

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM HERESNIAK,
Plaintiff,
v.
ELON R MUSK, et al.,
Defendants.

Case No. 22-cv-03074-CRB (SK)

**ORDER DENYING MOTION TO
EXPEDITE DISCOVERY**

Regarding Docket No. 26

On August 12, 2022, Plaintiff filed a motion to expedite and coordinate discovery with an action pending in Delaware Chancery Court, *Twitter, Inc. v. Musk. et al.*, C.A. No. 2022-0613 KSJM (the “Delaware action”). (Dkt. No. 26.) Plaintiff simultaneously filed an *ex parte* application to modify the ordinary briefing schedule for the motion to expedite discovery. (Dkt. No. 27.) In the alternative, Plaintiff requested that the Court order Defendants to participate in a conference pursuant to Federal Rule of Civil Procedure 26(f) earlier than required and/or that the Court order Defendants to share all discovery in the Delaware action with Plaintiff in this action. The case was then referred for discovery purposes to the Undersigned. (Dkt. No. 28.) The Court set a briefing schedule for the motion to expedite discovery. (Dkt. No. 31.) The application to modify the briefing schedule is therefore **HEREBY DENIED** as **MOOT**.

Per the Court’s order, Defendant Twitter, Inc. (“Twitter”) filed an opposition to the motion to expedite discovery on August 23, 2022. (Dkt. No. 35.) Defendants Elon R. Musk (“Musk”), X Holdings II, Inc. (“XHII”), and X Holdings I, Inc. (“XHI”) filed an opposition on the same date. The Court refers to all Defendants collectively as “Defendants.” Having considered the submissions of the parties, the Court **HEREBY DENIES** the motion to expedite and coordinate discovery, **DENIES** the motion for an expedited Rule 26(f) conference, and **DENIES WITHOUT PREJUDICE** the request to obtain all discovery from the Delaware action, for the reasons set forth

United States District Court
Northern District of California

1 below.

2 **A. Background.**

3 On April 25, 2022, Elon Musk, “acting through and with his solely-owned entities [XHI
4 and XHII] agreed buy Twitter for \$54.20 per share in cash, for a total of about \$44 billion.” (Dkt.
5 No. 26-1 (Redenbarger Decl. Ex. A, ¶ 3).) Plaintiff filed this suit on May 25, 2022, against
6 Defendants Musk and Twitter. (Dkt. No. 1.) In his original Complaint, Plaintiff, a Twitter
7 shareholder in his proposed class action on behalf of all of Twitter’s shareholders, alleged that
8 Musk harmed Twitter’s shareholders by engaging in manipulative transactions and/or made or
9 materially participated in making” false and misleading statements in violation of Cal. Corp. Code
10 §§ 25400 and 25500. (*Id.*) Plaintiff also alleged that Musk violated Cal. Corp. Code §§ 25401
11 and 25501 by making false statements or omitting material information in his offer to purchase
12 securities from Plaintiff and proposed class members. (*Id.*) Plaintiff sought declarative and
13 injunctive relief against all defendants in an unspecified manner. (*Id.*) Plaintiff alleged that both
14 Musk and Twitter were liable under Cal. Corp. Code §§ 25402 and 25502.5 because Musk
15 purchased Twitter’s securities when he knew material information that could significantly affect
16 the market price, and Plaintiff sought declaratory judgment that Twitter has an obligation to
17 investigate Musk’s conduct and take action. (*Id.*) Finally, Plaintiff asserted unjust enrichment
18 against Musk. (*Id.*) Plaintiff did not serve that original complaint.

19 Plaintiff then filed a First Amended Complaint (“FAC”) on July 1, 2022. (Dkt. No. 7.)
20 The FAC alleges three claims against three defendants. First, the FAC alleges a class action claim
21 for aiding and abetting breach of fiduciary duty against Musk, XHI, and XHII. (*Id.* ¶¶ 155-162.)
22 Although Plaintiff does not name them as defendants, Plaintiff alleges that Jack Dorsey and Egon
23 Durban, who are directors of Twitter, breached their fiduciary duties to Twitter and that the named
24 Defendants aided and abetted Dorsey and Egon Durban. (*Id.* ¶ 105.) Second, Plaintiff alleges an
25 individual claim against Musk, XHI, XHII, and Twitter for declaratory and injunctive relief under
26 California law:

27 Defendants Musk and X Holdings I, Inc. and X Holdings II, Inc
signed a binding contract to buy Plaintiff’s stock for \$54.20. But
28 Defendant Musk thereafter publicly stated that the Buyout is

1 “temporarily on hold” and “cannot go forward” until certain
2 conditions are met.

3 [. . .] The conditions that Musk stated be met before the Buyout can
4 go forward to not appear to be part of the contract he signed with
5 Twitter, Inc. Plaintiff thus seeks a declaration concerning these s
6 facts and issues and the parties’ respective rights and obligations.
7 Plaintiff also seeks appropriate injunctive relief to be determined by
8 the Court.

