

COTCHETT, PITRE & MCCARTHY, LLP

Joseph W. Cotchett (SBN 36324)
jcotchett@cpmlegal.com
Mark C. Molumphy (SBN 168009)
mmolumphy@cpmlegal.com
Anne Marie Murphy (SBN 202540)
ammurphy@cpmlegal.com
Tyson C. Redenbarger (SBN 294424)
tredenbarger@cpmlegal.com
Julia Q. Peng (SBN 318396)
jpeng@cpmlegal.com
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, California 94010
Telephone: (650) 697-6000

BOTTINI & BOTTINI, INC.

Francis A. Bottini, Jr. (SBN: 175783)
fbottini@bottinilaw.com
Anne B. Beste (SBN 326881)
abeste@bottinilaw.com
Albert Y. Chang (SBN 296065)
achang@bottinilaw.com
Yury A. Kolesnikov (SBN 271173)
ykolesnikov@bottinilaw.com
Nicholas H. Woltering (SBN 337193)
nwoltering@bottinilaw.com
7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037
Telephone: (858) 914-2001

Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

vs.

ELON R. MUSK and TWITTER, INC.,

Defendants,

Case No.:

Class Action

**COMPLAINT FOR
(1) VIOLATION OF THE
CALIFORNIA CORPORATIONS
CODE; AND
(2) DECLARATORY AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

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1 Plaintiff alleges the following (a) upon personal knowledge with respect to the matters
2 pertaining to Plaintiff; and (b) upon information and belief with respect to all other matters, based upon,
3 among other things, the investigations undertaken by Plaintiff’s counsel. Plaintiff believes that
4 substantial additional evidentiary support will exist for the allegations set forth below after a reasonable
5 opportunity for discovery.

6 **I. INTRODUCTION AND SUMMARY OF THE ACTION**

7 1. Plaintiff brings this class action on behalf of all stockholders of Twitter, Inc., a San
8 Francisco based company, who have been harmed by the actions of Defendant Elon R. Musk. Plaintiff
9 asserts claims against Defendant Musk for violations of California Corporations Code §§ 25400, 25401,
10 25500, and 25501 and against Defendant Twitter, Inc. for declaratory, injunctive relief, and unjust
11 enrichment.

12 2. Defendant Twitter, Inc., headquartered in San Francisco, operates a social media
13 platform that allows its users to send and receive “tweets.” Defendant Musk is a prolific user of Twitter
14 and one of its most-followed members, with 90 million followers, making Musk’s Twitter account the
15 eighth most popular account on Twitter.

16 3. On **April 25, 2022**, Twitter, Inc. announced that it had agreed to sell itself to Elon Musk
17 for \$54.20 per share, or approximately \$44 billion (the “Buyout” or “Proposed Buyout”). Musk
18 negotiated the Twitter Buyout over the weekend of April 23-24, 2022 without carrying out any due
19 diligence. The Buyout is only conditioned on approval of Twitter’s shareholders at a meeting to be
20 scheduled this summer, regulatory approval, and closing of the Buyout by October 24, 2022.

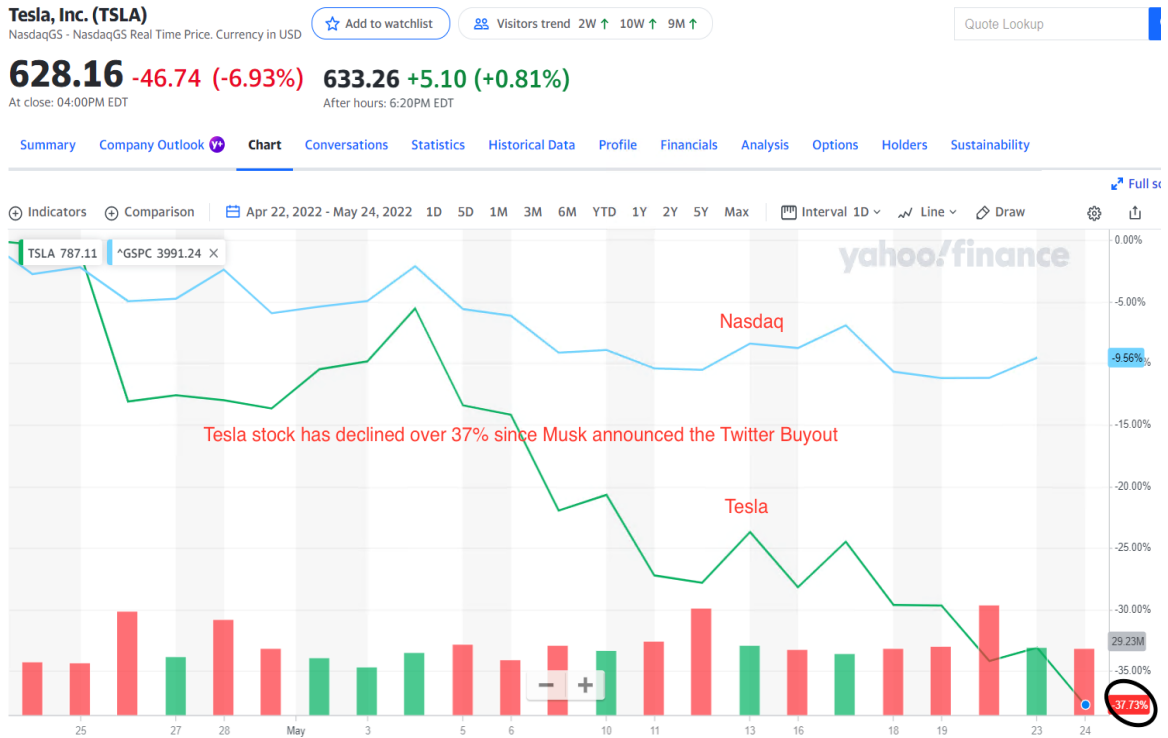
21 4. Before agreeing to buy Twitter for \$44 billion, Musk, one of the world’s richest
22 individuals valued at \$276 billion according to the Bloomberg Billionaires Index, and a sophisticated
23 businessman with a phalanx of lawyers and investment bankers, according to the press, specifically
24 agreed to waive detailed due diligence as a condition of the merger agreement. At the time, Musk was
25 well aware that Twitter had a certain amount of “fake accounts” and accounts controlled by “bots” and
26 had in fact settled a lawsuit based on the fake accounts for millions of dollars. Musk had tweeted about
27 that issue at Twitter several times in the past, prior to making his offer to acquire Twitter with full
28 knowledge of the bots.

