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10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO/OAKLAND DIVISION**  
14

15 PARAG AGRAWAL, NED SEGAL,  
16 VIJAYA GADDE, and SEAN EDGETT,

17 Plaintiffs,

18 vs.

19 ELON MUSK; X CORP., f/k/a TWITTER, INC.;  
20 TWITTER, INC. CHANGE OF CONTROL  
AND INVOLUNTARY TERMINATION  
21 PROTECTION POLICY; TWITTER, INC.  
CHANGE OF CONTROL SEVERANCE AND  
22 INVOLUNTARY TERMINATION  
PROTECTION POLICY; LINDSAY  
23 CHAPMAN; BRIAN BJELDE; AND  
DHRUV BATURA,

24 Defendants.

Case No. 24-cv-01304

**COMPLAINT FOR SEVERANCE  
BENEFITS, EQUITABLE RELIEF, AND  
STATUTORY PENALTIES (ERISA)**

**INTRODUCTION**

1  
2 1. After Defendant Elon Musk definitively agreed to buy Twitter, Inc. for \$44 billion,  
3 the stock market declined, and Musk tried to back out of the deal, despite having no legal or  
4 contractual justification to do so. Twitter sued Musk to enforce the deal, and over months of  
5 intensive litigation, each of Musk’s baseless excuses was stripped away. On the eve of trial, Musk  
6 capitulated, and the deal closed at its original price.

7 2. Defeated, but still determined to avoid his obligations, Musk then tried to recover  
8 some of what he paid by repeatedly refusing to honor other clear contractual commitments. Under  
9 Musk’s control, Twitter has become a scofflaw, stiffing employees, landlords, vendors, and  
10 others. Musk doesn’t pay his bills, believes the rules don’t apply to him, and uses his wealth and  
11 power to run roughshod over anyone who disagrees with him.

12 3. Musk has a special ire toward Plaintiffs Parag Agrawal, Ned Segal, Vijaya Gadde,  
13 and Sean Edgett. As the former Chief Executive Officer, Chief Financial Officer, Chief Legal  
14 Officer, and General Counsel, respectively, of Twitter, they appropriately and vigorously  
15 represented the interests of Twitter’s public shareholders throughout Musk’s wrongful attempt to  
16 renege on the deal. For their efforts, Musk vowed a lifetime of revenge.

17 4. As he was closing the acquisition, Musk told his official biographer, Walter  
18 Isaacson, that he would “hunt every single one of” Twitter’s executives and directors “till the day  
19 they die.”<sup>1</sup> These statements were not the mere rantings of a self-centered billionaire surrounded  
20 by enablers unwilling to confront him with the legal consequences of his own choices. Musk  
21 bragged to Isaacson specifically how he planned to cheat Twitter’s executives out of their  
22 severance benefits in order to save himself \$200 million. Isaacson described the scene as follows:

23 The closing of the Twitter deal had been scheduled for that Friday. An  
24 orderly transition had been scripted for the opening of the stock market  
25 that morning. The money would transfer, the stock would be delisted,  
26 and Musk would be in control. That would permit Agrawal and his top  
27 Twitter deputies to collect severance and have their stock options vest.

28 But Musk decided that he did not want that. . . . He would force a fast  
close that night. If his lawyers and bankers timed everything right, he

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<sup>1</sup> Walter Isaacson, *Elon Musk* 493 (Simon & Schuster, 2023) (quoting Musk).

1 could fire Agrawal and other top Twitter executives “for cause” before  
2 their stock options could vest. . . .

3 “There’s a 200-million differential in the cookie jar between closing  
4 tonight and doing it tomorrow morning,” he told me late Thursday  
5 afternoon in the war room as the plan unfolded.

6 At 4:12 p.m. Pacific time, once they had confirmation that the money  
7 had transferred, Musk pulled the trigger to close the deal. At precisely  
8 that moment, his assistant delivered letters of dismissal to Agrawal and  
9 his top three officers. Six minutes later, Musk’s top security officer  
10 came down to the second-floor conference room to say that all had  
11 been “exited” from the building and their access to email cut off.

12 The instant email cutoff was part of the plan. Agrawal had his letter of  
13 resignation, citing the change of control, ready to send. But when his  
14 Twitter email was cut off, it took him a few minutes to get the  
15 document into a Gmail message. By that point, he had already been  
16 fired by Musk.

17 “He tried to resign,” Musk said.

18 “But we beat him,” his gunslinging lawyer Alex Spiro replied.<sup>2</sup>

19 5. In fact, Musk and Spiro had not beaten anyone at anything. If anyone around Musk  
20 had been willing to tell him the truth, he would have learned that his scheme to deny Plaintiffs  
21 their contractual severance payments was a pointless effort that would not withstand legal  
22 scrutiny. ERISA protects Plaintiffs’ severance benefits. Under Twitter’s severance plans, if an  
23 eligible executive is terminated without cause following a change in control, they are entitled to  
24 severance benefits. Likewise, if an eligible executive resigns due to a change in their reporting  
25 structure, they are entitled to severance benefits. “Cause” under the severance plans is limited to  
26 extremely narrow circumstances, such as being convicted of a felony or committing “gross  
27 negligence” or “willful misconduct.” “Cause” is not “Board-approved business decisions that  
28 Musk dislikes” from the time before he owned the Company.

6. Severance plans are an important feature of modern corporate governance, aligning  
the economic interests of executives and shareholders in the face of a corporate takeover,  
especially one as contentious as Musk’s acquisition of Twitter. Severance plans encourage

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<sup>2</sup> Walter Isaacson, *The Real Story of Musk’s Twitter Takeover*, Wall St. J. (Aug. 31, 2023),  
<https://www.wsj.com/tech/elon-musk-x-twitter-takeover-5f553fa> (quoting Musk and Spiro);  
*accord Elon Musk* 512-13.

1 everyone to work toward getting the deal done. For example, without severance plans, executives  
2 could have a financial incentive to oppose an acquisition even when that acquisition is in the best  
3 interests of shareholders. Executives could also have a professional incentive to leave the  
4 company before the closing, which could jeopardize the company's ability to close the transaction  
5 and the public shareholders' ability to get the control premium provided by the acquisition.  
6 Executives' severance benefits are designed to be legally resilient, as they must be, because  
7 severance payments are necessarily made by the acquired entity only after it passes into the hands  
8 of its acquiror. If executives could not count on getting their contractual severance, they would  
9 have no incentive to stay through the acquisition to run the business, oversee the acquisition  
10 process, and make sure the shareholders get paid.

11 7. Because Musk decided he didn't want to pay Plaintiffs' severance benefits, he  
12 simply fired them without reason, then made up fake cause and appointed employees of his  
13 various companies to uphold his decision. He claimed in his termination letters that each Plaintiff  
14 committed "gross negligence" and "willful misconduct" without citing a single fact in support of  
15 this claim. Musk's employees then spent a year trying to come up with facts to support his pre-  
16 ordained conclusion, to no avail. Nonetheless, Defendants have persisted in their benefits denials  
17 over the past year, wrongfully withholding documents, needlessly prolonging any decisions, and  
18 generally playing out the ERISA administrative process for all it's worth. This is the Musk  
19 playbook: to keep the money he owes other people, and force them to sue him. Even in defeat,  
20 Musk can impose delay, hassle, and expense on others less able to afford it. Musk's conduct gives  
21 rise to claims for wrongful denial of benefits under ERISA Section 502(a)(1)(B); unlawful  
22 discharge to interfere with rights to benefits under ERISA Section 510; and failure to timely  
23 provide required materials under ERISA Section 502(c).

24 8. Defendants have used the ERISA administrative process to advance the justification  
25 that Plaintiffs engaged in "gross negligence" and "willful misconduct" by carrying out the  
26 directives of Twitter's Board, primarily by paying Board-approved success fees to the law firms  
27 that represented Twitter in negotiating, litigating, and closing the acquisition in the face of Musk's  
28 stubborn and unjustified resistance. Although success fees are common following a successful

1 takeover defense, Defendants take the position that these particular payments were wrongful  
2 because Musk objects to them. Defendants also take the position that the payment decisions are  
3 not entitled to the benefits of the business judgment rule, which protects discretionary decisions  
4 from precisely this sort of post hoc attack. Defendants have no explanation for why Twitter’s  
5 *executives* can be denied their ERISA benefits because Twitter’s *Board* both authorized the  
6 attorneys’ fees payments and directed the Company to make the payments. The same is true for  
7 Defendants’ other manufactured assertions of “cause” regarding employee retention bonuses,  
8 purported corporate waste, and severance plan participants. All the decisions that Defendants now  
9 challenge were approved and directed by Twitter’s Board at a time when the Board, not Musk,  
10 oversaw the Company. Defendants have issued claims denials that overlook these obvious  
11 problems and ignore that the terminations were pretextual.

12 9. This is not an ERISA case where a professional administrator, fulfilling its  
13 obligations as a plan fiduciary, made objective benefits decisions according to a recognized  
14 framework. In this instance, Musk first made the decision to deny all benefits, and only thereafter  
15 brought in employees of his family office and his other companies to act out the ERISA  
16 administrative process. Although the Twitter severance plans provide for deference to the  
17 discretionary decisions of a properly-appointed and properly-functioning plan administrator, no  
18 deference is due here. In this case, the Court reviews the benefits denials de novo. Because those  
19 benefits denials cannot withstand de novo or even deferential review, the Court should order the  
20 payment of Plaintiffs’ ERISA benefits claims and award attorneys’ fees and interest.

### 21 PARTIES

22 10. Plaintiff Parag Agrawal is a resident of California. Agrawal worked at Twitter from  
23 2011 until 2022. Agrawal was Twitter’s Chief Executive Officer from November 29, 2021 until  
24 October 27, 2022, having taken over that role from Jack Dorsey, one of Twitter’s founders. At all  
25 relevant times, Agrawal was a participant, as defined by ERISA Section 3(7), 29 U.S.C.  
26 § 1002(7), in the Twitter, Inc. Change of Control and Involuntary Termination Protection Policy,  
27 as amended and restated effective August 8, 2014 (the “2014 Plan”).<sup>3</sup>

28 <sup>3</sup> A copy of the 2014 Plan is attached hereto as Exhibit A.

1           11. Plaintiff Ned Segal is a resident of California. Segal was Twitter’s Chief Financial  
2 Officer from August 25, 2017 until October 27, 2022. At all relevant times, Segal was a  
3 participant, as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7), in the 2014 Plan.

4           12. Plaintiff Vijaya Gadde is a resident of California. Gadde is a lawyer, and worked at  
5 Twitter from 2011 until October 27, 2022. She was General Counsel from August 2013 until her  
6 promotion to Chief Legal Officer in February 2018. At all relevant times, Gadde was a  
7 participant, as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7), in the 2014 Plan.

8           13. Plaintiff Sean Edgett is a resident of California. Edgett is a lawyer who worked in  
9 Twitter’s legal department from 2012 until October 27, 2022. From February 2018 until his  
10 termination, Edgett was Twitter’s General Counsel. At all relevant times, Edgett was a  
11 participant, as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7), in the Twitter, Inc. Change of  
12 Control Severance and Involuntary Termination Protection Policy, as amended and restated,  
13 effective February 22, 2017 (the “2017 Plan”).<sup>4</sup>

14           14. Defendant Elon Musk is the Chairman, Sole Director, Chief Technology Officer,  
15 and controlling shareholder of X Corp., the entity into which he merged Twitter. At times relevant  
16 to this Complaint, Musk also was and/or is the CEO of X Corp. and the Administrator<sup>5</sup> of the  
17 Plans.

18           15. Defendant X Corp. is a Nevada corporation with its headquarters in San Francisco,  
19 California and is the successor in interest to Twitter, Inc., a Delaware corporation that was  
20 headquartered in San Francisco, California.<sup>6</sup> X Corp. succeeded to all of Twitter’s obligations  
21 upon the October 27, 2022 closing of the merger transaction, including Twitter’s obligations  
22 under the Plans. X Corp. is the Plan Sponsor and funding source of the Plans.

23           16. Upon Musk’s acquisition of Twitter, there was and continues to be such unity of  
24 interest and ownership between Twitter and Musk that there is no longer a separate corporate  
25 status among Musk, Twitter, and Twitter’s successor X Corp. Musk controls Twitter’s decision-

26 <sup>4</sup> A copy of the 2017 Plan is attached hereto as Exhibit B. The 2014 Plan and the 2017 Plan are  
hereafter collectively referred to as the “Plans” unless context dictates otherwise.

27 <sup>5</sup> Unless otherwise stated, discussed, or defined herein, all capitalized terms have the meaning  
ascribed to them in the Plans.

28 <sup>6</sup> X Corp. and Twitter, Inc. are hereafter referred to as “Twitter,” “X Corp.,” or the “Company.”

1 making and operations and disregards corporate formalities in conducting Twitter’s operations  
2 subject to his personal whims or based on polls conducted from his personal Twitter account.

3 17. Musk often employs and relies on Excession, LLC (“Excession”), his personal  
4 family office, and Excession employees to conduct X Corp. business. Musk also relies on other  
5 personal friends, family members, and longtime business associates and investors to provide  
6 services to Twitter. On information and belief, Musk brought in multiple family members to work  
7 at Twitter.

8 18. Musk has commingled assets of his other companies with Twitter. On information  
9 and belief, Musk has allowed Twitter’s assets to be used by his other companies, including Tesla  
10 and xAI. Additionally, Musk regularly uses employees of his other companies to conduct Twitter  
11 business and has granted them access to Twitter’s systems and records. For instance, as the  
12 Delaware Court of Chancery recently found, Musk enlisted approximately fifty Tesla engineers to  
13 provide services to Twitter immediately following the acquisition, none of whom were hired,  
14 retained, or paid by Twitter for services they provided to Twitter. xAI employees also reportedly  
15 have been working out of Twitter’s headquarters.

16 19. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 20. It would be inequitable and unjust to prevent Plaintiffs from recovering benefits and  
21 other remedies from Musk, who is personally responsible for and will individually benefit from  
22 the acts of X Corp.

