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13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16
17 SARAH ANOKE, CATHERINE BONN,
ISABELLE CANNELL, MELANIE EUSEBIO,
18 SAMANTHA FESTEJO, CARLOS MOISES
ORTIZ GOMEZ, DAWN HOISE, WAYNE
19 KRUG, LAURENT LUCE, PATRICK
O'CONNELL, JENNIFER RYAN, JAIME
20 SENA, JAMES SHOBE, KARYN
THOMPSON, AND CRISTIAN ZAPATA,

Case No. 3:23-cv-02217-SI

**RESPONDENTS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

21
22 Petitioners,

23 v.

24 TWITTER, INC., X HOLDINGS I, INC., X
HOLDINGS, CORP, X CORP, AND ELON
25 MUSK,

26 Respondents.
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28

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5 of the Northern District of California,
3 Respondents X Holdings Corp., on its own behalf and as successor in interest to named
4 Respondent X Holdings I, Inc. (“X Holdings”), X Corp., on its own behalf and as successor in
5 interest to named Respondent Twitter, Inc. (“Twitter”), and Elon Musk (“Respondents”) hereby
6 move the Court to issue an administrative order authorizing the filing under seal of Respondents’
7 Supplemental Rule 7.1 Corporate Disclosure Statement and Certification Pursuant to Local Rule
8 3-15 (“Supplemental Corporate Disclosure Statement”).

9 On June 6, 2023, the Court directed Respondents to file a supplemental corporate
10 disclosure statement disclosing “who owns X Holdings Corporation because that person or
11 persons have ‘a financial interest of any kind in the subject matter in controversy.’” ECF No. 35.
12 In compliance with the Court’s June 6 Order, Respondents have submitted concurrently herewith
13 a Supplemental Corporate Disclosure Statement listing of all shareholders that have an ownership
14 interest in the privately held corporation and named Respondent X Holdings. However, because
15 the identities of these owners constitute private and confidential business information that is not
16 publicly available and the disclosure of which would result in injury, Respondents request that the
17 Court authorize this filing under seal. In accordance with the Court’s Local Rules, a redacted
18 version of the Supplemental Corporate Disclosure Statement has been filed in the public record.
19 Because the sole purpose of the Corporate Disclosure Statement under Local Rule 3-15 is to
20 allow the Judge to determine whether a conflict exists that would necessitate recusal, no
21 legitimate purpose is served by any public-facing filing of this private and confidential
22 information.

23 **II. LEGAL STANDARD**

24 Courts apply a “strong presumption in favor of access” to court records. *Kamakana v.*
25 *City and Cty. Of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). However, the presumption of
26 access to court records can be overcome when a party demonstrates important countervailing
27 interests in maintaining the confidentiality of sensitive and private personal or business
28 information. *San Jose News v. U.S. Dist. Ct.*, 187 F.3d 1096, 1102 (9th Cir. 1999).

1 Confidentiality protections are not limited to trade secrets. *See, e.g., Pintos v. Pacific Creditors*
2 *Assoc.*, 504 F.3d 792, 801 (9th Cir. 2007); *Hagestead v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir.
3 1995); *see also* Fed. R. Civ. Proc. 26(c)(1)(G) (permitting protection of “trade secrets” and other
4 “confidential commercial information.”) Nor are confidentiality protections limited to a
5 company’s sensitive financial information, business forecasts, and intellectual property. “In
6 deciding whether sufficient countervailing interests exist, the court will look to the public interest
7 in understanding the judicial process and whether disclosure of the material could result in
8 improper use . . .” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002).

9 In addition, under Article I, section 1 of the California Constitution, persons have a
10 constitutional inalienable right to privacy. This right to privacy includes the privacy of a person’s
11 financial information, such as investments and financial holdings. *See Valley Bank of Nevada v.*
12 *Superior Ct.*, 15 Cal. 3d 652, 656, (1975) (discussing the “inalienable right” of privacy under the
13 California Constitution and finding that courts “may safely assume that the right of privacy
14 extends to one’s confidential financial affairs as well as to the details of one’s personal life”). The
15 existence of an ownership share and/or interest in a private corporation clearly constitutes a
16 person’s private financial information that is protected under the California Constitution.