1 5. Musk and his team were also well aware of a **\$809.5 million settlement** Twitter entered
2 into **in September 2021**, in a securities fraud class action alleging Twitter overstated its user numbers
3 and growth rate -- *In re Twitter Inc. Securities Litigation*, 16-cv-05314, U.S. District Court, Northern
4 District of California (San Francisco). All the documents from that case were publicly available to
5 Musk, including a website (www.twittersecuritieslitigation.com) containing, among other things, the
6 Court's order denying Twitter's motion for summary judgment. See **Exhibit A** (April 17, 2020 Order
7 Denying Motion for Summary Judgment, at p. 16)(holding that Twitter's false statements about its
8 Daily Active Users (DAUs) and Monthly Active Users (MAUs) were material because "Twitter has
9 publicly stated that its success and financial performance depend, at least in part, on the size and
10 engagement of its user base.").

11 6. Musk believed he was obtaining Twitter at a sale price, since Twitter's stock price had
12 decreased significantly in the months before he made his offer, declining from \$71.69 on July 23, 2021
13 to just \$32.42 on March 7, 2022. After Musk agreed to buy Twitter for \$54.20, the stock market
14 experienced a decline. The market decline, however, did not affect Twitter's stock price. After the
15 announcement of the Buyout, stock consistently traded close to the Buyout price, and around \$50 per
16 share. The small delta between its trading price and the \$54.20 buyout price was typical of the trading
17 prices of companies who have agreed to be acquired, characterized by a small discount for the time
18 value of money and a relatively small risk that the deal will not go through.

19 7. Musk had a unique and multi-billion-dollar problem. Musk pledged his **Tesla** stock as
20 collateral for a \$12.5 billion loan to finance the buyout of Twitter, however **Tesla's shares have**
21 **declined by over 37%** since the announcement of the Buyout, as reflected below:
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8. Because Tesla’s stock is worth much less now than when Musk agreed to buy Twitter, Musk is at risk of a margin call or a requirement to put up more cash. Musk quickly acted to attempt to mitigate these personal risks to himself by engaging in unlawful conduct that moved the price of Twitter’s stock down. Musk proceeded to make statements, send tweets, and engage in conduct designed to create doubt about the deal and drive Twitter’s stock down substantially in order to create leverage that Musk hoped to use to either back out of the purchase or re-negotiate the buyout price by as much as 25% which, if accomplished, would result in an \$11 billion reduction in the Buyout consideration. As detailed herein, Musk’s conduct was and continues to be illegal, in violation of the California Corporations Code, and contrary to the contractual terms he agreed to in the deal.

9. Musk’s market manipulation worked -- **Twitter has lost \$8 billion in valuation** since the Buyout was announced. As subsequently disclosed, Musk first started purchasing Twitter shares on January 31, 2022. Musk thereafter exceeded the 5% threshold, requiring him to file a Form 13G with the SEC. Musk did not timely file the Form 13G; failing to do so benefitted Musk because he was able to continue to buy Twitter shares at depressed prices. When Musk belatedly filed the Form 13G, Twitter’s shares increased substantially, rising 27% after he filed the 13G.

1 10. ***Musk benefitted himself by approximately \$156 million*** by failing to timely file a Form
2 13G.¹ By delaying his disclosure of his stake in Twitter, Musk engaged in market manipulation and
3 bought Twitter stock at an artificially low price, in violation of the California Corporations Code.

4 11. Musk’s disregard for securities laws demonstrates how one can flaunt the law and the tax
5 code to build their wealth at the expense of the other Americans. Musk’s insider trading profits may
6 come with a slap on the wrist in the form of a fine from the SEC but will probably be limited to
7 hundreds of thousands of dollars, according to legal and security experts.²

8 12. When Musk eventually filed his Form 13G on April 4, 2022, it was materially
9 misleading. He did not disclose his intent to join the Twitter Board and he failed to disclose that he was
10 contemplating buying Twitter. Both disclosures would have caused Twitter’s stock to increase more
11 than it did when his filing was made. Musk was later forced to file an amended Form 13G to comply
12 with the law. As Tesla shares cratered by almost 30% in April and May 2022, Musk began to make
13 disparaging comments about Twitter in an effort to drive its stock price down further.

14 13. On **May 13, 2022**, at 5:44 a.m. (*i.e.*, before the stock market opened), Musk issued a
15 tweet which stated that the buyout was “temporarily on hold:”



16 Elon Musk ✓
17 @elonmusk

...

18 Twitter deal temporarily on hold pending details
19 supporting calculation that spam/fake accounts do
20 indeed represent less than 5% of users

21 14. Musk’s tweet (and public statement) was misleading and constituted an effort to
22 manipulate the market for Twitter shares as he knew all about the fake accounts. The statement was
23 false because the buyout was not, in fact, “temporarily on hold.” There is nothing in the buyout
24 contract that allows Musk to put the deal “temporarily on hold.” Moreover, Musk’s statement was
25 misleading because it stated or implied that Musk’s obligation to consummate the buyout was

26 ¹ See Reed Albergotti, “Elon Musk Delayed Filing a Form and Made \$156 Million,” The Washington
27 Post, April 6, 2022.