23 21. Defendants Twitter, Inc. Change of Control and Involuntary Termination Protection  
24 Policy, as amended and restated effective August 8, 2014 (the 2014 Plan), and Twitter, Inc.  
25 Change of Control Severance and Involuntary Termination Protection Policy, as amended and  
26 restated, effective February 22, 2017 (the 2017 Plan) were, at all relevant times, employee welfare  
27 benefit plans within the meaning of ERISA Section 3(1), 29 U.S.C. § 1002(1).  
28



1           27. A large portion of an executive’s compensation is typically provided in the form of  
2 restricted stock units that vest over time. In the normal course, these stock awards only have value  
3 if the executive remains at the company until they vest. When a change of control occurs, the new  
4 owners of the company often decide to replace the company’s prior management. Accordingly,  
5 most public companies provide their executives with severance benefits that include the value of  
6 these unvested stock awards, as well as their salary and other benefits for a defined period of time,  
7 if they are terminated or constructively terminated following a change in control.

8           28. Long before Musk’s acquisition, Twitter, like many public companies, adopted  
9 severance plans that were intended to provide precisely this sort of protection to its senior  
10 executives to ensure that their interests were aligned with those of the Company’s shareholders. In  
11 the case of a contentious situation such as Twitter’s sale to Musk, this alignment is especially  
12 important to ensure that the most senior leaders of the Company support and oversee the involved  
13 and uncertain acquisition process, while continuing to run the Company’s business throughout  
14 this period. This maximizes the likelihood that all closing conditions will be satisfied so the deal  
15 goes through and the public shareholders get paid, while also helping the Company continue as a  
16 successful stand-alone business in case the deal ultimately does not close.

17           29. Twitter’s severance plans provided its senior executives with severance benefits  
18 equal to one year’s salary plus unvested stock awards valued at the acquisition price in the event  
19 their employment was negatively affected by a change in control.

20           30. These provisions were well known and disclosed to Twitter’s public shareholders –  
21 and Musk – before the acquisition. Indeed, Twitter’s proxy statement identified the specific  
22 amounts that would become payable by Twitter to its executive officers if they were involuntarily  
23 terminated (including if they left on their own for good reason) following the acquisition.  
24 Twitter’s public shareholders voted overwhelmingly to approve these change-of-control  
25 provisions and payments.

26           31. The severance plans were not intended to be used by new management to deprive  
27 outgoing executives of their promised compensation. Instead, they were designed to ensure that  
28 the executives’ interests were aligned with the shareholders’ best interests, by incentivizing the

1 executives to remain at the Company and ensure the success of the business and the acquisition,  
2 even when it was clear that they were not part of Musk’s plans for post-acquisition Twitter.

3 32. Twitter adopted two severance plans that are relevant here: one that covered the  
4 Company’s most senior officers (the 2014 Plan) and another that covered other key executives  
5 (the 2017 Plan).

6 **B. The 2014 Plan (Plaintiffs Agrawal, Segal, and Gadde)**

7 33. Twitter adopted the 2014 Plan “to provide certain protections to a select group of  
8 key Twitter employees if their employment is negatively affected by a change on control of  
9 Twitter.” Ex. A at 1. The Plan states that it is governed by ERISA.

10 34. The 2014 Plan provides that a participant is entitled to benefits if three conditions  
11 are satisfied: (1) they are an Eligible Employee, (2) their employment ended during the Change of  
12 Control Period, and (3) their employment ended as a result of an Involuntary Termination. If a  
13 participant meets these conditions, the 2014 Plan declares that their employment ended through a  
14 “COC Qualified Termination,” and they are eligible to receive “the applicable Equity Vesting,  
15 Cash Severance and COBRA Benefit described herein and specified on [their] Participation  
16 Agreement.” *Id.*

17 35. The 2014 Plan provides that an Involuntary Termination can occur in either of two  
18 ways: (1) the employer terminates the employee without Cause; or (2) the employee has “Good  
19 Reason” to terminate their employment due to one of several conditions occurring, such as no  
20 longer reporting directly to the board of directors or chief executive officer of a publicly traded  
21 company.

22 36. Agrawal, Segal, and Gadde meet all conditions for protection under the 2014 Plan,  
23 but as explained below, Twitter has created a frivolous dispute about whether their terminations  
24 were Involuntary Terminations.

25 **C. The 2017 Plan (Plaintiff Edgett)**

26 37. The 2017 Plan provides protections to additional senior employees “if their  
27 employment is negatively affected by a change on control of Twitter.” Ex. B at 1. It likewise is  
28 “designed to be an ‘employee welfare benefit plan,’ as defined in Section 3(1) of ERISA.” *Id.*

1           38. Like the 2014 Plan, the 2017 Plan provides that a participant is entitled to benefits if  
2 three conditions are satisfied: (1) they are an Eligible Employee, (2) their employment ended  
3 during the Change of Control Period, and (3) their employment ended as a result of an  
4 Involuntary Termination. If a participant meets these conditions, the 2017 Plan declares that their  
5 employment ended through a “COC Qualified Termination,” and they are eligible to receive “the  
6 applicable Equity Vesting, Cash Severance and COBRA Benefit described herein and specified  
7 on [their] Participation Agreement.” *Id.* The definitions of these terms are the same as in the 2014  
8 Plan.

9           39. Edgett is a participant in the 2017 Plan and meets all conditions for protection under  
10 the 2017 Plan. However, as explained below, Twitter created a frivolous dispute about whether  
11 his termination was an Involuntary Termination.

12           **D. Exhaustion of Administrative Remedies**

13           40. Both Plans provide that, before a participant can file a lawsuit, they must first  
14 follow the Plans’ administrative claim process. All Plaintiffs exhausted their administrative  
15 remedies under the Plans, although, as explained below, Musk deprived Plaintiffs of any  
16 meaningful review in the administrative process.

17           41. The administrative process generally requires two steps. First, a participant is  
18 required to submit a claim for benefits. In response, the Plan Administrator is supposed to  
19 determine in a neutral fashion whether the claim is approved or denied. Second, if the claim is  
20 denied, participants are permitted to submit an appeal, although the Plans do not say who is to  
21 rule on those appeals. If the appeal is denied, then a participant can file a lawsuit.

22           42. All Plaintiffs followed this administrative process, had their initial claims denied,  
23 and then had their appeals denied. To understand why their claims (including their appeals) were  
24 wrongfully denied, it is helpful to understand Musk’s October 2022 acquisition of Twitter,  
25 because the purported bases for denying the claims are mainly related to the acquisition.  
26  
27  
28

1 **II. MUSK’S ACQUISITION OF TWITTER**

2 **A. Musk’s Agreement to Purchase Twitter**

3 43. Starting on January 31, 2022, Musk began purchasing Twitter stock. By March 14,  
4 2022, he had secretly accumulated a substantial position – about 5% of the Company’s  
5 outstanding shares. This 5% threshold is significant, because the Securities Exchange Act of 1934  
6 requires purchasers of more than 5% of a public company’s stock to file a public report disclosing  
7 their ownership amount and whether their investment is “active” or “passive.” Apparently  
8 concluding that mandatory disclosure obligations do not apply to him, Musk did not file the  
9 required report. Instead Musk kept buying Twitter stock without revealing his ownership stake or  
10 intentions. On April 4, 2022, when Musk finally disclosed that he held 9.2% of Twitter’s stock,  
11 Twitter’s share price rose 27%. According to published reports, Musk saved himself more than  
12 \$140 million by wrongfully delaying his mandatory disclosure. Moreover, when he did file his  
13 mandatory disclosure, he concealed his true intentions. Musk falsely claimed that he was a  
14 “passive” investor even as he was negotiating for a seat on Twitter’s Board of Directors.

15 44. On April 5, 2022, Musk initially accepted an offer to join Twitter’s Board. On April  
16 9, 2022, the day his appointment to the Board was to become effective, Musk notified the  
17 Company that he would not be joining the Board but instead would be making an offer to acquire  
18 the Company.

19 45. On April 13, 2022, Musk offered to purchase Twitter at a price of \$54.20 per share,  
20 a 38% premium over the stock’s closing price on the day before his investment in Twitter was  
21 disclosed.

22 46. On April 14, 2022, the Board established a Transactions Committee of the Twitter  
23 Board, known as the Transactions Committee, composed of three highly qualified independent  
24 directors, “[t]o assist the Twitter Board in its evaluation and negotiation of Musk’s acquisition  
25 proposal and consideration of other strategic alternatives and to provide additional feedback and  
26 guidance to members of Twitter management.” The full Board appointed the Chair of the Board,  
27 the Chair of the Audit Committee, and the Chair of the Nominating and Corporate Governance  
28 Committee as the members of the Transactions Committee.

1           47. In April 2022, the Board approved the retention of the law firms Wilson Sonsini  
2 Goodrich & Rosati P.C. (“Wilson Sonsini”) and Simpson Thacher & Bartlett LLP (“Simpson  
3 Thacher”) to represent Twitter and the Board in the transaction. The Board authorized the  
4 executive officers of the Company to ██████████ of those firms’ expenses and fees, as well  
5 as any other professional fees incurred by the Company in connection with the negotiation,  
6 execution, and performance of the Merger Agreement and related matters.

7           48. On April 25, 2022, Twitter, Musk, and Musk’s wholly-owned entities X Holdings I,  
8 Inc. and X Holdings II, Inc. entered into the Merger Agreement. Musk, through X Holdings I, Inc.  
9 and X Holdings II, Inc., agreed to buy Twitter for \$54.20 per share in cash, for a total of \$44  
10 billion, with no financing contingencies and no due diligence conditions, and with Musk bearing  
11 the risk of any downturn in the market.

12           **B. After Multiple Attempts to Back Out of the Deal, Musk Was Forced to**  
13           **Purchase Twitter Through the Efforts of Twitter’s Board, Officers, and**  
14           **Outside Counsel.**

15           49. Shortly after the ink was dry on the Merger Agreement, the stock market began to  
16 decline and Musk changed his mind about buying Twitter. For the next five months, Musk tried  
17 everything he could to create an excuse to back out of the deal.

18           50. On May 13, 2022, to the surprise of Twitter’s leadership and shareholders, Musk  
19 tweeted that the deal was “temporarily on hold pending details supporting calculation that  
20 spam/fake accounts do indeed represent less than 5% of users.” Musk’s business manager and  
21 lawyer “desperately urged him to walk back the declaration,” telling him that it was “legally  
22 perilous for him to be announcing his desire” to “wriggle out of the deal.”<sup>7</sup> But in the weeks that  
23 followed, Musk and his team began to manufacture a false narrative about Twitter’s site integrity,  
24 and specifically the number of “spam bots” on the platform. Then, on June 6, 2022, Musk,  
25 through his lawyer Mike Ringler of Skadden, Arps, Slate, Meagher & Flom LLP (“Skadden”),  
26 sent a letter to Gadde stating that Musk had the “right not to consummate” his acquisition of  
27 Twitter and a “right to terminate the Merger Agreement.”

28           <sup>7</sup> *Elon Musk* 464.

1           51. When it became apparent that Musk was trying to renege on the deal, Twitter  
2 recognized that it might need to file a lawsuit to enforce the deal and protect its shareholders' best  
3 interests. Twitter searched for and interviewed law firms. In June 2022, after interviewing several  
4 prominent law firms, the Company retained Wachtell Lipton Rosen & Katz ("Wachtell"), one of  
5 the nation's most skilled firms in corporate deal litigation. [REDACTED]

6 [REDACTED] When Wachtell was retained, Twitter and  
7 Wachtell contemplated that Wachtell's fees would ultimately depend on the success that Wachtell  
8 achieved. It was impossible to know up front whether there would even need to be litigation, or  
9 how involved or successful the litigation would be. Thus, Twitter and Wachtell agreed that  
10 Twitter would consider a success fee payment to Wachtell if it achieved a favorable result for the  
11 Company, with the fact and amount of any fee to be determined at the conclusion of the dispute.

12           52. On July 8, 2022, Musk delivered a notice to Twitter improperly purporting to  
13 terminate the Merger Agreement. Within days of that notice, Twitter filed a lawsuit against Musk  
14 in the Delaware Court of Chancery seeking to force him to proceed with the deal (the "Merger  
15 Litigation").

16           53. Musk was represented in the Merger Litigation by several law firms, including  
17 Skadden and Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel").

18           54. The Merger Litigation, which was described in one academic article as the "trial of  
19 the century" because of the enormous stakes and the prominent people involved, was litigated on  
20 an expedited basis and was extremely hard fought, fast paced, time consuming, and all  
21 encompassing. In the 126 days between the filing of the initial complaint and the case's dismissal,  
22 there were 1,569 docket entries, 101 attorneys made formal appearances, 190 subpoenas were  
23 issued, at least 47 depositions were taken, and the parties made at least 22 motions. Musk's legal  
24 team asserted myriad, ever-evolving factual and legal reasons for voiding the deal. They served  
25 exceptionally broad discovery requests, seeking to require Twitter to produce "trillions upon  
26 trillions of data points reflecting all of the data Twitter might possibly store for each of the  
27 approximately 200 million accounts included in its mDAU [monetizable daily active users] count  
28

1 every day for nearly three years.”<sup>8</sup> The court held that Musk’s data requests were so “absurdly  
2 broad” that “no one in their right mind” could even undertake to quantify the burden of  
3 responding.<sup>9</sup>

4 55. The Company ultimately prevailed entirely. After several months of intensive,  
5 round-the-clock litigation, just days before the trial date, and on the eve of Musk’s deposition,  
6 Musk capitulated: he agreed to close the deal on its original terms, without any reduction in the  
7 purchase price.

8 56. The merger transaction closed on October 27, 2022. Twitter received 100% of the  
9 relief sought in the Merger Litigation, requiring Musk to purchase the Company at the originally  
10 agreed purchase price of \$44 billion. In other words, the litigation was a complete success for  
11 Twitter and its public shareholders.

12 57. Closing the deal on the original terms of the Merger Agreement was a remarkable  
13 result for the Company’s shareholders. This is particularly true given that the most common  
14 outcome by far in deals challenged by litigation is that the transaction is either terminated or  
15 completed at a reduced price. Even Twitter’s stockholders did not expect the deal to close at the  
16 \$54.20 price, as reflected by Twitter’s much lower stock price during the summer and fall of  
17 2022. The collective economic benefit to Twitter shareholders of closing the deal at \$54.20 per  
18 share was at least \$11.4 billion – calculated as the difference between \$54.20 and the price of  
19 Twitter shares on April 1, 2024, the last full trading day before Musk’s disclosure that he had  
20 purchased more than a 9% stake in the Company.

