EFiled: Jul 21 2023 03:04PM EDT
Transaction ID 70456667
Case No. 2023-0409-KSJM

IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

PARAG AGRAWAL, VIJAYA GADDE, and NED SEGAL, Plaintiffs, v. X CORP., as successor to TWITTER, INC., Defendant.	C.A. No. 2023-0409-KSJM **PUBLIC VERSION FILED JULY 21, 2023**

OPENING BRIEF OF X. CORP. IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Michael D. Blanchard (*pro hac vice*)
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110
(617) 341-7700
michael.blanchard@morganlewis.com

Jody C. Barillare (#5107)
Amy M. Dudash (#5741)
Brian Loughnane (#6853)
Morgan, Lewis & Bockius LLP
1201 North Market Street, Suite 2201
Wilmington, DE 19801
(302) 574-3000
jody.barillare@morganlewis.com
amy.dudash@morganlewis.com
brian.loughnane@morganlewis.com

Dated: July 14, 2023

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

PRELIMINARY STATEMENT

Former Twitter, Inc. ("Twitter") Chief Legal Officer ("CLO") Vijaya Gadde ("Gadde" or "Plaintiff") seeks "advancement" of legal fees incurred by Sidley Austin LLP ("Sidley") in connection with testifying for a single day, contemporaneously with two other similarly situated witnesses, before the Congressional House Oversight Committee (the "Congressional Inquiry").[1] Unlike many advancement actions, here, X Corp. (the "Company") does *not* challenge Gadde's *entitlement* to advancement of reasonable expenses—the Company does not dispute that her testimony was required by reason of Gadde's role as former CLO of Twitter. Rather, the Company here is challenging only the *reasonableness* of the fees for which Gadde seeks advancement with respect to the Congressional Inquiry.[2]

Critically, while Gadde's complaint is nominally for advancement, the unique posture of this case strongly favors affording the Company's challenge the same attention that is typically afforded at the indemnification stage, for two principal

---

[1] While styled an action for "advancement"—as if there was some ongoing matter requiring continual representation—in reality, the testimony was for a single day and, but for a one-off follow-up request for answers to written questions, appears to be concluded.

[2] Gadde's complaint sought advancement for certain other former executives and for representation of Gadde in matters other than the Congressional inquiry. The Company never disputed entitlement to advancement in connection with any of these other alleged fees, and has paid all such undisputed amounts as of the date of this filing.

reasons. First, a simple comparison of the fees incurred by Gadde to those fees incurred by James Baker (Twitter's former General Counsel) and Yoel Roth (Twitter's former Head of Trust & Safety) for essentially identical representation immediately reflects the "gross problem" that this Court has recognized calls for greater scrutiny, even at the advancement stage. *Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 160, 177 (Del. Ch. Feb. 27, 2003). Baker and Roth held positions similar to Gadde's, were called upon to give similar testimony alongside Gadde at the same hearing, and were represented by similarly reputable, national law firms (Dechert and Nixon Peabody), and each incurred only approximately $100,000 to prepare for their testimony. Gadde, by contrast, managed to incur with Sidley Austin over **$1.1 million—nearly 1,100%** of the fees incurred by Baker and Roth. The extreme delta between Gadde's legal fees and those of not one, but two separately represented, similarly situated, former Twitter executives who engaged similarly reputable law firms, is on its own sufficiently shocking to require that the reasonableness of Gadde's fees be thoroughly addressed now.

Second, from a judicial efficiency perspective, the unique posture of the underlying matter for which Gadde seeks fees militates strongly in favor of the Court taking a "harder look" at the reasonableness of Gadde's fees—as would normally be appropriate at the indemnification stage. This is not a typical advancement action where a former executive is in the beginning phases of a protracted litigation and the

matter is being decided on an expedited basis. Here, Sidley's representation in connection with the Congressional Inquiry is all but concluded.[3] It would make no sense for the Court to conduct the limited review typical of advancement-stage actions here, after full summary judgment briefing, only to be presented promptly thereafter with a duplicative indemnification-stage, recoupment challenge. Moreover, this case does not involve typical indemnification-phase disputes about whether conduct satisfies those standards required to be indemnified—the *only* issue here is the reasonableness of Gadde's fees. For all intents and purposes, this dispute warrants indemnification-stage review now, a reality implicitly acknowledged by Gadde's abandoning her motion to expedite.

As to the merits of the reasonableness of Gadde's fees, the undisputed facts confirm what a straightforward comparison of her fees to Roth's and Baker's fees strongly suggest—Gadde's fees are unreasonable in the extreme. For example, Sidley staffed the matter—the preparation of a single witness for testimony—with *five partners* who played continuous, active roles in the representation. This is not a case of mere duplication of effort (which alone would require a reduction in fees for such duplication). This is a case of *quadruplication* of effort. In the same vein, Sidley's team included a non-lawyer "policy advisor" who billed (at a rate of $665

[3] Indeed, Sidley has not provided any invoices reflecting work in connection with the Congressional Inquiry since an invoice for work performed in April 2023.

per hour) over 150 hours for "looking for anything [in public materials] that could be potentially relevant in the hearing." Ex.[4] 1 ("Borden Dep.") at 47:13-15. While the substantive contribution of this work is, at best, questionable, the policy advisor's time alone unequivocally contributed $101,600 of Sidley's invoices—an amount approximating or exceeding the *entire cost* of legal representation for Baker and Roth. It is difficult to imagine this being reasonable under Delaware law.

Unfortunately, determining what a reasonable fee actually might be is impossible due to Sidley's use of undifferentiated block billing across all invoices, obfuscating the nature and amount of work performed by each timekeeper. Accordingly, while Sidley's bills plainly reflect up to five partners, two associates and a nonlawyer policy advisor routinely mirroring each other's work, the full extent of Sidley's inefficiency is unknowable. Moreover, this is not a case where the Court may take comfort that the work was deemed necessary by a client who understood she might be liable for the fees herself. To the contrary, the record here establishes that Gadde was informed from inception that the fees would be made the burden of the Company—a company from which Gadde had been terminated—providing no incentive for her to monitor her counsel's tab in any respect. Indeed, Gadde's failure to question a penny of the $1.1 million she incurred, the excessive partner staffing

[4] Unless otherwise stated all exhibits are attached to the Declaration of Jody C. Barillare filed contemporaneously herewith.

on the matter, the policy advisor's 150-plus hours "evaluating public materials," the inefficiency of up to seven lawyers performing the same tasks and four partners accompanying her to the Congressional testimony, only confirms that Gadde eschewed any degree of oversight. With the ability to meaningfully evaluate the invoices foreclosed by block billing and the usual indicia of reasonableness (*i.e.*, a client with skin in the game monitoring) nonexistent, the Company respectfully submits that Gadde cannot meet her burden of proving the reasonableness of the bills beyond that amount established by the invoices generated for two similarly situated executives facing the same Congressional Inquiry—$106.203.28. As the Company has already paid the same, judgment should be granted in its favor.