28 ² *Id.*

1 conditioned on his satisfaction with due diligence to determine whether “spam/fake accounts do indeed
 2 represent less than 5% of users.” This was false because Musk had specifically waived detailed due
 3 diligence as a condition precedent to his obligations under the buyout contract. Thus, Musk had and has
 4 no right to cancel the buyout based on any results from due diligence concerning the number of
 5 spam/fake accounts at Twitter. Musk then continued issuing false and disparaging tweets about Twitter
 6 in an effort to drive its stock price down further.

7 15. Musk’s false and misleading tweets had the desired effect, as they caused Twitters’ stock
 8 to decline in the days following the tweets, in stark contrast to the Nasdaq index, which increased, as
 9 reflected in the following chart:



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 21 16. On May 17, 2022, Musk doubled down on his “Friday the 13th” tweet, issuing another
 22 tweet stating that the deal “cannot go forward” while claiming almost 20% of accounts were fake.



1 17. Musk’s wrongful conduct has not only substantially harmed Twitter’s shareholders by
2 causing Twitter’s stock to crater by approximately 25%, but it has also substantially harmed Twitter’s
3 employees. As reported by the Wall Street Journal on May 21, 2022:

4 ***In one 24-hour period this month, Twitter Inc.’s chief executive fired two widely liked senior***
5 ***executives and announced a hiring freeze, while billionaire Elon Musk suddenly said he was***
6 ***putting “on hold” an acquisition plan that could lead to a wholesale revamp of the social-***
7 ***media company.***

8 It is a tricky time to work at Twitter. Far beyond the usual uncertainty at an acquisition target,
9 ***Mr. Musk’s \$44 billion takeover deal has left employees bewildered about what their jobs are***
10 ***and will be, as well as how to keep operating a platform with around 229 million daily users***
11 while its would-be owner uses it to publicly assail the company for everything from its free-
12 speech policies to its business model.

13 Internal conversations and Slack channels are awash in distress and anger over the criticism,
14 while ***company leaders who themselves have no way to know the outcome have responded***
15 ***with repeated staff meetings to try to soothe the angst and encourage people to press forward,***
16 according to current and former staffers and internal communications viewed by The Wall
17 Street Journal.

18 ***“I expect the ‘chaos tax’ and ups and downs to continue,” Jay Sullivan, Twitter’s new head***
19 ***of product, wrote on May 13*** in an internal message to thousands of employees that was viewed
20 by the Journal.

21 Whatever the fate of the deal, many ***current and former employees say the company has been***
22 ***irrevocably shaped by the five weeks since Mr. Musk publicly disclosed his unsolicited bid to***
23 ***buy Twitter***, one of the world’s most influential social-media platforms. Some employees have
24 left. Many more say they are looking for new jobs. Others are hunkering down to await an
25 uncertain fate under ***Mr. Musk***, who ***recently tweeted an image of cartoon excrement at the***
26 ***current CEO.***

27 ***On May 12, Mr. Agrawal told employees the company was pausing hiring and looking to cut***
28 ***costs, and that two senior executives—Bruce Falck, general manager of revenue, and Kayvon***
29 ***Beykpour, general manager of consumer—were leaving. Mr. Beykpour tweeted he was on***
30 ***paternity leave when he got the news.***

31 ***The next day, Mr. Musk tweeted that the deal was “on hold” until he could get more***
32 ***clarification from the company about how pervasive bots were on the platform. That rattled***
33 ***already wobbly investor confidence that the deal will happen at the price Mr. Musk agreed***
34 ***to—if at all. Twitter shares are down more than 25% since late April.***³

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³ See Deepa Seetharaman & Sarah Needleman, “Twitter Employees Face ‘Chaos Tax,’” THE WALL STREET JOURNAL, May 21, 2022.

1 18. Musk’s false statements and market manipulation have created “chaos” at Twitter’s
2 headquarters in San Francisco:

3 TECH

4 **Elon Musk’s Planned Twitter Takeover Creates a ‘Chaos’**

5 Deal has left employees bewildered about what their jobs are and will be



16 Twitter, which is based in San Francisco, has held companywide meetings in recent weeks to address employee questions about the takeover.
17 PHOTO: LAURA MORTON FOR THE WALL STREET JOURNAL

18 19. Musk has also bullied current Twitter employees and stated that he would stop censoring
19 hate speech:

20 Among those most concerned are staff responsible for moderating content and developing tools
21 that minimize abuse and hate speech on the platform, current and former employees say. **Mr.**
22 **Musk has repeatedly said Twitter’s limits on expression are too great and that he wants to**
23 **allow almost all speech on the platform** that isn’t illegal. Mr. Musk’s complaints echo those of
24 others, including some conservative lawmakers who have criticized efforts at content
25 moderation, saying they are subjective and can lead to bias.

26 **Some current employees say they view Mr. Musk’s behavior on the platform, particularly his**
27 **targeting of Ms. Gadde, as an example of the type of online bullying** they have been tasked
28 with minimizing.⁴

⁴ *Id.*

1 20. Musk has been accused of using Twitter to foster “dogpiling,” in which he encouraged
2 his users to harass someone else, such as the case of Vernon Unsworth, a British diver who had spent
3 days assisting the rescue of a group of Thai boys trapped in a flooded cave. After Musk offered a
4 miniscule submarine to the rescue divers, Unsworth told the media that Musk’s idea was just a useless
5 public relations stunt. Musk then took to Twitter, where (in tweets that he later deleted) he baselessly
6 accused Unsworth of being a “pedo guy,” or pedophile. The tweets prompted hundreds of Musk fans to
7 pile on to the diver with abusive, humiliating attacks.⁵

8 21. Musk’s market manipulation of Twitter’s stock has also encouraged other market
9 participants to short Twitter’s stock, including Hindenburg. After Musk began disparaging Twitter and
10 his own buyout, Hindenburg shorted Twitter. On May 17, 2022, Hindenburg closed its short position
11 for a large profit.⁶

12 22. On **May 18, 2022**, Musk announced he would switch parties and become a Republican,
13 calling the Democrats the “party of division & hate” to further excite the media of his conduct.