21 58. Musk admits that he closed the deal only because he was legally obligated to do so  
22 and his lawyers told him that they would lose at trial. On April 11, 2023, Musk gave an interview  
23 to BBC reporter James Clayton on Twitter Spaces. In the interview, Musk stated that he  
24 surrendered in the litigation and went forward with the Merger Agreement because his lawyers  
25 advised him that a court would eventually order him to close. Musk’s biographer similarly writes  
26

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27 <sup>8</sup> Letter Decision Resolving Defs.’ Second Discovery Motion at 2-3, *Twitter v. Musk*, Case No.  
2022-0613-KSJM, Dkt. 632 (Del. Ch. Aug. 25, 2022).

28 <sup>9</sup> *Id.*

1 that Musk’s “lawyers finally convinced him at the end of September that he would lose the case if  
2 they took it to trial.”<sup>10</sup>

3 **III. MUSK’S MANUFACTURED TERMINATIONS OF PLAINTIFFS**

4 59. In the days leading up to the closing, Musk was aware that Plaintiffs and several  
5 other executives would be entitled to payments under the two Plans totaling around \$200 million.  
6 Musk had no intention of paying those amounts because he was furious that Twitter’s Board and  
7 executives had defeated him and forced him to close the deal.

8 60. As a result, Musk talked with his lawyer, Alex Spiro of Quinn Emanuel, about how  
9 to avoid making the payments owed under the Plans. He hatched a plan to accelerate the closing,  
10 manufacture fake “cause” for Plaintiffs’ terminations, cut off Plaintiffs’ email access, and send  
11 Plaintiffs termination letters before they could resign and claim their benefits.

12 61. Musk then put this plan into action. On October 27, 2022, at approximately 3:50  
13 p.m. Pacific Time, Gadde released her signature on the certificate of merger to complete the  
14 transaction. Minutes later, at about 4:00 p.m. Pacific Time and before the merger became  
15 effective, Plaintiffs each received emails containing termination letters signed by Musk on behalf  
16 of Twitter, sent by an employee of Musk’s family office from her Excession email account.  
17 Edgett, who was present at Twitter headquarters at the time of closing, was also informed of his  
18 termination by Musk’s security team, who had been instructed to escort him off the premises.

19 62. In the termination letters, Musk falsely asserted that Plaintiffs were being  
20 terminated “for cause,” which he believed would allow him to deprive Plaintiffs of receiving  
21 benefits under the Plans.

22 63. Plaintiffs’ termination letters specifically mentioned the Plans and made clear that  
23 the purpose of the letters was to deprive Plaintiffs of their severance benefits. Each Plaintiff  
24 received a letter claiming that they were being terminated for “cause” under subsection (e) in the  
25 Plans: “gross negligence or willful misconduct in the performance of [their] duties.” The letters to  
26 Agrawal, Gadde, and Edgett also claimed that they were being terminated for “cause” under  
27 subsection (g): “failure to cooperate in good faith with a governmental or internal investigation of

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28 <sup>10</sup> *Elon Musk* 493.

1 the Company or its directors, officers or employees, if the Company has requested [their]  
2 cooperation.” The letters did not identify any facts purportedly supporting a finding under either  
3 subsection (e) or (g). Indeed, the letters provided no factual basis for Plaintiffs’ terminations at all.  
4 Musk planned to manufacture cause later, but believed it was important to act before Plaintiffs  
5 had a chance to resign.

6 64. Musk was wrong about timing, but right that Plaintiffs Agrawal, Segal, and Gadde  
7 could resign and still receive benefits under the Plans as a result of the change in control. The  
8 Plans contained standard “Good Reason” provisions that allowed Plaintiffs to treat certain  
9 conditions as a constructive termination that triggered a right to benefits. One of those conditions  
10 occurred because Twitter became a privately-held company, and thus Agrawal no longer reported  
11 to the board of directors of a publicly traded entity, and Segal and Gadde no longer reported to the  
12 CEO of a publicly traded entity.

13 65. Therefore, on the day of closing, Agrawal, Segal, and Gadde sent letters to the  
14 Company indicating that their employment circumstances constituted Good Reason within the  
15 meaning of the 2014 Plan (the “Good Reason letters”). The fact that Musk purported to fire them  
16 for cause before their letters arrived has no bearing on the reality that Good Reason existed.  
17 Twitter had 30 days from the date of their Good Reason letters to cure the circumstances  
18 identified in the Good Reason letters, but did not do so.

19 **IV. PLAINTIFFS SUBMIT CLAIMS FOR BENEFITS**

20 66. On November 29, 2022, each Plaintiff submitted a Claim to the “Administrator” of  
21 the Plans requesting payment of the benefits to which they are entitled under the Plans, pursuant  
22 to the Plans’ Claims Procedure.

23 67. The Claims demonstrated that each Plaintiff is entitled to benefits because they  
24 satisfy the conditions of the applicable Plan: (1) they are an Eligible Employee; (2) their  
25 employment ended during the Change of Control Period; and (3) their employment ended as a  
26 result of an Involuntary Termination.

27 68. Plaintiffs were not able to respond to any claim of “cause” for their terminations  
28 because their termination letters set forth no factual basis supporting the assertion that there was

1 cause under subsection (e) (“gross negligence or willful misconduct”) or subsection (g) (“failure  
2 to cooperate in good faith with a governmental or internal investigation”). As a result, Plaintiffs  
3 represented that they knew of no basis for a finding of gross negligence or willful misconduct or  
4 failure to cooperate with any investigation. As the Claims noted, the Company’s assertion of  
5 cause without any factual basis was a transparent attempt to prevent Plaintiffs from attaining the  
6 benefits to which they are entitled under the Plans, in violation of Section 510 of ERISA, 29  
7 U.S.C. § 1140.

8 69. Agrawal, Segal, and Gadde’s Claims also explained that they incurred an  
9 Involuntary Termination under the 2014 Plan for the additional reason that their employment  
10 circumstances constituted Good Reason within the meaning of the Plan. The Company had 30  
11 days from the date of their Good Reason letters to cure the circumstances identified in those  
12 letters, but did not do so. If the Company had not already terminated Plaintiffs, the Plan would  
13 have required them to submit subsequent resignation letters. In light of their terminations, they  
14 were not holding any positions with the Company from which they could resign. Nevertheless, to  
15 the extent a formal resignation letter was requested, Plaintiffs represented that their Claims served  
16 as resignation letters. Thus, for this additional reason, Agrawal, Segal, and Gadde incurred an  
17 Involuntary Termination within the meaning of the 2014 Plan.

18 **V. THE DENIALS OF PLAINTIFFS’ CLAIMS**

19 70. The Plans require that the Plan Administrator decide whether to approve Plaintiffs’  
20 Claims within 90 days, unless “special circumstances require an extension of time (up to 90  
21 days).” Exs. A & B at 6. The Plans further require that if a claim is denied, the claimant must be  
22 provided “a written notice explaining the specific reasons for the denial and referring to the  
23 provisions of the Policy on which the denial is based.” *Id.*

24 71. On February 16, 2023, almost 90 days after Plaintiffs submitted their Claims,  
25 Plaintiffs received a letter from Lindsay Chapman, who identified herself as working for Twitter’s  
26 Human Resources Department. Chapman’s letter stated that she had been appointed as the  
27 Administrator of the Plans and that she was granting herself a 90-day extension of time to respond  
28 to the Claims.



1           75. Because Musk’s termination letters had not provided any details about the factual  
2 basis for the claimed “cause” that existed, the appeal was the first time that Plaintiffs were able to  
3 present evidence to respond to Defendants’ newly-invented basis for cause.

4           76. Plaintiffs submitted a seventy-four page appeal and extensive evidence, including  
5 their declarations, other percipient witness declarations and letters, including from members of the  
6 Board and Transactions Committee, deposition testimony, documents, and an expert report by a  
7 distinguished corporate governance expert, showing that Plaintiffs did not commit gross  
8 negligence or willful misconduct and therefore are entitled to benefits under the Plans. Among  
9 other things, Plaintiffs showed that Chapman ignored the corporate governance principles that  
10 applied to Plaintiffs’ conduct as officers and executives of Twitter. They showed that the  
11 Company’s claimed reasons for terminating Plaintiffs are pretextual and insupportable, and that  
12 the Company cannot rely on these pretextual reasons to withhold Plaintiffs’ severance benefits.  
13 They also showed that, even on her own terms, Chapman’s decisions cannot be upheld.

14           77. Among other things, Plaintiffs demonstrated that the facts on which Chapman relied  
15 do not support a claim of wrongdoing by Plaintiffs in connection with the payment of attorneys’  
16 fees to the law firms, and submitted additional evidence that not only refuted her conclusion but  
17 that showed that her decision was arbitrary and capricious. The process for determining these fees  
18 was set by the Board, the ultimate fee amounts were decided by the Board, and the Board directed  
19 Plaintiffs to pay these fees.

20           78. Plaintiffs presented evidence showing that the Company followed a careful and  
21 robust process to ensure an appropriate decision as to the law firms’ fees. [REDACTED]  
22 [REDACTED]  
23 [REDACTED] Plaintiffs  
24 contributed to the process by expressing their own views about the fees and by confirming that the  
25 payments were made as directed by the Board. Plaintiffs met repeatedly with the Transactions  
26 Committee members about the fees, conducted and shared their due diligence about the fees, and  
27 provided fee information to the full Board.  
28

1           79. On the morning of October 27, 2022, the Company’s full Board met. [REDACTED]  
2 [REDACTED]  
3 [REDACTED] One of the directors  
4 noted that it was the largest stockholder value creation by a legal team that he had ever seen.  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] The full Board  
9 deliberated and decided to approve the fees.

10           80. [REDACTED]  
11 [REDACTED] Thus, Plaintiffs were not  
12 only authorized to make the payments, they were required to do so to comply with their fiduciary  
13 duties to the Company. This alone refutes any claim that Plaintiffs’ actions constitute gross  
14 negligence or willful misconduct.

15           81. [REDACTED]  
16 [REDACTED] If Musk felt that the attorneys’  
17 fees payments, or any other payments, were improper, his remedy was to seek to terminate the  
18 deal – not to withhold executives’ severance payments after the deal closed. Musk did not do this  
19 because he knew he would lose.

20           82. Musk chose to buy Twitter. He proposed and signed a Merger Agreement that did  
21 not give him the right to withdraw from the deal based on market conditions deteriorating, new  
22 learnings or theories about the Company after signing, disagreements with the Company’s  
23 business decisions, or simply changing his mind. The Merger Agreement both allowed and  
24 required Twitter to use commercially reasonable efforts to operate “in the ordinary course of  
25 business” until the acquisition closed.

26           83. Twitter’s Board and officers had full authority to run the Company pre-closing,  
27 subject only to the covenants in the Merger Agreement. Musk had no authority or remedy outside  
28 the confines of the Merger Agreement. If Musk thought that the covenants in the Merger

1 Agreement were violated, which they were not, his remedy was to refuse to complete the  
2 transaction. Instead, he chose to close the deal and thus represented that all closing conditions  
3 were met or waived.

4 84. Musk repeatedly tried to tell Twitter what to do before the closing, including asking  
5 Plaintiffs not to make payments to third parties in the days before the closing. However, Musk did  
6 not own the Company and had no right to control its operations or payments. The Board rightly  
7 decided what payments and other decisions to make, consistent with the terms of the Merger  
8 Agreement, based on the best interests of the Company and its shareholders, not Musk's whims,  
9 and Plaintiffs fully complied with the Board's directives.

10 85. As just one example of the deficiencies in Chapman's position, Chapman  
11 mischaracterized an email from a Board member to falsely claim that Plaintiffs "kept the Board in  
12 the dark on the legal fee issues." In connection with their appeal, Plaintiffs submitted a sworn  
13 declaration from that Board member which affirmed that the Board was kept fully apprised of the  
14 attorneys' fees discussions and approved those fees.

15 86. Plaintiffs also showed that the facts Chapman pointed to did not support a claim of  
16 wrongdoing in connection with the payment of employee retention bonuses, and submitted  
17 additional evidence refuting the claim. The retention bonuses were consistent with past practice,  
18 necessary to retain key employees during the turbulent and uncertain merger period, made under  
19 Twitter's preexisting policies approved by the Board's Compensation Committee, and permitted  
20 under the Merger Agreement. Indeed, Plaintiffs sought legal advice from the Company's outside  
21 counsel to ensure that the bonuses complied with the Merger Agreement.

22 87. Although Musk both created retention risk and opposed any effort to address it, the  
23 incumbent Board and officers had authority to award normal course retention bonuses, consistent  
24 with past practice, and did so. Indeed, the Merger Agreement required the Company to operate "in  
25 the ordinary course of business" and to "preserve substantially intact the material components of  
26 its current business operation." Preserving the material components of the "current business  
27 organization" necessarily required retaining key Twitter employees.

28

1           88. Plaintiffs also showed that the other facts Chapman cited did not support a claim  
2 that Plaintiffs committed gross negligence by causing corporate waste, and submitted additional  
3 evidence refuting the claim. Plaintiffs showed that the challenged expenditures were carried out  
4 pursuant to, and consistent with, the Board's strategy and budgetary plan, and are precisely the  
5 types of judgmental decisions protected by the business judgment rule. Plaintiffs also presented  
6 evidence showing that at all times through the closing, Plaintiffs acted as responsible stewards of  
7 Twitter's resources. While the Board directly determined the fees for [REDACTED]  
8 [REDACTED], Plaintiffs undertook to manage other expenses with other vendors, saving  
9 the Company [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 and in May 2022, Agrawal informed Twitter employees that the Company was pausing most  
14 hiring and further reducing operating expenses. Plaintiffs continued to focus on conserving costs  
15 throughout the litigation period, within the bounds of the Merger Agreement.

16           89. In short, there is no support for Defendants' manufactured, post hoc claim of gross  
17 negligence and willful misconduct set forth in the claims denials. At all times, Plaintiffs acted in  
18 good faith, and with due care, in what they believed to be Twitter's and its stockholders' best  
19 interests, under the directives and approvals of the Board.

