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17
 18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**

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

22 Plaintiff,

23 vs.

24 **ELON R. MUSK, X HOLDINGS I, INC., X**
 25 **HOLDING II, INC., and TWITTER, INC.,**

26 Defendants,

Case No.: **3:22-CV-03074-CRB**

**PLAINTIFF’S NOTICE OF MOTION
 AND MOTION TO EXPEDITE AND
 COORDINATE DISCOVERY**

Date: September 16, 2022
 Time: 10:00 a.m.
 Crtrm: 6, 17th Floor
 Judge: Hon. Charles R. Breyer

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 16, 2022, at 10:00 a.m. or as soon thereafter as it may be heard, in the above-entitled court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiff will and does move this Court for an Order granting Plaintiff's Motion to Expedite and Coordinate Discovery ("Motion"). Please also take notice that Plaintiff intends to request an expedited briefing schedule and hearing date for this Motion, subject to the Court's approval.

As set forth in the accompanying Memorandum of Points and Authorities, good cause exists for the relief requested. This Motion is based upon this Notice of Motion; the supporting Memorandum of Points and Authorities; the supporting declaration of Tyson Redenbarger filed herewith; all documents and pleadings on file in this action; and such other argument or evidence as may be presented in reply or at the hearing on this motion.

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NOTICE OF MOTION AND MOTION i

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 A. Expedited and Coordinated Discovery is Warranted in this Case 6

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 2. Expedited Discovery is Appropriate As Plaintiff Anticipates Filing a Motion for Injunction or Declaratory Relief 8

 B. Defendants Should be Ordered to Promptly Confer on Discovery and to Submit a Discovery Plan 9

 C. Alternatively, If the Court Does Not Order Coordination, Defendants Should be Ordered to Produce to Plaintiff all Documents and Deposition Transcripts from the Delaware Action 10

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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiff respectfully moves this Court pursuant to Federal Rule of Civil Procedure 26(d)(1) to compel Defendants to coordinate the discovery taking place in the related Delaware Action¹ where discovery has already been expedited, and to compel Defendants to promptly schedule a Rule 26(f) conference. The Delaware Action seeks only specific performance, asking the court there to require Defendant Elon Musk (“Musk”) to honor his contract to buy Twitter for \$54.20 per share, or approximately \$44 billion (the “Merger” or “Buyout”). The present action concerns the same Buyout but seeks monetary damages and declaratory relief on behalf of Twitter’s stockholders. Those damages are significant as Twitter’s stock price has declined by over 25% (more than \$8 billion in market capitalization) due to the wrongful conduct alleged in Plaintiff’s complaint.

The Merger has a closing Deadline of October 24, 2022, and the Delaware Action, though filed after this case on July 12, 2022, is set for Trial on October 17, 2022. Discovery in that action has already commenced, with all document production and depositions to be completed by September 12, 2022. Because the imminent discovery in the Delaware Action is directly relevant to this case, Plaintiff asked Defendants to coordinate discovery so that duplicative and potentially inconsistent discovery could be avoided. Defendants refused. Defendants also declined to schedule a Rule 26(f) conference despite Plaintiff’s requests. The Rule 26(f) report in this case, originally due August 22, 2022, is currently due September 16, 2022. Waiting until that time to begin discovery will likely result in duplicated efforts as fact discovery will be completed in the Delaware Action by September 12, 2022.

Given the quickly approaching deadlines that impact the Delaware Action, the Merger, and ultimately Plaintiff and the class, there is good cause to expedite and coordinate discovery in this case. If discovery is not coordinated now, many of the same people will have to be deposed twice, or Plaintiff will be forced to brief Defendants’ inevitable future arguments that the individuals

¹ “Delaware Action” refers to *Twitter, Inc. v. Musk, et al.*, C.A. No. 2022-0613-KSJM, filed in Delaware Chancery Court.

1 should not have to be deposed twice, or that Plaintiff should be relegated to a copy of the transcript
2 from the earlier depositions, or should not be able to ask similar questions, etc. It is far easier and
3 more efficient for the parties to simply coordinate discovery now.

4 The urgency for such discovery is self-evident given the nature of Plaintiff's claims,
5 including Plaintiff's anticipated motions for declaratory and injunctive relief relating to the Merger.
6 Additionally, producing the documents from the Delaware Action involves few burdens, as the
7 documents are likely already gathered, reviewed, and presumably available in digital form (or will
8 be in short order). Conversely, failing to coordinate discovery will create unnecessary duplication
9 and will potentially prevent Plaintiff from seeking declaratory and injunctive relief before the
10 Merger closes.

11 Accordingly, Plaintiff respectfully requests that the Court order the Defendants to coordinate
12 discovery in the Delaware Action with Plaintiff in this case, and to promptly participate in a Rule
13 26(f) conference.

14 **II. FACTUAL BACKGROUND**

15 On April 4, 2022, Musk publicly disclosed his ownership of approximately 9.2% of
16 Twitter's common stock. However, Musk's disclosure was 11 days late. Musk became a 5%
17 stockholder on March 14, 2022, according to the SEC filings, but failed to file his Form 13G until
18 April 4, 2022. FAC² ¶63. Musk's Schedule 13G also failed to disclose his intent to join the Twitter
19 Board or that he was contemplating buying Twitter. FAC ¶62. Both disclosures would have caused
20 Twitter's stock to increase more than it did when his filing was made. Musk was later forced to file
21 an amended 13D on April 5, 2022. Musk benefitted himself by approximately \$156 million by
22 failing to timely file the Form 13G. FAC ¶63.

23 On April 25, 2022, Elon Musk entered into the Merger agreement to purchase Twitter for
24 \$54.20 per share, or \$44 billion. Redenbarger Decl.,³ Ex. A,⁴ at ¶3. Shortly thereafter, Musk began
25

26 ² "FAC" refers to Plaintiff's First Amended Complaint. Dkt. 7.

27 ³ "Redenbarger Decl." refers to the Declaration of Tyson Redenbarger filed in support of this Motion.

28 ⁴ "Ex. ___" refers to the Exhibits attached to the Redenbarger Decl.

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