STATEMENT OF UNDISPUTED MATERIAL FACTS

The Congressional Inquiry and Sidley's Overstaffing and Billing

On December 6, 2022, former Twitter CLO Gadde received notice from the House of Representatives Committee on Oversight and Reform of its intent to elicit her testimony regarding Twitter's alleged suppression of a *New York Post* story concerning Hunter Biden during the 2020 Presidential election. Ex. 2 (the "Oversight Inquiry letter"). James Baker (Twitter's former General Counsel) and Yoel Roth (Twitter's former Head of Trust & Safety, responsible for Twitter's content moderation decisions) were also requested to testify at the same hearing. *See* Exs. 3 & 4 (Letters to Messrs. Baker and Roth from House of Representatives

Committee on Oversight and Reform). Gadde was Sidley's pre-existing client when she received the Oversight Inquiry letter and approached Sidley to prepare her to testify before Congress. Borden Dep. at 7:12-8:14.

On November 8, 2022, following Gadde's termination by Twitter, she entered into an engagement letter for legal representation by Sidley. Ex. 5. On December 12, Sidley and Gadde agreed to extend that engagement letter to cover the Congressional Inquiry work. *See* Ex. 6. The engagement letter notably provided that Sidley would "not be subject to any Outside Counsel Guidelines," applicable to Twitter's outside counsel (Ex. 5 at 1) and in the email exchange, Sidley made clear that "we will seek reimbursement on your behalf from Twitter." Ex. 6.

Baker retained Dechert LLP ("Dechert") as his counsel in connection with the Congressional Inquiry. *See* Ex. 23 (Dechert invoices). Roth retained Nixon Peabody LLP ("Nixon Peabody"). *See* Ex. 24 (Nixon Peabody invoices).

Two days after Gadde retained Sidley for the Congressional Inquiry, Sidley discussed [redacted] with her. Ex. 25 at AGRAWAL-0000002 ([redacted] Gadde's [redacted] [redacted] on December 14, 2022). After reviewing Gadde's [redacted] [redacted], Sidley then informed Gadde of proposed staffing "for [her] reference" (*i.e.* not for her approval, Ex. 7). The proposed staffing included the use of five partners (having billing rates ranging from $1,300 up to $1,825), two

associates (with billing rates of over $1,200), and Tracey LaTurner—a non-lawyer "policy advisor" who billed at $665 per hour. Ex. 7 at 2; *see also* Borden Dep. at 56:2-57:10. By contrast, Dechert staffed Baker's Congressional Inquiry matter with one partner and one associate. Ex. 23 at XCORP000000003 (D. Kelley and A. Patel). Nixon Peabody similarly staffed Roth's Congressional Inquiry matter primarily with one partner and one associate. Ex. 24 (identifying M. Lytle and L. Maynard as Nixon Peabody's two primary timekeepers.).

When questioned about the composition of the Sidley team, Michael Borden—the lead Sidley partner in charge who determined staffing—first explained his niche specialty in the realm of Congressional inquiries, and contrasted his expertise with the purportedly less suitable "white collar" specialists that Dechert and Nixon Peabody staffed on their matters for Baker and Roth.[5]

[5] Mr. Borden stated that using "white collar" attorneys to prepare a witness for congressional testimony would simply not be an adequate substitute for "the skills of a white collar defense attorney combined with the skills of a Washington insider source." Borden Dep. at 73:1-19. In fact, like Mr. Borden, attorneys from Dechert and Nixon Peabody too had substantial congressional investigation experience. *See, e.g.*, Ex. 8 (D. Kelley Dechert Website Biography) (noting Mr. Kelley "has cultivated a revered reputation for . . . investigations before major regulatory bodies" and listing "representation of former Director of FBI, James Comey, before various Congressional bodies" as experience); Ex. 9 (M. Lytle Nixon Peabody Biography) (noting that Mr. Lytle has experience with "congressional oversight" demands and has "provided invaluable service to clients working to respond to aggressive oversight demands").

Nonetheless, while deploring the use of mere white collar partners to prepare for Congressional inquiries, Borden staffed the Gadde Congressional Inquiry matter with predominantly white collar specialists. Aside from Mr. Borden who formerly worked on Capitol Hill and specializes in preparing witnesses for Congressional testimony (*see id.* at 6:1-7) the remainder of Sidley's attorney team, including four other partners, consisted of, according to their firm biographies, white collar and commercial litigation attorneys. *See id.* at 17:12-20, 19:20-20:20; *see* Ex. 10 (listing William Levi, partner, commercial, regulatory, appellate and white collar); Ex. 11 (listing Dave Anderson as partner, white collar and commercial litigation); Ex. 12 (listing Sheila Armbrust as partner, white collar, commercial litigation, and privacy and cybersecurity); Ex. 13 (listing Marisa West as partner, white collar); Ex. 14 (listing Ankur Shingal as senior managing associate, commercial litigation, white collar); Ex. 15 (listing Ana Blinder as associate, commercial litigation); Ex. 16 (listing Sarah Gallo as associate, commercial litigation, securities, and white collar).

While Gadde was informed of Sidley's staffing decisions, she never questioned the number of partners and associates working on the matter, never requested a discount[6] nor provided any other billing guidance or guidelines (*see*

[6] While the November 8, 2022 engagement letter stated that Sidley would extend a 10% discount on invoices paid within 30 days, there is no evidence that Gadde paid any of the invoices, Borden Dep. at 70:24-71:1, and no invoices were even provided to the Company until March 3, 2023.

Borden Affidavit (Dkt. 24) ¶ 32, even though while serving as Twitter's CLO, Twitter's Outside Counsel Billing Guidelines precluded much of the type of billing Sidley later engaged in—*i.e.*, block billing, legal research projects that exceed two hours, and duplicative billing. *See* Ex. 18 (Twitter Outside Counsel Guidelines). Notably, throughout Sidley's representation of her in connection with the Congressional Inquiry, Gadde never contested or questioned a single invoice or time entry. *See* Borden Affidavit (Dkt. 24), ¶ 32.