20           90. Plaintiffs' management of the Company made Twitter extremely valuable, such that  
21 it was worth \$44 billion. In contrast, under Musk's leadership since the acquisition, Twitter's  
22 value has fallen precipitously. Musk admitted in March 2023 that Twitter's value had fallen to  
23 about \$20 billion. And by the end of May 2023, Fidelity, which owns an equity stake in Twitter,  
24 had lowered its valuation of the Company to \$15 billion, approximately a third of the Company's  
25 prior value when Plaintiffs held their leadership positions at the Company. By the end of 2023,  
26 Fidelity lowered its valuation of the Company even further, to about \$12.5 billion, approximately  
27 28% of the Company's prior value.  
28

1           91. The Board and officers fully complied with the Merger Agreement and acted in the  
2 best interests of Twitter and its shareholders. Musk cannot second-guess the judgment of a fully  
3 independent and operational board that approved and directed the actions that he now claims are  
4 the basis for “cause” to avoid paying Plaintiffs their contractual severance benefits.

5 **VII. THE DENIAL OF PLAINTIFFS’ ADMINISTRATIVE APPEALS**

6           92. The Plans require that any appeals of claims denials be ruled on within 60 days,  
7 unless “special circumstances” require an extension of time (up to 60 days). Exs. A & B at 6.

8           93. Predictably, on November 13, 2023, Plaintiffs received a letter from Chapman, on  
9 behalf of the committee, stating that the committee had granted itself a 60-day extension of time  
10 to rule on the appeal.

11           94. On January 12, 2024, four months after Plaintiffs submitted their appeal, Chapman  
12 sent Plaintiffs’ counsel a letter from the committee stating that the committee had decided to deny  
13 the appeal.

14           95. Unable to refute Plaintiffs’ showing that Chapman’s benefits denials were  
15 erroneous, the committee ignored much of Plaintiffs’ evidence, switched tacks yet again, and  
16 purported to rely on new, but equally insufficient, bases and materials to find cause for Plaintiffs’  
17 terminations, in violation of ERISA and the Plans. For instance, the committee purported to deny  
18 the appeal on an entirely new and incorrect basis which Plaintiffs never had the chance to address  
19 – that Plaintiffs purportedly committed gross negligence and wrongful misconduct because they  
20 “did not stop other executives from urging the Compensation Committee [of the Twitter Board] to  
21 add new participants to the Plan” in May 2022. Once again, Defendants wrongly sought to  
22 second-guess and hold Plaintiffs liable for the discretionary determinations of Twitter’s Board.

23           96. Defendants also presented a new declaration from Musk, in which [REDACTED]

24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 97. In addition, Defendants presented a new report from a purported legal services  
4 expert [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 98. Defendants' ever-changing theories of cause reflect the weakness of their position.  
9 They also show that, far from acting as a neutral arbiter, Defendants' objective throughout has  
10 been to try to find reasons to deny Plaintiffs their rightful severance payments.

11 99. With the denial of their appeal, Plaintiffs have fully exhausted any and all  
12 administrative remedies under the Plans.

13 100. In attempting to obtain payment of the benefits due to them under the Plans,  
14 Plaintiffs have been required to incur, and will continue to incur, attorneys' fees and costs which  
15 they are entitled to recover.

16 **VIII. DEFENDANTS TERMINATED PLAINTIFFS AND MANUFACTURED**  
17 **CAUSE FOR THE PURPOSE OF INTERFERING WITH THEIR ERISA**  
18 **RIGHTS.**

19 101. Defendants' purported termination of Plaintiffs "for cause" was a sham designed to  
20 deprive Plaintiffs of their severance benefits.

21 **A. Musk Admitted that He Terminated Plaintiffs for the Purpose of Interfering**  
22 **with Their Right to Benefits Under the ERISA Plans.**

23 102. Musk's own words show that he made up cause and terminated Plaintiffs to avoid  
24 paying them the benefits they are owed under the Plans. As quoted above, Musk admitted his plan  
25 to his biographer Isaacson as it was happening. Musk orchestrated the closing and termination  
26 plan as a pretext to cut off Plaintiffs' severance, exact vengeance, and save himself money. He  
27 terminated Plaintiffs and manufactured cause for the specific purpose of interfering with their  
28 right to benefits under the Plans.

1           **B. Musk Denied Plaintiffs Their Contractually-Entitled Benefits as Retaliation for**  
2           **the Company Enforcing the Merger Agreement.**

3           103. Musk was angry that, after multiple attempts to back out of the Twitter acquisition,  
4           Twitter had sued him and was forcing him to go through with the deal. He took his anger out on  
5           anyone involved with the Merger Litigation.

6           104. In September 2022, Musk had his lawyers repeatedly threaten Twitter’s Board. [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12           105. [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17           106. [REDACTED]

18 [REDACTED]  
19 [REDACTED]

20           107. Although Musk’s anger was directed broadly at the group that successfully  
21           represented Twitter on behalf of its public shareholders, Musk found an immediate outlet for this  
22           anger by wrongfully withholding Plaintiffs’ severance payments as the acquisition closed.

23           108. [REDACTED]

24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1           C.    **Musk Wanted Plaintiffs Fired Long Before They Paid the Law Firms' Fees in**  
2                   **October 2022, Confirming that the Board's Decision to Authorize Payment of**  
3                   **Those Fees Was Not the Reason for Their Termination.**

4           109. Musk wanted Plaintiffs fired long before the Board authorized payment of the law  
5           firms' fees in October 2022, showing that Defendants' manufactured, post hoc rationale is not the  
6           true reason for their termination.

7           110. As early as April 2022, shortly after signing the Merger Agreement, but before he  
8           owned the company, Musk wanted Agrawal to terminate Gadde. On or about April 27, 2022,  
9           Musk, Agrawal, and former Twitter CEO Jack Dorsey joined a FaceTime call. Agrawal's  
10          intention for the call was to discuss Musk's vision for Twitter, and how they could align so that  
11          Agrawal could lead with an awareness of that vision over the next few months prior to the  
12          closing, while shareholder and regulatory approval was pending. Musk had no such intention.  
13          Within minutes of the start of the call, Musk directed Agrawal to terminate Gadde immediately.  
14          When Agrawal refused, Musk gave him a day to comply, telling him to text Musk confirmation of  
15          her firing.

16          111. Agrawal said that he would take what Musk had asked under consideration, but as  
17          CEO, he made his own decisions. Musk became aggressive and angrily repeated his orders. When  
18          Agrawal refused to fire Gadde, Musk told him that "we can't work together" as a result.

19          112. Following the call, Musk texted Dorsey about his frustration over Agrawal's refusal  
20          to fire Gadde. Dorsey wrote, "at least it became clear that you can't work together [with  
21          Agrawal]. That was clarifying." Musk agreed, responding "Yeah."

22          113. On April 27, 2022, Musk also tweeted a meme about Twitter's alleged left-wing  
23          bias featuring Gadde's face.

24          114. Musk's attempt to have Gadde fired months before the closing not only  
25          demonstrates his pretextual reason for denying benefits, but was also illegal "gun jumping" under  
26          Section 7A of the Clayton Act, 15 U.S.C. § 18a.

27          115. Musk failed to provide any cause-related reason for his request that Agrawal  
28          terminate Gadde, but Musk had a history of publicly criticizing her. As Chief Legal Officer,  
29          Gadde led the Trust and Safety team, which made several content moderation decisions, approved

1 by the CEO, with which Musk publicly disagreed, including the removal of former President  
2 Donald Trump and the refusal to take down the @ElonJet Twitter account, which tracked the  
3 movements of Musk’s private plane using publicly available information.

4 116. [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 117. On April 4, 2022, Musk filed a Schedule 13G (a form that can be used only by  
14 passive investors who have no intent to influence a company), in which he publicly disclosed for  
15 the first time his ownership stake in Twitter. That same day, the SEC sent Musk a letter  
16 questioning both his failure to make an earlier disclosure of his holdings and his filing of a  
17 Schedule 13G rather than a Schedule 13D. The next day, Musk filed a Schedule 13D. [REDACTED]

18 [REDACTED]  
19 [REDACTED] In May  
20 2022, the SEC publicly confirmed it was investigating Musk, [REDACTED]

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED].  
24 118. On information and belief, Musk was so angry about a prior SEC investigation into  
25 his conduct that he tried to get his company’s outside counsel, Cooley, to fire one of its attorneys  
26 solely because that attorney previously worked on an SEC investigation into Musk’s conduct. On  
27 information and belief, when Cooley refused, Musk fired Cooley. Here, Musk took out his anger  
28

1 by trying to get Gadde fired in late April 2022, and then by pretextually terminating Gadde and  
2 the other Plaintiffs in October 2022 and refusing to pay their severance.

3 119. Musk simply disagreed with the business judgments Plaintiffs and the Board made  
4 about how to run Twitter. He spoke openly about his disagreement with their decisions and intent  
5 to terminate Plaintiffs. He had completely different plans for how to run the Company after the  
6 acquisition. He was angry that Plaintiffs and the Board made him go through with the deal and did  
7 not acquiesce to his demands for a lower price, and he desperately wanted to avoid his obligation  
8 to pay Plaintiffs' severance benefits. These reasons, which do not constitute Cause, are the real  
9 reasons he fired them, not Defendants' manufactured post hoc rationale.

10 **D. The Circumstances of Plaintiffs' Terminations Further Show that Defendants'**  
11 **Post Hoc Justifications Are Not the Reason Plaintiffs Were Fired.**

12 120. The details of Plaintiffs' terminations also belie that any cause existed and show  
13 that Defendants manufactured claims of cause in order to deny Plaintiffs severance.

14 121. Musk terminated Plaintiffs on October 27, 2022, effective immediately upon the  
15 closing, before he could have seen the documents that Defendants now claim demonstrate  
16 Plaintiffs' gross negligence and willful misconduct.

17 122. Moreover, Musk provided no factual basis for his terminations of Plaintiffs in their  
18 October 27, 2022 termination letters – because he had none. Musk knew the amounts of the  
19 attorneys' fees payments before the closing, but never mentioned the fees in his termination  
20 letters, showing that he only later decided to use that as a purported justification for the  
21 terminations.

22 123. The fact that the termination letters even mention the Plans only underscores that  
23 Musk's intention was to deprive Plaintiffs of their severance benefits. There was no reason for  
24 those letters to mention the Plans. If there had been a valid factual basis for cause, it would have  
25 been explained in the letters, and without reference to the Plans. Because the termination letters  
26 were specifically intended to deprive Plaintiffs of their severance benefits, the letters invoke the  
27 Plans without explaining any basis for cause.  
28

1           124. Defendants’ post hoc, manufactured approach to Plaintiffs’ purported “for cause”  
2 terminations is also apparent in the discrepancy between Plaintiffs’ termination letters and the  
3 denials of their benefits claims. The termination letters to Agrawal, Gadde, and Edgett all  
4 reference their purported failure to cooperate with an investigation as a basis for their termination  
5 (under subsection (g) of the Plans), yet no such grounds were ever advanced at any point during  
6 the administrative claim process. This omission shows that Musk made allegations first and only  
7 later searched for a basis to support those excuses for non-payment.

8           125. Moreover, in a separate lawsuit relating to Wachtell’s fees, X Corp. stated that it  
9 only learned of Plaintiffs’ alleged wrongdoing after an investigation conducted “following the  
10 closing of the merger.”<sup>12</sup> Thus, at the time Musk purportedly terminated Plaintiffs “for cause,” he  
11 admittedly had no cause. He did not know the facts that he now claims constitute cause – further  
12 confirming that all of his purported reasons for cause were a mere pretext to deprive Plaintiffs of  
13 their severance.

14           126. The timing of Defendants’ response to each of Plaintiffs’ Claims further reinforces  
15 this point. Plaintiffs’ claim letters were just three pages long. Even though the Plans gave the  
16 Administrator 90 days to rule on those claims, Defendants claimed that there were exceptional  
17 circumstances that required an additional 90 days to address. But even after spending six months  
18 investigating Plaintiffs’ conduct in an attempt to find a basis to claim wrongdoing, all Defendants  
19 could come up with was the meritless claim that Plaintiffs committed gross negligence and willful  
20 misconduct by paying attorneys’ fees that the Board expressly approved and directed be paid, the  
21 lion’s share of which was necessitated only by Musk’s improper refusal to close a transaction to  
22 which he was contractually bound.

23           **E. Musk’s Denial of Plaintiffs’ Benefits Is Part of a Pattern of Refusing to Pay**  
24           **Severance and Other Compensation to Eligible Employees.**

25           127. Musk’s refusal to pay Plaintiffs their benefits is part of a larger pattern of refusing  
26 to pay Twitter’s former employees the benefits and other compensation they are due.

27 \_\_\_\_\_  
28 <sup>12</sup> *X Corp. v. Wachtell*, No. CGC-23-607461, Complaint ¶ 768, Dkt. 1 (Cal. Super. Ct., S.F. Cty.,  
July 5, 2023).

1           128. On information and belief, none of Twitter’s former executives have received  
2 severance or other benefits following Musk’s acquisition of the Company. Ten former Twitter  
3 executives, including Plaintiffs, have submitted claims for benefits under the Plans, which have  
4 all been denied, all on the grounds that the executives purportedly were terminated for cause and  
5 therefore ineligible for benefits.

6           129. This pattern and practice of Defendants refusing to pay benefits to the Company’s  
7 former executives is further evidence that Defendants are manufacturing cause after the fact  
8 simply to avoid paying Plaintiffs what they are owed.

9           130. There are also thousands of non-executive former employees whom Musk  
10 terminated and is now refusing to pay severance and other benefits. They have sued in droves.  
11 The Company and Musk are facing numerous lawsuits and arbitrations brought by former  
12 employees that stem from the Company’s refusal to pay money owed in the aftermath of Musk’s  
13 acquisition.

14           **F. Musk’s Refusal to Pay Plaintiffs Their Severance Benefits Is Part of a Pattern**  
15           **and Practice of Refusing to Pay His Bills.**

16           131. Musk’s refusal to pay Plaintiffs is part of a larger pattern and practice of failing to  
17 comply with his payment obligations. His repeated failure to pay those to whom he owes money  
18 is well-documented and has been on full public display since his acquisition of Twitter.