25
26 ⁵ See Billy Perrigo, “Twitter Employees Have Spent Years Trying to Make the Platform Safer. Elon Musk Could Undermine All That,” TIME, Apr. 26, 2022.

27 ⁶ See Joshua Fineman, “Hindenburg Research Closes Twitter Short Position,” SEEKING ALPHA, May 17,
28 2022.

II. JURISDICTION AND VENUE

1
2 23. This Court has jurisdiction as the Defendants are located in and/or conduct business in
3 California, including, but not limited to, the conduct here at issue, and because they have sufficient
4 minimum contacts with California to render the exercise of jurisdiction by the California courts
5 permissible under traditional notions of fair play and substantial justice.

6 24. This Court has subject matter jurisdiction over this matter under 28 U.S.C. §1332,
7 as this is a class action where at least one of the members of the Class is a citizen of a state different
8 from at least one of the defendants, and the matter in controversy exceeds the sum or value of
9 \$5,000,000.

10 25. Venue is proper in this judicial district under 28 U.S.C. §1391, because: (1) one or
11 more defendants reside in this District; and (2) a substantial part of the events or omissions giving
12 rise to the claims occurred in this District. Twitter is headquartered in San Francisco, California at 1355
13 Market Street, Suite 900. Musk’s wrongful conduct took place in substantial part and have an effect in
14 San Francisco, California, including his use of Twitter tweets to make false statements and engage in
15 market manipulation of Twitter stock.

III. INTRADISTRICT ASSIGNMENT

16
17 26. A substantial part of the events or omissions which give rise to the claims in this
18 action occurred in the county of San Francisco, and as such this action is properly assigned to the
19 San Francisco division of this Court.

IV. THE PARTIES

20
21 27. Plaintiff William Heresniak is a current shareholder of Twitter, Inc. and has owned
22 Twitter stock at all relevant times. Plaintiff is a resident and citizen of Virginia.

23 28. Defendant Twitter, Inc. is a Delaware corporation headquartered in San Francisco,
24 California. Twitter is a citizen of California and Delaware.

25 29. Defendant Elon R. Musk is an individual who currently owns approximately 9.2% of
26 Twitter’s stock. On April 25, 2022, Musk announced a definitive agreement to buy Twitter for \$54.20
27 per share in cash. Upon information and belief, Musk is a citizen and resident of Texas.

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V. CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action as a class action, pursuant to F.R.C.P. 23, on behalf of all stockholders of Twitter, Inc. who have been harmed and/or are threatened with harm by Defendants’ unlawful conduct in connection with Musk’s proposed buyout of Twitter. Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants and their successors in interest (the “Class”).

31. This action is properly maintainable as a class action because:

(a) The Class is so numerous that joinder of all members is impracticable. There are millions of shares of the Company’s common stock outstanding owned by hundreds, if not thousands, of stockholders;

(b) There are questions of law and fact which are common to the Class including, *inter alia*, the following: (i) whether Musk made false and misleading statements; (ii) whether Musk has and continues to engage in conduct in an effort to manipulate the market for Twitter stock; (iii) whether Musk created a false or misleading appearance with respect to the market for Twitter stock; (iv) whether Musk engaged in conduct designed to raise or depress the price of Twitter stock for the purpose of inducing the purchase or sale of Twitter stock by others; (v) whether Musk purchased or sold Twitter stock based on material, non-public information; and (vi) the extent of damage sustained by Class members.

(c) Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature;

(d) The claims of Plaintiff are typical of the claims of other members of the Class and Plaintiff has the same interests as the other members of the Class. Plaintiff will fairly and adequately represent the Class; and

(e) Defendants have acted in a manner which affects Plaintiff and all members of the Class alike, thereby making class treatment appropriate.

The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual

1 members of the Class which would, as a practical matter, be dispositive of the interests of other
2 members not parties to the or substantially impair or impede their ability to protect their interests.

3 VI. SUBSTANTIVE ALLEGATIONS

4 A. Background of the Musk Buyout of Twitter

5 32. Elon Musk is an active user of the Twitter platform with close to 90 million followers,
6 making him one of Twitter's most popular accounts.

7 33. Musk has violated SEC rules related to going-private transactions before. He issued
8 false tweets in the past claiming he was going to take his company, Tesla, Inc., private, and that he had
9 already secured financing. The SEC sued Musk, and he was forced to settle the case and agree to a
10 consent decree dated September 29, 2018, as amended April 26, 2019. The settlement and consent
11 decree required Musk to pay a \$20 million fine, give up his role as Tesla's chairman, and refrain from
12 issuing tweets related to Tesla without the pre-approval of a "Securities Counsel" and Tesla's
13 Disclosure Controls Committee. Musk later demanded that his law firm, Cooley LLP, fire a former
14 SEC lawyer who had worked on the SEC case and later joined Cooley, or else Cooley would lose
15 Musk's business.⁷

16 34. Musk has been sued by Tesla shareholders. On April 1, 2022, the United States District
17 Court for the Northern District of California issued an order granting in part Plaintiffs' Motion for
18 Summary Judgment and holding that Musk's tweets regarding his intent to take Tesla private were false
19 and misleading and that Musk knew or recklessly disregarded the falsity of the tweets. *See In re Tesla,*
20 *Inc. Sec. Litig.*, Case No. 18-cv-04685 (N.D. Cal.), Docket No. 387.⁸

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22
23 ⁷ See Rebecca Elliott, "Elon Musk's Tesla Asked Law Firm to Fire Associate Hired From SEC," THE
24 WALL STREET JOURNAL, Jan. 15, 2022.

