



EFiled: Aug 03 2022 10:57AM EDT  
Transaction ID 67895250  
Case No. 2022-0613-KSJM



1315 North Market  
Wilmington, DE 19801  
302 4

www.potteranderson.com

**Kevin R. Shannon**  
**Partner**

Attorney at Law  
kshannon@potteranderson.com  
302 984-6112 Direct Phone

August 3, 2022

By E-File and Hand Delivery

The Honorable Kathaleen St. Jude McCormick  
Chancellor  
Court of Chancery  
Leonard L. Williams Justice Center  
500 North King Street, Suite 1551  
Wilmington, Delaware 19801

Re: *Twitter, Inc. v. Elon R. Musk, et al.*, C.A. No. 2022-0613-KSJM

Dear Chancellor McCormick:

Plaintiff Twitter, Inc. respectfully seeks the Court's intervention to prevent Defendants from violating this Court's Rules. Court of Chancery Rule 5.1 and Rule 6 provide that Defendants should file the public version of their 163-page Counterclaims and Answer five business days after initial filing, on August 5. In violation of the Rules, Defendants informed Twitter that they intend to file a public version of that filing today, two days early, cutting off Twitter's time to decide whether to propose redactions of the confidential Twitter information included in the Counterclaim. Notwithstanding Twitter's objection, Defendants confirmed late last night their intention to resort to self-help and to file before Twitter decides what information in the filings, if any, to designate as confidential.

The Honorable Kathaleen St. Jude McCormick  
Chancellor  
Court of Chancery  
August 3, 2022  
Page 2

Defendants filed their responsive pleading on Friday, July 29, 2022—17 days after Twitter filed its complaint. This responsive pleading refers extensively to internal Twitter information and data provided to Defendants pursuant to a nondisclosure agreement. Accordingly, and as required by the Stipulation and Order for the Production and Exchange of Confidential and Highly Confidential Information (Dkt. # 31), Defendants filed their responsive pleading under seal. That night, counsel to Defendants sent Twitter’s counsel notice under Rule 5.1 of a proposed public version of their responsive pleading that contained no redactions. Exhibit A (Email from Ryan Lindsay, 7.29.22 @ 5.55pm). The notice stated that Defendants would file their proposed public version “if no one designates Confidential Information in response to this notice by 3:00 p.m. on August 3, 2022.”

That proposed timing is inconsistent with the Court’s Rules. Rule 5.1(d)(1) provides that “the filer of a Confidential Filing shall file a public version [of a Confidential Filing] on the fifth day after the Confidential Filing.” And Rule 6(a) provides that where “the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and other legal holidays shall be excluded in the computation” of time. Because Defendants filed their Counterclaims and Answer

The Honorable Kathaleen St. Jude McCormick  
Chancellor  
Court of Chancery  
August 3, 2022  
Page 3

on Friday, the ensuing Saturday and Sunday are to be excluded from the computation of the five-day period. Accordingly, under the clear language of the Rules, Defendants “shall file a public version” of the Counterclaims and Answer on but not before Friday, August 5.

Twitter promptly so informed Defendants and asked them to confirm that they would not file the public version of their responsive pleading until Friday, August 5. Exhibit B. Defendants refused. They insisted that they were entitled to make their public filing on August 3 under Rule 5.1(e), which governs “[c]onfidential treatment for complaints.” *See id.* As Twitter explained to Defendants, Rule 5.1(e) does not apply, because a responsive pleading is not a “complaint” under the Rules, regardless of whether it contains counterclaims. *See* Exhibit C. Rule 3(a) defines a complaint, and only a complaint, as a filing that commences an action. Consistent with that definition, the Rules refer to “pleadings”—not “complaints”—that state a counterclaim, *see* Rule 13, and separately refer to complaints and counterclaims, *see, e.g.*, Rules 3(aa), 7, 8, 10(b), 12(a)-(b), 18, 22(b), 42, 54(b), 55(d), and 56(b). To further establish the point, Twitter provided Defendants with an example of a public version of a responsive pleading filed by Musk’s counsel five business days after the confidential filing.

The Honorable Kathaleen St. Jude McCormick  
Chancellor  
Court of Chancery  
August 3, 2022  
Page 4

Belying their assertion that Rule 5.1(e) applies because their responsive pleading is a “complaint,” Defendants did not file, as required by Rule 5.1(e)(1), “a cover letter addressed to the Register in Chancery that certifies compliance with this Rule in accordance with Rule 5.1(c).” Defendants also did not “give notice to [Twitter’s] registered agent,” as required by Rule 5.1(e)(2).

Defendants offered no credible response justifying their plan to violate the clear language of the Rules. Exhibit D. They provided no legitimate basis in the text of the Court of Chancery Rules for the determination to cut off Twitter’s time to review their filing. They provided no relevant precedent in this Court’s practice for the interpretation of the Rules they propose. They provided no explanation why their counsel had previously interpreted the Rules contrary to the interpretation they now sponsor. Instead, Defendants asserted that, as a matter of “policy,” a responsive pleading containing a counterclaim should be treated the same as a complaint. *Id.*

In an effort to compromise and avoid burdening the Court with this dispute, Twitter offered to provide its proposed redactions, if any, to Defendants by 3 p.m. on Thursday, August 4—one day early. Defendants rejected this compromise. Exhibit E.

The Honorable Kathaleen St. Jude McCormick  
Chancellor  
Court of Chancery  
August 3, 2022  
Page 5

Few cases attract as much public interest as this one, and Twitter is mindful of this Court's commitment to ensuring maximum public access to its proceedings. Twitter has no interest in proposing any more redactions to Defendants' responsive pleading than are necessary. Twitter seeks this Court's intervention because the Rules should apply as written and equally to all parties, and because, as Twitter explained to Defendants, the additional time to which Twitter is entitled is needed to permit Twitter to do the work required to responsibly minimize proposed redactions.

We regret burdening the Court with this request, but we saw no other means to enforce our adversary's compliance with the Rules. We have attached a proposed form of order compelling Defendants to comply with Rule 5.1(d)(1). We are available should the Court wish to confer with counsel.

Respectfully,



Kevin R. Shannon (No. 3137)

Words: 879

KRS/aeo:10286096

Enclosures

cc: Register in Chancery (by E-File)  
Edward B. Micheletti, Esquire (by E-File)  
Brad D. Sorrels, Esquire (by E-File)



# EXHIBIT A

---

**From:** Lindsay, Ryan M <Ryan.Lindsay@skadden.com>  
**Sent:** Friday, July 29, 2022 5:55 PM  
**To:** Shannon, Kevin R.; Kelly, Christopher N.; 'BRWilson@wlrk.com'; 'wdsavitt@wlrk.com'; 'SKEddy@wlrk.com'; 'RAMcLeod@wlrk.com'; 'AReddy@wlrk.com'; 'NBYavitz@wlrk.com'; 'ALGoodman@wlrk.com'; 'APSadinsky@wlrk.com'; 'bsorrels@wsgr.com'; 'jshlights@wsgr.com'  
**Cc:** Micheletti, Edward B; Rosenello, Lauren N; 'Andrew J. Rossman'; 'Alex Spiro'; 'Christopher Kercher'; 'Silpa Maruri'; 'Kathryn Bonacorsi'; 'Emily Kapur'; 'Matthew Fox'  
**Subject:** [EXT] Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1  
**Attachments:** Musk\_-\_Public\_Version\_of\_Countercls\_\_Ans\_\_Aff\_\_Defenses.pdf; Rule 5.1.pdf

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

---

Counsel,

In accordance with Court of Chancery Rule 5.1 (attached), we are sending you notice of our proposed public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses to Plaintiff's Verified Complaint, which was filed confidentially on July 29, 2022 in *Twitter, Inc. v. Musk, et al*, C.A. No. 2022-0613-KSJM (Del. Ch.). The attached proposed public version shall be filed in compliance with Rule 5.1 if no one designates Confidential Information in response to this notice by 3:00 p.m. on August 3, 2022.