For its representation of Gadde in connection with the Congressional Inquiry for the five-month period from December 2022 through April 2023, Gadde incurred fees totaling $1,153,540.81. *See* Ex. 25. All but approximately $100,000 of the total bill, however, was incurred in the six-week period of January 1, 2023 – February 8, 2023 (the Congressional testimony occurred on February 8, 2023). In that six-week period alone, Gadde incurred approximately $1,050,764.30. *See* Ex. 25 at AGRAWAL-0000004 - AGRAWAL-0000024.

In January, Sidley incurred nearly a 460,000 fees, in comparison to approximately $30,000 for each of Baker and Roth. *Compare* Ex. 25 at AGRAWAL-0000016 (Sidley invoice), *with* Ex. 24 at XCORP000000018 (Roth invoice) & Ex. 23 at XCORP00000003 (Baker invoice). Over the course of that month, the Sidley team engaged in extensive internal conferences involving all or nearly all of the partners on the matter, along with routine duplication, triplication,

and quadruplication (or more) of legal services. Sidley's invoices revealed numerous meetings, conferences, and phone calls that include nearly every Sidley attorney staffed on Gadde's matter, in addition to other duplicative services. *See* Ex. 19-21 (charts summarizing Sidley's duplicative time entries); Ex. 18 (Twitter Outside Counsel Guidelines). Indeed, for January 20-31, 2023, Sidley conducted almost daily meetings with Gadde that included between three and five partners, as well as associates and Ms. LaTurner, the "policy advisor." *See* Ex. 19; *e.g.*, *id.* (reflecting 1/25/23 meeting with Gadde including partners Borden, Anderson, Armbrust, Levi and West, associate Gallo and policy advisor LaTurner).

Sidley had seven separate attorneys (five partners and two associates) bill time for preparing or reviewing a two-page opening statement for Ms. Gadde in January 2023. *See* Ex. 25 at AGRAWAL-0000010-15 (Feb. 27, 2023 Sidley Invoice) (reflecting that the following Sidley attorneys billed time for opening statement preparation and review: Levi, West, Borden, Armburst, Gallo, Shingal, and Anderson). Due to Sidley's improper block billing, it is impossible to tell how much time was devoted to the opening statement as opposed to other tasks included in opening statement-related time entries, but the total time encompassed by entries referencing work on the two-page opening statement is over 117 hours, equating to $159,300 in fees. Gadde incurred another $575,000 in fees for the time period of February 1 – February 8, in contrast with Baker and Roth incurring approximately

$67,979 and $71.024.80 respectively. *Compare* Ex. 25 at AGRAWAL-0000020-24 (Sidley invoice), *with* Ex. 24 at XCORP000000019-22 (Roth invoice) & Ex. 23 at XCORP00000007-8 (Baker invoice). Each day in February in advance of the February 8 testimony, Sidley staffed 4-5 partners, 1-2 associates and the policy advisor to meet with Gadde for durations ranging between 4-10 hours. The seven days of preparation cost approximately $525,000, in comparison with Baker and Roth incurring approximately $41,550 and $55,081 respectively over these same days. Gadde then testified before Congress on February 8, 2023, accompanied by four partners from Sidley, billing a combined total of over 47 hours ($49,720 in fees). Ex. 25 at AGRAWAL-0000023. The hearing lasted approximately six and a half hours, inclusive of breaks. Borden Dep. at 66:4-6. In contrast to the nearly $50,000 in fees that the four Sidley partners incurred for merely attending the Congressional hearing, Dechert and Nixon Peabody each only had 1 partner and 1 associate attend, resulting in approximately $26,000 and $16,000 in fees, respectively. *See* Exs. 23 at XCORP00000007 & Ex. 24 at XCORP000000022.

Of particular note, Sidley's overall representation preceding the testimony also included the services of Tracey LaTurner, a Washington, D.C. "policy advisor." Ms. LaTurner's experience, as reported in her bio, is devoid of any involvement in preparing witnesses for Congressional testimony, and Mr. Borden testified that he did not know if she had any such experience. *See* Borden Dep. at 21:4-7. Rather,

her skill set involves "appropriations, policy and legislative experience." Ex. 17 (T. LaTurner Sidley bio). Mr. Borden testified that he included Ms. LaTurner on the Sidley team because she is familiar with Congress, worked with him on past matters, and for her research skills (Borden Dep. at 21:8-18). Yet, the vast majority of her work involved entire days devoted to "evaluat[ing] public materials regarding [redacted]." *See* Ex. 22 (chart).[7] As later explained by Mr. Borden, he did not "know precisely" what this evaluation entailed, but her job was to "find" public materials "and share them with attorneys" who would be preparing Ms. Gadde for testimony. Borden Dep. at 45:2-19. "She was looking for anything that could be potentially relevant in the hearing," apparently for 150 hours—*i.e.*, almost a *month* non-stop. *Id.* at 47:13-15.

In total, Ms. LaTurner was responsible for $101,631.50 of Sidley's total fees. In other words, the amount that Sidley incurred by a non-lawyer, policy-specialist with no experience preparing witnesses for Congressional testimony and who

[7] The precise amount of time LaTurner spent Googling cannot be known because LaTurner block-billed her entries. Nonetheless, a review of her entries in comparison with other entries demonstrates that most of her time was so devoted. *Compare* Ex. 25 at AGARWAL-0000011 (T. LaTurner 1/20/23 Entry: 6.30 hours total, block billed to "evaluat[ing] public materials regarding [redacted] on behalf of client" and "participat[ing] in client background information call with M. Borden, D. Anderson, S. Gallo, M. West, and W. Levi"), *with id.* (D. Anderson entry from same day: 1.70 hours for "[m]eeting with V. Gadde with [client and team, including LaTurner]"). Thus, on January 20th alone, Ms. LaTurner spent 4.6 hours surfing the Internet to "evaluate" public materials.

devoted the vast majority of her time to "evaluating materials" was more than the total amount of fees incurred by Baker, and close to the total amount of fees incurred by Roth for the entirety of their Congressional inquiry representations. Ex. 22 (chart isolating invoice entries for Tracey LaTurner).

A month after the hearing, Gadde, Baker, and Roth, with the assistance of their respective counsel, were each requested by Congress to respond to "questions for the record," which are commonly referred to as "QFRs." Borden Dep. at 68:15-19. Sidley incurred approximately $53,000 for March and April. *See* Ex. 25 at AGRAWAL-0000030, AGRAWAL-0000035. For the same time period, Baker and Roth incurred approximately $3,500 and $8,000, respectively. *See* Ex. 23 at XCORP000000011, XCORP000000014 (Dechert's March and April invoice including time entries related to QFRs) and Ex. 24 at XCORP000000057 (Nixon Peabody's March invoice including time entries related to QFRs).