19           132. The Company has faced a staggering number of lawsuits from its vendors and  
20 service providers across a range of industries, all seeking money they are owed for bills that Musk  
21 refuses to pay. These include lawsuits from software vendors, landlords, consultants, and office  
22 custodial workers, among many other groups. Consistent with the cavalier attitude he has  
23 demonstrated towards his financial obligations, Musk’s attitude in response to these mounting  
24 lawsuits has reportedly been to “let them sue.”

25           133. In addition, the Company refused or delayed payment for Plaintiffs’ attorneys’ fees  
26 incurred in connection with government investigations, congressional testimony, and private  
27 lawsuits arising from their work at Twitter – despite being obligated to pay these fees under the  
28 Company’s bylaws, indemnification agreements, and Delaware law. Only after Plaintiffs filed suit

1 in Delaware Chancery Court did X Corp. pay some of Plaintiffs' attorneys' fees. And only after  
2 the Court granted Plaintiffs' motion for summary judgment and ordered X Corp. to pay the fees  
3 did X Corp. pay the rest of the fees.

4 134. Musk's reputation for not paying his bills is so widespread that there was a website  
5 dedicated to tracking his non-payments since taking over Twitter:  
6 <https://www.plainsite.org/tags/twitter-vendor-nonpayment/>. Notably, Twitter suspended the  
7 Twitter accounts of PlainSite and its founder, Aaron Greenspan, on June 13, 2023.

8 135. It is no surprise, then, that when faced with the obligation to pay Plaintiffs the  
9 amounts owed to them under the Plans, Musk has done what he is known to do: simply refuse to  
10 pay.

11 **IX. DEFENDANTS' FAILURE TO PRODUCE DOCUMENTS AND OTHER**  
12 **ATTEMPTS TO DEPRIVE PLAINTIFFS OF A FULL AND FAIR**  
13 **OPPORTUNITY TO PRESENT THEIR CLAIMS**

14 136. From the beginning, Defendants X Corp., Musk, Chapman, Bjelde, and Batura have  
15 withheld documents and taken other actions designed to inhibit Plaintiffs' presentation of their  
16 claims. Defendants have sought at every opportunity to deprive Plaintiffs of a full and fair  
17 opportunity to present their claims by seeking to block their efforts to obtain information  
18 supporting those claims. As a result, Defendants have administered the Plans' claim procedures in  
19 a way that unduly inhibits and hampers the initiation or processing of a claim for benefits.

20 137. For instance, Defendants did not even produce the specific documents they  
21 identified as having reviewed in the course of making their benefits determinations. Defendants  
22 delayed producing all these documents, and entirely refused to produce some of the documents.

23 138. On May 26, 2023, Chapman issued a claim denial letter for each Plaintiff, denying  
24 each Plaintiff's Claim for benefits under the Plans. Each letter attaches an "Appendix A" that lists  
25 the documents purportedly reviewed in making the claim determination.

26 139. On May 30, 2023, Plaintiffs sent a letter requesting copies of all of those documents  
27 and other materials to which they are entitled under 29 C.F.R. § 2560.503-1(h)(2)(iii) and 29  
28 C.F.R. § 2560.503-1(m)(8).

1 140. After several requests, on June 12, 2023, Plaintiffs' counsel reached out by phone to  
2 Defendants' counsel, who advised for the first time that no documents would be produced  
3 because Defendants claimed some were confidential. Defendants then insisted that Plaintiffs enter  
4 into a confidentiality agreement before they would produce any documents they deemed  
5 confidential.

6 141. On June 22, 2023, Defendants made a partial production of non-confidential  
7 documents listed in Appendix A to the claims denial letters.

8 142. Incredibly, Defendants withheld from this production as confidential several  
9 documents that X Corp. *publicly disclosed* as exhibits to the Complaint it filed on July 5, 2023 in  
10 *X Corp. v. Wachtell*.

11 143. On July 20, 2023, Defendants purported to complete their production of the  
12 documents listed in Appendix A to the claims denial letters.

13 144. However, Defendants did not produce all the documents listed in Appendix A and  
14 still have not produced all the documents listed in Appendix A. Chapman improperly refused to  
15 produce some of the Appendix A documents, and redacted nearly the entirety of others, claiming  
16 that they are privileged, even though Plaintiffs were the authors or recipients of those documents  
17 and Chapman specifically considered and relied on them for her denials of Plaintiffs' Claims.

18 145. As a particularly egregious example, Chapman withheld in its entirety one of the  
19 documents that she quotes from, and specifically points to, in the claims denial letters as  
20 purported support for her denial of Plaintiffs' Claims – an October 23, 2022 email from Agrawal  
21 [REDACTED]

22 146. Moreover, Chapman failed to produce the [REDACTED] spreadsheet  
23 [REDACTED] despite Plaintiffs' specific  
24 request for that document and Chapman's representation that it had been produced. Chapman  
25 produced [REDACTED] but withheld the attached  
26 spreadsheet, misrepresenting that it was produced. Plaintiffs were only able to obtain the  
27 document from a former Board member, whose sworn declaration attaching the spreadsheet  
28 Plaintiffs submitted in connection with their appeal.

1           147. On June 28, 2023, Plaintiffs' counsel sent an email to Defendants' counsel  
2 requesting documents that were not produced but are relevant to Plaintiffs' claims under 29  
3 C.F.R. § 2560.503-1(m)(8). Because the basis for the denial of Plaintiffs' claims relates to fees  
4 that Twitter paid to various law firms, Plaintiffs requested documents related to the negotiation  
5 and payment of attorneys' fees to the law firms involved in Musk's acquisition of Twitter,  
6 including the firms' invoices and several specific documents that Plaintiffs remember receiving or  
7 writing while employed by Twitter that refute Chapman's conclusions that they committed gross  
8 negligence or willful misconduct. As an alternative, Plaintiffs proposed that Defendants allow  
9 those firms to provide Plaintiffs with documents and correspondence relating to the negotiation or  
10 payment of the attorneys' fees.

11           148. On July 21, 2023, Defendants' counsel responded to Plaintiffs' May 30, 2023 and  
12 June 28, 2023 requests for materials required by 29 C.F.R. § 2560.503-1(m)(8). Defendants took  
13 the unsupportable position that Appendix A is inclusive of all documents relevant to Plaintiffs'  
14 claims. Defendants also refused to produce the law firms' invoices and other specific documents  
15 that Plaintiffs requested related to the negotiation and payment of attorneys' fees and refused to  
16 allow the firms involved to provide them to Plaintiffs, thereby depriving Plaintiffs of additional  
17 factual support for their claims.

18           149. On January 12, 2024, the committee issued its letter denying Plaintiffs' appeal. The  
19 committee's letter includes an "Appendix B," listing documents purportedly reviewed in deciding  
20 the appeal. Defendants failed to provide these documents to Plaintiffs with the denial letter.

21           150. On January 16, 2024, Plaintiffs made a written request for the documents in  
22 Appendix B and any other documents required under 29 C.F.R. § 2560.503-1.

23           151. On January 24, 2024, Defendants made a partial production of documents listed in  
24 Appendix B. In this partial production, Defendants again improperly designated as confidential  
25 multiple documents that were publicly filed in *X Corp. v. Wachtell* or *Twitter v. Musk*.

26           152. On February 7, 2024, Defendants made another partial production of the Appendix  
27 B documents. Defendants wrongfully withheld and refused to produce two of the documents  
28 listed on Appendix B, memoranda prepared by outside counsel for the committee regarding

1 factual and legal issues related to Plaintiffs’ appeal, on the purported basis of attorney-client  
2 privilege. Because these memoranda were provided to the committee to assist it in its benefits  
3 determination, they are subject to the fiduciary exception and therefore are not privileged.

4 153. Defendants’ repeated withholding of documents violates 29 C.F.R. § 2560.503-1,  
5 which requires that claimants be provided, upon request, all documents relevant to their claim for  
6 benefits, including documents “relied upon in making the benefit determination” and documents  
7 “submitted, considered, or generated in the course of making the benefit determination.”

8 154. Defendants’ withholding of such documents also renders their claims procedures  
9 inadequate and unfair under 29 C.F.R. § 2560.503-1(h)(2)(iii).

10 155. Defendants have taken other actions to prevent Plaintiffs from securing additional  
11 factual support for their claims, [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 156. Moreover, by virtue of their dual roles in evaluating and funding claims, Defendants  
15 are biased and operated under a conflict of interest in adjudicating Plaintiffs’ claims for benefits.  
16 This conflict was exacerbated by the fact that Musk appointed employees of his companies who  
17 are beholden to him to evaluate the claims.

18 **FIRST CAUSE OF ACTION**

19 **Claim for Benefits**  
20 **Pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)**  
21 **by Plaintiff Parag Agrawal Against All Defendants**

22 157. Plaintiffs repeat and reallege each and every allegation contained above as if fully  
23 set forth herein.

24 158. ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a plan participant  
25 to bring a civil action to recover benefits due to him under the terms of a plan, to enforce his  
26 rights under the terms of a plan, and/or to clarify his rights to future benefits under the terms of a  
27 plan.

28 159. Plaintiff Agrawal is entitled to severance benefits under the 2014 Plan, in the  
amount of \$57,361,399.80. This amount is equal to one-year’s salary of \$1,000,000 plus 327,847

1 Restricted Stock Units (“RSUs”), 470,354 Performance Share Units (“PSUs”), and 241,508  
2 Granted Special Performance-Based Value Creation Awards (“VCAs”), all valued at the  
3 acquisition price of \$54.20 per share, and \$9,172 in COBRA health insurance premiums.

4 160. By denying Plaintiff’s claims for benefits under the 2014 Plan, and by related acts  
5 and omissions, Defendants have violated, and continue to violate, the terms of the Plan and  
6 Plaintiff’s rights thereunder.

7 **SECOND CAUSE OF ACTION**

8 **Claim for Benefits**  
9 **Pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)**  
10 **by Plaintiff Ned Segal Against All Defendants**

11 161. Plaintiffs repeat and reallege each and every allegation contained above as if fully  
12 set forth herein.

13 162. ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a plan participant  
14 to bring a civil action to recover benefits due to him under the terms of a plan, to enforce his  
15 rights under the terms of a plan, and/or to clarify his rights to future benefits under the terms of a  
16 plan.

17 163. Plaintiff Segal is entitled to severance benefits under the 2014 Plan, in the amount  
18 of \$44,468,148. This amount is equal to one-year’s salary of \$600,000 plus 310,069 RSUs,  
19 257,213 PSUs, and 241,508 VCAs, all valued at the acquisition price of \$54.20 per share, and  
20 \$31,730 in COBRA health insurance premiums.

21 164. By denying Plaintiff’s claims for benefits under the 2014 Plan, and by related acts  
22 and omissions, Defendants have violated, and continue to violate, the terms of the Plan and  
23 Plaintiff’s rights thereunder.

24 **THIRD CAUSE OF ACTION**

25 **Claim for Benefits**  
26 **Pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)**  
27 **by Plaintiff Vijaya Gadde Against All Defendants**

28 165. Plaintiffs repeat and reallege each and every allegation contained above as if fully  
set forth herein.

1 166. ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a plan participant  
2 to bring a civil action to recover benefits due to her under the terms of a plan, to enforce her rights  
3 under the terms of a plan, and/or to clarify her rights to future benefits under the terms of a plan.

4 167. Plaintiff Gadde is entitled to severance benefits under the 2014 Plan, in the amount  
5 of \$20,012,782.80. This amount is equal to one year's salary of \$600,000 plus 50% of 269,354  
6 RSUs, 50% of 204,306 PSUs, and 50% of 241,508 VCAs, all valued at the acquisition price of  
7 \$54.20 per share, and \$31,730 in COBRA health insurance premiums.

8 168. By denying Plaintiff's claims for benefits under the 2014 Plan, and by related acts  
9 and omissions, Defendants have violated, and continue to violate, the terms of the Plan and  
10 Plaintiff's rights thereunder.

11 **FOURTH CAUSE OF ACTION**

12 **Claim for Benefits**  
13 **Pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)**  
14 **by Plaintiff Sean Edgett Against All Defendants**

15 169. Plaintiffs repeat and reallege each and every allegation contained above as if fully  
16 set forth herein.

17 170. ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a plan participant  
18 to bring a civil action to recover benefits due to him under the terms of a plan, to enforce his  
19 rights under the terms of a plan, and/or to clarify his rights to future benefits under the terms of a  
20 plan.

21 171. Plaintiff Edgett is entitled to severance benefits under the 2017 Plan, in the amount  
22 of \$6,765,356.68. This amount is equal to one-year's salary of \$510,000 plus 50% of 230,032  
23 RSUs, valued at the acquisition price of \$54.20 per share, and \$21,489.48 in COBRA health  
24 insurance premiums.

25 172. By denying Plaintiff's claims for benefits under the 2017 Plan, and by related acts  
26 and omissions, Defendants have violated, and continue to violate, the terms of the Plan and  
27 Plaintiff's rights thereunder.

**FIFTH CAUSE OF ACTION**

**Unlawful Discharge to Interfere with Right to Benefits  
Pursuant to ERISA Section 510, 29 U.S.C. § 1140  
by All Plaintiffs Against Defendants Elon Musk and X Corp.**

173. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

174. ERISA Section 510, 29 U.S.C. § 1140, makes it “unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary . . . for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan.”

175. Defendants Musk and X Corp. discharged Plaintiffs and falsely claimed that the termination was for “cause” for the specific purpose of interfering with their attainment of severance benefits under the Plans, in violation of ERISA Section 510, 29 U.S.C. § 1140.

176. Plaintiffs are entitled to appropriate equitable relief to remedy Defendants’ violation of Section 510.

**SIXTH CAUSE OF ACTION**

**Failure to Timely Provide Required Materials  
Pursuant to ERISA Section 502(c), 29 U.S.C. § 1132(c)  
by All Plaintiffs Against Defendants Elon Musk and Lindsay Chapman**

177. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

178. On November 29, 2022, Plaintiffs made a written request for documents under Section 104(b)(4) of ERISA, 29 U.S.C. § 1024(b)(4).

179. ERISA Section 502(c), 29 U.S.C. § 1132(c), requires a Plan Administrator to provide, within 30 days, all documents required under ERISA to be maintained and provided to participants. Thus, Defendants had until December 29, 2022 to respond.

