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June 29, 2022

Twitter, Inc.
1355 Market Street, Suite 900
San Francisco, CA 94103
Attn: Vijaya Gadde, Chief Legal Officer

Dear Ms. Gadde:

We are in receipt of your letter dated June 20, 2022, responding to Mr. Musk's request for the data and information described in my letters dated May 25, 2022, May 31, 2022, June 6, 2022, and June 16, 2022. Mr. Musk appreciates the company's decision to finally provide access to Twitter's Enterprise APIs, though we have just been informed by our data experts that Twitter has placed an artificial cap on the number of searches our experts can perform with this data, which is now preventing Mr. Musk and his team from doing their analysis. Please remove any search cap or limit immediately.¹

Either way, access to those APIs was not the only request in Mr. Musk's letter, and your letter promised to "get back to [us] in due course" on the remainder of Mr. Musk's requests. It has now been over a week, and no information whatsoever has been provided in response to these outstanding requests.

First, Mr. Musk disagrees with your creative recasting of the events leading up to and during the merger agreement negotiations. However, instead of engaging in a distracting back-and-forth on these issues here, we focus on the issues that are actually relevant—Mr. Musk's information requests concerning Twitter's calculation of mDAU, board and executive level communications within Twitter concerning the

¹ It also appears that this access has been provided with an artificially throttled rate limit. Please promptly provide access to these Enterprise APIs with the rate limit afforded to Twitter's largest enterprise customers, and explain why that limit was not previously used for the transfer of data to Mr. Musk.

same, and information regarding Twitter's financial modeling and projections in light of its pending earnings miss.

Second, your assertion that Mr. Musk's requests for information "go beyond the scope of what is contemplated by the merger agreement" is manifestly untrue. In reality, all of the limited information that Mr. Musk has requested is not merely for a reasonable business purpose related to consummating the Transaction—all that the merger agreement requires—but for a purpose *foundational* to Mr. Musk's ability to consummate the Transaction: determining whether Twitter's representations regarding the number of mDAU on its platform (and what percent are false or spam accounts) have been accurate. It is hard to imagine a purpose *more* relevant than determining whether the metric underlying Twitter's entire business model has been accurately described and disclosed prior to Mr. Musk closing the Transaction.

Third, your claim that Mr. Musk had previously disavowed any need for accessing real-time data from Twitter (like the real-time Twitter Firehouse) is belied by Mr. Musk's repeated requests, since at least May 9, 2022, for that very information. For example, in a letter dated May 25, 2022, Mr. Musk explained that he was seeking "enterprise data and other information intended to enable Mr. Musk and his advisors to make an independent assessment of the prevalence of fake or spam accounts on Twitter's platform, including requests for access to Twitter's: (i) enterprise firehose, which comprises 100% of tweets and favoriting activity, (ii) Decahose, (iii) favoriting or "like" firehose, (iv) compliance firehose, (v) historical PowerTrack archive, and (vi) search requests with counts." This request has not been amended, and has now been answered only following six weeks of deliberation. Following the foregoing request, on and around June 9, 2022, we had several discussions regarding the data that Twitter proposed to provide initially. At no point during those discussions did we indicate that whatever data Twitter produced initially would be sufficient to satisfy Mr. Musk's broader data requests or otherwise operate to "disavow" those data requests. After receiving Twitter's initial data production, it became clear that the data Twitter had provided was inadequate to enable Mr. Musk's advisors to properly assess the prevalence of false and spam accounts on Twitter's platform. Therefore, we sent follow-up requests reiterating Mr. Musk's previous data requests.

Mr. Musk has been clear and consistent in emphasizing the importance of testing Twitter's calculation of mDAU. To that end, he has now for nearly two months sought information that would allow him "to make an independent assessment of the prevalence of fake or spam accounts on Twitter's platform." May 25, 2022 Letter. While Twitter has now provided *part* of what Mr. Musk asked for—access to its Enterprise APIs—you admitted that these would be "insufficient to perform the spam analysis that [Mr. Musk] purport[s] to wish to do." June 20, 2022 Letter. This makes

Twitter's failure to honor the remainder of Mr. Musk's information requests particularly troubling, as Twitter *knows* it has given Mr. Musk only an incomplete picture.

We had hoped this remaining information was forthcoming, but it now appears that it is not. Thus, Mr. Musk must, yet again, reiterate his request for:

Access to the sample set used and calculations performed, as well as any related reports or analysis, to support Twitter's representation that fewer than 5% of its mDAUs are false or spam accounts. Access to such information is requested and should be provided on a daily basis and for the previous eight quarters. Included with this information should be daily measures of mDAU for the previous eight quarters, and through the present.

June 17, 2022 Letter at 2.