**Ryan M. Lindsay**  
Associate  
**Skadden, Arps, Slate, Meagher & Flom LLP**  
One Rodney Square | P.O. Box 636 | Wilmington | DE | 19899-0636  
**T: +1.302.651.3073 | F: +1.302.434.3073**  
[ryan.lindsay@skadden.com](mailto:ryan.lindsay@skadden.com)

-----  
This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====

# EXHIBIT B



---

**From:** Palmer, Bridget <Bridget.Palmer@skadden.com> on behalf of Micheletti, Edward B <Edward.Micheletti@skadden.com>  
**Sent:** Monday, August 1, 2022 12:15 PM  
**To:** Kelly, Christopher N.; Lindsay, Ryan M; Shannon, Kevin R.; 'BRWilson@wlrk.com'; 'wdsavitt@wlrk.com'; 'SEddy@wlrk.com'; 'RAMcLeod@wlrk.com'; 'AReddy@wlrk.com'; 'NBYavitz@wlrk.com'; 'ALGoodman@wlrk.com'; 'APSadinsky@wlrk.com'; 'bsorrels@wsgr.com'; 'jslights@wsgr.com'  
**Cc:** Micheletti, Edward B; Rosenello, Lauren N; 'Andrew J. Rossman'; 'Alex Spiro'; 'Christopher Kercher'; 'Silpa Maruri'; 'Kathryn Bonacorsi'; 'Emily Kapur'; 'Matthew Fox'  
**Subject:** [EXT] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1  
**Attachments:** Trimaran.pdf; Madison YT.pdf; RF Capital.pdf; AES Acquisition .pdf

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

---

Counsel,

We write in response to your email below and the issue you raised regarding the timing for filing the public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses (the "Counterclaims"). Even though Plaintiff did not file the Verified Complaint in this action under seal, and Defendants do not believe any of the information in their Counterclaims meets the standard for sealing under Rule 5.1, Defendants filed the Counterclaims confidentially to foreclose Plaintiff from generating (yet another) contrived breach regarding Defendants' compliance with their confidentiality obligations. While Plaintiff has an opportunity to propose any redactions under Rule 5.1, Defendants do not believe that any information contained in the Counterclaims should be redacted.

With respect to when the public version of the Counterclaims should be filed (3 business days versus 5 business days), the law strongly supports that the 3 day period applies. Rule 5.1(e) applies to filing public versions of a "complaint." "A counterclaim is a complaint by the defendant against the plaintiff." *De Reimer v. Tunnell & Raysor*, 1986 WL 13102, at \*1 (Del. Super. Ct. Sept. 11, 1986); *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 824 ("[Counterclaims] represent separate causes of action.") Rule 8(a) sets forth identical pleading requirements whether for an "original claim" or a "counterclaim." And Rule 12 requires service of a response to a counterclaim to be made in the same 20 day period that applies to an answer to a complaint. Furthermore, as the attached precedents demonstrate public versions of counterclaims have been filed in this Court pursuant to the 3 business day rule.

Perhaps most notably, the policy rationale underlying the difference in timing between a complaint and all other filings is based on the public's right to know the essence of what a case involves. As the Delaware courts have consistently stated, the public right of access has two foundations: the First Amendment and the common law. *Horres v. Chick-fil-A, Inc.*, 2013 WL 1223605, at \*1 (Del. Ch. Mar. 27, 2013) (discussing the First Amendment and common law foundations of the public right of access). The fact that Plaintiff chose to file its complaint publicly and is now raising timing issues for the Counterclaims appears to be a disingenuous attempt to delay public disclosure of Defendants' claims.

Accordingly, Defendants will file a public version of their Counterclaims on August 3. If Plaintiff wishes to propose redactions it must do so by that day. We are available to meet and confer if you maintain the August 5 date applies.

Regards,  
Ed M.

**Edward B. Micheletti**  
Partner  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square | P.O. Box 636 | Wilmington | DE | 19899-0636  
T: +1.302.651.3220 | F: +1.302.552.3220  
[edward.micheletti@skadden.com](mailto:edward.micheletti@skadden.com)

Skadden

 Please consider the environment before printing this email.

---

**From:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>  
**Sent:** Monday, August 1, 2022 10:59 AM  
**To:** Lindsay, Ryan M (WIL) <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKEddy@wlrk.com' <[SKEddy@wlrk.com](mailto:SKEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>  
**Cc:** Micheletti, Edward B (WIL) <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N (WIL) <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>  
**Subject:** [Ext] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Counsel,

We are following up on the below.

Thanks,  
Chris



**Christopher N. Kelly | Partner**  
Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108  
T +1 302.984.6178 | F +1 302.658.1192  
[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com) | [potteranderson.com](http://potteranderson.com)

The information contained in this email message and any attachments is intended only for the addressee and is privileged, confidential, and may be protected from disclosure. Please be aware that any other use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please do not read this message or any attached items. Please notify the sender immediately and delete the email and all attachments, including any copies. This email message and any attachments have been scanned for viruses and are believed to be free of any virus or other defect that might affect any computer system into which they are received and opened. However, it is the responsibility of the recipient to ensure that the email and any attachments are virus-free, and no responsibility is accepted by Potter Anderson & Corroon LLP for any loss or damage arising in any way from their use.

---

**From:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>  
**Sent:** Saturday, July 30, 2022 7:26 PM  
**To:** 'Lindsay, Ryan M' <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKEddy@wlrk.com' <[SKEddy@wlrk.com](mailto:SKEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>  
**Cc:** Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher

Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>

**Subject:** RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Counsel,

We received your notice of Defendants' proposed public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses (the "Answer"). We are reviewing the Answer to determine whether there is information contained therein that Plaintiff will designate as Confidential Information under Rule 5.1. Your Answer states that a public version will be filed on August 3, 2022, and your email requests that we provide redactions by 3:00 p.m. on August 3, 2022. Rule 5.1, however, sets a five-day deadline for Defendants to file the public version of their Answer. Under Rule 6, that means five business days. Accordingly, Plaintiff should have until 3:00 p.m. on August 5, 2022 to provide any redactions. Can you please confirm that our proposed redactions are due at 3:00 p.m. on August 5? If you continue to believe the deadline is on August 3, please explain why.

Thanks,  
Chris



**Christopher N. Kelly | Partner**

Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108

T +1 302.984.6178 | F +1 302.658.1192

[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com) | [potteranderson.com](http://potteranderson.com)

---

**From:** Lindsay, Ryan M <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>

**Sent:** Friday, July 29, 2022 5:55 PM

**To:** Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKEddy@wlrk.com' <[SKEddy@wlrk.com](mailto:SKEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>

**Cc:** Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>

**Subject:** [EXT] Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

---

Counsel,

In accordance with Court of Chancery Rule 5.1 (attached), we are sending you notice of our proposed public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses to Plaintiff's Verified Complaint, which was filed confidentially on July 29, 2022 in *Twitter, Inc. v. Musk, et al*, C.A. No. 2022-0613-KSJM (Del. Ch.). The attached proposed public version shall be filed in compliance with Rule 5.1 if no one designates Confidential Information in response to this notice by 3:00 p.m. on August 3, 2022.