180. Defendants did not comply with Plaintiffs’ Section 104(b) request within 30 days as required by Section 502. Defendants responded to that request on April 11, 2023 and, even then, did not provide a complete response. Defendants produced additional documents later, and still have not produced certain documents.

1 181. In addition, Defendants did not comply with Plaintiffs' requests for the documents  
2 required by 29 C.F.R. § 2560.503-1(m)(8) within 30 days as required by Section 502.

3 182. By failing to timely provide Plaintiffs with a copy of all documents required to be  
4 maintained and provided to participants, Defendants violated ERISA Section 502(c), 29 U.S.C. §  
5 1132(c).

6 183. Thus, each Plaintiff is entitled to a penalty of \$110 per day, running from the 30th  
7 day following their written request for such materials, until the materials are provided.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray that the Court grant the following relief:

- 10 A. Declare that Defendants have violated the terms of the Plans by failing to pay  
11 Plaintiffs benefits in accordance with the terms of the Plans;
- 12 B. Order Defendants to pay benefits to Plaintiffs pursuant to the terms of the Plans;
- 13 C. Award equitable relief to Plaintiffs, including front pay and/or equitable surcharge;
- 14 D. Order Defendants to pay each Plaintiff a penalty of \$110 per day from December  
15 29, 2022 to the day that Defendants provide Plaintiffs with all documents required  
16 to be provided under ERISA Sections 104(b) and 502(c)(1), 29 U.S.C. §§ 1024(b),  
17 1132(c)(1), and 29 C.F.R. § 2560.503-1(m)(8);
- 18 E. Award Plaintiffs pre-judgment and post-judgment interest;
- 19 F. Award Plaintiffs' reasonable attorneys' fees and costs of suit incurred herein  
20 pursuant to ERISA Section 502(g), 29 U.S.C. § 1132(g); and
- 21 G. Provide such other relief as the Court deems just and proper.

22  
23 Date: March 4, 2024

SIDLEY AUSTIN LLP

24  
25 By: /s/ David L. Anderson

David L. Anderson

26 *Attorneys for Plaintiffs Parag Agrawal,*  
27 *Ned Segal, Vijaya Gadde, and Sean Edgett*

# **EXHIBIT A**

**Twitter, Inc.**

**Change of Control and Involuntary Termination Protection Policy**

**(as amended and restated effective August 8, 2014)**

This Change of Control and Involuntary Termination Protection Policy (the “Policy”) is designed to provide certain protections to a select group of key Twitter, Inc. (“Twitter” or the “Company”) employees if their employment is negatively affected by a change on control of Twitter. The Policy is designed to be an “employee welfare benefit plan,” as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and this document is both the formal plan document and the required summary plan description for the Policy.

**Eligible Employee:** You are only eligible for Change of Control Severance Benefits and non-Change of Control Severance Benefits under the policy if you are an eligible employee under this Policy (an “**Eligible Employee**”) and comply with its terms. To be an Eligible Employee, you (1) must have been designated as eligible by the Compensation Committee of the Board (the “**Compensation Committee**”) and (2) must have executed a Participation Agreement (as defined below).

**Severance Benefits:** As an Eligible Employee for Change of Control Severance Benefits, you will be eligible for severance benefits under this Policy if: (1) during the Change of Control Period (as defined below) and (2) your employment with Twitter or any of its subsidiaries terminates as a result of an Involuntary Termination (a “**COC Qualified Termination**”). If your employment with Twitter or any of its subsidiaries terminates as a result of a COC Qualified Termination, you will be eligible to receive the applicable Equity Vesting, Cash Severance and COBRA Benefit described herein and specified on your Participation Agreement. As an Eligible Employee for non-Change of Control Severance Benefits, you will be eligible for severance benefits under this Policy if: (1) other than during a Change of Control Period and (2) your employment with Twitter or any of its subsidiaries terminates as a result of an Involuntary Termination (a “**Non-COC Qualified Termination**”). If your employment with Twitter or any of its subsidiaries terminates as a result of a Non-COC Qualified Termination, you will be eligible to receive the applicable Equity Vesting, Cash Severance and COBRA Benefit described herein and specified on your Participation Agreement. All benefits under this Policy shall be subject to your compliance with the Release Requirement and timing modifications required to avoid adverse taxation under Section 409A. A “**Qualified Termination**” is either a COC Qualified Termination or a Non-COC Qualified Termination, depending on whether the Involuntary Termination occurs within or outside of the Change of Control Period.

**Equity Vesting:** Upon a Qualified Termination, a percentage set forth on your Participation Agreement of the then-unvested shares subject to each of your then-outstanding equity awards shall immediately vest and, in the case of options and stock appreciation rights, shall become exercisable (for avoidance of doubt, no more than 100% of the shares subject to the outstanding portion of an equity award may vest and, with respect to an option or stock appreciation right, become exercisable pursuant to this provision). In the case of equity awards with performance-based vesting, all performance goals or other vesting criteria will be deemed achieved at target levels as to the percentage set forth on your Participation Agreement. Subject to any payment delay necessary to comply with Section 409A (as defined below), any restricted stock units, performance shares, performance units, and/or similar full value awards that vest under this paragraph will be settled on the 61<sup>st</sup> day following your Qualified Termination.

**Cash Severance:** Upon a Qualified Termination, you will be eligible to receive a lump-sum severance payment equal to a percentage set forth on your Participation Agreement of your Base Salary. Your severance payment will be paid in cash and in full on the 61<sup>st</sup> day following your Qualified Termination.

If you die before all amounts have been paid, such unpaid amounts will be paid to your designated beneficiary, if living, or otherwise to your personal representative in a lump-sum payment (less any withholding taxes) as soon as possible following your death.

**COBRA Benefit:** Upon a Qualified Termination, if you make a valid election under COBRA to continue your health coverage, the Company will (for a limited time set forth on your Participation Agreement) pay the cost of such continuation coverage for you and any eligible dependents that were covered under the Company’s health care plans immediately prior to the date of your eligible termination (“**COBRA Benefit**”). Notwithstanding the preceding, if the Company determines in its sole discretion that it cannot provide the COBRA Benefit without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Company will instead provide you a taxable lump-sum payment in an amount equal to the applicable number of months of the COBRA Benefit *multiplied* by the monthly COBRA premium that you would be required to pay to continue your group health coverage in effect on the date of termination of employment (which amount will be based on the premium for the

first month of COBRA coverage). If the Company provides for a taxable cash payment in lieu of the COBRA Benefit, then such cash payment will be made regardless of whether you elect COBRA continuation coverage and such payment will be made in full on the 61<sup>st</sup> day following your termination of employment.

**Release:** Notwithstanding any other term of this Policy, the receipt of any severance payments or benefits pursuant to this Policy is subject to your signing and not revoking the Company's then-standard separation agreement and release of claims (the "**Release**" and such requirement, the "**Release Requirement**"), which must become effective and irrevocable no later than the sixtieth (60th) day following your Qualified Termination (the "**Release Deadline**"). If the Release does not become effective and irrevocable by the Release Deadline, you will forfeit any right to severance payments or benefits under this Policy. In no event will severance payments or benefits be paid or provided until the Policy until the Release actually becomes effective and irrevocable.

For purposes of this Policy, the following terms shall have the following meanings:

**"Base Salary"** means your annual base salary as in effect immediately prior to your Qualified Termination date or, if greater, at the level in effect immediately prior to the Change of Control in the case of a COC Qualified Termination.

**"Board"** means the Board of Directors of the Company.

**"Cause"** means (a) your unauthorized use or disclosure of the Company's confidential information or trade secrets, which use or disclosure causes material harm to the Company; (b) your breach of any agreement between you and the Company; (c) your failure to comply with the Company's written policies or rules, including its code of conduct; (d) your conviction of, or plea of "guilty" or "no contest" to, a felony under the laws of the United States or any state thereof; (e) your gross negligence or willful misconduct in the performance of your duties; (f) your continuing failure to perform assigned duties after receiving written notification of the failure from the Board (or for Eligible Employees other than the Chief Executive Officer, from the Chief Executive Officer); or (g) your failure to cooperate in good faith with a governmental or internal investigation of the Company or its directors, officers or employees, if the Company has requested your cooperation; provided, however, that "Cause" will not be deemed to exist in the event of subsections (b), (c) or (f) above unless you have been provided with (i) 30 days' written notice by the Board or the act or omission constituting "Cause" and (ii) 30 days' opportunity to cure such act or omission, if capable of cure.

**"Change of Control"** means the occurrence of any of the following events:

- A. Change in Ownership of the Company. A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("**Person**"), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of the stock of the Company; provided, however, that the acquisition of additional stock by any one Person who is considered to own more than fifty percent (50%) of the total voting power of the stock of the Company will not be considered a Change of Control; or
- B. Change in Effective Control of the Company. If the Company has a class of securities registered pursuant to Section 12 of the Exchange Act, a change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any 12 month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (B), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change of Control; or
- C. Change in Ownership of a Substantial Portion of the Company's Assets. A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the 12 month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, however, that for purposes of this subsection, the following will not constitute a change in the ownership of a substantial portion of the Company's assets: (i) a transfer to an entity that is controlled by the Company's stockholders immediately after the transfer, or (ii) a transfer of assets by the Company to: (a) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock, (b) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the Company, (c) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the Company, or (d) an

entity, at least fifty percent (50%) of the total value or voting power of which is owned, directly or indirectly, by a Person.

Notwithstanding the foregoing, a transaction will not be deemed a Change of Control unless the transaction qualifies as a change in control event within the meaning of Section 409A (as defined below).

**“Change of Control Period”** means the period on, and twelve (12) months following, a Change of Control.

**“COBRA”** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

**“Disability”** means the total and permanent disability as defined in Section 22(e)(3) of the Code unless the Company maintains a long-term disability plan at the time of the Eligible Employee’s termination, in which case, the determination of disability under such plan also will be considered “Disability” for purposes of this Policy.

**“Exchange Act”** means the Securities and Exchange Act of 1934, as amended.

**“Good Reason”** means your termination of employment within thirty (30) days following the “notice and cure period” in the next paragraph following the occurrence of one or more of the following events, without your express written consent: (a) a material adverse change in the nature or scope of your authority, powers, functions, duties, responsibilities, or reporting relationship (including ceasing to directly report to the chief executive officer or board of directors of a publicly traded entity, as applicable); (b) a material reduction by the Company in your rate of annual base salary; (c) the failure of the Company to continue any material compensation plan in which you are participating, unless you are permitted to participate in other plans providing you with substantially comparable compensation-related benefits, or the taking of any action by the Company which would adversely affect your participation in or materially reduce your compensation-related benefits under any such plan; or (d) the failure of the Company to obtain from any successor or transferee of the Company an express written and unconditional assumption of the Company’s obligations under this agreement.

Your employment may be terminated by you for Good Reason only if an event or circumstance set forth the Good Reason definitions as specified in (a) through (d) above shall have occurred and you provide the Company with written notice thereof within ninety (90) days after you have knowledge of the occurrence or existence of such event or circumstance, which notice shall specifically identify the event or circumstance that you believe constitutes Good Reason, the Company fails to correct the circumstance or event so identified within thirty (30) days after the receipt of such notice, and you resign after the expiration of the cure period referenced in the preceding clause.

**“Involuntary Termination”** means a termination of employment by the Company other than for Cause, death or Disability or a termination of employment by you for Good Reason.

**“Participation Agreement”** means an agreement in the form attached hereto as Exhibit A.

**Section 409A:** The Company intends that all payments and benefits provided under this Policy or otherwise are exempt from, or comply with, the requirements of Section 409A of the Internal Revenue Code of 1986, as amended, and any guidance promulgated thereunder (“**Section 409A**”) so that none of the payments or benefits will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply. No payment or benefits to be paid to you, if any, pursuant to this Policy or otherwise, when considered together with any other severance payments or separation benefits that are considered deferred compensation under Section 409A (together, the “**Deferred Payments**”) will be paid or otherwise provided until you have a “separation from service” within the meaning of Section 409A. If, at the time of your termination of employment, you are a “specified employee” within the meaning of Section 409A and the payment of the Deferred Payments will be delayed to the extent necessary to avoid the imposition of the additional tax imposed under Section 409A, which generally means that you will receive payment on the first payroll date that occurs on or after the date that is 6 months and 1 day following your termination of employment. The Company reserves the right to amend the Policy as it deems necessary or advisable, in its sole discretion and without the consent of any Eligible Employee or any other individual, to comply with Section 409A the Code or to otherwise avoid income recognition under Section 409A prior to the actual payment of any benefits or imposition of any additional tax. Each payment, installment and benefit payable under this Policy is intended to constitute a separate payment for purposes of U.S. Treasury Regulation Section 1.409A-2(b)(2).

In no event will the Company reimburse you for any taxes that may be imposed on you as a result of Section 409A. Each payment and benefit payable hereunder is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

**Parachute Payments:**

**Reduction of Severance Benefits.** Notwithstanding anything set forth herein to the contrary, if any payment or benefit that an Eligible Employee would receive from the Company or any other party whether in connection with the provisions herein or otherwise (the “**Payment**”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the “**Code**”), and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “**Excise Tax**”), then such Payment shall be equal to the Best Results Amount. The “**Best Results Amount**” shall be either (x) the full amount of such Payment or (y) such lesser amount as would result in no portion of the Payment being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax, results in the Eligible Employee’s receipt, on an after-tax basis, of the greater amount notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting “parachute payments” is necessary so that the Payment equals the Best Results Amount, reduction shall occur in the following order: reduction of cash payments; cancellation of accelerated vesting of stock awards; reduction of employee benefits. In the event that acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of the Eligible Employee’s stock awards unless the Eligible Employee elects in writing a different order for cancellation. The Eligible Employee shall be solely responsible for the payment of all personal tax liability that is incurred as a result of the payments and benefits received under this Policy, and the Eligible Employee will not be reimbursed by the Company for any such payments.