25 ⁸ Musk continues to flaunt court and governmental findings and orders. Musk gave a TED Talk in
26 Vancouver on April 14, 2022 during which he emphatically proclaimed in reference to his August 7,
27 2018 Tesla tweets, inter alia, that "funding was actually secured – I want to be clear about that – in fact
28 that gives me a good opportunity to clarify that – and funding was indeed secured" before going on to
refer to the SEC's San Francisco office as "bastards" and claiming that he settled with the agency only
because they had a "gun to [his] child's head." See https://www.ted.com/talks/elon_musk_elon_musk_talks_twitter_tesla_and_how_his_brain_works_live_at_ted2022.

1 35. On **May 12, 2022**, it was announced that the SEC was again investigating Musk, this
2 time for his failure to timely file the Form 13D regarding his more than 5% stake in Twitter. In addition
3 to violating SEC rules, Musk’s false tweets and his wrongful conduct constitute a violation of various
4 provisions of the California Corporations Code designed to protect investors.

5 36. As disclosed by Twitter in its Proxy Statement filed on May 17, 2022 regarding the
6 Buyout, Musk Tweeted comments regarding Twitter’s business, the Twitter platform and functionality,
7 and Twitter’s content moderation policies.

8 37. On **March 26, 2022**, Musk called Jack Dorsey (Twitter’s founder) in California to
9 discuss the future direction of social media, including the benefits of open social protocols. Dorsey had
10 previously communicated his views on these topics to the Twitter Board and publicly. Dorsey lives in
11 the Sea Cliff neighborhood of San Francisco and his communications with Musk were made to and
12 from California.

13 38. Also on **March 26, 2022**, Musk contacted Egon Durban, one of Twitter’s directors, to
14 set up a discussion between Musk and Durban. Musk and Durban subsequently spoke on March 26,
15 2022 and March 27, 2022 *and discussed the potential of Musk joining the Twitter Board, as well as*
16 *the fact that Musk had purchased a significant stake of more than five percent of Twitter’s common*
17 *stock.*⁹ Durban informed Bret Taylor, the chairperson of the Twitter Board,¹⁰ Martha Lane Fox, one of
18 Twitter’s directors and the chairperson of Twitter’s Nominating and Corporate Governance Committee
19 (the “NomGov Committee”), and Parag Agrawal, Twitter’s chief executive officer, of Musk’s
20 communication. Durban, Taylor, Agrawal and Lane Fox discussed Musk’s communications and
21 determined (1) that Durban would connect Musk with Taylor, Agrawal and Lane Fox, and they would
22 also discuss with Musk his potential interest in joining the Twitter Board; (2) to call meetings of the
23 NomGov Committee and of the Twitter Board to discuss Musk’s communications and potential interest
24 in joining the Twitter Board; and (3) that Lane Fox would inform each member of the Twitter Board in
25

26 _____
27 ⁹ See May 17, 2022 Proxy Statement at 42.

28 ¹⁰ Taylor, in addition to being a Twitter director, is the Co-CEO of Salesforce.com and lives in the San Francisco Bay Area. His communications with Musk were disseminated from and to California.

1 advance of the Twitter Board meeting of Musk's communications. Lane Fox subsequently informed
2 the members of the Twitter Board of Musk's initial communications.

3 **B. Musk's Failure to Timely Disclose His 9+% Stake in Twitter, Failure to Disclose**
4 **He Had Been Invited to Join the Twitter Board, and Failure to Disclose He**
5 **Intended to Make an Offer to Acquire Twitter, and Contrary to the Law**

6 39. Despite the fact that Twitter has admitted that Musk already owned 5% of Twitter's
7 stock on or before March 26, 2022, Musk failed to file a Schedule 13D with the SEC, as he was
8 required to do. Musk belatedly filed a Schedule 13G on April 4, 2022, at least 10 days after his stake
9 surpassed the trigger point for disclosure. Musk has not publicly explained why he did not file the form
10 in a timely manner.

11 40. Moreover, Musk's April 4, 2022 filing was false and misleading because it was
12 improperly filed on Form 13G, not 13D. Form 13G is only to be used by passive investors, and thus
13 Musk was required to use Form 13D. Musk's 13G filing failed to disclose that he had been offered a
14 position on Twitter's Board and that he was interested in buying Twitter.

15 41. On **May 11, 2022**, the Wall Street Journal reported that the SEC was investigating Musk
16 over his failure to timely disclose his 9.2% stake in Twitter.¹¹ ***Musk likely saved more than \$143***
17 ***million by not reporting that his trades had crossed the 5% threshold***, according to Daniel Taylor, a
18 University of Pennsylvania accounting professor, since the share price could have been higher had the
19 market known of Musk's growing stake.

20 42. Because Musk had acquired more than 5% of Twitter's stock, he was required to file a
21 Schedule 13D with the SEC within 10 days. Musk's Twitter holdings surpassed 5% on March 14, 2022,
22 securities filings show, meaning he should have disclosed his stake by March 24, 2022 under SEC rules.

23 43. After March 24, Musk purchased roughly \$513 million of stock at prices between \$38.20
24 and \$40.31 a share, according to a regulatory filing. The total buying spree made him Twitter's largest
25 individual shareholder with 9.2% of its shares.

26 _____
27 ¹¹ See Dave Michaels, "Elon Musk's Belated Disclosure of Twitter Stake Triggers Regulators' Probes,"
28 The Wall Street Journal, May 11, 2022.

1 44. Based on Twitter’s closing price of \$49.97 on April 4, the day Musk disclosed his stake,
2 he likely saved more than \$143 million on those trades, Taylor estimated.

3 45. On **March 27, 2022**, Musk, Taylor and Agrawal discussed Musk’s interest in Twitter
4 and potentially joining the Twitter Board. As part of that discussion, Musk stated that he was
5 considering various options with respect to his ownership, including potentially joining the Twitter
6 Board, seeking to take Twitter private or starting a competitor to Twitter.

