identification, of any trial witnesses identified pursuant to this paragraph who had not previously been deposed. The parties shall work in good faith to schedule and hold any such deposition regardless of any dispute over whether the witness should appear at trial.	September 22, 2022, 5:00 p.m.
(p)	Parties to complete expert depositions.	September 29, 2022, 5:00 p.m.
(q)	Parties to provide final list of all trial witnesses.	October 5, 2022, 5:00 p.m.
(r)	Plaintiff's counsel to provide Defendants' counsel with a draft of the pre-trial order.	October 5, 2022, 5:00 p.m.
(s)	Defendants' counsel to provide Plaintiff's	October 10, 2022, 5:00 p.m.

	counsel a markup of the draft pre-trial order.	
(t)	Deadline for filing motions in <i>limine</i> .	October 11, 2022, 5:00 p.m.
(u)	Parties to submit joint pre-trial order and exhibit list.	October 12, 2022, 5:00 p.m.
(v)	Deadline for filing responses to motions in <i>limine</i> .	October 12, 2022, 12:00 p.m.
(w)	Deadline for submitting pre-trial briefs.	October 13, 2022, 12:00 p.m.
(x)	Pre-trial conference. Any motions in <i>limine</i> will be argued during the pre-trial conference.	October 14, 2022, 9:15 a.m.
(y)	Trial	October 17 – 21, 2022

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

3. The parties shall meet and confer promptly regarding a confidentiality agreement, and a discovery plan including search terms, custodians, the form of production of electronically stored information, the form and content of privilege logs, and arrangements for any discovery to be taken from the parties' agents and advisors. The Discovery Liaisons appointed pursuant to Paragraph 14 shall participate in the meet and confer.

4. Interrogatories shall be limited to a total of 25 interrogatories, including subparts, per side. The parties shall not be entitled to serve requests for admission without leave of Court.

5. Responses and objections to requests for production or interrogatories shall be due seven calendar days after service.

6. Document production should commence on a rolling basis upon receipt of discovery requests. Discovery is bilateral. Discovery should not be requested or withheld in an effort to inflict unreasonable demands on or extract unreasonable benefits from the opposing party. Each side shall review any discovery requests served to date with an eye toward limiting or consolidating those requests. Each side shall use best efforts to comply with its discovery obligations. Each side shall produce readily available information on or by August 4, 2022, at 5:00 p.m., and begin producing contemporaneous communications from key custodians shortly thereafter. This Order does not resolve any specific discovery disputes, including the propriety of any requests for large data sets. The parties shall implement the protocol set forth in Paragraph 14 below and surface any disputes through that procedure.

7. Prior to production, the parties shall use their best efforts to de-duplicate 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 shall produce for deposition or appearance at trial persons under their control, including but not limited to officers, directors, employees, agents, and experts on reasonable notice and without the need for subpoena.

9. The parties shall 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. 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. The parties will not require a subpoena to produce for deposition, on reasonable notice, persons under their respective control, including their respective current directors, officers, employees, and experts and documents under the parties' control in the possession of such persons.

11. 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(q), 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. The parties shall use their best efforts to order the trial exhibits chronologically. The parties shall deliver an electronic set of trial exhibits by flash drive to Chambers with the pre-trial briefs. The parties shall deliver an additional flash

drive and two hardcopy sets of trial exhibits to Chambers at a time established during the pre-trial conference.

13. Each side shall designate a partner-level Delaware lawyer to review and certify their clients' respective privilege logs (the "Privilege Certifier").

14. The parties shall use the following protocol for addressing discovery disputes, including document production issues.

a. Each side shall designate a partner-level lawyer who will be responsible for negotiating discovery issues and receiving and addressing document deficiency issues (the "Discovery Liaisons"). If this person is not the Privilege Certifier designated pursuant to Paragraph 13, then the Privilege Certifier shall be automatically designated as a second Discovery Liaison.

b. The party identifying any discovery deficiencies shall first raise that dispute in writing and send it by email to the opposing Discovery Liaisons.

c. Within 24 hours of receipt of such correspondence, the Discovery Liaisons shall, in writing sent by email to the opposing Discovery Liaisons, acknowledge receipt of the correspondence and either cure the deficiency or provide a reason why the production was not deficient. If a response cannot be provided within 24 hours, the Discovery Liaisons shall explain why and provide an estimate as to when a full response will be provided.

d. If the issue is not resolved within 72 hours of the initial deficiency notice, then at the election of the party identifying the deficiencies, the parties shall submit letters to the court not exceeding 5,000 words stating their positions,

attaching the relevant communications, and including a proposed form of order granting any relief sought.

e. If the court requests a hearing on the discovery dispute presented pursuant to the immediately preceding paragraphs, then all Discovery Liaisons shall be present at the hearing.

15. No deadline set forth in this Order shall require a filing or communication outside of ordinary business hours. If a deadline, for example the 24-hour period referenced in the immediately preceding paragraph, falls outside of ordinary business hours, then the deadline shall be 10:00 a.m. on the next business day.

/s/ Kathaleen St. J. McCormick

Chancellor Kathaleen St. J. McCormick
Dated: July 28, 2022