



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TWITTER, INC.,

Plaintiff and
Counterclaim-Defendant,

v.

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

Defendants and
Counterclaim-Plaintiffs.

C.A. No. 2022-0613-KSJM

[PROPOSED] ORDER

The Court, having reviewed Plaintiff's letter dated September 2, 2022 concerning Defendants' failure to engage in good faith during discovery (the "Letter"), and any response thereto;

IT IS HEREBY ORDERED, this _____ day of September, 2022, that:

1. The relief sought in the Letter is hereby GRANTED.
2. Within two (2) calendar days of entry of this Order, Defendants shall produce to Plaintiff all text messages within their possession, custody, or control sent or received by Mr. Musk and/or Mr. Birchall between January 1, 2022 and July 8, 2022, regardless of whether such messages are responsive to any of Plaintiff's document requests, except that Defendants may redact personally identifiable information from any such message.

a. Such production shall not effect a waiver of attorney-client privilege, work-product immunity, or any other applicable privilege. The parties shall negotiate and enter into a customary stipulation pursuant to DRE 510(f); however, the negotiation of such stipulation shall not delay the production of documents pursuant to this Paragraph 2.

3. Within four (4) calendar days of entry of this Order, Defendants shall supply to Plaintiff an affidavit, stating under oath:

a. Whether they have determined that any non-email communications sent or received via their custodians' mobile devices between January 1, 2022 through July 8, 2022 have been deleted, destroyed, or otherwise lost (such documents being "Unavailable Communications");

b. In as much detail as is available, a description of each such Unavailable Communication; and

c. In as much detail as is available, a description of the circumstances surrounding the deletion, destruction, or loss of each such Unavailable Communication, including but not limited to when, how, and why the communication was lost.

4. In the event that Defendants identify Unavailable Communications, Defendants shall, within four (4) calendar days of such identification, submit the

mobile devices that previously stored the Unavailable Communications to a forensic examination specialist identified by Plaintiff.

5. Within four (4) calendar days of entry of this Order, Defendants shall undertake best efforts to obtain and produce to Plaintiff records from Messrs. Musk and Birchall's phone service provider(s) showing text messages sent or received by each between January 1, 2022 and July 8, 2022.

6. Within seven (7) calendar days, Defendants shall make Mr. Musk available individually for deposition concerning Defendants' interrogatory responses. Such deposition shall not count against any limit on the number of depositions that the parties may agree upon and/or the Court may impose. Defendants shall bear all costs for the deposition taken pursuant to this Paragraph 6.

7. Any deadlines on third-party discovery applicable to Plaintiff are hereby lifted.

Chancellor Kathaleen St. Jude McCormick