**Determination of Excise Tax Liability.** The Company shall select a professional services firm to make all of the determinations required to be made under these paragraphs relating to “Parachute Payments.” The Company shall request that firm provide detailed supporting calculations both to the Company and the Eligible Employee prior to the date on which the event that triggers the Payment occurs if administratively feasible, or subsequent to such date if events occur that result in parachute payments to the Eligible Employee at that time. For purposes of making the calculations required under these paragraphs relating to “Parachute Payments,” the firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith determinations concerning the application of the Code. The Company and the Eligible Employee shall furnish to the firm such information and documents as the firm may reasonably request in order to make a determination under these paragraphs relating to “Parachute Payments.” The Company shall bear all costs the firm may reasonably incur in connection with any calculations contemplated by these paragraphs relating to “Parachute Payments.” Any such determination by the firm shall be binding upon the Company and the Eligible Employee, and the Company shall have no liability to the Eligible Employee for the determinations of the firm.

**Administration:** The Policy will be administered by the Compensation Committee or its delegate (in each case, an “**Administrator**”). The Administrator will have full discretion to administer and interpret the Policy. Any decision made or other action taken by the Administrator with respect to the Policy, and any interpretation by the Administrator of any term or condition of the Policy, or any related document, will be conclusive and binding on all persons and be given the maximum possible deference allowed by law. The Administrator is the “named fiduciary” of the Policy for purposes of ERISA and will be subject to the fiduciary standards of ERISA when acting in such capacity.

**Attorneys Fees:** The Company and each Eligible Employee bear their own attorneys’ fees incurred in connection with any disputes between them.

**Exclusive Benefits:** Except as may be set forth in your Participation Agreement, this Policy is intended to be the only agreement between you and the Company regarding any severance payments or benefits to be paid to you on account of a termination of employment whether unrelated to, concurrent with, or following, a Change of Control. Accordingly, by executing your Participation Agreement, you hereby forfeit and waive any rights to any severance or change of control benefits set forth in any employment agreement, offer letter and/or equity award agreement, except as set forth in this Policy and/or in your Participation Agreement.

**Withholding:** The Company is authorized to withhold from any payments or benefits all federal, state, local and/or foreign taxes required to be withheld therefrom and any other required payroll deductions.

**Amendment or Termination:** The Company reserves the right to amend or terminate the Policy at any time, without advance notice to any Eligible Employee or other individual and without regard to the effect of the amendment or termination on any Eligible Employee or on any other individual. Notwithstanding the preceding, (a) any amendment to the Policy that causes an individual or group of individuals to cease to be an Eligible Employee will not be effective with respect to COC Qualified Terminations unless it is both approved by the Administrator and communicated to the affected individual(s) in writing at least 6 months prior to the effective date of the amendment or termination, and (b) no amendment or termination of the Policy shall be made within 12 months following a Change of Control to the extent that such amendment or reduction would reduce the benefits provided hereunder or impair an Eligible Employee's eligibility under the Policy (unless the affected Eligible Employee consents to such amendment or termination). Any amendment or termination of the Policy will be in writing. Any action of the Company in amending or terminating the Policy will be taken in a non-fiduciary capacity.

**Claims Procedure:** Any Eligible Employee who believes he or she is entitled to any payment under the Policy may submit a claim in writing to the Administrator. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Policy on which the denial is based. The notice will also describe any additional information needed to support the claim and the Policy's procedures for appealing the denial. The denial notice will be provided within 90 days after the claim is received. If special circumstances require an extension of time (up to 90 days), written notice of the extension will be given within the initial 90-day period. This notice of extension will indicate the special circumstances requiring the extension of time and the date by which the Administrator expects to render its decision on the claim.

**Appeal Procedure:** If the claimant's claim is denied, the claimant (or his or her authorized representative) may apply in writing to the Administrator for a review of the decision denying the claim. Review must be requested within 60 days following the date the claimant received the written notice of their claim denial or else the claimant loses the right to review. The claimant (or representative) then has the right to review and obtain copies of all documents and other information relevant to the claim, upon request and at no charge, and to submit issues and comments in writing. The Administrator will provide written notice of the decision on review within 60 days after it receives a review request. If additional time (up to 60 days) is needed to review the request, the claimant (or representative) will be given written notice of the reason for the delay. This notice of extension will indicate the special circumstances requiring the extension of time and the date by which the Administrator expects to render its decision. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Policy on which the denial is based. The notice shall also include a statement that the claimant will be provided, upon request and free of charge, reasonable access to, and copies of, all documents and other information relevant to the claim and a statement regarding the claimant's right to bring an action under Section 502(a) of ERISA.

**Successors:** Any successor to the Company of all or substantially all of the Company's business and/or assets (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or other transaction) will assume the obligations under the Policy and agree expressly to perform the obligations under the Policy the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under the Policy, the term "Company" will include any successor to the Company's business and/or assets which become bound by the terms of the Policy by operation of law, or otherwise.

**Applicable Law:** The provisions of the Policy will be construed, administered and enforced in accordance with ERISA and, to the extent applicable, the internal substantive laws of the state of California (but not its conflict of laws provisions).

**Additional Information.**

<b>Plan Name:</b>	Twitter, Inc. Change of Control and Involuntary Termination Protection Policy
<b>Plan Sponsor:</b>	Twitter, Inc. 1355 Market St, Suite 900 San Francisco, CA 94103
<b>Identification Numbers:</b>	[550]
<b>Plan Year:</b>	Company's Fiscal Year
<b>Plan Administrator:</b>	Twitter, Inc. <i>Attention:</i> Administrator of the Twitter, Inc. Change of Control and Involuntary Termination Protection Policy 1355 Market St, Suite 900 San Francisco, CA 94103

**Agent for Service of  
Legal Process:**

Twitter, Inc.  
*Attention:* General Counsel  
1355 Market St, Suite 900  
San Francisco, CA 94103

Service of process may also be made upon the Plan Administrator.

**Type of Plan**

Severance Plan/Employee Welfare Benefit Plan

**Plan Costs**

The cost of the Policy is paid by the Company.

**Statement of ERISA Rights.**

Policy Eligible Employees have certain rights and protections under ERISA:

They may examine (without charge) all Policy documents, including any amendments and copies of all documents filed with the U.S. Department of Labor, such as the Policy's annual report (Internal Revenue Service Form 5500). These documents are available for review in the Company's Human Resources Department.

They may obtain copies of all Policy documents and other Policy information upon written request to the Plan Administrator. A reasonable charge may be made for such copies.

In addition to creating rights for Eligible Employees, ERISA imposes duties upon the people who are responsible for the operation of the Policy. The people who operate the Policy (called "fiduciaries") have a duty to do so prudently and in the interests of Eligible Employees. No one, including the Company or any other person, may fire or otherwise discriminate against an Eligible Employee in any way to prevent them from obtaining a benefit under the Policy or exercising rights under ERISA. If an Eligible Employee's claim for a severance benefit is denied, in whole or in part, they must receive a written explanation of the reason for the denial. An Eligible Employee has the right to have the denial of their claim reviewed. (The claim review procedure is explained above.)

Under ERISA, there are steps Eligible Employees can take to enforce the above rights. For instance, if an Eligible Employee requests materials and does not receive them within 30 days, they may file suit in a federal court. In such a case, the court may require the Administrator to provide the materials and to pay the Eligible Employee up to \$110 a day until they receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If an Eligible Employee has a claim which is denied or ignored, in whole or in part, he or she may file suit in a state or federal court. If it should happen that an Eligible Employee is discriminated against for asserting their rights, he or she may seek assistance from the U.S. Department of Labor, or may file suit in a federal court.

In any case, the court will decide who will pay court costs and legal fees. If the Eligible Employee is successful, the court may order the person sued to pay these costs and fees. If the Eligible Employee loses, the court may order the Eligible Employee to pay these costs and fees, for example, if it finds that the claim is frivolous.

If an Eligible Employee has any questions regarding the Policy, please contact the Plan Administrator. If an Eligible Employee has any questions about this statement or about their rights under ERISA, they may contact the nearest area office of the Employee Benefits Security Administration (formerly the Pension and Welfare Benefits Administration), U.S. Department of Labor, listed in the telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20210. An Eligible Employee may also obtain certain publications about their rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

# **EXHIBIT B**

**Twitter, Inc.**

**Change of Control Severance and Involuntary Termination Protection Policy**

**(as amended and restated, effective February 22, 2017)**

This Change of Control Severance and Involuntary Termination Protection Policy (the "**Policy**") is designed to provide certain protections to a select group of key Twitter, Inc. ("**Twitter**" or the "**Company**") employees if their employment is negatively affected by a change on control of Twitter. The Policy is designed to be an "employee welfare benefit plan," as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") and this document is both the formal plan document and the required summary plan description for the Policy.

**Eligible Employee:** You are only eligible for Change of Control Severance Benefits and non-Change of Control Severance Benefits under the policy if you are an eligible employee under this Policy (an "**Eligible Employee**") and comply with its terms. To be an Eligible Employee, you (1) must have been designated as eligible by the Compensation Committee of the Board (the "**Compensation Committee**") and (2) must have executed a Participation Agreement (as defined below).

**Severance Benefits:** As an Eligible Employee for Change of Control Severance Benefits, you will be eligible for severance benefits under this Policy if: (1) during the Change of Control Period (as defined below) and (2) your employment with Twitter or any of its subsidiaries terminates as a result of an Involuntary Termination (a "**COC Qualified Termination**"). If your employment with Twitter or any of its subsidiaries terminates as a result of a COC Qualified Termination, you will be eligible to receive the applicable Equity Vesting, Cash Severance and COBRA Benefit described herein and specified on your Participation Agreement. As an Eligible Employee for non-Change of Control Severance Benefits, you will be eligible for severance benefits under this Policy if: (1) other than during a Change of Control Period and (2) your employment with Twitter or any of its subsidiaries is terminated by the Company other than for Cause, death or Disability (a "**Non-COC Qualified Termination**"). If your employment with Twitter or any of its subsidiaries terminates as a result of a Non-COC Qualified Termination, you will be eligible to receive the applicable Equity Vesting, Cash Severance and COBRA Benefit described herein and specified on your Participation Agreement. All benefits under this Policy shall be subject to your compliance with the Release Requirement and timing modifications required to avoid adverse taxation under Section 409A. A "Qualified Termination" is either a COC Qualified Termination or a Non-COC Qualified Termination, depending on whether it occurs within or outside of the Change of Control Period.

**Equity Vesting:** Upon a Qualified Termination, a percentage set forth on your Participation Agreement of the then-unvested shares subject to each of your then-outstanding equity awards shall immediately vest and, in the case of options and stock appreciation rights, shall become exercisable (for avoidance of doubt, no more than 100% of the shares subject to the outstanding portion of an equity award may vest and, with respect to an option or stock appreciation right, become exercisable pursuant to this provision). In the case of equity awards with performance-based vesting, all performance goals or other vesting criteria will be deemed achieved at target levels as to the percentage set forth on your Participation Agreement. Subject to any payment delay necessary to comply with Section 409A (as defined below), any restricted stock units, performance shares, performance units, and/or similar full value awards that vest under this paragraph will be settled on the 61<sup>st</sup> day following your Qualified Termination.

**Cash Severance:** Upon a Qualified Termination, you will be eligible to receive a lump-sum severance payment equal to a percentage set forth on your Participation Agreement of your Base Salary. Your severance payment will be paid in cash and in full on the 61<sup>st</sup> day following your Qualified Termination. If you die before all amounts have been paid, such unpaid amounts will be paid to your designated beneficiary, if living, or otherwise to your personal representative in a lump-sum payment (less any withholding taxes) as soon as possible following your death.

**COBRA Benefit:** Upon a Qualified Termination, if you make a valid election under COBRA to continue your health coverage, the Company will (for a limited time set forth on your Participation Agreement) pay

the cost of such continuation coverage for you and any eligible dependents that were covered under the Company's health care plans immediately prior to the date of your eligible termination ("**COBRA Benefit**"). Notwithstanding the preceding, if the Company determines in its sole discretion that it cannot provide the COBRA Benefit without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Company will instead provide you a taxable lump-sum payment in an amount equal to the applicable number of months of the COBRA Benefit *multiplied* by the monthly COBRA premium that you would be required to pay to continue your group health coverage in effect on the date of termination of employment (which amount will be based on the premium for the first month of COBRA coverage). If the Company provides for a taxable cash payment in lieu of the COBRA Benefit, then such cash payment will be made regardless of whether you elect COBRA continuation coverage and such payment will be made in full on the 61<sup>st</sup> day following your termination of employment.

**Release:** Notwithstanding any other term of this Policy, the receipt of any severance payments or benefits pursuant to this Policy is subject to your signing and not revoking the Company's then-standard separation agreement and release of claims (the "**Release**" and such requirement, the "**Release Requirement**"), which must become effective and irrevocable no later than the sixtieth (60th) day following your Qualified Termination (the "**Release Deadline**"). If the Release does not become effective and irrevocable by the Release Deadline, you will forfeit any right to severance payments or benefits under this Policy. In no event will severance payments or benefits be paid or provided until the Policy until the Release actually becomes effective and irrevocable.

For purposes of this Policy, the following terms shall have the following meanings:

**"Base Salary"** means your annual base salary as in effect immediately prior to your Qualified Termination date or, if greater, at the level in effect immediately prior to the Change of Control in the case of a COC Qualified Termination.

**"Board"** means the Board of Directors of the Company.

**"Cause"** means (a) your unauthorized use or disclosure of the Company's confidential information or trade secrets, which use or disclosure causes material harm to the Company; (b) your breach of any agreement between you and the Company; (c) your failure to comply with the Company's written policies or rules, including its code of conduct; (d) your conviction of, or plea of "guilty" or "no contest" to, a felony under the laws of the United States or any state thereof; (e) your gross negligence or willful misconduct in the performance of your duties; (f) your continuing failure to perform assigned duties after receiving written notification of the failure from the Board (or for Eligible Employees other than the Chief Executive Officer, from the Chief Executive Officer); or (g) your failure to cooperate in good faith with a governmental or internal investigation of the Company or its directors, officers or employees, if the Company has requested your cooperation; provided, however, that "Cause" will not be deemed to exist in the event of subsections (b), (c) or (f) above unless you have been provided with (i) 30 days' written notice by the Board or the act or omission constituting "Cause" and (ii) 30 days' opportunity to cure such act or omission, if capable of cure.