As summarized in the following chart, Sidley's invoiced fees were approximately 1,100% the fees incurred by each of the former Twitter Executives Messrs. Roth and Baker, related to the same Congressional Inquiry for the same time period:

	James Baker (Dechert)	Yoel Roth (Nixon Peabody)	Vijaya Gadde (Sidley)
December 2022	$0.00	$0.00	$49,305.50
January 2023	$30,282.10	$33,506.20	$471,821.50
February 2023	$58,560.12	$73,754.04	$578,942.81
March 2023	$1,905.00	$7,896.40	$42,020.50
April 2023	$1,027.65	$2,847.00	$11,450.50
Total	$91,774.87	$118,003.64	$1,153,540.81

The Former Twitter Executives Demand Advancement and Plaintiffs File Suit While the Company Reaches Resolution with Messrs. Baker and Roth

In January and February 2023, Twitter received advancement and indemnification demands from Gadde, her co-plaintiffs, and Baker and Roth. *See, e.g.*, Am. Complaint, Exs. E, F & G. With respect to Gadde, Sidley first reached out to Twitter on January 13, 2023, demanding advancement and indemnification for, *inter alia*, the Congressional Investigation. With this first correspondence, Sidley demanded to know "[i]f there [was] any basis on which the Company anticipate[d] denying indemnification of Ms. Gadde." *See* Am. Compl., Ex. F. The correspondence, however, did not include any invoices for any proceedings for Ms. Gadde. Also on January 13, Sidley provided an undertaking to repay advancement of expenses signed by Gadde. *See* Am. Compl., Ex. I. Subsequently, on March 3,

2023, Sidley sent correspondence to Twitter enclosing redacted invoices regarding the Congressional Inquiry reflecting fees and expenses incurred through January 31, 2023. *See* Am. Compl., Ex. K. Although these invoices reflect a 10% discount if paid within 30 days, the Company did not even receive the invoices until more than 30 days after the date reflected on the invoices. *See id.* Twitter—through its counsel—acknowledged receipt of these requests on March 17, 2023. *See, e.g.*, Am. Compl., Ex. L. On March 23, 2023, Sidley sent Gadde's Congressional Investigation Invoice dated March 16, 2023, again failing to provide the Company the opportunity to take advantage of payment within the full 30 days from date of invoice to gain a 10% discount on charged fees. *See* Am. Compl., Ex. M.

In response to a March 17, 2023 acknowledgement from Twitter's counsel, counsel for Baker and Roth thereafter worked with Twitter's counsel to secure advancement of requested fees (less a negotiated 10% discount). Sidley declined to explore out-of-Court resolution and instead filed the instant lawsuit.

Notably, the Sidley invoices sent for the first time on March 17 failed to comply with Gadde's Indemnification Agreement, which defines "Expenses" to include only those expenses that are "reasonable" and required Gadde to submit invoices that "reasonably evidence the Expenses incurred by Indemnitee." Am. Compl., Ex. C §§ 5, 14(e). The Sidley invoices were initially redacted extensively, precluding any meaningful inquiry as to the reasonableness of the expenses. *See,*

e.g., Ex. 26 (Sidley Redacted Mar. 16, 2023 Invoice) at 3 (including 02/03/23 entry from D Anderson for "Attention to [REDACTED]" for 7.7 hours and 02/02/23 entry from WR Levi for "Research [REDACTED]" for 9 hours). After discussion in which counsel for the Company noted that such redactions are improper in an advancement context,[8] Sidley later provided invoices with many of the redactions removed, but because the invoices were block billed without differentiation of the amount incurred for precise tasks, an accurate assessment of the reasonableness of fees remains exceedingly difficult. *E.g.*, Ex. 25 (Sidley Mar. 16, 2023 Invoice) at AGRAWAL-0000022 (containing numerous block billed entries of 8 to over 12 hours of time with no increments attributed to listed tasks).

Sidley filed the instant action on April 10, a few weeks after Twitter's counsel acknowledged receipt of the advancement/indemnification demand and only one month and a week after Sidley first provided invoices to Twitter. *See* Dkt. 1, Original Complaint.

[8] *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 825 (Del. 1992) (holding that plaintiff in indemnification action partially waives privilege regarding content of their attorneys' invoices); *see also Zaman v. Amedeo Holdings, Inc.*, 2008 WL 2168397, at *38 (Del. Ch. May 23, 2008) (applying *Citadel* in advancement proceeding).

Plaintiffs Abandon Their Request for Expedition, and the Company Advances Fees Where Warranted, Narrowing the Scope of the Instant Action

Along with their original complaint, Plaintiffs filed a motion to expedite their "advancement" action. *See* Dkt. 1. After counsel for the parties met and conferred and the Company made clear it was not disputing entitlement to advancement, merely the reasonableness of Gadde's fees, Plaintiffs abandoned their motion to expedite. Further, given Twitter's agreement to advance fees to Gadde's co-plaintiffs and to advance fees to Gadde for all proceedings outside of the Congressional Inquiry, and given the narrow scope of the dispute and minimal discovery necessary, the parties agreed that the dispute could be efficiently resolved through summary judgment.

To date, the Company has advanced to Gadde's co-plaintiffs the invoiced amounts for the non-Congressional Inquiry proceedings—(1) the putative class action securities lawsuit captioned *Baker v. Twitter, Inc.*, No. 2:22-cv-06525 (MCS) (C.D. Cal.), (2) investigations conducted by the Department of Justice and Securities and Exchange Commission related to Twitter, and (3) a lawsuit captioned *D'Ambly v. Exoo*, No. 2:20-cv-12880 (JMV) (D.N.J.). And, the Company has advanced Plaintiffs' counsel their fees-on-fees incurred in the instant action. The sole dispute remaining for the Court is whether the Company should be required to advance

Gadde the remaining $1,100.069.81 fees reflected on Sidley's December 2022 through April 2023 invoices.[9]

ARGUMENT

Pursuant to Court of Chancery Rule 56, summary judgment "shall be rendered forthwith if . . . there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Ct. Ch. R. 56(c). If the moving party satisfies its initial burden of demonstrating the absence of any dispute of material fact, "then 'the burden shifts to the nonmovant to present some specific, admissible evidence that there is a genuine issue of fact for a trial.'" *CelestialRX Invs., LLC v. Krivulka*, 2017 WL 416990, at *12 (Del. Ch. Jan. 31, 2017).

I. THE COURT SHOULD ENGAGE IN A DETAILED REVIEW OF THE UNREASONABLENESS OF GADDE'S FEES IN THE PRESENT PROCEDURAL POSTURE.