**Ryan M. Lindsay**

Associate

**Skadden, Arps, Slate, Meagher & Flom LLP**

One Rodney Square | P.O. Box 636 | Wilmington | DE | 19899-0636

T: +1.302.651.3073 | F: +1.302.434.3073

[ryan.lindsay@skadden.com](mailto:ryan.lindsay@skadden.com)

-----  
This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====  
-----  
This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

# EXHIBIT C

---

**From:** Kelly, Christopher N.  
**Sent:** Monday, August 1, 2022 8:53 PM  
**To:** 'Micheletti, Edward B'; Lindsay, Ryan M; Shannon, Kevin R.; 'BRWilson@wlrk.com'; 'wdsavitt@wlrk.com'; 'SEddy@wlrk.com'; 'RAMcLeod@wlrk.com'; 'AReddy@wlrk.com'; 'NBYavitz@wlrk.com'; 'ALGoodman@wlrk.com'; 'APSadinsky@wlrk.com'; 'bsorrels@wsgr.com'; 'jslights@wsgr.com'  
**Cc:** Rosenello, Lauren N; 'Andrew J. Rossman'; 'Alex Spiro'; 'Christopher Kercher'; 'Silpa Maruri'; 'Kathryn Bonacorsi'; 'Emily Kapur'; 'Matthew Fox'  
**Subject:** RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Ed,

Thanks for your email. We will leave aside defendants' assertions regarding whether certain information in their answer/counterclaims meets the Rule 5.1 standard and their comments about the public's right to access court documents, as any debate on those points is premature. As noted in my prior email, plaintiff is reviewing defendants' filing to determine if any information therein should be designated as Confidential Information in accordance with Rule 5.1.

Defendants' position regarding the date for filing the public version of their answer/counterclaims is contrary to the Rules. To begin, defendants fail to address the answer component of their filing, which they do not dispute is subject to the five business day time period. Moreover, defendants' counterclaim is not a "complaint," which is defined in Rule 3(a)(1) as a filing that "commence[s]" "[a]n action." Numerous other Rules, including Rules 3(aa), 7, 8, 10(b), 12(a)-(b), 18, 22(b), 42, 54(b), 55(d), and 56(b), also expressly distinguish between complaints and counterclaims.

Simply put, Rule 5.1(e) sets forth a separate procedure for the initial filing in the case (*i.e.*, the complaint) because it is not possible to obtain a protective order to permit confidential filings prior to the initiation of the action, as required for all other filings under Rule 5.1(d). Defendants' strained argument also ignores the express provisions of Rule 5.1(e). For example, that rule repeatedly (at least 10 times) refers to the "plaintiff" as the party who can file a complaint as a Confidential Filing. In addition, belying their assertion that their counterclaim is a "complaint," defendants did not file, as required by Rule 5.1(e)(1), "a cover letter addressed to the Register in Chancery that certifies compliance with this Rule in accordance with Rule 5.1(c)." Defendants also did not "give notice to [Twitter's] registered agent," as required by Rule 5.1(e)(2).

The rules and cases you cite are inapposite and simply recognize that counterclaims may be similar to complaints in certain respects. None of those authorities even purports to address, much less override, the relevant language of Rule 5.1(e), which relates solely to "complaints."

Further, we note that defendants' position is contrary to the timing of defendants' filing of their counterclaims in *Forescout Technologies, Inc. v. Ferrari Group Holdings, L.P., et al.*, 2020-0385-SG (Del. Ch.). There, defendants (who were also represented by Quinn Emanuel) filed their answer and counterclaims on Saturday, May 30, 2020 (Dkt. 46), and did not file the public version of that document until five business days later, on Friday, June 5, 2020 (Dkt. 71). Not surprisingly, we found numerous other examples of parties filing public versions of counterclaims five business days after the initial confidential filing, as required by the Rules. On the other hand, we don't know of a single instance where the rule has been interpreted or applied as you suggest.

Accordingly, pursuant to the Rules, Plaintiff will provide any proposed redactions by 3:00 p.m. on August 5. We need the time afforded to us by Rule 5.1 to complete our review and ask that defendants allow us that time. Please advise us by 10:00 a.m. tomorrow if defendants intend to file the public version of their pleading prior to 3:00 p.m. on August 5, in violation of Rule 5.1, so that we may seek appropriate relief from the Court. We are available to meet and confer if you believe it would be helpful.

Regards,  
Chris



**Christopher N. Kelly | Partner**

Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108

T +1 302.984.6178 | F +1 302.658.1192

ckelly@potteranderson.com | potteranderson.com

**From:** Palmer, Bridget <Bridget.Palmer@skadden.com> **On Behalf Of** Micheletti, Edward B

**Sent:** Monday, August 1, 2022 12:15 PM

**To:** Kelly, Christopher N. <ckelly@potteranderson.com>; Lindsay, Ryan M <Ryan.Lindsay@skadden.com>; Shannon, Kevin R. <kshannon@potteranderson.com>; 'BRWilson@wlrk.com' <BRWilson@wlrk.com>; 'wdsavitt@wlrk.com' <wdsavitt@wlrk.com>; 'SEddy@wlrk.com' <SEddy@wlrk.com>; 'RAMcLeod@wlrk.com' <RAMcLeod@wlrk.com>; 'AReddy@wlrk.com' <AReddy@wlrk.com>; 'NBYavitz@wlrk.com' <NBYavitz@wlrk.com>; 'ALGoodman@wlrk.com' <ALGoodman@wlrk.com>; 'APSadinsky@wlrk.com' <APSadinsky@wlrk.com>; 'bsorrels@wsgr.com' <bsorrels@wsgr.com>; 'jslights@wsgr.com' <jslights@wsgr.com>

**Cc:** Micheletti, Edward B <Edward.Micheletti@skadden.com>; Rosenello, Lauren N <Lauren.Rosenello@skadden.com>; 'Andrew J. Rossman' <andrewrossman@quinnemanuel.com>; 'Alex Spiro' <alexspiro@quinnemanuel.com>; 'Christopher Kercher' <christopherkercher@quinnemanuel.com>; 'Silpa Maruri' <silpamaruri@quinnemanuel.com>; 'Kathryn Bonacorsi' <kathrynbonacorsi@quinnemanuel.com>; 'Emily Kapur' <emilykapur@quinnemanuel.com>; 'Matthew Fox' <matthewfox@quinnemanuel.com>

**Subject:** [EXT] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

Counsel,

We write in response to your email below and the issue you raised regarding the timing for filing the public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses (the "Counterclaims"). Even though Plaintiff did not file the Verified Complaint in this action under seal, and Defendants do not believe any of the information in their Counterclaims meets the standard for sealing under Rule 5.1, Defendants filed the Counterclaims confidentially to foreclose Plaintiff from generating (yet another) contrived breach regarding Defendants' compliance with their confidentiality obligations. While Plaintiff has an opportunity to propose any redactions under Rule 5.1, Defendants do not believe that any information contained in the Counterclaims should be redacted.

With respect to when the public version of the Counterclaims should be filed (3 business days versus 5 business days), the law strongly supports that the 3 day period applies. Rule 5.1(e) applies to filing public versions of a "complaint." "A counterclaim is a complaint by the defendant against the plaintiff." *De Reimer v. Tunnell & Raysor*, 1986 WL 13102, at \*1 (Del. Super. Ct. Sept. 11, 1986); *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 824 ("[Counterclaims] represent separate causes of action.") Rule 8(a) sets forth identical pleading requirements whether for an "original claim" or a "counterclaim." And Rule 12 requires service of a response to a counterclaim to be made in the same 20 day period that applies to an answer to a complaint. Furthermore, as the attached precedents demonstrate public versions of counterclaims have been filed in this Court pursuant to the 3 business day rule.

Perhaps most notably, the policy rationale underlying the difference in timing between a complaint and all other filings is based on the public's right to know the essence of what a case involves. As the Delaware courts have consistently stated, the public right of access has two foundations: the First Amendment and the common law. *Horres v. Chick-fil-A, Inc.*, 2013 WL 1223605, at \*1 (Del. Ch. Mar. 27, 2013) (discussing the First Amendment and common law foundations of the public right of access). The fact that Plaintiff chose to file its complaint publicly and is now raising timing issues for the Counterclaims appears to be a disingenuous attempt to delay public disclosure of Defendants' claims.

Accordingly, Defendants will file a public version of their Counterclaims on August 3. If Plaintiff wishes to propose redactions it must do so by that day. We are available to meet and confer if you maintain the August 5 date applies.

Regards,  
Ed M.