7 46. On **March 30, 2022**, Lane Fox and Musk discussed his potential interest in joining the
8 Twitter Board and the benefits that Musk believed he could potentially bring to Twitter as a Twitter
9 director.

10 47. On **March 31, 2022**, Agrawal and Taylor met with Musk in California to discuss
11 Twitter’s business and Musk’s potential interest in joining the Twitter Board. At the meeting, Musk
12 reiterated his interest in potentially joining the Twitter Board to help improve Twitter’s business as a
13 director of Twitter, and that he was also considering the possibility of taking Twitter private or starting
14 a competitor to Twitter.

15 48. On **April 2, 2022**, the NomGov Committee met in California, with Taylor, members of
16 Twitter management and a representative of Wilson Sonsini Goodrich & Rosati, Professional
17 Corporation, Twitter’s outside legal counsel reporting to the Twitter Board (“Wilson Sonsini”), in
18 attendance. Durban, Taylor, Agrawal, and Lane Fox each updated the NomGov Committee on their
19 discussions with Musk. After considering, among other things, Musk’s interest in Twitter’s business,
20 his statement that he is one of Twitter’s substantial stockholders, his active use of the Twitter platform,
21 his technical expertise in areas critical to Twitter’s products and technology, and the perspectives that
22 he could bring to the Twitter Board, the NomGov Committee determined to recommend that the Twitter
23 Board consider inviting Musk to join the Twitter Board, subject to completion of customary onboarding
24 procedures, such as a background check and completing and signing a director onboarding
25 questionnaire.

26 49. Upon information and belief, Musk completed the director questionnaire and returned it
27 to Twitter in California.

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1 50. Also on **April 2, 2022**, at the direction of Taylor and the NomGov Committee, Twitter
2 requested that J.P. Morgan attend the scheduled meeting of the Twitter Board in California to assist
3 Twitter in reviewing Musk’s purported purchase of a significant stake in Twitter’s common stock,
4 Musk’s potential appointment to the Twitter Board and related matters.

5 51. On **April 3, 2022**, the Twitter Board met in California, with members of Twitter
6 management and representatives of each of Wilson Sonsini and J.P. Morgan in attendance. Durban,
7 Taylor, Agrawal, and Lane Fox each updated the Twitter Board on their discussions with Musk. The
8 NomGov Committee reported on its discussions at its meeting the previous day and provided its
9 recommendation that the Twitter Board consider inviting Musk to join the Twitter Board. In evaluating
10 the NomGov Committee’s recommendation, the Twitter Board considered, among other things, Musk’s
11 qualifications, business expertise, knowledge of Twitter’s business and user base and technical expertise
12 in areas critical to Twitter’s products and technology.

13 52. At the meeting, Dorsey informed the Twitter Board that he and Musk were friends, and
14 Durban informed the Twitter Board that he had worked on unrelated matters with Musk in the past. At
15 this and other meetings of the Twitter Board in California relating to Musk joining the Twitter Board,
16 Musk’s acquisition proposal and the merger, the Twitter Board regularly met in executive session of
17 independent directors. ***The Twitter Board determined to invite Musk to join the Twitter Board***, subject
18 to his completion of a background check and other customary onboarding procedures. In connection
19 with Musk joining the Twitter Board, ***it was the desire of the Twitter Board that Musk enter into a***
20 ***cooperation agreement that included “standstill” provisions that, among other things, would limit his***
21 ***public statements regarding Twitter***, including the making of unsolicited public proposals to acquire
22 Twitter (but not private proposals) without the prior consent of the Twitter Board.

23 53. Following the meeting, at the direction of the Twitter Board, ***Lane Fox called Musk to***
24 ***invite him to join the Twitter Board***, subject to completion of customary onboarding procedures. Lane
25 Fox also noted the desire of the Twitter Board that Musk enter into a cooperation agreement. Following
26 that discussion, representatives of Twitter sent a copy of Twitter’s customary director onboarding
27 questionnaire to representatives of Musk.

28 54. As noted *supra*, on April 4, 2022, Musk publicly disclosed his ownership of

1 approximately 9.2 percent of Twitter common stock. Musk’s Schedule 13G did not disclose his intent
2 to join the Twitter Board and also failed to disclose that he was contemplating buying Twitter. Both
3 disclosures would have caused Twitter’s stock to increase more than it did when his filing was made.
4 Musk was later forced to file an amended disclosure form on Schedule 13D on April 5, 2022.

5 55. Musk benefitted himself by approximately \$156 million by failing to timely file the
6 Form 13G.¹² By delaying his disclosure of his stake in Twitter, Musk engaged in market manipulation
7 and bought Twitter stock at an artificially low price. Musk was 11 days late in publicly declaring he
8 had amassed a large stake in Twitter. Musk became a 5% stockholder on March 14, 2022, according to
9 the SEC filings, but failed to file his Form 13G until April 4, 2022

10 56. Between March 14 and April 4, 2022, Musk continued to buy Twitter stock at the price
11 of around \$39 per share, bringing his total stake to 9.2 percent. After his disclosure, Twitter’s share
12 price rose roughly 30 percent and then traded at above \$50 per share until Musk began disparaging
13 Twitter.

14 57. Musk saved about \$156 million, according to David Kass, a finance professor at
15 University of Maryland’s business school, who stated “I really don’t know what’s going through his
16 mind. Was he ignorant or knowledgeable that he was violating securities law?” “Whoever was
17 handling the trades for Musk should have known,” Kass said.¹³

18 58. Musk’s disregard for securities laws demonstrates how billionaires can skirt the law and
19 the tax code to build their wealth at the expense of the average American.