**"Change of Control"** means the occurrence of any of the following events:

A. Change in Ownership of the Company. A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("**Person**"), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of the stock of the Company; provided, however, that the acquisition of additional stock by any one Person who is considered to own more than fifty percent (50%) of the total voting power of the stock of the Company will not be considered a Change of Control; or

B. Change in Effective Control of the Company. If the Company has a class of securities registered pursuant to Section 12 of the Exchange Act, a change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any 12 month period by directors whose appointment or election is not endorsed by a majority

of the members of the Board prior to the date of the appointment or election. For purposes of this clause (B), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change of Control; or

C. Change in Ownership of a Substantial Portion of the Company's Assets. A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the 12 month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, however, that for purposes of this subsection, the following will not constitute a change in the ownership of a substantial portion of the Company's assets: (i) a transfer to an entity that is controlled by the Company's stockholders immediately after the transfer, or (ii) a transfer of assets by the Company to: (a) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock, (b) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the Company, (c) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the Company, or (d) an entity, at least fifty percent (50%) of the total value or voting power of which is owned, directly or indirectly, by a Person.

Notwithstanding the foregoing, a transaction will not be deemed a Change of Control unless the transaction qualifies as a change in control event within the meaning of Section 409A (as defined below).

**"Change of Control Period"** means the period on, and twelve (12) months following, a Change of Control.

**"COBRA"** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

**"Disability"** means the total and permanent disability as defined in Section 22(e)(3) of the Code unless the Company maintains a long-term disability plan at the time of the Eligible Employee's termination, in which case, the determination of disability under such plan also will be considered "Disability" for purposes of this Policy.

**"Exchange Act"** means the Securities and Exchange Act of 1934, as amended.

**"Good Reason"** means your termination of employment following, without your written consent, either (a) a reduction in your base salary of over 20% other than in connection with a Company-wide reduction in salary, (b) relocation of you by the Company to a facility or location more than 50 miles from your principal office location immediately prior to such relocation or (c) during the Change of Control Period only, your title is demoted or otherwise changed to one that ranks below the level of Vice President; provided, however, that a termination for Good Reason shall not have occurred unless (i) you deliver to the Company a written notice explaining the circumstances constituting Good Reason within 30 days after the first occurrence of the circumstances constituting Good Reason, (ii) the Company has failed within 30 days following receipt of such notice to cure the circumstances constituting Good Reason, and (iii) your employment terminates no later than 30 days following the expiration of such cure period.

**"Involuntary Termination"** means a termination of employment by the Company other than for Cause, death or Disability or a termination of employment by you for Good Reason.

**"Participation Agreement"** means an agreement in the form attached hereto as Exhibit A.

**Section 409A:** The Company intends that all payments and benefits provided under this Policy or otherwise are exempt from, or comply with, the requirements of Section 409A of the Internal Revenue Code of 1986, as amended, and any guidance promulgated thereunder ("**Section 409A**") so that none of the payments or benefits will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply. No payment or benefits to be paid to you, if any, pursuant to this Policy or otherwise, when considered together with any other severance payments or

separation benefits that are considered deferred compensation under Section 409A (together, the “**Deferred Payments**”) will be paid or otherwise provided until you have a “separation from service” within the meaning of Section 409A. If, at the time of your termination of employment, you are a “specified employee” within the meaning of Section 409A and the payment of the Deferred Payments will be delayed to the extent necessary to avoid the imposition of the additional tax imposed under Section 409A, which generally means that you will receive payment on the first payroll date that occurs on or after the date that is 6 months and 1 day following your termination of employment. The Company reserves the right to amend the Policy as it deems necessary or advisable, in its sole discretion and without the consent of any Eligible Employee or any other individual, to comply with Section 409A the Code or to otherwise avoid income recognition under Section 409A prior to the actual payment of any benefits or imposition of any additional tax. Each payment, installment and benefit payable under this Policy is intended to constitute a separate payment for purposes of U.S. Treasury Regulation Section 1.409A-2(b)(2).

In no event will the Company reimburse you for any taxes that may be imposed on you as a result of Section 409A. Each payment and benefit payable hereunder is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

**Parachute Payments:**

**Reduction of Severance Benefits.** Notwithstanding anything set forth herein to the contrary, if any payment or benefit that an Eligible Employee would receive from the Company or any other party whether in connection with the provisions herein or otherwise (the “**Payment**”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the “**Code**”), and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “**Excise Tax**”), then such Payment shall be equal to the Best Results Amount. The “**Best Results Amount**” shall be either (x) the full amount of such Payment or (y) such lesser amount as would result in no portion of the Payment being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax, results in the Eligible Employee’s receipt, on an after-tax basis, of the greater amount notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting “parachute payments” is necessary so that the Payment equals the Best Results Amount, reduction shall occur in the following order: reduction of cash payments; cancellation of accelerated vesting of stock awards; reduction of employee benefits. In the event that acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of the Eligible Employee’s stock awards unless the Eligible Employee elects in writing a different order for cancellation. The Eligible Employee shall be solely responsible for the payment of all personal tax liability that is incurred as a result of the payments and benefits received under this Policy, and the Eligible Employee will not be reimbursed by the Company for any such payments.

**Determination of Excise Tax Liability.** The Company shall select a professional services firm to make all of the determinations required to be made under these paragraphs relating to “Parachute Payments.” The Company shall request that firm provide detailed supporting calculations both to the Company and the Eligible Employee prior to the date on which the event that triggers the Payment occurs if administratively feasible, or subsequent to such date if events occur that result in parachute payments to the Eligible Employee at that time. For purposes of making the calculations required under these paragraphs relating to “Parachute Payments,” the firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith determinations concerning the application of the Code. The Company and the Eligible Employee shall furnish to the firm such information and documents as the firm may reasonably request in order to make a determination under these paragraphs relating to “Parachute Payments.” The Company shall bear all costs the firm may reasonably incur in connection with any calculations contemplated by these paragraphs relating to “Parachute Payments.” Any such determination by the firm shall be

binding upon the Company and the Eligible Employee, and the Company shall have no liability to the Eligible Employee for the determinations of the firm.

**Administration:** The Policy will be administered by the Compensation Committee or its delegate (in each case, an “**Administrator**”). The Administrator will have full discretion to administer and interpret the Policy. Any decision made or other action taken by the Administrator with respect to the Policy, and any interpretation by the Administrator of any term or condition of the Policy, or any related document, will be conclusive and binding on all persons and be given the maximum possible deference allowed by law. The Administrator is the “named fiduciary” of the Policy for purposes of ERISA and will be subject to the fiduciary standards of ERISA when acting in such capacity.

**Attorneys Fees:** The Company and each Eligible Employee bear their own attorneys’ fees incurred in connection with any disputes between them.

**Exclusive Benefits:** Except as may be set forth in your Participation Agreement, this Policy is intended to be the only agreement between you and the Company regarding any severance payments or benefits to be paid to you on account of a termination of employment whether unrelated to, concurrent with, or following, a Change of Control. Accordingly, by executing your Participation Agreement, you hereby forfeit and waive any rights to any severance or change of control benefits set forth in any employment agreement, offer letter and/or equity award agreement, except as set forth in this Policy and/or in your Participation Agreement.

**Withholding:** The Company is authorized to withhold from any payments or benefits all federal, state, local and/or foreign taxes required to be withheld therefrom and any other required payroll deductions.

**Amendment or Termination:** The Company reserves the right to amend or terminate the Policy at any time, without advance notice to any Eligible Employee or other individual and without regard to the effect of the amendment or termination on any Eligible Employee or on any other individual. Notwithstanding the preceding, (a) any amendment to the Policy that causes an individual or group of individuals to cease to be an Eligible Employee will not be effective with respect to Qualified Terminations unless it is both approved by the Administrator and communicated to the affected individual(s) in writing at least 6 months prior to the effective date of the amendment or termination, and (b) no amendment or termination of the Policy shall be made within 12 months following a Change of Control to the extent that such amendment or reduction would reduce the benefits provided hereunder or impair an Eligible Employee’s eligibility under the Policy (unless the affected Eligible Employee consents to such amendment or termination). Any amendment or termination of the Policy will be in writing. Any action of the Company in amending or terminating the Policy will be taken in a non-fiduciary capacity.

**Claims Procedure:** Any Eligible Employee who believes he or she is entitled to any payment under the Policy may submit a claim in writing to the Administrator. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Policy on which the denial is based. The notice will also describe any additional information needed to support the claim and the Policy’s procedures for appealing the denial. The denial notice will be provided within 90 days after the claim is received. If special circumstances require an extension of time (up to 90 days), written notice of the extension will be given within the initial 90-day period. This notice of extension will indicate the special circumstances requiring the extension of time and the date by which the Administrator expects to render its decision on the claim.

**Appeal Procedure:** If the claimant’s claim is denied, the claimant (or his or her authorized representative) may apply in writing to the Administrator for a review of the decision denying the claim. Review must be requested within 60 days following the date the claimant received the written notice of their claim denial or else the claimant loses the right to review. The claimant (or representative) then has the right to review and obtain copies of all documents and other information relevant to the claim, upon request and at no charge, and to submit issues and comments in writing. The Administrator will provide written notice of the decision on review within 60 days after it receives a review request. If additional time (up to 60 days) is needed to review the request, the claimant (or representative) will be given written notice of the reason for the delay. This notice of extension will indicate the special circumstances requiring the extension of time and the date by which the Administrator expects to render its decision. If

the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Policy on which the denial is based. The notice shall also include a statement that the claimant will be provided, upon request and free of charge, reasonable access to, and copies of, all documents and other information relevant to the claim and a statement regarding the claimant's right to bring an action under Section 502(a) of ERISA.

**Successors:** Any successor to the Company of all or substantially all of the Company's business and/or assets (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or other transaction) will assume the obligations under the Policy and agree expressly to perform the obligations under the Policy the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under the Policy, the term "Company" will include any successor to the Company's business and/or assets which become bound by the terms of the Policy by operation of law, or otherwise.

**Applicable Law:** The provisions of the Policy will be construed, administered and enforced in accordance with ERISA and, to the extent applicable, the internal substantive laws of the state of California (but not its conflict of laws provisions).

**Additional Information.**

**Plan Name:** Twitter, Inc. Change of Control Severance and Involuntary Termination Protection Policy

**Plan Sponsor:** Twitter, Inc.  
1355 Market St, Suite 900  
San Francisco, CA 94103

**Plan Year:** Company's Fiscal Year

**Plan Administrator:** Twitter, Inc.  
*Attention:* Administrator of the Twitter, Inc. Change of Control Severance and Involuntary Termination Protection Policy  
1355 Market St, Suite 900  
San Francisco, CA 94103

**Agent for Service of Legal Process:** Twitter, Inc.  
*Attention:* General Counsel  
1355 Market St, Suite 900  
San Francisco, CA 94103

Service of process may also be made upon the Plan Administrator.

**Type of Plan** Severance Plan/Employee Welfare Benefit Plan

**Plan Costs** The cost of the Policy is paid by the Company.

**Statement of ERISA Rights.**

Policy Eligible Employees have certain rights and protections under ERISA:

They may examine (without charge) all Policy documents, including any amendments and copies of all documents filed with the U.S. Department of Labor, such as the Policy's annual report (Internal Revenue Service Form 5500). These documents are available for review in the Company's Human Resources Department.

They may obtain copies of all Policy documents and other Policy information upon written request to the Plan Administrator. A reasonable charge may be made for such copies.

In addition to creating rights for Eligible Employees, ERISA imposes duties upon the people who are responsible for the operation of the Policy. The people who operate the Policy (called "fiduciaries") have a duty to do so prudently and in the interests of Eligible Employees. No one, including the Company or any other person, may fire or otherwise discriminate against an Eligible Employee in any way to prevent them from obtaining a benefit under the Policy or exercising rights under ERISA. If an Eligible Employee's claim for a severance benefit is denied, in whole or in part, they must receive a written explanation of the reason for the denial. An Eligible Employee has the right to have the denial of their claim reviewed. (The claim review procedure is explained above.)

Under ERISA, there are steps Eligible Employees can take to enforce the above rights. For instance, if an Eligible Employee requests materials and does not receive them within 30 days, they may file suit in a federal court. In such a case, the court may require the Administrator to provide the materials and to pay the Eligible Employee up to \$110 a day until they receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If an Eligible Employee has a claim which is denied or ignored, in whole or in part, he or she may file suit in a state or federal court. If it should happen that an Eligible Employee is discriminated against for asserting their rights, he or she may seek assistance from the U.S. Department of Labor, or may file suit in a federal court.

In any case, the court will decide who will pay court costs and legal fees. If the Eligible Employee is successful, the court may order the person sued to pay these costs and fees. If the Eligible Employee loses, the court may order the Eligible Employee to pay these costs and fees, for example, if it finds that the claim is frivolous.

If an Eligible Employee has any questions regarding the Policy, please contact the Plan Administrator. If an Eligible Employee has any questions about this statement or about their rights under ERISA, they may contact the nearest area office of the Employee Benefits Security Administration (formerly the Pension and Welfare Benefits Administration), U.S. Department of Labor, listed in the telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20210. An Eligible Employee may also obtain certain publications about their rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Agrawal, Parag; Segal, Ned; Gadde, Vijaya; Edgett, Sean

(b) County of Residence of First Listed Plaintiff Santa Clara County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) David L. Anderson, Sidley Austin LLP (see attachment) 555 California St, Suite 2000, San Francisco, CA 94104 +1 (415) 772-1200

DEFENDANTS

Elon Musk; X Corp., f/k/a Twitter, Inc.; Twitter, Inc. Change of Control and Involuntary Termination Protection Policy; Twitter, Inc. Change of Control Severance and Involuntary Termination Protection Policy; Lindsay Chapman; Brian Bjelde; and Dhruv Batura

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Sections 502(a)(1)(B), 502(c), and 510 of the Employee Retirement Income Security Act of 1974 ("ERISA")

Brief description of cause:

Claim for Benefits; Unlawful Discharge to Interfere with Right to Benefits; Failure to Timely Provide Required Materials

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 03/04/2024

SIGNATURE OF ATTORNEY OF RECORD

/s/ David L. Anderson

ATTACHMENT

I. (c) ATTORNEYS OF RECORD

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