**Edward B. Micheletti**  
Partner  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square | P.O. Box 636 | Wilmington | DE | 19899-0636  
T: +1.302.651.3220 | F: +1.302.552.3220  
[edward.micheletti@skadden.com](mailto:edward.micheletti@skadden.com)

Skadden

 Please consider the environment before printing this email.

---

**From:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>  
**Sent:** Monday, August 1, 2022 10:59 AM  
**To:** Lindsay, Ryan M (WIL) <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKEddy@wlrk.com' <[SKEddy@wlrk.com](mailto:SKEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>  
**Cc:** Micheletti, Edward B (WIL) <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N (WIL) <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>  
**Subject:** [Ext] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Counsel,

We are following up on the below.

Thanks,  
Chris



**Christopher N. Kelly | Partner**  
Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108  
T +1 302.984.6178 | F +1 302.658.1192  
[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com) | [potteranderson.com](http://potteranderson.com)

The information contained in this email message and any attachments is intended only for the addressee and is privileged, confidential, and may be protected from disclosure. Please be aware that any other use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please do not read this message or any attached items. Please notify the sender immediately and delete the email and all attachments, including any copies. This email message and any attachments have been scanned for viruses and are believed to be free of any virus or other defect that might affect any computer system into which they are received and opened. However, it is the responsibility of the recipient to ensure that the email and any attachments are virus-free, and no responsibility is accepted by Potter Anderson & Corroon LLP for any loss or damage arising in any way from their use.

---

**From:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>  
**Sent:** Saturday, July 30, 2022 7:26 PM  
**To:** 'Lindsay, Ryan M' <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>;



'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKEddy@wlrk.com' <[SKEddy@wlrk.com](mailto:SKEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>

**Cc:** Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>

**Subject:** RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Counsel,

We received your notice of Defendants' proposed public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses (the "Answer"). We are reviewing the Answer to determine whether there is information contained therein that Plaintiff will designate as Confidential Information under Rule 5.1. Your Answer states that a public version will be filed on August 3, 2022, and your email requests that we provide redactions by 3:00 p.m. on August 3, 2022. Rule 5.1, however, sets a five-day deadline for Defendants to file the public version of their Answer. Under Rule 6, that means five business days. Accordingly, Plaintiff should have until 3:00 p.m. on August 5, 2022 to provide any redactions. Can you please confirm that our proposed redactions are due at 3:00 p.m. on August 5? If you continue to believe the deadline is on August 3, please explain why.

Thanks,  
Chris



**Christopher N. Kelly | Partner**

Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108

T +1 302.984.6178 | F +1 302.658.1192

[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com) | [potteranderson.com](http://potteranderson.com)

---

**From:** Lindsay, Ryan M <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>

**Sent:** Friday, July 29, 2022 5:55 PM

**To:** Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKEddy@wlrk.com' <[SKEddy@wlrk.com](mailto:SKEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>

**Cc:** Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>

**Subject:** [EXT] Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

Counsel,

In accordance with Court of Chancery Rule 5.1 (attached), we are sending you notice of our proposed public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses to Plaintiff's Verified Complaint, which was filed confidentially on July 29, 2022 in *Twitter, Inc. v. Musk, et al*, C.A. No. 2022-0613-KSJM (Del. Ch.). The attached proposed public version shall be filed in compliance with Rule 5.1 if no one designates Confidential Information in response to this notice by 3:00 p.m. on August 3, 2022.

**Ryan M. Lindsay**  
Associate  
**Skadden, Arps, Slate, Meagher & Flom LLP**  
One Rodney Square | P.O. Box 636 | Wilmington | DE | 19899-0636  
**T: +1.302.651.3073 | F: +1.302.434.3073**  
[ryan.lindsay@skadden.com](mailto:ryan.lindsay@skadden.com)

-----  
This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====

-----  
This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====

# EXHIBIT D

---

**From:** Palmer, Bridget <Bridget.Palmer@skadden.com> on behalf of Micheletti, Edward B <Edward.Micheletti@skadden.com>  
**Sent:** Tuesday, August 2, 2022 10:26 AM  
**To:** Kelly, Christopher N.; Micheletti, Edward B; Lindsay, Ryan M; Shannon, Kevin R.; 'BRWilson@wlrk.com'; 'wdsavitt@wlrk.com'; 'SEddy@wlrk.com'; 'RAMcLeod@wlrk.com'; 'AReddy@wlrk.com'; 'NBYavitz@wlrk.com'; 'ALGoodman@wlrk.com'; 'APSadinsky@wlrk.com'; 'bsorrels@wsgr.com'; 'jslights@wsgr.com'  
**Cc:** Rosenello, Lauren N; 'Andrew J. Rossman'; 'Alex Spiro'; 'Christopher Kercher'; 'Silpa Maruri'; 'Kathryn Bonacorsi'; 'Emily Kapur'; 'Matthew Fox'  
**Subject:** [EXT] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

---

Chris,

Thanks for your reply. Defendants again reiterate that nothing contained in the Counterclaims warrants redaction under the good cause standard of Rule 5.1. Again, we only filed under seal to avoid another contrived argument that Defendants purportedly breached their confidentiality obligations. The fact of the matter is that Twitter chose to file its complaint publicly and is now unreasonably seeking to keep Defendants' counterclaims concealed from the public in violation of the First Amendment – a point which you fail to address.

In any event, our position is not contrary to the Rules. Indeed, it is consistent with the Court ordered schedule here, which requires that Twitter file its answer to the Counterclaims on Thursday. It is nonsensical that Twitter could potentially publicly file a response to Counterclaims that are not available to the public yet. If it is your view is that the three law firms that have entered an appearance on behalf of Twitter need 5 business days to review the answer to a complaint that you filed publicly, then Defendants would have no objection to filing the Answer on Friday, which we believe would be allowed by the Rules, albeit inefficient.

Your recitation of various Rules is unpersuasive, because, as Defendants stated, the Rules contemplate that "original claims" and "counterclaims" are afforded the same treatment, when it comes to pleading, the time to answer, default judgment, etc. Also, you note that the rule refers to Plaintiff (at least 10 times), but Elon Musk and his affiliated entities are Counterclaim *Plaintiffs*. This is reiterated by the caselaw, which you ignore, where Delaware courts have recognized that a counterclaim is a complaint by the defendant against the plaintiff. Furthermore, your claim that you are unaware of a "single instance" that the rule was applied as we suggest is contradicted by the precedents that we provided.

And most tellingly, your response does not provide any basis for why the policy underlying the 3-day rule, *i.e.* that the public has a greater interest in understanding the essence of the claims asserted in an action, should apply with any less force for counterclaims. Twitter pressed for the Counterclaims due to a purported need to understand the scope of the case. Twitter has provided no reason why the public's First Amendment rights to the same information on the same timeline as an original claim is any less important.

We again remain willing to meet and confer, but otherwise will plan to file our public version tomorrow, August 3. We will consider your redactions, but do not expect that anything should be designated as confidential and reserve all rights.

Regards,

Ed M.

**Edward B. Micheletti**

Partner

Skadden, Arps, Slate, Meagher & Flom LLP

One Rodney Square | P.O. Box 636 | Wilmington | DE | 19899-0636

T: +1.302.651.3220 | F: +1.302.552.3220

[edward.micheletti@skadden.com](mailto:edward.micheletti@skadden.com)

Skadden

 Please consider the environment before printing this email.