Neither Gadde's indemnification agreement (Dkt. 9, Am. Compl., Ex. C), Twitter's operative bylaws, "nor Delaware law can be fairly read as requiring [the Company] to honor clearly unreasonable advancement requests." *Fuhlendorf v. Isilon Sys., Inc.*, 2010 WL 4570225, at *1 (Del. Ch. Nov. 9, 2010). Indeed, "all contracts for advancement and indemnification are subject to an implied reasonableness term." *Kaung v. Cole National Corp.*, 2004 WL 1921249, at *4 (Del.

[9] Accordingly, the Company requests that Plaintiffs' remaining advancement claims not addressed herein be dismissed as moot.

Ch. 2004) (citations omitted), *reversed in part on other grounds*, 884 A.2d 500 (Del. 2005). Accordingly, Delaware law has long recognized that the reasonableness of fees may be appropriately reviewed at the advancement stage. *E.g.*, *Kaung v. Cole Nat. Corp.*, 884 A.2d 500, 510 (Del. 2005) (holding "it was appropriate for the Court of Chancery to determine" that legal fees were "not reasonably incurred" and thus plaintiff's lawyers "w[ere] not entitled to advancement of its unpaid legal fees").

While there is no question that the reasonableness of fees to be advanced may be considered at the advancement stage, Defendant acknowledges that in the typical advancement context, adjudicated through expedited, summary proceedings, the issue of reasonableness is often given brief consideration. Defendant respectfully submits that the Court's review of the reasonableness of Sidley's fees here, given the unique procedural posture of this case and patently problematic invoices, should extend beyond the "quick look" that is typically afforded in expedited, summary advancement proceedings,[10] for two reasons.

First, this case fits within an exception to the general rule. As then-Chancellor Strine has explained, "*Unless some gross problem arises*, a balance of fairness and efficiency concerns would seem to counsel deferring fights about details until a final

[10] *E.g.*, *Weil v. VEREIT Operating Partnership, L.P.*, 2018 WL 834428, at *12 (Del. Ch., 2018) (advancement is not "a vehicle for a party that committed to provide advancements to manufacture 'persnickety disputes over the reasonableness of the attorneys' fees sought").

indemnification proceeding. . . ." *Fasciana*, 829 A.2d at 177 (emphasis added); *Duthie v. CorSolutions Medical, Inc.*, 2008 WL 4173850, at *2 (Del. Ch. 2008) ("Advancement is not the proper stage for a detailed analytical review of the fees, whether in terms of the strategy followed or the staffing and time committed. . . . *In the absence of clear abuse,* the fees should be advanced") (emphasis added). This case presents just such a "gross problem" of "clear abuse," with Plaintiff seeking advancement of fees amounting to 1,100% of those incurred by similarly situated indemnitees for virtually identical legal representations, provided by similarly reputable, nationally known firms.

Second, the policy reasons for the abbreviated attention otherwise afforded reasonableness inquiries at the advancement stage are not present here. A traditional advancement action contemplates that the underlying action has not yet been resolved. Thus, while the underlying action is pending, the Court of Chancery summarily resolves advancement claims on an expedited basis "because the immediate advancement of fees fulfills a real and legitimate need of those who serve as directors and officers of Delaware corporations when faced with the significant costs of defending legal actions against them . . . . [To be of any value,] advancement must be made promptly, otherwise its benefit is forever lost because the failure to advance fees affects the counsel the director may choose and litigation strategy that

the executive or director will be able to afford." *Tafeen v. Homestore, Inc.*, 2005 WL 1314782, at *3 (Del. Ch. May 2, 2005), *aff'd*, 888 A.2d 204 (Del. 2005).

Accordingly, given the exigencies typically in play:

> The summary nature of an advancement proceeding [] counsels against granular review. "[D]etailed analysis . . . is both premature and inconsistent with the purpose of a summary [advancement] proceeding." "The function of [an] advancement case is not to inject this court as a monthly monitor of the precision and integrity of advancement requests." Consequently, the advancement stage "is not the proper stage for a detailed analytical review of the fees, whether in terms of the strategy followed or the staffing and time committed.

Weil, 2018 WL 834428, at *12.[11]

None of these policy concerns are at issue here. Unlike the typical advancement action brought at the earliest stages of lengthy underlying proceedings, this matter involves an essentially completed representation in connection with a single day of testimony that has already come and gone.[12] And it cannot be said that a dispute over advancement here will "affect the counsel [Gadde] may choose" or

---

[11] Rather, as advancement proceedings are typically summary in nature, a corporation's presumed remedy for improperly advanced fees occurs in an action for recoupment at the indemnification stage. *See, e.g.*, *Sider v. Hertz Glob. Holdings, Inc.*, 2019 WL 2501481, at *3 (Del. Ch. June 17, 2019) ("In short, '[t]he policy of Delaware favors advancement when it is provided for, with the Company's remedy for improperly advanced fees being recoupment at the indemnification stage,' or on appeal after issues of reasonableness have been finally resolved.").

[12] Indeed, Gadde did not even submit Sidley invoices until March 3, 2023—almost a full month *after* the Congressional Inquiry matter largely ended with the conclusion of the hearing on February 8, 2023.

her "litigation strategy," given that Gadde was already Sidley's client when she received the Congressional Inquiry letter, and at this point she has already chosen counsel and executed on a litigation strategy for a matter that is essentially concluded. Borden Dep. at 7:12-8:14. That the exigencies of the typical advancement case are not present here is confirmed by Gadde abandoning her motion to expedite.

Moreover, in a typical advancement proceeding, "[t]he key question" is "whether the plaintiff seeking advancement is facing claims that are subject to his advancement right . . . ." *Fasciana*, 829 A.2d at 167. The Company here, however, does not contest that Gadde was entitled to advancement, and thus the "key question" typically presented is not at issue. Rather, the sole issue presented here is the reasonableness of the fees, a matter best resolved through a more granular review that typically awaits the indemnification stage, but in this matter, is wholly appropriate in the present procedural posture.

