

**COTCHETT, PITRE & MCCARTHY, LLP**

Joseph W. Cotchett (SBN 36324)  
jcotchett@cpmlegal.com  
Mark C. Molumphy (SBN 168009)  
mmolumphy@cpmlegal.com  
Anne Marie Murphy (SBN 202540)  
ammurphy@cpmlegal.com  
Tyson C. Redenbarger (SBN 294424)  
tredenbarger@cpmlegal.com  
Julia Q. Peng (SBN 318396)  
jpeng@cpmlegal.com  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, California 94010  
Telephone: (650) 697-6000

**BOTTINI & BOTTINI, INC.**

Francis A. Bottini, Jr. (SBN: 175783)  
fbottini@bottinilaw.com  
Anne B. Beste (SBN 326881)  
abeste@bottinilaw.com  
Albert Y. Chang (SBN 296065)  
achang@bottinilaw.com  
Yury A. Kolesnikov (SBN 271173)  
ykolesnikov@bottinilaw.com  
Nicholas H. Woltering (SBN 337193)  
nwoltering@bottinilaw.com  
7817 Ivanhoe Avenue, Suite 102  
La Jolla, California 92037  
Telephone: (858) 914-2001

*Counsel for Plaintiff*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**WILLIAM HERESNIAK**, on behalf of  
himself and all others similarly situated,

Plaintiff,

vs.

**ELON R. MUSK and TWITTER, INC.**,

Defendants,

Case No.:

**Class Action**

**COMPLAINT FOR  
(1) VIOLATION OF THE  
CALIFORNIA CORPORATIONS  
CODE; AND  
(2) DECLARATORY AND  
INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff alleges the following (a) upon personal knowledge with respect to the matters  
2 pertaining to Plaintiff; and (b) upon information and belief with respect to all other matters, based upon,  
3 among other things, the investigations undertaken by Plaintiff's counsel. Plaintiff believes that  
4 substantial additional evidentiary support will exist for the allegations set forth below after a reasonable  
5 opportunity for discovery.

### 6 I. INTRODUCTION AND SUMMARY OF THE ACTION

7 1. Plaintiff brings this class action on behalf of all stockholders of Twitter, Inc., a San  
8 Francisco based company, who have been harmed by the actions of Defendant Elon R. Musk. Plaintiff  
9 asserts claims against Defendant Musk for violations of California Corporations Code §§ 25400, 25401,  
10 25500, and 25501 and against Defendant Twitter, Inc. for declaratory, injunctive relief, and unjust  
11 enrichment.

12 2. Defendant Twitter, Inc., headquartered in San Francisco, operates a social media  
13 platform that allows its users to send and receive "tweets." Defendant Musk is a prolific user of Twitter  
14 and one of its most-followed members, with 90 million followers, making Musk's Twitter account the  
15 eighth most popular account on Twitter.

16 3. On **April 25, 2022**, Twitter, Inc. announced that it had agreed to sell itself to Elon Musk  
17 for \$54.20 per share, or approximately \$44 billion (the "Buyout" or "Proposed Buyout"). Musk  
18 negotiated the Twitter Buyout over the weekend of April 23-24, 2022 without carrying out any due  
19 diligence. The Buyout is only conditioned on approval of Twitter's shareholders at a meeting to be  
20 scheduled this summer, regulatory approval, and closing of the Buyout by October 24, 2022.

21 4. Before agreeing to buy Twitter for \$44 billion, Musk, one of the world's richest  
22 individuals valued at \$276 billion according to the Bloomberg Billionaires Index, and a sophisticated  
23 businessman with a phalanx of lawyers and investment bankers, according to the press, specifically  
24 agreed to waive detailed due diligence as a condition of the merger agreement. At the time, Musk was  
25 well aware that Twitter had a certain amount of "fake accounts" and accounts controlled by "bots" and  
26 had in fact settled a lawsuit based on the fake accounts for millions of dollars. Musk had tweeted about  
27 that issue at Twitter several times in the past, prior to making his offer to acquire Twitter with full  
28 knowledge of the bots.

1           5. Musk and his team were also well aware of a **\$809.5 million settlement** Twitter entered  
2 into **in September 2021**, in a securities fraud class action alleging Twitter overstated its user numbers  
3 and growth rate -- *In re Twitter Inc. Securities Litigation*, 16-cv-05314, U.S. District Court, Northern  
4 District of California (San Francisco). All the documents from that case were publicly available to  
5 Musk, including a website (www.twittersecuritieslitigation.com) containing, among other things, the  
6 Court's order denying Twitter's motion for summary judgment. See **Exhibit A** (April 17, 2020 Order  
7 Denying Motion for Summary Judgment, at p. 16)(holding that Twitter's false statements about its  
8 Daily Active Users (DAUs) and Monthly Active Users (MAUs) were material because "Twitter has  
9 publicly stated that its success and financial performance depend, at least in part, on the size and  
10 engagement of its user base.").

11           6. Musk believed he was obtaining Twitter at a sale price, since Twitter's stock price had  
12 decreased significantly in the months before he made his offer, declining from \$71.69 on July 23, 2021  
13 to just \$32.42 on March 7, 2022. After Musk agreed to buy Twitter for \$54.20, the stock market  
14 experienced a decline. The market decline, however, did not affect Twitter's stock price. After the  
15 announcement of the Buyout, stock consistently traded close to the Buyout price, and around \$50 per  
16 share. The small delta between its trading price and the \$54.20 buyout price was typical of the trading  
17 prices of companies who have agreed to be acquired, characterized by a small discount for the time  
18 value of money and a relatively small risk that the deal will not go through.

19           7. Musk had a unique and multi-billion-dollar problem. Musk pledged his **Tesla** stock as  
20 collateral for a \$12.5 billion loan to finance the buyout of Twitter, however **Tesla's shares have**  
21 **declined by over 37%** since the announcement of the Buyout, as reflected below:

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