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July 26, 2022

BY HAND DELIVERY & eFILING

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

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

Dear Chancellor McCormick:

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

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

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

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

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

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

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

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

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

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

³ The parties’ proposed schedules are otherwise largely consistent.

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

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

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

Respectfully,

/s/ Edward B. Micheletti

Edward B. Micheletti (ID No. 3794)

Words: 999

The Honorable Kathaleen St. J. McCormick
July 26, 2022
Page 7

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