In sum, because the Company seeks to address a "gross problem" of facially unreasonable fees, because the policy concerns requiring expediency in the usual advancement case are not present (as confirmed by Gadde abandoning her motion to expedite), and because the Congressional Inquiry is effectively concluded, the procedural posture here is more akin to an "action for recoupment at the indemnification stage," *Sider*, 2019 WL 2501481, at *3, and therefore a more

"granular review" *is appropriate* regarding the "staffing and time committed," as it is not "premature and inconsistent with the purpose of a summary [advancement] proceeding." *Id.*

II. SIDLEY'S FEES ARE UNREASONABLE.

As a general matter, whether viewed as an advancement- or indemnification-stage inquiry, the advancee/indemnitee bears the burden of proving that the fees and expenses incurred are reasonable. *Danenberg v. Fitracks, Inc.*, 58 A.3d 991, 995 (Del. Ch. 2012) (advancee must prove fees reasonable); *O'Brien v. IAC/Interactive Corp.*, 2010 WL 3385798, at *5 (Del. Ch. Aug. 27, 2010), *aff'd*, 26 A.3d 174 (Del. 2011) ("When dealing with a mandatory indemnification provision such as the one here, 'the burden rests on the party from whom indemnification is sought to prove that indemnification is not required.' *The party seeking indemnification, however, must prove that the amount of indemnification sought is reasonable.*") (emphasis added) (citations omitted).

A party's expenses are reasonable if, among other factors, they were charged "at rates, or on a basis, charged to others for the same or comparable services under comparable circumstances." *Weil*, 2018 WL 834428 at *12. "Under Delaware law the reasonableness of fees is evaluated under Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct." *Tafeen*, 2005 WL 789065, at *2. Under Rule 1.5(a), "[f]actors include, but are not limited to, the time and labor required, the

novelty and difficulty of the questions involved, the skill requisite to perform the legal services properly, the fee customarily charged in the locality for similar legal services, the nature and length of the professional relationship with the client, and the experience, reputation, and ability of the lawyer or lawyers performing the services." *Id.* That said, and critically here, when conducting a reasonableness analysis the Court must "exclude costs which are excessive, redundant, duplicative, or otherwise unnecessary." *Lillis v. AT&T Corp.*, 2009 WL 663946, at *2 (Del. Ch. Feb. 25, 2009) (quoting *Mahani v. Edix Media Grp., Inc.*, 935 A.2d 242, 245 (Del. 2007)). Here, there is no material dispute of fact that Sidley's fees are excessive, redundant, duplicative, and otherwise unnecessary. This is apparent from the sheer magnitude of Sidley's bill when compared to those of Dechert and Nixon Peabody. It is also apparent from review of Sidley's block billed entries and duplicative efforts on behalf of Ms. Gadde. ***First***, the fees Gadde incurred and Sidley billed are unreasonable because they are manifestly excessive in comparison to those incurred by similarly (virtually identically) situated former Twitter corporate officers, relying upon similarly qualified law firms, preparing for exactly the same proceeding. Comparing Sidley's fees on the one hand versus Dechert's and Nixon Peabody's on the other, Sidley's fees are plainly excessive. *See Kaung*, 2004 WL 1921249, at *5 (finding fees excessive where plaintiff's counsel "churned fees with the knowledge and expectation that [defendant] would continue to pay without effective protest"

and had fees in excess of another firm who undertook more extensive work in connection with similar representation); *see also O'Brien*, 2010 WL 3385798, at *10 ("reasonableness inquiry turned on the specific law firm's efficiency"). Charging 1,100% more than similarly situated firms for similarly situated executives for the same congressional proceeding is facially unreasonable.

Second, Sidley's time entries reveal extensive duplication of effort with five partners and only two sparingly employed (relative to the partners) associates performing identical roles, which further underscores the unreasonableness of Sidley's overbilling and overstaffing when compared with the firms representing former executives Roth and Baker. *See Tafeen*, 2005 WL 789065, at *3, *5-8 (affirming special master's reduction of fees because although some work was necessary it was duplicative and holding defendant "should not have to pay for duplicative work"). As Vice Chancellor Lamb recognized: "[A] court should greet with 'healthy skepticism' a claim that several lawyers were required to perform a single set of tasks and may discount the time for two or three lawyers in a courtroom or conference when one would do." *See Richmont Capital Partners I, LP v. JR Investments Corp.*, 2004 WL 1152295, at *3 (Del. Ch. May 20, 2004). Ms. Gadde too apparently recognized this when the billing guidelines applicable when she was CLO precluded the very block billing her attorneys engaged in.

Sidley's invoices reflect extensive duplication between attorneys on the team, including, *inter alia*, having up to five partners (plus associates) on conference calls and meetings with Gadde, five partners and two associates preparing Gadde's two-page opening statement, and four partners that accompanied Gadde to the hearing before Congress on February 8, 2023. *See* Ex. 19. Sidley's overuse of partners and other unnecessary work compels a reduction of Gadde's requested fees. *See, e.g.*, *Concord Steel, Inc. v. Wilmington Steel Processing Co.*, 2010 WL 571934, at *4 (Del. Ch. Feb. 5, 2010) (reducing plaintiff's attorneys' fees because the "overuse of senior partners artificially inflated [plaintiff's] attorneys' fees"); *see also Top Jet Enterprises, Ltd. v. Kulowiec*, 2022 WL 1184245, at *4 (S.D.N.Y. Apr. 21, 2022) (reducing fee request by 75% because "this matter was not staffed appropriately and work was not distributed in a rational way to minimize costs [which] justifies a substantial reduction"); *Pig Netwon, Inc. v. Bd. of Dirs. of The Motion Picture Indus. Pension Plan*, 2016 WL 796840, at *7 (S.D.N.Y. Feb. 24, 2016) (reducing awarded attorneys' fees partially because of the "'top-heavy' nature of the legal services provided"). Indeed, in the eight days that required legal representation in February, Sidley's partners accounted for 73% of the firm's billable hours and $458,150 of the firm's billed fees related to the Congressional Inquiry for that month alone. Ex. 25 at AGRAWAL-0000020 – AGRAWAL-000024. Four of these five partners attended the Congressional Inquiry

testimony even though there are limited breaks and little time for consultation with Gadde (if any). *Id.* at AGRAWAL-00000023. Just for the single six-and-a-half hour day of Gadde's testimony alone, Sidley billed 34.3 hours, which totaled nearly $50,000, roughly half of what Dechert and Nixon Peabody incurred for their entire congressional testimony representation. This is another example of Sidley's pattern of "overlawyering," *Combined Ins. Co. of Am. v. Bastian*, 2010 WL 11556590, at *5 (M.D. Pa. Mar. 16, 2020) (determining Sidley "overlawyer[ed] case" and declining to award full amount of Sidley's incurred fees because "the hours accumulated and requested [by Sidley] are far in excess of what would be reasonable based upon the issues before the Court"). Accordingly, like the plaintiff's fees in *Concord Steel*, here the Court should reduce Gadde's fees to adjust for the inflation caused by Sidley's overuse of the firm's partners. Sidley can offer no reason why a single partner (or two) could not have adequately supervised Sidley associates who could have worked on the matter.