---

**From:** Kelly, Christopher N. <ckelly@potteranderson.com>

**Sent:** Monday, August 1, 2022 8:53 PM

**To:** Micheletti, Edward B (WIL) <Edward.Micheletti@skadden.com>; Lindsay, Ryan M (WIL)

<Ryan.Lindsay@skadden.com>; Shannon, Kevin R. <kshannon@potteranderson.com>; 'BRWilson@wlrk.com'

<BRWilson@wlrk.com>; 'wdsavitt@wlrk.com' <wdsavitt@wlrk.com>; 'SEddy@wlrk.com' <SEddy@wlrk.com>;

'RAMcLeod@wlrk.com' <RAMcLeod@wlrk.com>; 'AReddy@wlrk.com' <AReddy@wlrk.com>; 'NBYavitz@wlrk.com'

<NBYavitz@wlrk.com>; 'ALGoodman@wlrk.com' <ALGoodman@wlrk.com>; 'APSadinsky@wlrk.com'

<APSadinsky@wlrk.com>; 'bsorrels@wsgr.com' <bsorrels@wsgr.com>; 'jslights@wsgr.com' <jslights@wsgr.com>

**Cc:** Rosenello, Lauren N (WIL) <Lauren.Rosenello@skadden.com>; 'Andrew J. Rossman'

<andrewrossman@quinnemanuel.com>; 'Alex Spiro' <alexspiro@quinnemanuel.com>; 'Christopher Kercher'

<christopherkercher@quinnemanuel.com>; 'Silpa Maruri' <silpamaruri@quinnemanuel.com>; 'Kathryn Bonacorsi'

<kathrynbbonacorsi@quinnemanuel.com>; 'Emily Kapur' <emilykapur@quinnemanuel.com>; 'Matthew Fox'

<matthewfox@quinnemanuel.com>

**Subject:** [Ext] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Ed,

Thanks for your email. We will leave aside defendants' assertions regarding whether certain information in their answer/counterclaims meets the Rule 5.1 standard and their comments about the public's right to access court documents, as any debate on those points is premature. As noted in my prior email, plaintiff is reviewing defendants' filing to determine if any information therein should be designated as Confidential Information in accordance with Rule 5.1.

Defendants' position regarding the date for filing the public version of their answer/counterclaims is contrary to the Rules. To begin, defendants fail to address the answer component of their filing, which they do not dispute is subject to the five business day time period. Moreover, defendants' counterclaim is not a "complaint," which is defined in Rule 3(a)(1) as a filing that "commence[s]" "[a]n action." Numerous other Rules, including Rules 3(aa), 7, 8, 10(b), 12(a)-(b), 18, 22(b), 42, 54(b), 55(d), and 56(b), also expressly distinguish between complaints and counterclaims.

Simply put, Rule 5.1(e) sets forth a separate procedure for the initial filing in the case (*i.e.*, the complaint) because it is not possible to obtain a protective order to permit confidential filings prior to the initiation of the action, as required for all other filings under Rule 5.1(d). Defendants' strained argument also ignores the express provisions of Rule 5.1(e). For example, that rule repeatedly (at least 10 times) refers to the "plaintiff" as the party who can file a complaint as a Confidential Filing. In addition, belying their assertion that their counterclaim is a "complaint," defendants did not file, as required by Rule 5.1(e)(1), "a cover letter addressed to the Register in Chancery that certifies compliance with this Rule in accordance with Rule 5.1(c)." Defendants also did not "give notice to [Twitter's] registered agent," as required by Rule 5.1(e)(2).

The rules and cases you cite are inapposite and simply recognize that counterclaims may be similar to complaints in certain respects. None of those authorities even purports to address, much less override, the relevant language of Rule 5.1(e), which relates solely to "complaints."

Further, we note that defendants' position is contrary to the timing of defendants' filing of their counterclaims in *Forescout Technologies, Inc. v. Ferrari Group Holdings, L.P., et al.*, 2020-0385-SG (Del. Ch.). There, defendants (who were also represented by Quinn Emanuel) filed their answer and counterclaims on Saturday, May 30, 2020 (Dkt. 46), and did not file the public version of that document until five business days later, on Friday, June 5, 2020 (Dkt. 71). Not surprisingly, we found numerous other examples of parties filing public versions of counterclaims five business days after the initial

confidential filing, as required by the Rules. On the other hand, we don't know of a single instance where the rule has been interpreted or applied as you suggest.

Accordingly, pursuant to the Rules, Plaintiff will provide any proposed redactions by 3:00 p.m. on August 5. We need the time afforded to us by Rule 5.1 to complete our review and ask that defendants allow us that time. Please advise us by 10:00 a.m. tomorrow if defendants intend to file the public version of their pleading prior to 3:00 p.m. on August 5, in violation of Rule 5.1, so that we may seek appropriate relief from the Court. We are available to meet and confer if you believe it would be helpful.

Regards,  
Chris



**Christopher N. Kelly | Partner**

Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108

T +1 302.984.6178 | F +1 302.658.1192

ckelly@potteranderson.com | potteranderson.com

The information contained in this email message and any attachments is intended only for the addressee and is privileged, confidential, and may be protected from disclosure. Please be aware that any other use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please do not read this message or any attached items. Please notify the sender immediately and delete the email and all attachments, including any copies. This email message and any attachments have been scanned for viruses and are believed to be free of any virus or other defect that might affect any computer system into which they are received and opened. However, it is the responsibility of the recipient to ensure that the email and any attachments are virus-free, and no responsibility is accepted by Potter Anderson & Corroon LLP for any loss or damage arising in any way from their use.

---

**From:** Palmer, Bridget <[Bridget.Palmer@skadden.com](mailto:Bridget.Palmer@skadden.com)> **On Behalf Of** Micheletti, Edward B

**Sent:** Monday, August 1, 2022 12:15 PM

**To:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>; Lindsay, Ryan M <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKEDdy@wlrk.com' <[SKEDdy@wlrk.com](mailto:SKEDdy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>

**Cc:** Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>

**Subject:** [EXT] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

---

Counsel,

We write in response to your email below and the issue you raised regarding the timing for filing the public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses (the "Counterclaims"). Even though Plaintiff did not file the Verified Complaint in this action under seal, and Defendants do not believe any of the information in their Counterclaims meets the standard for sealing under Rule 5.1, Defendants filed the Counterclaims confidentially to foreclose Plaintiff from generating (yet another) contrived breach regarding Defendants' compliance with their confidentiality obligations. While Plaintiff has an opportunity to propose any redactions under Rule 5.1, Defendants do not believe that any information contained in the Counterclaims should be redacted.

With respect to when the public version of the Counterclaims should be filed (3 business days versus 5 business days), the law strongly supports that the 3 day period applies. Rule 5.1(e) applies to filing public versions of a “complaint.” “A counterclaim is a complaint by the defendant against the plaintiff.” *De Reimer v. Tunnell & Raysor*, 1986 WL 13102, at \*1 (Del. Super. Ct. Sept. 11, 1986); *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 824 (“[Counterclaims] represent separate causes of action.”) Rule 8(a) sets forth identical pleading requirements whether for an “original claim” or a “counterclaim.” And Rule 12 requires service of a response to a counterclaim to be made in the same 20 day period that applies to an answer to a complaint. Furthermore, as the attached precedents demonstrate public versions of counterclaims have been filed in this Court pursuant to the 3 business day rule.

Perhaps most notably, the policy rationale underlying the difference in timing between a complaint and all other filings is based on the public’s right to know the essence of what a case involves. As the Delaware courts have consistently stated, the public right of access has two foundations: the First Amendment and the common law. *Horres v. Chick-fil-A, Inc.*, 2013 WL 1223605, at \*1 (Del. Ch. Mar. 27, 2013) (discussing the First Amendment and common law foundations of the public right of access). The fact that Plaintiff chose to file its complaint publicly and is now raising timing issues for the Counterclaims appears to be a disingenuous attempt to delay public disclosure of Defendants' claims.

Accordingly, Defendants will file a public version of their Counterclaims on August 3. If Plaintiff wishes to propose redactions it must do so by that day. We are available to meet and confer if you maintain the August 5 date applies.

Regards,  
Ed M.

**Edward B. Micheletti**  
Partner  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square | P.O. Box 636 | Wilmington | DE | 19899-0636  
T: +1.302.651.3220 | F: +1.302.552.3220  
[edward.micheletti@skadden.com](mailto:edward.micheletti@skadden.com)

Skadden

 Please consider the environment before printing this email.

