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July 28, 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 respectfully write in response to Plaintiff's fourteen-page "Cross-Motion for Entry of a Case Schedule," filed on July 27 in response to Defendants' July 26 *six*-page letter. (Dkt. 37; Dkt. 34) Plaintiff spends seven pages providing the Court with an extended, self-serving, and unnecessary recitation of the parties' ongoing meet and confer process. While Defendants disagree with Plaintiff's mischaracterization of events, the

back-and-forth between the parties over the last two weeks is irrelevant for purposes of resolving the fundamental disputes between the parties that require the Court's guidance.

Trial Date. Both parties are available to start trial on October 17. Twitter's brief does not state otherwise. Given the compressed timeframe – just *ninety days* until trial – and size of this case – a dispute worth potentially \$44 billion – the extra week an October 17 trial date would provide will meaningfully impact Defendants' ability to present their case. Defendants respectfully ask the Court to set trial for October 17, and to enter the case schedule proposed by Defendants in their July 26 letter.

Rolling Productions. Defendants of course agree that both sides have discovery obligations in this case. While Plaintiff suggests otherwise, Defendants *agreed* to render an initial production if Plaintiff would do so. Regardless, however, because Twitter is the target in this busted-deal action, the overwhelming majority of documents relevant to the parties' dispute are in Twitter's possession (hence the obvious disparity in document custodians referenced by Plaintiff). The burden of late productions is thus more heavily borne by Defendants.

Moreover, Defendants' Answer, and any potential counterclaims Defendants may bring, does nothing to change the fact that the core disputed facts have been known to the parties since Plaintiff filed its complaint on July 12, and that the majority of documents relevant to such disputed facts are in Plaintiff's possession.¹ Indeed, Plaintiff does nothing to dispute that such documents are relevant or to explain why Defendants' Answer could possibly detract from the relevance of issues Plaintiff has already put at issue through its Complaint. Nor does it explain why it cannot produce such documents. Regardless, Defendants' Answer is being filed today, thus mooted any supposed concerns about serving documents prior to its submission. Besides an eleven-page organization chart, Plaintiff has yet to make an initial production of documents and should be ordered to do so immediately.

August 1 Material Data Production Deadline. While Plaintiff harps on the amount of data requested by Defendants, Plaintiff does nothing to

¹ While Plaintiff suggests it is in the dark on Defendants' case until Defendants file their Answer (which Defendants will file today), Plaintiff has had Defendants' detailed termination letter for *20 days*, since July 8.

substantiate any claim of undue burden—indeed, it attaches no hit reports to its filings. And while Plaintiff attempts to pre-litigate the relevance of certain data requests, that is certainly not within the bounds of this scheduling dispute, nor should it impact what deadline is set for material data production. As explained in Defendants’ letter, the sheer amount of relevant data is *why* Defendants require an August 1 production date. Defendants’ analysis of this data can only move as fast as the processing software will allow. A delay in the production of this data under the current trial schedule would be extremely prejudicial to Defendants, as it could prevent Defendants from being able to use this information at all due to lack of processing time.

Document Production Deadline. Plaintiff’s attack on Defendants’ proposed document production deadline is simply a sideshow. Plaintiff previously represented to the Court that it could complete *its entire document production* by August 11, and if that representation was true when made, Plaintiff should be able to meet Defendants’ proposed timelines. Defendants served document requests on July 19, July 20, and July 25. An eighteen day deadline means that documents are due for the first set of document requests (which includes only one request), on August 6, meaning there is only a five-

day difference between Defendants' proposed eighteen-day deadline and August 11. There is only a four-day difference for Defendants' second set of document requests. As to Defendants' third set of document requests, under Defendants' proposed schedule, Plaintiff's production would not be due until August 12—*after* Plaintiff represented it could complete its production. While Plaintiff belatedly requests an August 28 (or August 24) production deadline, in seeking expedition, Plaintiff represented to the Court that it could complete its productions well before that date. There is no reason to delay these productions.

Now that Plaintiff has its expedited schedule, it no longer wants to move expeditiously. Defendants respectfully request the Court deny Plaintiff's motion and enter Defendants' proposed schedule, which is consistent with this Court's expedition order.

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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: 794

Enclosures

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