The Court should similarly deny advancement/indemnification of LaTurner's time entries because, to the extent they can be understood, they represent costs that are "otherwise unnecessary." As illustrated in Exhibit 22, Ms. LaTurner, a non-lawyer, billed approximately 153 hours, at a rate of $665/hour, almost exclusively

for "evaluat[ing] public materials regarding [redacted]." Ex. 22.[13] This description lacks detail that would allow X Corp. to evaluate precisely what tasks Ms. LaTurner was performing for the Congressional Inquiry matter and whether the amount of time for those tasks was reasonable. Even Sidley does not know. Borden Dep. at 45:13-14 (Borden: "I don't know precisely what [Ms. LaTurner] does."). At most, Ms. LaTurner would provide cover emails regarding current events related to the Congressional Inquiry. *Id.* at 46:5-14. For this single task, Ms. LaTurner's fees total $101,631.50, *which exceeds Dechert's fees for their entire representation of James Baker and is just shy of Nixon Peabody's fees for their entire representation of Yoel Roth*. In the few time entries that reference additional tasks, Ms. LaTurner failed to provide any detail regarding the amount of time devoted to any additional tasks. Even if this were a typical advancement action, Sidley's "playing fast and loose" to treat the Company's obligations as a "blank check" are improper. *See Weil*, 2018 WL 834428, at *12 ("Just because the court will not review each line item individually at the advancement stage does not mean that the party seeking advancements can play fast and loose with its requests or treat the advancement right

[13] Ms. LaTurner's time entries do include stray references to other tasks, but because the entries are block-billed, the amount of time for these other tasks as opposed to monitoring internet traffic cannot be discerned, warranting denial of the fees. *See Spence v. Ellis*, 2012 WL 7660124, at *7 (E.D.N.Y. Dec. 19, 2012) ("A party who submits vague bills that are exacerbated by block billing loses its right to recover attorney's fees."), *rep. and rec. adopted*, 2013 WL 867533 (E.D.N.Y. Mar. 7, 2013).

as a blank check. Plaintiffs' counsel must make a good faith determination regarding the fees and expenses to which its clients are entitled.").

III. GADDE CANNOT PROVE SIDLEY'S FEES ARE REASONABLE.

It is Gadde's burden to prove that the fees she incurred are reasonable. *Fitracks*, 58 A.3d at 995 (advancee must prove fees reasonable). Of course, fees for duplicative or otherwise unnecessary work are unreasonable. *Lillis*, 2009 WL 663946 at *2 (the Court must "exclude costs which are excessive, redundant, duplicative, or otherwise unnecessary"). Here, Sidley's invoices are littered with facial duplication, the true extent of which is obscured by Sidley's block billing.

For example, seven different timekeepers (i) all billed time; (ii) all on the same day, February 1, 2023; (iii) toward the same meeting with Gadde; and (iv) block-billed their time along with other tasks, resulting in $58,814.50 total claimed fees:

- **Telephone call with V. Gadde, M. Borden, S. Armbrust, M. West, W. Levi, A. Shingal, S. Gallo, T. LaTurner re: testimony prep**; attention to [redacted], opening statement, [redacted]; telephone call with [redacted], Ex. 25 at AGRAWAL-0000020 (4.1 hour time entry from D. Anderson totaling $7,482.50);

- Attention to [redacted] for [redacted]; evaluation of [redacted]; review of [redacted]; **meeting with V. Gadde to prepare for testimony**, *id.* (3.8 hour time entry from SA Armburst totaling 5,035.00);

- Evaluate [redacted]; correspond with M. West and A. Shingal regarding [redacted]; revise

materials regarding [redacted]; **prepare for and participate in conference call with V. Gadde and Sidley team regarding** [redacted]; correspond with [redacted] regarding [redacted]; correspond with V. Gadde regarding [redacted]; correspond with A. Shingal regarding [redacted]; correspond with T. LaTurner regarding [redacted]; confer with [redacted], *id.* (10.0 hour time entry from M. Borden totaling $14,000.00);

- Evaluate public materials regarding [redacted] on behalf of client; **participate in client background information call with M. Borden, D. Anderson, S. Gallo, M. West, and W. Levi**, *id.* (6.6 hour time entry from TA LaTurner totaling $4,389.00);

- **Prepare for and participate in interview with client**; research for and draft [redacted], *id.* (7.0 hour time entry form WR Levi totaling $9,450.00);

- Revise [redacted] and follow up with M. West; follow up with M. Borden regarding [redacted]; draft [redacted] **attend client meeting**; finalize [redacted] and submit to M. West; revise [redacted] and follow up with M. West; revise [redacted] per request from D. Anderson, *id.* (5.6 hour time entry from A Shingal totaling $6,888.00); and

- **Call with V. Gadde, D. Anderson, S. Armbrust, M. Borden, W. Levi, T. LaTurner, A. Shingal, and S. Gallo**; draft [redacted]; revise [redacted] drafted by A. Shingal and S. Gallo; analyze [redacted] related to [redacted] related to [redacted], *id.* (8.9 hour time entry from MS West totaling $11,570.00).

This duplication is plain evidence of Sidley's overlawyering of the matter, which underscores why the Court should reduce Sidley's fees to be comparable to those incurred by the other former Twitter executives. *Cf. Lillis*, 2009 WL 663946

at *2 (the Court must "exclude costs which are excessive, redundant, duplicative, or otherwise unnecessary"); *Richmont*, 2004 WL 1152295 at *3 ("[A] court should greet with 'healthy skepticism' a claim that several lawyers were required . . . and may discount the time for two or three lawyers in a courtroom or conference when one would do."); *see also Immedient Corp. v. HealthTrio, Inc.*, 2007 WL 656901, at *4 (Del. 2007) (holding court may "exercise its discretion in assigning a reasonable percentage to [block-billed] entries, or simply cast them aside"). Because Sidley block billed, it is impossible to tell a specific amount to reduce for duplicative efforts, which precludes Gadde from meeting her burden to demonstrate reasonableness of fees. *See generally In re SC SJ Holdings, Inc.*, Case No. 21-10549, slip op. at 6-7 (Bankr. D. Del. July 13, 2023) D.I. 1124 (attached hereto as Ex. 27) (applying a 50% reduction to a debtor's professional fees from "lumped" entries).