---

**From:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>  
**Sent:** Monday, August 1, 2022 10:59 AM  
**To:** Lindsay, Ryan M (WIL) <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKEDdy@wlrk.com' <[SKEDdy@wlrk.com](mailto:SKEDdy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>  
**Cc:** Micheletti, Edward B (WIL) <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N (WIL) <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbacorsi@quinnemanuel.com](mailto:kathrynbacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>  
**Subject:** [Ext] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Counsel,

We are following up on the below.

Thanks,  
Chris



**Christopher N. Kelly | Partner**

Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108

T +1 302.984.6178 | F +1 302.658.1192

[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com) | [potteranderson.com](http://potteranderson.com)

The information contained in this email message and any attachments is intended only for the addressee and is privileged, confidential, and may be protected from disclosure. Please be aware that any other use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please do not read this message or any attached items. Please notify the sender immediately and delete the email and all attachments, including any copies. This email message and any attachments have been scanned for viruses and are believed to be free of any virus or other defect that might affect any computer system into which they are received and opened. However, it is the responsibility of the recipient to ensure that the email and any attachments are virus-free, and no responsibility is accepted by Potter Anderson & Corroon LLP for any loss or damage arising in any way from their use.

---

**From:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>

**Sent:** Saturday, July 30, 2022 7:26 PM

**To:** 'Lindsay, Ryan M' <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKeddy@wlrk.com' <[SKeddy@wlrk.com](mailto:SKeddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>

**Cc:** Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>

**Subject:** RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Counsel,

We received your notice of Defendants' proposed public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses (the "Answer"). We are reviewing the Answer to determine whether there is information contained therein that Plaintiff will designate as Confidential Information under Rule 5.1. Your Answer states that a public version will be filed on August 3, 2022, and your email requests that we provide redactions by 3:00 p.m. on August 3, 2022. Rule 5.1, however, sets a five-day deadline for Defendants to file the public version of their Answer. Under Rule 6, that means five business days. Accordingly, Plaintiff should have until 3:00 p.m. on August 5, 2022 to provide any redactions. Can you please confirm that our proposed redactions are due at 3:00 p.m. on August 5? If you continue to believe the deadline is on August 3, please explain why.

Thanks,  
Chris



**Christopher N. Kelly | Partner**

Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108

T +1 302.984.6178 | F +1 302.658.1192

[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com) | [potteranderson.com](http://potteranderson.com)



---

**From:** Lindsay, Ryan M <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>

**Sent:** Friday, July 29, 2022 5:55 PM

**To:** Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SEddy@wlrk.com' <[SEddy@wlrk.com](mailto:SEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBavitz@wlrk.com' <[NBavitz@wlrk.com](mailto:NBavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>

**Cc:** Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>

**Subject:** [EXT] Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

---

Counsel,

In accordance with Court of Chancery Rule 5.1 (attached), we are sending you notice of our proposed public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses to Plaintiff's Verified Complaint, which was filed confidentially on July 29, 2022 in *Twitter, Inc. v. Musk, et al*, C.A. No. 2022-0613-KSJM (Del. Ch.). The attached proposed public version shall be filed in compliance with Rule 5.1 if no one designates Confidential Information in response to this notice by 3:00 p.m. on August 3, 2022.

**Ryan M. Lindsay**

Associate

**Skadden, Arps, Slate, Meagher & Flom LLP**

One Rodney Square | P.O. Box 636 | Wilmington | DE | 19899-0636

**T: +1.302.651.3073 | F: +1.302.434.3073**

[ryan.lindsay@skadden.com](mailto:ryan.lindsay@skadden.com)

-----  
This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====  
-----  
This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original

email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====

-----

This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====

# EXHIBIT E

---

**From:** Micheletti, Edward B <Edward.Micheletti@skadden.com>  
**Sent:** Tuesday, August 2, 2022 10:22 PM  
**To:** Kelly, Christopher N.  
**Cc:** Rosenello, Lauren N; Shannon, Kevin R.  
**Subject:** [EXT] Re: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

---

Chris - We've discussed this issue on our side, and we would also like to avoid having an unnecessary spat before the court. We are confident that the case law and policy underpinning Rule 5.1 supports our position that the public should have access by 3 pm ET tomorrow. Accordingly, please let us know before 3 pm ET tomorrow whether you have proposed redactions.

Regards,

Ed

On Aug 2, 2022, at 7:30 PM, Kelly, Christopher N. <ckelly@potteranderson.com> wrote:

Ed,

We are following-up on our prior discussion. As noted, we continue to disagree with defendants' position, but would prefer to resolve the issue without burdening the Court. Accordingly, as a compromise, we proposed changing the deadline to Thursday, at 3 p.m. Please let us know if defendants will agree to that timing. Twitter reserves all rights.

Regards,  
Chris



**Christopher N. Kelly | Partner**

Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108

T +1 302.984.6178 | F +1 302.658.1192

[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com) | [potteranderson.com](http://potteranderson.com)

The information contained in this email message and any attachments is intended only for the addressee and is privileged, confidential, and may be protected from disclosure. Please be aware that any other use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please do not read this message or any attached items. Please notify the sender immediately and delete the email and all attachments, including any copies. This email message and any attachments have been scanned for viruses and are believed to be free of any virus or other defect that might affect

any computer system into which they are received and opened. However, it is the responsibility of the recipient to ensure that the email and any attachments are virus-free, and no responsibility is accepted by Potter Anderson & Corroon LLP for any loss or damage arising in any way from their use.

---

**From:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>  
**Sent:** Tuesday, August 2, 2022 1:48 PM  
**To:** Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Lindsay, Ryan M <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKEddy@wlrk.com' <[SKEddy@wlrk.com](mailto:SKEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>  
**Cc:** Rosenello, Lauren N <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>  
**Subject:** RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Ed,

Your email once again fails to address the actual language of Rules 5.1 and 6, which clearly provides that the public version shall be filed in five (5) business days. We continue to find it hard to believe that defendants would intentionally violate the clear provisions of a Court of Chancery Rule in these circumstances. Although we fail to see any good-faith basis for defendants' position, we propose to meet and confer this afternoon at 3pm. Twitter reserves all rights.

Regards,  
Chris



**Christopher N. Kelly | Partner**  
Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108  
T +1 302.984.6178 | F +1 302.658.1192  
[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com) | [potteranderson.com](http://potteranderson.com)

---

**From:** Palmer, Bridget <[Bridget.Palmer@skadden.com](mailto:Bridget.Palmer@skadden.com)> **On Behalf Of** Micheletti, Edward B  
**Sent:** Tuesday, August 2, 2022 10:26 AM  
**To:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>; Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Lindsay, Ryan M <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKEddy@wlrk.com' <[SKEddy@wlrk.com](mailto:SKEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>  
**Cc:** Rosenello, Lauren N <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>;

'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>  
**Subject:** [EXT] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

---

Chris,

Thanks for your reply. Defendants again reiterate that nothing contained in the Counterclaims warrants redaction under the good cause standard of Rule 5.1. Again, we only filed under seal to avoid another contrived argument that Defendants purportedly breached their confidentiality obligations. The fact of the matter is that Twitter chose to file its complaint publicly and is now unreasonably seeking to keep Defendants' counterclaims concealed from the public in violation of the First Amendment – a point which you fail to address.

In any event, our position is not contrary to the Rules. Indeed, it is consistent with the Court ordered schedule here, which requires that Twitter file its answer to the Counterclaims on Thursday. It is nonsensical that Twitter could potentially publicly file a response to Counterclaims that are not available to the public yet. If it is your view is that the three law firms that have entered an appearance on behalf of Twitter need 5 business days to review the answer to a complaint that you filed publicly, then Defendants would have no objection to filing the Answer on Friday, which we believe would be allowed by the Rules, albeit inefficient.

