

1 SHANNON LISS-RIORDAN (SBN 310719)
 (sliss@llrlaw.com)
 2 THOMAS FOWLER (*pro hac vice* forthcoming)
 (tfowler@llrlaw.com)
 3 LICHTEN & LISS-RIORDAN, P.C.
 4 729 Boylston Street, Suite 2000
 Boston, MA 02116
 5 Telephone: (617) 994-5800
 6 Facsimile: (617) 994-5801

7 *Attorneys for Plaintiff Dmitry Borodaenko,*
 8 *on behalf of himself and all others similarly situated*

9
 10 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 11 **SAN FRANCISCO DIVISION**

12
 13 DMITRY BORODAENKO, on behalf of
 14 himself and all others similarly situated,

15 Plaintiff,

16 v.

17 TWITTER, INC.

18 Defendant
 19
 20
 21
 22

Case No. 3:22-cv-7226

**CLASS ACTION COMPLAINT AND
 JURY DEMAND**

1. DISCRIMINATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §§ 12101, *et seq.*
2. DISCRIMINATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, Gov. Code § 12940
3. DECLARATORY JUDGMENT ACT, 28 U.S.C. §§ 2201-02

1 **I. INTRODUCTION**

2 1. Plaintiff Dmitry Borodaenko files this Class Action Complaint against Defendant
3 Twitter, Inc. (“Twitter”), on his own behalf and on behalf of other disabled Twitter employees
4 across the country who have been discharged or constructively discharged from their jobs during
5 the chaotic weeks since multi-billionaire Elon Musk purchased the company.
6

7 2. Plaintiff brings claims of discrimination under the Americans With Disabilities
8 Act (“ADA”), 42 U.S.C. §§ 12101, *et seq.*, and (for employees who worked out of California)
9 California Fair Employment and Housing Act (“FEHA”), Gov. Code § 12940, challenging the
10 company’s termination, or constructive termination, of employees with disabilities who can
11 perform their jobs with or without reasonable accommodation but who were not permitted to
12 continue their jobs, either through termination or forced resignation after being required to accept
13 working under unreasonable circumstances for an employee with a disability.

14 3. As described further below, shortly after Elon Musk completed his purchase of
15 Twitter, he immediately began laying off half of its workforce.

16 4. Many of the employees who have lost their jobs since Musk’s purchase of the
17 company are disabled.

18 5. Prior to Musk’s purchase of the company, Twitter employees were permitted to
19 work remotely. In fact, over the spring and summer of 2022, Twitter reassured employees that,
20 following Musk’s purchase of the company, they would be permitted to continue working
21 remotely for at least a year.

22 6. However, shortly after Musk completed the purchase of Twitter, he declared that
23 working remotely would no longer be allowed and that all remaining employees would need to
24 work out of a company office – with only rare exceptions for “exceptional” employees, that
25 Musk himself would have to approve.
26
27
28

1 7. Many disabled employees were able to perform their jobs adequately with the
2 reasonable accommodation of working remotely, rather than from a physical Twitter office.
3 Musk’s declaration, however, that almost all employees would need to work out of physical
4 offices made it not possible or viable for many disabled employees to continue their jobs.
5

6 8. In addition, Musk declared that, in order to remain employed at Twitter,
7 employees would have to “work[] long hours at high intensity.” Any employees who did not
8 agree to this mandate would have to resign.

9 9. Many disabled employees who have, and could continue to, perform their jobs
10 effectively have felt that, because of their disability, they will not be able to meet this new
11 heightened standard of performance and productivity. Thus, many disabled employees have felt
12 forced to resign.

13 10. Twitter has stated that these employees would receive severance agreements
14 shortly. Plaintiff is very concerned that employees will be asked to sign away their rights without
15 notice that they have legal claims of discrimination and that these legal claims have already been
16 filed on their behalf.