17 Courts also draw an important distinction between the standard for the sealing of records
18 attached to dispositive motions versus non-dispositive motions. *See, e.g., Best Odds Corp. v.*
19 *iBus Media Ltd.*, No. 2:14-cv-00932-RCJ-VCF, 2014 WL 5687730, *2 (Nov. 4, 2014) (citing
20 *Kamakana*, 447 F.3d 1172 at 1180). “This distinction is predicated on the fact that different
21 interests are at stake with dispositive and non-dispositive motions.” *Best Odds Corp.*, 2014 WL
22 5687730, at *2. As a result, “[w]ith non-dispositive motions, **private interests predominate.**” *Id.*
23 (emphasis added). A request to seal records attached to non-dispositive motions “merely requires
24 satisfying Rule 26(c)” and a showing of “good cause,” and the district court has “much flexibility
25 in balancing and protecting the interests of private parties” under this standard. *Id.* Indeed, “the
26 good cause standard may be satisfied by showing mere embarrassment, incrimination, or
27 exposure to undue litigation expenses.” *Id.* (citing Fed. R. Civ. P. 26(c)).

1 **III. ARGUMENT**

2 The Court should grant Respondents' Motion for Administrative Relief to authorize the
3 filing under seal of Respondents' Supplemental Corporate Disclosure Statement. The
4 Supplemental Corporate Disclosure Statement is not a motion, let alone a dispositive motion, but
5 rather a document the sole purpose of which is for the assigned judge to consider whether any
6 conflict exists that would require recusal. Here, good cause exists to seal the portions of the filing
7 that reveal the identifies of X Holdings' owners/shareholders due to the countervailing interests in
8 maintaining the confidentiality of this sensitive confidential and private business information.
9 The owners/shareholders of X Holdings include various individual persons, private family and
10 other trusts, and other private entities (such as funds, LLCs and corporations). Batura Decl. ¶ 3.
11 As a matter of routine practice and policy, X Holdings does not publish or make publicly
12 available information regarding its owners/shareholders and treats such information as
13 confidential. *Id.* Individuals and entities investing and taking an ownership interest in a private
14 corporation such as X Holdings expect that such information will remain private. *Id.* The
15 disclosure of such information violates this expectation of privacy. Also, in certain cases, X
16 Holdings is contractually bound to keep such information confidential. *Id.*

17 Denying Respondents' request for sealing here will cause injury to the
18 owners/shareholders whose identities would be disclosed in a public court filing, and to X
19 Holdings by revealing its confidential business information. The wholesale disclosure of
20 information regarding its owners/shareholders potentially could enable X Holdings' competitors
21 to undermine X Holdings' competitive position in the marketplace, allow current or prospective
22 business partners or counterparties to take unfair advantage of X Holdings in negotiations or other
23 business affairs, or otherwise prejudice X Holdings' business interests. To that end, X Holdings
24 has policies that prohibit employees from accessing information beyond what is reasonably
25 necessary to perform their duties, limiting access to certain non-public information, permitting
26 access to documents and data on a need-to-know basis, and requiring employees to sign
27 confidentiality agreements. Batura Decl. ¶ 4. The act of disclosing (and making public) financial
28 information protected by a right of privacy itself constitutes an injury to owners' privacy interests.

1 No less restrictive alternative exists to sealing this information that be sufficient to protect the
2 interests at stake here.

3 The disclosure of X Holdings' shareholders to the Court *under seal* would fully comply
4 with and promote the purposes underlying Rule 7.1 and Civil Local Rule 3-15. Rule 7.1 of the
5 Federal Rules of Civil Procedure serves to "support properly informed disqualification decisions"
6 by the Court. F.R.C.P. 7.1, Committee Notes on Rules – 2002. Similarly, Civil Local Rule 3-15
7 is intended to aid the Court in determining whether any potential conflicts of interest exist that
8 would lead the assigned Judge to recuse him or herself. *See* N.D. Cal. Civil L-R 3-15(b)(1) ("The
9 Certification must disclose whether the party is aware of any conflict, financial or otherwise, that
10 the presiding judge may have with the parties to the litigation.") As a result, Respondents' filing
11 of the Supplemental Corporate Disclosure Statement under seal to the Court and redacting the
12 identities of X Holdings' shareholders/owners from the publicly filed document fully satisfies all
13 competing interests – allowing the Court to determine whether a conflict exists while
14 simultaneously safeguarding confidential and private business and financial information and
15 preventing potential misuse of this information. *See Best Odds Corp.*, 2014 WL 5687730, at *2
16 (granting the defendant's motion to file a redacted certificate of interested parties and noting that
17 sealing the disclosure will "(1) satisfy Rule 7.1's purpose, by enabling the court to determine
18 whether a conflict of interest exists, and (2) act as a prophylactic against potential[] litigation
19 abuses that will needlessly increase the cost of litigation.")