20 59. On **April 4, 2022**, representatives of Twitter in California provided Musk with a draft of
21 a cooperation agreement that provided for Musk’s appointment to the Twitter Board and included
22 customary “standstill” provisions. For example, for so long as Musk were to serve on the Twitter Board
23 and for 90 days thereafter, Musk agreed to refrain from, either alone or as a member of a group,
24 becoming the beneficial owner of more than 14.9 percent of Twitter common stock.

25 _____
26 ¹² See Reed Albergotti, “Elon Musk Delayed Filing a Form and Made \$156 Million,” The Washington
27 Post, April 6, 2022.

28 ¹³ *Id.*

1 60. Also on **April 4, 2022**, Twitter sent Musk a draft of a letter agreement providing that
 2 Twitter would appoint Musk to the Twitter Board to serve as a Class II director with a term expiring at
 3 Twitter’s 2024 Annual Meeting of Stockholders. Twitter requested, but Musk refused, to agree to a
 4 customary “cooperation agreement” limiting his public statements about Twitter. Musk did, however,
 5 agree at Twitter’s request to limit his purchase of additional Twitter stock to no more than 14.9% *so*
 6 *long as he was a Twitter director.*

7 61. On **April 5, 2022**, Twitter and Musk issued a joint announcement from California
 8 disclosing the entry into the letter agreement. Musk and Agrawal tweeted the following:



18 62. Over the next three days, Agrawal and Musk continued to discuss Twitter’s business and
 19 products *in anticipation of Musk joining the Twitter Board.* Later that day, Musk called Dorsey in San
 20 Francisco to ask Dorsey for his perspectives on Twitter in connection with the announcement of Musk
 21 joining the Twitter Board.

22 63. On **April 8, 2022**, Lane Fox informed the Twitter Board of the satisfactory completion
 23 of Musk’s background check. Taylor informed the Twitter Board of his expectation that Musk’s
 24 appointment to the Twitter Board would be effective on April 9, 2022.

25 64. On **April 9, 2022**, before Musk’s appointment to the Twitter Board became effective,
 26 Musk notified Taylor and Agrawal in San Francisco that he would not be joining the Twitter Board and
 27 would be making an offer to take Twitter private.

1 65. On **April 10, 2022**, Twitter issued an announcement from California that Musk had
2 decided not to join its Board.

3 **C. After Unexpectedly Announcing He Would Not Join Its Board, Musk Discloses**
4 **an Intent to Buy Twitter, and Threatens to Go Hostile Through a Tender Offer**
5 **if Twitter’s Board Does Not Acquiesce**

6 66. On **April 13, 2022**, Musk delivered to Twitter’s Chairman Bret Taylor in California a
7 non-binding proposal to acquire Twitter, the full text of which is reproduced below. Musk also called
8 Taylor in California to re-iterate that Musk’s proposal represented his best and final offer to acquire
9 Twitter and referred Taylor to Musk’s public disclosure of the proposal scheduled for the next day for
10 additional details with respect to the proposal.

11 *Bret Taylor*

12 *Chairman of the Board,*

13 *I invested in Twitter as I believe in its potential to be the platform for free speech around the*
14 *globe, and I believe free speech is a societal imperative for a functioning democracy.*
15 *However, since making my investment I now realize the company will neither thrive nor serve*
16 *this societal imperative in its current form. Twitter needs to be transformed as a private*
17 *company.*

18 *As a result, I am offering to buy 100% of Twitter for \$54.20 per share in cash, a 54% premium*
19 *over the day before I began investing in Twitter and a 38% premium over the day before my*
20 *investment was publicly announced. My offer is my best and final offer and if it is not accepted,*
21 *I would need to reconsider my position as a shareholder.*

22 *Twitter has extraordinary potential. I will unlock it.*

23 */s/ Elon Musk*
24 *Elon Musk*

25 67. Two aspects of Musk’s letter are noteworthy. First, Musk made one and only one offer.
26 He refused to negotiate and simply put the \$54.20 per share offer to the Twitter Board as a “take it or
27 leave it” offer. Second, Musk threatened to sell his Twitter stock if the Twitter Board did not accept his
28 ultimatum. As will be shown infra, Musk also waived due diligence; he was in a hurry to acquire
Twitter, claimed he knew everything he needed to know about Twitter, and did not condition his offer
on his satisfaction with any due diligence.

 68. On **April 14, 2022**, Musk publicly disclosed his acquisition proposal.

1 69. On **April 15, 2022**, the Twitter Board responded to Musk’s takeover attempt by
2 defensively adopting a shareholder rights plan or “poison pill,” pursuant to which Musk’s acquisition of
3 greater than 15% of Twitter’s outstanding common stock would trigger a right for the Company’s other
4 stockholders to acquire additional stock at a considerable discount.

5 70. Twitter’s CEO, Dorsey, took the highly unusual step of criticizing the Board for this.
6 “On April 16, Jack Dorsey . . . tweeted that the board had been the ‘consistent dysfunction of the
7 company.’ When asked by a Twitter user whether he was allowed to say that, Dorsey responded,
8 ‘no.’”¹⁴

9 71. In response to Twitter’s adoption of a poison pill, Musk began laying the groundwork for
10 a hostile tender offer to acquire Twitter over the Board’s objection. He threatened a tender offer in a
11 series of tweets, posting “Love me tender” on April 16, 2022 and “_____ is the Night” on April 19,
12 2022 (an apparent allusion to the F. Scott Fitzgerald novel Tender is the Night).

13 72. Musk also filed an amended Schedule 13D/A on April 21, 2022, which stated that Musk
14 was “exploring whether to commence a tender offer” and that he had secured commitment letters from a
15 group of lenders, led by Morgan Stanley, to provide approximately \$46.5 billion to finance his
16 acquisition of Twitter.

17 73. Musk then spoke directly with Taylor on Saturday April 23, 2022 and “threatened to take
18 his offer directly to Twitter’s shareholders.”

19 74. The following day, Sunday **April 24, 2022**, the Twitter Board capitulated in the face of
20 Musk’s threats and accepted his initial, “best and final” offer to purchase all Twitter’s outstanding
21 common stock for \$54.20 per share.

