

SHIVA STEIN,

Plaintiff,

v.

TWITTER, INC., BRET TAYLOR, PARAG AGRAWAL, MIMI ALEMAYEHOU, EGON DURBAN, MARTHA LANE FOX, OMID KORDESTANI, DR. FEI-FEI LI, PATRICK PICHETTE, and DAVID ROSENBLATT,

Defendants.

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: Civil Action No. 22-cv-5490

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: **COMPLAINT FOR VIOLATIONS OF**

: **SECTIONS 14(a) AND 20(a) OF THE**

: **SECURITIES EXCHANGE ACT OF**

: **1934**

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: **JURY TRIAL DEMANDED**

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1. This is an action brought by Plaintiff against Twitter, Inc. (“Twitter or the “Company”) and the members Twitter’s board of directors (the “Board” or the “Individual Defendants” and collectively with the Company, the “Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9 and 17 C.F.R. § 244.100, in connection with the proposed acquisition of Twitter by affiliates of Elon R. Musk (“Musk”).

**DOCKET**  
**ALARM**

Statement recommends that Company stockholders vote in favor of a proposed transaction whereby the X Holdings II, Inc. (“Merger Sub”), a wholly-owned subsidiary of X Holdings I, Inc. (“Parent”), will merge with and into Twitter with Twitter surviving as a wholly-owned subsidiary of Parent (the “Proposed Transaction”). Pursuant to the terms of the definitive agreement and plan of merger the companies entered into on April 25, 2022 (the “Merger Agreement”), each Twitter stockholder will receive \$54.20 in cash (the “Merger Consideration”) for each Twitter share owned. Parent and Merger Sub are affiliates of Musk.

1. As discussed below, Defendants have asked Twitter’s stockholders to support the Proposed Transaction based upon the materially incomplete and misleading representations and information contained in the Proxy Statement, in violation of Sections 14(a) and 20(a) of the Exchange Act. Specifically, the Proxy Statement contains materially incomplete and misleading information concerning the analyses performed by the Company’s financial advisors Goldman Sachs & Co. LLC (“Goldman Sachs”) and J.P. Morgan Securities LLC (“J.P. Morgan”) in support of their fairness opinions.

2. It is imperative that the material information that has been omitted from the Proxy Statement is disclosed to the Company’s stockholders prior to the forthcoming stockholder vote so that they can properly exercise their corporate suffrage rights.

3. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to Twitter’s stockholders or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants’ violations of the Exchange Act.

## **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9.

5. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

6. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because the Company trades on the New York Stock Exchange, headquartered in this District, and the Company's proxy solicitor, Innisfree M&A Incorporated, is also headquartered in this District.

## **PARTIES**

7. Plaintiff is, and has been at all relevant times, the owner of Twitter stocks and has held such stocks since prior to the wrongs complained of herein.

8. Individual Defendant Bret Taylor has served as a member of the Board since July 2021 and is the Independent Board Chair of the Company.

9. Individual Defendant Parag Agrawal has served as a member of the Board since 2021 and is the Chief Executive Officer of the Company.

10. Individual Defendant Mimi Alemayehou has served as a member of the Board since 2021.

11. Individual Defendant Egon Durban has served as a member of the Board since March 2020.

12. Individual Defendant Martha Lane Fox has served as a member of the Board since April 2016.

13. Individual Defendant Omid Kordestani has served as a member of the Board since October 2015.

14. Individual Defendant Dr. Fei-Fei Li has served as a member of the Board since 2020.

15. Individual Defendant Patrick Pichette has served as a member of the Board since December 2017.

16. Individual Defendant David Rosenblatt has served as a member of the Board since December 2010.

17. Defendant Twitter is a Delaware corporation and maintains its principal offices at 1355 Market Street, Suite 900, San Francisco, California 94103. The Company's stock trades on the New York Stock Exchange under the symbol "TWTR."

18. The defendants identified in paragraphs 10-16 are collectively referred to as the "Individual Defendants" or the "Board."

19. The defendants identified in paragraphs 10-17 are collectively referred to as the "Defendants."

## **SUBSTANTIVE ALLEGATIONS**

### **A. The Proposed Transaction**

20. Twitter operates as a platform for public self-expression and conversation in real-time. The Company's primary product is Twitter, a platform that allows users to consume, create, distribute, and discover content. It also provides promoted products that enable advertisers to promote brands, products, and services, as well as enable advertisers to target an audience based on various factors, including who an account follows and actions taken on its platform, such as

Tweets created and engagement with Tweets. Its promoted products consist of promoted ads and Twitter Amplify, Follower Ads, and Twitter takeover. In addition, the Company offers monetization products for creators, including Tips to directly send small one-time payments on Twitter using various payment methods, including bitcoin; Super Follows, a paid monthly subscription, which includes bonus content, exclusive previews, and perks as a way to support and connect with creators on Twitter; and Ticketed Spaces to support creators on Twitter for their time and effort in hosting, speaking, and moderating the public conversation on Twitter Spaces. Further, it offers products for developers and data partners comprising Twitter Developer Platform, a platform that enables developers to build tools for people and businesses using its public application programming interface; and paid access to Twitter data for partners with commercial use cases. Twitter was founded in 2006 and is based in San Francisco, California.

21. On April 25, 2022, the Company and Musk jointly announced the Proposed Transaction:

SAN FRANCISCO, April 25, 2022 /PRNewswire/ -- Twitter, Inc. (NYSE: TWTR) today announced that it has entered into a definitive agreement to be acquired by an entity wholly owned by Elon Musk, for \$54.20 per share in cash in a transaction valued at approximately \$44 billion. Upon completion of the transaction, Twitter will become a privately held company.

Under the terms of the agreement, Twitter stockholders will receive \$54.20 in cash for each share of Twitter common stock that they own upon closing of the proposed transaction. The purchase price represents a 38% premium to Twitter's closing stock price on April 1, 2022, which was the last trading day before Mr. Musk disclosed his approximately 9% stake in Twitter.

Bret Taylor, Twitter's Independent Board Chair, said, "The Twitter Board conducted a thoughtful and comprehensive process to assess Elon's proposal with a deliberate focus on value, certainty, and financing. The proposed transaction will deliver a substantial cash premium, and we believe it is the best path forward for Twitter's stockholders."

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