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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiff,

v.

ELON R. MUSK, X HOLDINGS I, INC., X
HOLDINGS II, INC., and TWITTER, INC.,

Defendants.

Case No. 3:22-cv-03074

**DEFENDANT TWITTER, INC.'S
OPPOSITION TO MOTION TO
EXPEDITE AND COORDINATE
DISCOVERY**

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INTRODUCTION

Plaintiff's Motion to Expedite and Coordinate Discovery (the "Motion") should be denied. In the Delaware Court of Chancery, Defendant Twitter, Inc. ("Twitter") is vigorously pursuing a judgment against Musk and his merger affiliates X Holdings I, Inc. and X Holdings II, Inc. (collectively, the "Musk Defendants") that would require them to perform their obligations under the Merger Agreement with Twitter, including their obligation to close the acquisition at the agreed upon price of \$54.20 per share. That case is hurtling through expedited discovery and will be tried in less than 60 days – on October 17, 2022. Unwilling to stand back – even briefly – while Twitter pursues enforcement of the Merger Agreement for the benefit of all stockholders, Plaintiff (a purported Twitter stockholder from Virginia) filed a wholly unnecessary claim in this Court demanding substantially the same declaratory and injunctive relief that Twitter is now pursuing in Delaware. Plaintiff also elected to sue *Twitter*, rather than just the Musk Defendants, presumably in hopes of better explaining why he sued here rather than in Delaware or his home jurisdiction.

Plaintiff offers no plausible reason why this Court should take the extraordinary step of effectively intervening in the Delaware action to *order* that he be permitted to participate in the critical and expedited discovery transpiring there. There are, in fact, overwhelming grounds to deny that relief. *First*, Plaintiff does not have standing to enforce Twitter's rights under the Merger Agreement. *Second*, the Merger Agreement makes Delaware the exclusive jurisdiction for any claim arising from the agreement. Given the absence of standing and any right to proceed with his injunctive relief/declaratory judgment claim (the only claim against Twitter) in this Court, there is no basis to grant Plaintiff *any* discovery at this time, let alone expedited discovery under an extraordinary cross-jurisdictional coordination order. *Third*, even if Plaintiff had standing and were in the right court, he has not established good cause for the extraordinary relief he seeks. The Motion does not plausibly explain why expediting discovery would be superior to awaiting the outcome of the highly expedited litigation in Delaware. That litigation is virtually certain to render Plaintiff's claim for injunctive/declaratory relief moot. To the extent Plaintiff seeks money damages, the only distinction he draws with the Delaware action, such claims are no basis for injunctive relief or

28 expedited proceedings. See *Ellie Mae, Inc. v. Wynn*, 2021 WL 2024225 (D. Cal. Apr. 20, 2021).



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