20 Federal Rule of Civil Procedure 7.1 and Civil Local Rule 3-15 do not serve Claimants'
21 interests; rather, they serve the Court and its interests in avoiding potential conflicts of interest.
22 Respondents have made compliant disclosures that afford this Court the opportunity to assess
23 whether any conflict of interest exists. Petitioners should not be entitled to conduct impermissible
24 discovery regarding Respondent X Holdings, and the Court should not indulge Petitioners' efforts
25 to obtain information to which they are not entitled.

26 **IV. CONCLUSION**

27 For the foregoing reasons, Respondents respectfully move this Court to grant
28 Respondents' Motion for Administrative Relief to keep sealed the Supplemental Corporate

1 Disclosure Statement.

2 Dated: June 9, 2023

MORGAN, LEWIS & BOCKIUS LLP

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By /s/ Eric Meckley

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Attorneys for Respondents

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TWITTER, INC.; X HOLDINGS I, INC.;

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X HOLDINGS CORP.; X CORP.; ELON MUSK

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SENA, JAMES SHOBE, KARYN
20 THOMPSON, AND CRISTIAN ZAPATA,

Case No. 3:23-cv-02217

**RESPONDENTS' SUPPLEMENTAL
RULE 7.1 CORPORATE
DISCLOSURE STATEMENT AND
CERTIFICATION PURSUANT TO
LOCAL RULE 3-15**

[FILED UNDER SEAL]

21 Petitioners,

22 v.

23 TWITTER, INC., X HOLDINGS I, INC., X
24 HOLDINGS, CORP, X CORP, AND ELON
MUSK,

25 Respondents.
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1 Pursuant to Northern District of California Civil Local Rule 3-15 and Rule 7.1 of the
2 Federal Rules of Civil Procedure, Respondent X Corp. as successor in interest to named
3 Respondent Twitter, Inc., by and through its counsel, certifies that Twitter, Inc. has been merged
4 into X Corp. and no longer exists. Respondent X Holdings Corp., as successor in interest to
5 named Respondent X Holdings I, Inc., by and through its counsel, certifies that X Holdings I, Inc.
6 has been merged into X Holdings Corp. and no longer exists. X Corp. is wholly owned by X
7 Holdings Corp. No publicly held corporation owns 10% or more of X Corp.'s or X Holdings
8 Corp.'s stock.

9 Pursuant to the Court's Order Granting Plaintiffs' Administrative Motion Directing
10 Defendants to Supplement Corporate Disclosure Statement, Respondents disclose the following
11 persons and entities who are owners/shareholders of X Holdings Corp. (ECF No. 35):

- 12 • 8VC Opportunities Fund II, L.P.
- 13 • ADREM X LLC
- 14 • ADREM Y LLC
- 15 • Afshar Partners, LP
- 16 • Andrea Stroppa
- 17 • Andreessen Horowitz LSV Fund III, L.P.
- 18 • Anthem Ventures, LLC
- 19 • ARK Venture Private Holdings LLC
- 20 • BAMCO, Inc.
- 21 • Bandera Fund LLC
- 22 • Baron Opportunity Fund
- 23 • Baron Partners Fund
- 24 • Binance Capital Management Co., Ltd
- 25 • Brookfield Project X L.P.
- 26 • CCM 2020 Investments LLC
- 27 • Cheng and Chen Family Trust
- 28 • CNK Fund IV, L.P.

- 1 • Danilo Kawasaki
- 2 • Dayton Family Enterprises, LLC
- 3 • Dayton Family Investments, LLC
- 4 • DFJ GROWTH IV, L.P.
- 5 • DFJ GROWTH IV PARALLEL FUND, LLC
- 6 • DFJ GROWTH X-I, L.P.
- 7 • Eden Relationship Capital L.P.
- 8 • Elon Musk as Trustee of the Elon Musk Revocable Trust dated July 22, 2003
- 9 • FIAM Target Date Blue Chip Growth Commingled Pool By: Fidelity Institutional
- 10 Asset Management Trust Company as Trustee
- 11 • Fidelity Blue Chip Growth Commingled Pool By: Fidelity Management Trust
- 12 Company, as Trustee
- 13 • Fidelity Blue Chip Growth Institutional Trust By its manager Fidelity Investments
- 14 Canada ULC
- 15 • Fidelity Canadian Growth Company Fund by its manager Fidelity Investments
- 16 Canada ULC
- 17 • Fidelity Central Investment Portfolios LLC: Fidelity U.S. Equity Central Fund -
- 18 Communication Services Sub
- 19 • Fidelity Contrafund: Fidelity Advisor New Insights Fund - Sub A
- 20 • Fidelity Contrafund: Fidelity Advisor New Insights Fund - Sub B
- 21 • Fidelity Contrafund: Fidelity Contrafund
- 22 • Fidelity Contrafund: Fidelity Contrafund K6
- 23 • Fidelity Contrafund: Fidelity Series Opportunistic Insights Fund
- 24 • Fidelity Contrafund Commingled Pool By: Fidelity Management Trust Company,
- 25 as Trustee
- 26 • Fidelity Destiny Portfolios: Fidelity Advisor Diversified Stock Fund
- 27 • Fidelity Global Growth and Value Investment Trust - Sub A By its manager
- 28 Fidelity Investments Canada ULC:

- 1 • Fidelity Global Innovators Investment Trust by its manager Fidelity Investments
- 2 Canada ULC
- 3 • Fidelity Growth Company Commingled Pool By: Fidelity Management Trust
- 4 Company, as Trustee
- 5 • Fidelity Insights Investment Trust By its manager Fidelity Investments Canada
- 6 ULC
- 7 • Fidelity Mt. Vernon Street Trust: Fidelity Growth Company Fund
- 8 • Fidelity Mt. Vernon Street Trust : Fidelity Growth Company K6 Fund
- 9 • Fidelity Mt. Vernon Street Trust: Fidelity Series Growth Company Fund
- 10 • Fidelity OTC Commingled Pool By: Fidelity Management Trust Company, as
- 11 Trustee
- 12 • Fidelity Puritan Trust: Fidelity Puritan Fund - Equity Sub B
- 13 • Fidelity Puritan Trust: Puritan K6 Fund - Equity Subportfolio
- 14 • Fidelity Securities Fund: Fidelity Blue Chip Growth Fund
- 15 • Fidelity Securities Fund: Fidelity Blue Chip Growth K6 Fund
- 16 • Fidelity Securities Fund: Fidelity OTC K6 Portfolio
- 17 • Fidelity Securities Fund: Fidelity OTC Portfolio
- 18 • Fidelity Select Portfolios : Select Communication Services Portfolio
- 19 • G64 Ventures LLC
- 20 • Gerber Kawasaki Inc.
- 21 • GFNCI LLC
- 22 • Gigafund 0.21, LP
- 23 • Glacier Ventures LLC
- 24 • Go Mav, LLC
- 25 • HRH Prince Alwaleed Bin Talal Bin Abdulaziz Alsaud
- 26 • HRH Prince Alwaleed Bin Talal Bin Abdulaziz Alsaud
- 27 • IMG US, LLC
- 28 • Jack Dorsey Remainder LLC

- 1 • Jack Dorsey Tr Ua 12/08/2010 Jack Dorsey Revocable Trust
- 2 • Kingdom Holding Company
- 3 • Lawrence J. Ellison Revocable Trust
- 4 • Linda Ye and Robin Ren Family Foundation
- 5 • Litani Ventures
- 6 • Luchi Fiduciaria SR POS. 365
- 7 • Manhattan Venture Partners X LLC
- 8 • Mirae Asset Innovation X ONE, LLC
- 9 • Mirae Asset Project X Fund I, LP
- 10 • Olivier Janssens
- 11 • Q Tetris Holding LLC
- 12 • Ross Gerber
- 13 • Santo Lira LLC
- 14 • SC CDA1 LLC
- 15 • SCGE Fund, L.P.
- 16 • SCGGF III – U.S./India Management, L.P.
- 17 • SCHF (M) PV, L.P.
- 18 • Scott Nolan
- 19 • SC US/E Expansion Fund I Management, L.P.
- 20 • Sean Combs Capital, LLC
- 21 • Sequent (Schweiz) AG as Trustee of the Debala Trust
- 22 • Sequoia Capital Fund, L.P.
- 23 • Series N Dis, a series of Atreides Special Circumstances Fund, LLC
- 24 • Shahidi Tactic Group, LLC
- 25 • Steve Davis
- 26 • T. One Holdings LLC
- 27 • The Pershing Square Foundation
- 28 • TM33 Partner Holdings LLC

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- Tresser Blvd 402 LLC
- UnipolSai S.P.A.
- Variable Insurance Products Fund II: VIP Contrafund Portfolio - Subportfolio A
- VYC25 Limited
- X Holdings I Investment, LLC

Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, there is no conflict or interest (other than the named parties and the above-listed owners/shareholders of X Holdings Corp.) to report.

Dated: June 9, 2023

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Eric Meckley

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