Block billing precludes Gadde from proving the reasonableness of the invoices in other manners as well. For example, whether any particular time entry is reasonable is necessarily a function of not only the substance of the work performed, but the amount of time spent on it. Consider the following time entry for 10.5 hours on January 25, sprawling for seven lines of text without delineation of the amount of time spent on each task:

> Correspond with [redacted] regarding [redacted]; confer with W. Levi regarding [redacted] and strategy; develop [redacted] for hearing preparation; review public materials regarding [redacted]; revise [redacted] regarding subpoena; prepare for and participate in conference with V. Gadde and Sidley team regarding [redacted].

Ex. 25 at AGRAWAL-000013. Even if each of these entries might be reasonable in the abstract, virtually none of them would be reasonable if the time associated was, for example, nine of the ten hours billed. Yet because the time entries are not quantified, there is no evidence to indicate whether the amount of time spent on any given task was reasonable, and Gadde—who bears the burden of proof—cannot prove that such time entries are reasonable.

Nor could the invoices be inferred to be reasonable on the premise that they were monitored by an individual who might be responsible for paying for them. Delaware has often allowed such circumstances to serve as a proxy for a reasonableness review. *Aveta Inc. v. Bengoa*, 2010 WL 3221823, at *6 (Del. Ch. Aug. 13, 2010) (concluding that fees were reasonable partially because plaintiff "did not know that it would be able to shift [its] expenses . . . . [and] [t]herefore had sufficient incentive to monitoring its counsel's work"); *accord Arbitrium (Cayman Islands) Handels AG v. Johnson*, 1998 WL 155550, at *2 (Del. Ch. Mar. 30, 1998) (considering when evaluating reasonableness that client faced prospect of bearing full cost of litigation), *aff'd* 720 A.2d 542 (Del. 1998); *see also Fitracks*, 58 A.3d at

997 ("[A]n arm's-length agreement, particularly with a sophisticated client . . . can provide an initial 'rough cut' of a commercially reasonable fee."). But here, the undisputed facts demonstrate that Sidley's fees are not the result of any "monitoring."

To date, the only evidence related to Gadde's "monitoring" to Sidley's overstaffing of her Congressional Inquiry matter is an email, dated December 22, 2022, from Sidley to Gadde disclosing Sidley's eight timekeepers "for [her] reference." Ex. 7. Prior to that, she never sought a discount, *supra* n.6, and authorized Sidley to ignore Twitter's outside counsel billing guidelines, after she had recently been terminated by Twitter. Ex. 7. Sidley forwarded Gadde the timekeepers only after Sidley (i) discussed Gadde's [redacted] with her and (ii) assured her that they would seek reimbursement from Twitter. Ex. 25 at AGRAWAL-0000002 ([redacted] on December 14, 2022); Ex. 6 ("[W]e will seek reimbursement on your behalf from Twitter."). Sidley admits that Gadde (i) never responded to the December 22, 2022 email and (ii) Gadde never contested or questioned a single invoice or time entry. Borden Affidavit (Dkt. 24), ¶¶ 10, 32.

Here, it cannot be said that Gadde meaningfully monitored Sidley's billing practices, nor that the $1.1 million fee provides an "initial 'rough cut' of a

commercially reasonable fee." Indeed, it is far from it—its 1,100% more than what other firms charged former Twitter executives.

IV. THE COMPANY SHOULD BE GRANTED JUDGMENT ON GADDE'S CLAIM FOR ALL AMOUNTS BEYOND THE $106,203.28 IT HAS PAID.

While, as set forth above, Gadde cannot prove the reasonableness of Sidley's fees due, among other things, Sidley's block billing, there is no dispute of fact that the $1.15 million in fees that Gadde seeks is patently unreasonable, and that the $106,203.28 the Company has paid is reasonable when compared to Dechert's and Nixon Peabody's fees for performing substantially similar work for the same Congressional Inquiry. Therefore, the Company should be granted summary judgment on Gadde's claim seeking any amount of the $1.15 million in fees beyond what the Company has already paid.

Where, as here, block billing precludes the quantification of tasks billed and, in turn, determining the reasonableness of the fees sought, the Court has the discretion to reduce or eliminate certain fees. "While block billing is not prohibited *per se*, it can make it more difficult for a court to assess the reasonableness of hours claimed. Therefore, a court may 'exercise its discretion in assigning a reasonable percentage to the entries, or *simply cast them aside*." *Immedient Corp. v. HealthTrio, Inc.*, 2007 WL 656901, at *4 (Del. 2007) (emphasis added); *see also In re SC SJ*

(Ex. 27) (applying a 50% reduction to a debtor's professional fees from "lumped" entries).

Here, there is no genuine issue of material fact with respect to the reasonableness of the $106,203.28 the Company has already paid Gadde for fees incurred for the Congressional Inquiry. This amount is comparable to the fees charged by Dechert and Nixon Peabody to represent Baker and Roth in the same Congressional Inquiry. It is undisputed that two similarly reputable, national law firms each used comparable expertise to similarly prepare two senior Twitter executives for testimony in the same Congressional Inquiry under the same circumstances as Gadde, and each firm incurred only approximately $100,000 for each witness. And Gadde's invoices on their face evidence significant overstaffing, and not mere duplication but quadruplication of work. Given these undisputed facts, the Court may use its discretion to assign a reasonable percentage of Sidley's block-billed $1.15 million in fees, reducing them to an amount similar to the fees billed by Dechert and Nixon Peabody and entering judgment for the Company on Gadde's claim for any amounts beyond what the Company has already paid.

CONCLUSION

For the foregoing reasons, this Court should reduce any advancement award related to Gadde's representation in the Congressional Inquiry from $1,153,540.81 to $106,203.28 because Gadde failed to prove that all the fees and expenses were reasonably incurred. The requested reduction accounts for (i) elimination of Sidley's $101.631.50 in fees for Ms. LaTurner's redundant work related to "evaluat[ing] public materials" and (ii) application of a discretionary reduction, equal to the fees incurred by Roth under comparable circumstances, to account for Sidley's overuse of partners and block billing practices, which is consistent with *Concord Steel* and *Immedient Corp.*, respectively.

Dated: July 14, 2023

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

/s/Jody C. Barillare

Jody C. Barillare (#5107)
Amy M. Dudash (#5741)
Brian Loughnane (#6853)
1201 North Market Street, Suite 2201
Wilmington, DE 19801
(302) 574-3000
jody.barillare@morganlewis.com
amy.dudash@morganlewis.com
brian.loughnane@morganlewis.com

Michael D. Blanchard (*pro hac vice*)
One Federal Street
Boston, MA 02110
(617) 341-7700
michael.blanchard@morganlewis.com

WORDS: 8,446