9 (*Id.* ¶¶ 164-165.) Finally, Plaintiff alleges a claim for unjust enrichment under Delaware law
10 against Musk alone. (*Id.* ¶¶ 166-169.) Plaintiff has not sought a temporary restraining order or a
11 preliminary injunction in this action.

12 On July 12, 2022, Twitter sued Musk, XHI, andXHII in the Delaware action for specific
13 performance to enforce the merger agreement. (Dkt. No. 26-1 (Redenbarger Decl. Ex. A).) The
14 merger agreement called for the purchase by October 24, 2022. (*Id.*) On July 29, 2022, the
15 Delaware Chancery Court set a trial date of October 17, 2022, on an expedited basis, with all
16 discovery to be completed by September 12, 2022. (Dkt. Nos. 26, 36.)

17 On July 28, 2022, the parties in this action agreed to extend the deadline for Defendants’
18 motions to dismiss to September 9, 2022, with a hearing date of November 21, 2022. (Dkt. No.
19 20.)

20 After the Court in the Delaware action ordered that discovery be expedited there, in late
21 July 2022, Plaintiff sked that the parties expedite and coordinate discovery in this action with the
22 Delaware action and that Defendants provide Plaintiff with all discovery from the Delaware
23 action. (Dkt. No. 36-1 (Sarles Decl. ¶ 2).) Plaintiff claimed that he needed the expedited
24 discovery to determine what type of preliminary injunction he would seek int his action. (*Id.*)

25 On August 10, 2022, before the Rule 26(f) conference, Plaintiff served his First Requests
26 for Production of Documents in which he seeks all discovery in the Delaware action. (Dkt. No.
27 36-1 (Sarles Decl. Ex. 2).)

28 **B. Analysis.**

29 Plaintiff does not meet the standards for expedited discovery in this action. In considering
30 whether to grant expedited discovery, courts consider the following factors:

1 (1) whether a preliminary injunction is pending, (2) the breadth of the
2 discovery requests, (3) the purpose for requesting the expedited
3 discovery, (4) the burden on the defendants to comply with the
4 requests; and (5) how far in advance of the typical discovery process
5 the request was made.

6 *American LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1067 (C.D. Cal. 2019). Here, there is no
7 preliminary injunction pending. Although Plaintiff claims that he needs the discovery now for a
8 contemplated motion for preliminary injunction, he provides no explanation for what he plans to
9 seek in that motion. Plaintiff also does not deny that he told Defendants in earlier discussion that
10 he wanted to see the discovery before determining what type of relief to seek. Thus, the first
11 factor weighs against expedited discovery. Second, the breadth of the discovery requests is broad,
12 as Plaintiff seeks everything produced and every deposition transcript in the Delaware action. The
13 third and fourth factors are combined: the purpose for seeking expedited discovery is ostensibly to
14 increase efficiency and decrease duplicative work, but here, given the extremely tight schedule the
15 Court in the Delaware action set, production here would, at least in the short term, be very
16 burdensome to Defendants. The schedule in the Delaware action is extremely fast-paced,
17 particularly for a case of its magnitude, with the parties ordered to conclude discovery only two
18 months after filing of the suit and go to trial only three months after filing suit. Adding an
19 additional Plaintiff to that rapid process would substantially increase the burden on the parties in
20 the Delaware action. Finally, Plaintiff made this request far in advance of the typical discovery
21 process, as the time for a Rule 26(f) conference has not even occurred. All of these factors weigh
22 against expedited discovery.

23 Separately, the Court considers Plaintiff's request that the Court coordinate discovery in
24 this matter with the discovery in the Delaware action. The Court declines to do so, again because
25 of the speed in which the discovery and trial are taking place in the Delaware action and the
26 increased burden that requiring coordination will create.

27 Plaintiff seeks an early Rule 26(f) conference, but again, there is no justification for
28 advancing the schedule. Plaintiffs seek an order that Defendants must produce all discovery from
29 the Delaware action. That request is premature. It is not clear whether the Delaware action and
30 this action will have perfect unity of interests that would make all of the Delaware action
31 discovery relevant to this action. Until this case progresses and until the Delaware action

1 concludes, it is difficult to determine what claims, if any, Plaintiff will have remaining. If, at a
2 later point in this litigation on the regular schedule for discovery, Plaintiff seeks this information,
3 Plaintiff can seek this information by following the regular procedure to compel production, i.e.,
4 after Defendants respond, after meeting and conferring, and with a discovery letter brief pursuant
5 to this Court's Standing Order.

6 **IT IS SO ORDERED.**

7 Dated: August 31, 2022



8
9 SALLIE KIM
United States Magistrate Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
United States District Court
Northern District of California