Your recitation of various Rules is unpersuasive, because, as Defendants stated, the Rules contemplate that "original claims" and "counterclaims" are afforded the same treatment, when it comes to pleading, the time to answer, default judgment, etc. Also, you note that the rule refers to Plaintiff (at least 10 times), but Elon Musk and his affiliated entities are Counterclaim *Plaintiffs*. This is reiterated by the caselaw, which you ignore, where Delaware courts have recognized that a counterclaim is a complaint by the defendant against the plaintiff. Furthermore, your claim that you are unaware of a "single instance" that the rule was applied as we suggest is contradicted by the precedents that we provided.

And most tellingly, your response does not provide any basis for why the policy underlying the 3-day rule, *i.e.* that the public has a greater interest in understanding the essence of the claims asserted in an action, should apply with any less force for counterclaims. Twitter pressed for the Counterclaims due to a purported need to understand the scope of the case. Twitter has provided no reason why the public's First Amendment rights to the same information on the same timeline as an original claim is any less important.

We again remain willing to meet and confer, but otherwise will plan to file our public version tomorrow, August 3. We will consider your redactions, but do not expect that anything should be designated as confidential and reserve all rights.

Regards,  
Ed M.

**Edward B. Micheletti**  
Partner  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square | P.O. Box 636 | Wilmington | DE | 19899-0636  
**T: +1.302.651.3220 | F: +1.302.552.3220**  
[edward.micheletti@skadden.com](mailto:edward.micheletti@skadden.com)

---

**From:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>  
**Sent:** Monday, August 1, 2022 8:53 PM  
**To:** Micheletti, Edward B (WIL) <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Lindsay, Ryan M (WIL) <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKeddy@wlrk.com' <[SKeddy@wlrk.com](mailto:SKeddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>  
**Cc:** Rosenello, Lauren N (WIL) <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>  
**Subject:** [Ext] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Ed,

Thanks for your email. We will leave aside defendants' assertions regarding whether certain information in their answer/counterclaims meets the Rule 5.1 standard and their comments about the public's right to access court documents, as any debate on those points is premature. As noted in my prior email, plaintiff is reviewing defendants' filing to determine if any information therein should be designated as Confidential Information in accordance with Rule 5.1.

Defendants' position regarding the date for filing the public version of their answer/counterclaims is contrary to the Rules. To begin, defendants fail to address the answer component of their filing, which they do not dispute is subject to the five business day time period. Moreover, defendants' counterclaim is not a "complaint," which is defined in Rule 3(a)(1) as a filing that "commence[s]" "[a]n action." Numerous other Rules, including Rules 3(aa), 7, 8, 10(b), 12(a)-(b), 18, 22(b), 42, 54(b), 55(d), and 56(b), also expressly distinguish between complaints and counterclaims.

Simply put, Rule 5.1(e) sets forth a separate procedure for the initial filing in the case (*i.e.*, the complaint) because it is not possible to obtain a protective order to permit confidential filings prior to the initiation of the action, as required for all other filings under Rule 5.1(d). Defendants' strained argument also ignores the express provisions of Rule 5.1(e). For example, that rule repeatedly (at least 10 times) refers to the "plaintiff" as the party who can file a complaint as a Confidential Filing. In addition, belying their assertion that their counterclaim is a "complaint," defendants did not file, as required by Rule 5.1(e)(1), "a cover letter addressed to the Register in Chancery that certifies compliance with this Rule in accordance with Rule 5.1(c)." Defendants also did not "give notice to [Twitter's] registered agent," as required by Rule 5.1(e)(2).

The rules and cases you cite are inapposite and simply recognize that counterclaims may be similar to complaints in certain respects. None of those authorities even purports to address, much less override, the relevant language of Rule 5.1(e), which relates solely to "complaints."

Further, we note that defendants' position is contrary to the timing of defendants' filing of their counterclaims in *Forescout Technologies, Inc. v. Ferrari Group Holdings, L.P., et al.*, 2020-0385-SG (Del. Ch.). There, defendants (who were also represented by Quinn Emanuel) filed their answer and counterclaims on Saturday, May 30, 2020 (Dkt. 46), and did not file the public version of that document until five business days later, on Friday, June 5, 2020 (Dkt. 71). Not surprisingly, we found numerous other examples of parties filing public versions of counterclaims five business days after the initial confidential filing, as required by the Rules. On the other hand, we don't know of a single instance where the rule has been interpreted or applied as you suggest.

Accordingly, pursuant to the Rules, Plaintiff will provide any proposed redactions by 3:00 p.m. on August 5. We need the time afforded to us by Rule 5.1 to complete our review and ask that defendants allow us that time. Please advise us by 10:00 a.m. tomorrow if defendants intend to file the public version of their pleading prior to 3:00 p.m. on August 5, in violation of Rule 5.1, so that we may seek appropriate relief from the Court. We are available to meet and confer if you believe it would be helpful.

Regards,  
Chris



**Christopher N. Kelly | Partner**

Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108

T +1 302.984.6178 | F +1 302.658.1192

[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com) | [potteranderson.com](http://potteranderson.com)

The information contained in this email message and any attachments is intended only for the addressee and is privileged, confidential, and may be protected from disclosure. Please be aware that any other use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please do not read this message or any attached items. Please notify the sender immediately and delete the email and all attachments, including any copies. This email message and any attachments have been scanned for viruses and are believed to be free of any virus or other defect that might affect any computer system into which they are received and opened. However, it is the responsibility of the recipient to ensure that the email and any attachments are virus-free, and no responsibility is accepted by Potter Anderson & Corroon LLP for any loss or damage arising in any way from their use.

---

**From:** Palmer, Bridget <[Bridget.Palmer@skadden.com](mailto:Bridget.Palmer@skadden.com)> **On Behalf Of** Micheletti, Edward B

**Sent:** Monday, August 1, 2022 12:15 PM

**To:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>; Lindsay, Ryan M

<[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>;

'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>;

'SKEddy@wlrk.com' <[SKEddy@wlrk.com](mailto:SKEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>;

'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>;

'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>;

'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>

**Cc:** Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N

<[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex

Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher'

<[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn

Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>;

'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>

**Subject:** [EXT] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

---

Counsel,

We write in response to your email below and the issue you raised regarding the timing for filing the public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses (the "Counterclaims"). Even though Plaintiff did not file the Verified Complaint in this action under seal, and Defendants do not believe any of the information in their Counterclaims meets the standard for sealing under Rule 5.1, Defendants filed the Counterclaims confidentially to foreclose Plaintiff from generating (yet another) contrived breach regarding Defendants' compliance with their confidentiality



obligations. While Plaintiff has an opportunity to propose any redactions under Rule 5.1, Defendants do not believe that any information contained in the Counterclaims should be redacted.

With respect to when the public version of the Counterclaims should be filed (3 business days versus 5 business days), the law strongly supports that the 3 day period applies. Rule 5.1(e) applies to filing public versions of a "complaint." "A counterclaim is a complaint by the defendant against the plaintiff." *De Reimer v. Tunnell & Raysor*, 1986 WL 13102, at \*1 (Del. Super. Ct. Sept. 11, 1986); *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 824 ("[Counterclaims] represent separate causes of action.") Rule 8(a) sets forth identical pleading requirements whether for an "original claim" or a "counterclaim." And Rule 12 requires service of a response to a counterclaim to be made in the same 20 day period that applies to an answer to a complaint. Furthermore, as the attached precedents demonstrate public versions of counterclaims have been filed in this Court pursuant to the 3 business day rule.

Perhaps most notably, the policy rationale underlying the difference in timing between a complaint and all other filings is based on the public's right to know the essence of what a case involves. As the Delaware courts have consistently stated, the public right of access has two foundations: the First Amendment and the common law. *Horres v. Chick-fil-A, Inc.*, 2013 WL 1223605, at \*1 (Del. Ch. Mar. 27, 2013) (discussing the First Amendment and common law foundations of the public right of access). The fact that Plaintiff chose to file its complaint publicly and is now raising timing issues for the Counterclaims appears to be a disingenuous attempt to delay public disclosure of Defendants' claims.