Ideally, Twitter would turn over this data cooperatively, as Twitter is obviously in the best position to know what sample sets, calculations, and related reports or analysis support its own representations. Nonetheless, Mr. Musk has endeavored to be *even more* specific, and to reduce the burden of the above request, and demands that Twitter immediately:

1. Expand the daily global mDAU data provided to cover the time period from October 1, 2020 to present and to add columns reflecting: the number of mDAU that tweeted, retweeted, replied to a tweet, or commented on a tweet; the number of mDAU that did not perform the foregoing tweet actions but did favorite a tweet; the number of mDAU that took none of the foregoing actions; and the number of accounts that tweeted, retweeted, replied to a tweet, commented on a tweet, or favorited a tweet but were excluded from mDAU. Please also clarify whether UTC is the time zone employed in measuring daily mDAU.
2. Explain how later suspensions are addressed in the mDAU counts, including explaining whether the mDAU population from which Twitter randomly samples selections of mDAU for human evaluation is the exact same mDAU population used to calculate average mDAU for purposes of quarter-end reporting, how each of these two mDAU populations address accounts that have, in the days or weeks since the day in question, been suspended as of the time of sample review or the end of the quarter and, if there are differences between the two populations, what they are.

3. For each day from October 1, 2020 to present, identify how many accounts Twitter suspended each day; how many of these suspended accounts were previously included in any mDAU figure used to calculate quarter-end average mDAU; the number of accounts suspended each day for each of Twitter's internal reasons for suspending accounts; the average and median number of days accounts suspended on each day were previously included in mDAU; and how many accounts suspended on each day were later unsuspending.
4. Provide the outputs of each of the five steps of the sampling process for each day during the week of June 19, 2022 and each day during the week of January 30, 2022. For the first step, please provide id and id_str for each account.
5. Provide all documents or other guidance provided to the contractor agents hired by Twitter's outsourced vendors in order to direct them in reviewing accounts and determining labels since April 1, 2020, including all dates that such documents or guidance were in use if not plain on the face of the documents.
6. Provide screenshots and descriptions of the user interface of the ADAP tool and the Twitter-proprietary internal tool or tools that the contractor agents use to code the sample accounts they are provided for review. If this tool has changed in the past year, please provide screenshots and descriptions documenting those changes.
7. For each day from April 1, 2021 through the present, identify each account drawn in the sampling process, including providing the id and id_str for each; the creation date of each account; which accounts if any were not reviewed by the contractor agents; anonymized identifiers indicating which contractor agents reviewed which accounts on each day; the designation given to each account reviewed by each of the three contractor agents who reviewed it and the anonymized identifier indicating the reviewer who provided that designation; anonymized identifiers indicating which Quality Analyst reviewed each account so reviewed or whether there was no Quality Analyst review; the designation given to each account reviewed by a Quality Analyst; the final designation for each account following review by in-house Twitter full time staff; and for all accounts labeled 'compromised' the current status of the account and the date on which that status was entered into.

All data should be provided in readily usable data formats, not PDF files.

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Finally, Twitter still has not provided the information requested in Mr. Musk's June 17 letter concerning the company's SEC disclosures. Instead, Twitter claimed it has already provided some information responsive to these requests, such as certain Board materials. Similarly, Twitter has not provided the information requested concerning Twitter's financial performance and projections (especially relevant given Twitter's material revenue miss for Q2 2022). Instead, Twitter claimed information of this type (*i.e.*, financial) has typically been exchanged between the parties' financial advisors. Neither of these actions actually excuse Twitter's performance.

Accordingly, we must again insist that Twitter provide the information requested in Mr. Musk's June 17 letter, including *but not limited to* any and all board and management reports that contemplate or discuss mDAU testing or methodology, any discussion of Twitter's quarterly representations of these figures for the past eight quarters, and the financial modeling and projections requested in that letter.

If Twitter believes it has already provided *some* information, it is obligated to provide the rest; if information of a similar sort has been exchanged through other channels, it should pose no burden on Twitter to exchange that information here. To that end, please provide the above requested information by Friday, July 1. If instead Twitter is refusing to provide any of the information requested on pages 3 and 4 of Mr. Musk's June 17 letter and reiterated herein, please so confirm promptly such that Mr. Musk may consider all options available to him, under the merger agreement and otherwise.

Sincerely,

/s/ Mike Ringler

Mike Ringler

Skadden, Arps, Slate, Meagher & Flom
LLP

cc:

Marty Korman, Wilson Sonsini Goodrich & Rosati, Professional Corporation

Alan Klein, Simpson Thacher & Bartlett LLP

Elon Musk

Alex Spiro, Quinn Emanuel Urquhart & Sullivan, LLP

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