17 11. Indeed, another company owned by Elon Musk, Tesla, recently engaged in mass
18 layoffs without notice. That company attempted to obtain releases from laid off employees
19 without informing them of their rights under the federal or California WARN Acts. A federal
20 court subsequently ordered the company to provide employees notice of the claims that had been
21 filed on their behalf. See Lynch v. Tesla, Inc., 2022 WL 42952953, at *6 (W.D. Tex. Sept. 16,
22 2022).

23 12. Plaintiff files this action, bringing claims of disability discrimination, under
24 federal and California law, and seeks to ensure that Twitter not solicit releases of claims of any
25 such employees without informing them of the pendency of this action and their right to pursue
26 these claims.
27

1 13. Plaintiff seeks immediate injunctive relief, as well as a declaratory judgment
2 under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, on behalf of himself and all
3 similarly situated employees.

4 **II. PARTIES**

5 14. Plaintiff Dmitry Borodaenko is an adult resident of Scotts Valley, California,
6 where he worked for Twitter from June 2021 until November 2022.

7 15. Plaintiff brings this lawsuit as a Rule 23 class action on behalf of all similarly
8 situated disabled Twitter employees across the United States whose jobs have been affected by
9 the company's layoffs, terminations, and heightened demands on the workforce.

10 16. Defendant Twitter, Inc. ("Twitter") is a Delaware corporation, headquartered in
11 San Francisco, California.

12 **III. JURISDICTION**

13 17. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1331 and
14 29 U.S.C. § 2104(a)(5).

15 18. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiff's
16 state law claims, because those claims derive from a common nucleus of operative facts with
17 Plaintiff's federal claims.

18 19. This Court has personal jurisdiction over Twitter, as it is headquartered in this
19 District and conducts substantial business operations in this District.

20 **IV. STATEMENT OF FACTS**

21 20. Twitter is a social media company that employs thousands of people across the
22 United States.

23 21. In April 2022, it was announced that multi-billionaire Elon Musk would be
24 purchasing the company.

1 22. Following this announcement, many employees raised concerns regarding the
2 company's policies following this anticipated acquisition.

3 23. In order to allay employees' concerns and try to prevent them from leaving
4 Twitter to work at other companies, Twitter made various promises to employees.

5 24. One of the promises was that employees would be able to continue working
6 remotely, for at least a year after Musk's acquisition of the company. This promise was made
7 repeatedly to employees by managers, the CEO, and other staff.

8 25. However, following the purchase of the company by Elon Musk in late October
9 2022, Twitter openly reneged on this promise.

10 26. On the evening of November 9, 2022, Musk announced that all employees were
11 expected to begin reporting to Twitter offices immediately.

12 27. At a meeting with Twitter employees on November 10, 2022, Musk reiterated that
13 employees needed to return to the office full time. He told employees: "if you can show up at an
14 office and you do not show up at the office, resignation accepted -- end of story." He elaborated:
15 "Let me be crystal clear, if people do not return to the office when they are able to return to the
16 office -- they cannot remain at the company." Victor Ordonez and Stephanie Wash, Exclusive
17 audio: Musk talks potential Twitter bankruptcy, return to office meeting, ABC News (November
18 11, 2022), [https://abcnews.go.com/Business/exclusive-audio-elon-musk-tells-twitter-employees-](https://abcnews.go.com/Business/exclusive-audio-elon-musk-tells-twitter-employees-return/story?id=93087987)
19 [return/story?id=93087987](https://abcnews.go.com/Business/exclusive-audio-elon-musk-tells-twitter-employees-return/story?id=93087987).

20 28. Musk further stated that exceptions to this policy would be made only for
21 "exceptional people".

22 29. In addition to requiring remaining employees to work at physical offices, Musk
23 also immediately began a mass layoff that has been reported to have affected half of Twitter's
24 workforce. See Kate Conger, Ryan Mac, and Mike Isaac, Confusion and Frustration Reign as
25
26
27

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.