Accordingly, Defendants will file a public version of their Counterclaims on August 3. If Plaintiff wishes to propose redactions it must do so by that day. We are available to meet and confer if you maintain the August 5 date applies.

Regards,  
Ed M.

**Edward B. Micheletti**  
Partner  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square | P.O. Box 636 | Wilmington | DE | 19899-0636  
T: +1.302.651.3220 | F: +1.302.552.3220  
[edward.micheletti@skadden.com](mailto:edward.micheletti@skadden.com)

Skadden

 Please consider the environment before printing this email.

---

**From:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>  
**Sent:** Monday, August 1, 2022 10:59 AM  
**To:** Lindsay, Ryan M (WIL) <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SKEddy@wlrk.com' <[SKEddy@wlrk.com](mailto:SKEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>  
**Cc:** Micheletti, Edward B (WIL) <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N (WIL) <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbacorsi@quinnemanuel.com](mailto:kathrynbacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>  
**Subject:** [Ext] RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Counsel,

We are following up on the below.

Thanks,  
Chris



**Christopher N. Kelly | Partner**

Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108

T +1 302.984.6178 | F +1 302.658.1192

[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com) | [potteranderson.com](http://potteranderson.com)

The information contained in this email message and any attachments is intended only for the addressee and is privileged, confidential, and may be protected from disclosure. Please be aware that any other use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please do not read this message or any attached items. Please notify the sender immediately and delete the email and all attachments, including any copies. This email message and any attachments have been scanned for viruses and are believed to be free of any virus or other defect that might affect any computer system into which they are received and opened. However, it is the responsibility of the recipient to ensure that the email and any attachments are virus-free, and no responsibility is accepted by Potter Anderson & Corroon LLP for any loss or damage arising in any way from their use.

---

**From:** Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>

**Sent:** Saturday, July 30, 2022 7:26 PM

**To:** 'Lindsay, Ryan M' <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>; Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SEddy@wlrk.com' <[SEddy@wlrk.com](mailto:SEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>

**Cc:** Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>

**Subject:** RE: Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

Counsel,

We received your notice of Defendants' proposed public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses (the "Answer"). We are reviewing the Answer to determine whether there is information contained therein that Plaintiff will designate as Confidential Information under Rule 5.1. Your Answer states that a public version will be filed on August 3, 2022, and your email requests that we provide redactions by 3:00 p.m. on August 3, 2022. Rule 5.1, however, sets a five-day deadline for Defendants to file the public version of their Answer. Under Rule 6, that means five business days. Accordingly, Plaintiff should have until 3:00 p.m. on August 5, 2022 to provide any redactions. Can you please confirm that our proposed redactions are due at 3:00 p.m. on August 5? If you continue to believe the deadline is on August 3, please explain why.

Thanks,  
Chris



**Christopher N. Kelly | Partner**

Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108

T +1 302.984.6178 | F +1 302.658.1192

[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com) | [potteranderson.com](http://potteranderson.com)

---

**From:** Lindsay, Ryan M <[Ryan.Lindsay@skadden.com](mailto:Ryan.Lindsay@skadden.com)>

**Sent:** Friday, July 29, 2022 5:55 PM

**To:** Shannon, Kevin R. <[kshannon@potteranderson.com](mailto:kshannon@potteranderson.com)>; Kelly, Christopher N. <[ckelly@potteranderson.com](mailto:ckelly@potteranderson.com)>; 'BRWilson@wlrk.com' <[BRWilson@wlrk.com](mailto:BRWilson@wlrk.com)>; 'wdsavitt@wlrk.com' <[wdsavitt@wlrk.com](mailto:wdsavitt@wlrk.com)>; 'SEddy@wlrk.com' <[SEddy@wlrk.com](mailto:SEddy@wlrk.com)>; 'RAMcLeod@wlrk.com' <[RAMcLeod@wlrk.com](mailto:RAMcLeod@wlrk.com)>; 'AReddy@wlrk.com' <[AReddy@wlrk.com](mailto:AReddy@wlrk.com)>; 'NBYavitz@wlrk.com' <[NBYavitz@wlrk.com](mailto:NBYavitz@wlrk.com)>; 'ALGoodman@wlrk.com' <[ALGoodman@wlrk.com](mailto:ALGoodman@wlrk.com)>; 'APSadinsky@wlrk.com' <[APSadinsky@wlrk.com](mailto:APSadinsky@wlrk.com)>; 'bsorrels@wsgr.com' <[bsorrels@wsgr.com](mailto:bsorrels@wsgr.com)>; 'jslights@wsgr.com' <[jslights@wsgr.com](mailto:jslights@wsgr.com)>

**Cc:** Micheletti, Edward B <[Edward.Micheletti@skadden.com](mailto:Edward.Micheletti@skadden.com)>; Rosenello, Lauren N <[Lauren.Rosenello@skadden.com](mailto:Lauren.Rosenello@skadden.com)>; 'Andrew J. Rossman' <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>; 'Alex Spiro' <[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)>; 'Christopher Kercher' <[christopherkercher@quinnemanuel.com](mailto:christopherkercher@quinnemanuel.com)>; 'Silpa Maruri' <[silpamaruri@quinnemanuel.com](mailto:silpamaruri@quinnemanuel.com)>; 'Kathryn Bonacorsi' <[kathrynbonacorsi@quinnemanuel.com](mailto:kathrynbonacorsi@quinnemanuel.com)>; 'Emily Kapur' <[emilykapur@quinnemanuel.com](mailto:emilykapur@quinnemanuel.com)>; 'Matthew Fox' <[matthewfox@quinnemanuel.com](mailto:matthewfox@quinnemanuel.com)>

**Subject:** [EXT] Twitter, Inc. v. Musk, et al, C.A. No. 2022-0613-KSJM (Del. Ch.)- Rule 5.1

**\*\* This email originated from outside of Potter Anderson's network. Please exercise caution before clicking links, opening attachments, or responding to this message. \*\***

---

Counsel,

In accordance with Court of Chancery Rule 5.1 (attached), we are sending you notice of our proposed public version of Defendants' Verified Counterclaims, Answer, and Affirmative Defenses to Plaintiff's Verified Complaint, which was filed confidentially on July 29, 2022 in *Twitter, Inc. v. Musk, et al*, C.A. No. 2022-0613-KSJM (Del. Ch.). The attached proposed public version shall be filed in compliance with Rule 5.1 if no one designates Confidential Information in response to this notice by 3:00 p.m. on August 3, 2022.

**Ryan M. Lindsay**

Associate

**Skadden, Arps, Slate, Meagher & Flom LLP**

One Rodney Square | P.O. Box 636 | Wilmington | DE | 19899-0636

T: +1.302.651.3073 | F: +1.302.434.3073

[ryan.lindsay@skadden.com](mailto:ryan.lindsay@skadden.com)

---

This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and

may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====

-----

This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====

-----

This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====

-----

This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TWITTER, INC.,

Plaintiff,

v.

ELON R. MUSK, X HOLDINGS I, INC.,  
and X HOLDINGS II, INC.,

Defendants.

C.A. No. 2022-0613-KSJM

**[PROPOSED] ORDER**

The Court, having considered Twitter, Inc.'s letter dated August 3, 2022 and finding good cause therefor;

IT IS HEREBY ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, that:

1. Defendants shall comply with the provisions of Rule 5.1(d)(1) with respect to the filing of the public version of their Verified Counterclaims, Answer, and Affirmative Defenses to Plaintiff's Verified Complaint. Defendants shall not file a public version of their responsive pleading until August 5, 2022 at 3 p.m. or until Plaintiff provides proposed redactions or confirms it has none, whichever is earlier.

\_\_\_\_\_  
Chancellor Kathaleen St. Jude McCormick