22 75. On **April 25, 2022**, Twitter approved entry into a definitive agreement to be acquired by
23 an entity wholly-owned by Musk for \$54.20 per share in cash, in a transaction valued at approximately
24 \$44 billion (the “Proposed Buyout”). The Board’s agreement to the Proposed Buyout was announced
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26 _____
27 ¹⁴ See Lauren Hirsch and Mike Isaac, “How Twitter’s Board Went From Fighting Elon Musk to
28 Accepting Him,” NEW YORK TIMES (April 30, 2022) (available at:
<https://www.nytimes.com/2022/04/30/technology/twitter-board-elon-musk.html>).

1 via a Form 8-K filed by Twitter that same day. The documentation for the Proposed Buyout was
2 negotiated and signed in substantial part in California.

3 76. On **May 5, 2022**, Twitter and Musk entered into a confidentiality agreement with respect
4 to Twitter sharing non-public information with Parent, Musk and their representatives, including
5 pursuant to the terms of the merger agreement. Prior to entry into the merger agreement, ***Musk did not***
6 ***ask to enter into a confidentiality agreement or seek from Twitter any non-public information***
7 ***regarding Twitter***. Further, Musk's obligation to complete the Buyout is not conditioned on his
8 satisfaction with any due diligence.

9 **D. Musk Finances the Proposed Buyout in Part by Pledging Billions of Dollars of**
10 **His Tesla Stock as Collateral for a Loan From Morgan Stanley**

11 77. Musk is financing his purchase of Twitter through the following: (1) \$21 billion in cash;
12 (2) \$25.5 billion in financing. As explained below, both the cash component and \$12.5 billion of the
13 debt financing are linked to Musk's Tesla shares and the value of those Tesla shares.

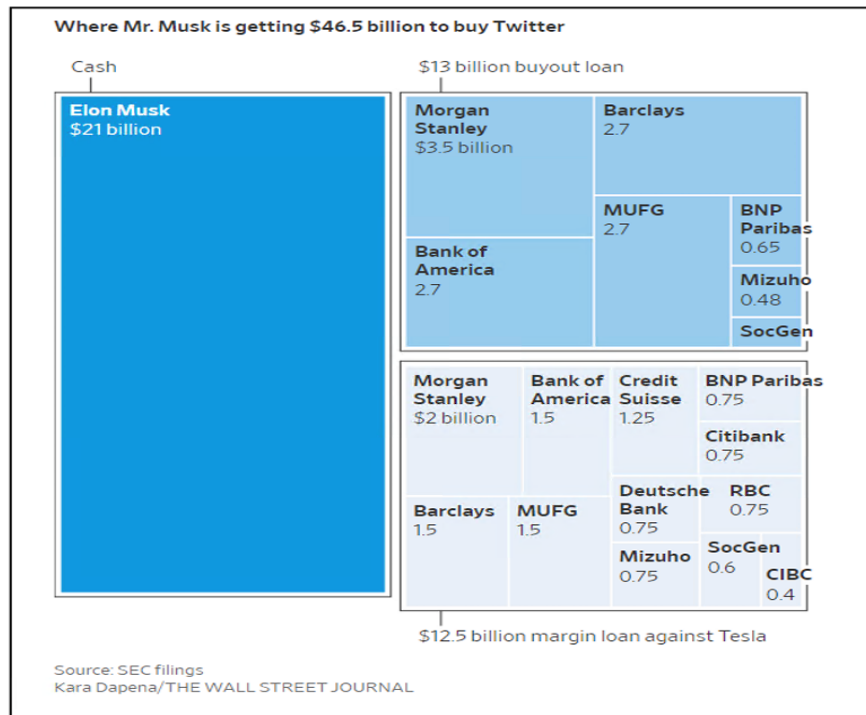
14 78. With respect to the cash component, at the time the Proposed Buyout was announced on
15 April 25, 2022, Musk was expected to sell about 20 million shares of his Tesla stock to provide such
16 cash. That was predicated on Tesla stock having a value at the time of close to \$1,000 per share.

17 79. Indeed, while Tesla stock was still trading around \$1,000 per share, Musk initially acted
18 quickly after the Proposed Buyout was announced to sell some of his Tesla shares to raise the cash
19 component. In the three days after announcement of the deal, Musk sold roughly \$8.5 billion worth of
20 shares in Tesla to help fund the purchase.

21 80. Musk reported the sale of 9.6 million Tesla shares in filings with the Securities and
22 Exchange Commission on April 28-29, 2022. The trades were made at prices ranging from \$822.68 to
23 \$999.13 a share. But then Musk stopped selling Tesla shares as its price began to decline. Further, the
24 decline did not abate, and instead got worse.

25 81. With respect to the debt financing, Morgan Stanley arranged tens of billions of dollars to
26 finance Musk's buyout of Twitter, and is the largest single lender facilitating the deal. Musk has
27 received commitment letters to provide, in addition to a \$21 billion contribution of his own cash, an
28 aggregate of approximately \$25.5 billion in financing as follows: (i) a debt commitment letter dated

1 April 20, 2022, from Morgan Stanley and certain other financial institutions to provide \$13 billion in
 2 financing to Musk via a \$6.5 billion senior secured term loan facility (the “Term Loan Facility”), a \$500
 3 million senior secured revolving facility (the “Revolving Facility”), a \$3 billion senior secured bridge
 4 loan facility (the “Secured Bridge Facility”) and a \$3 billion senior unsecured bridge loan facility (the
 5 “Unsecured Bridge Facility”); and (ii) a separate debt commitment letter dated April 20, 2022 from
 6 Morgan Stanley and certain other financial institutions pursuant to which they committed to provide
 7 Musk with \$12.5 billion in margin loans. The chart below depicts Musk’s financing package:



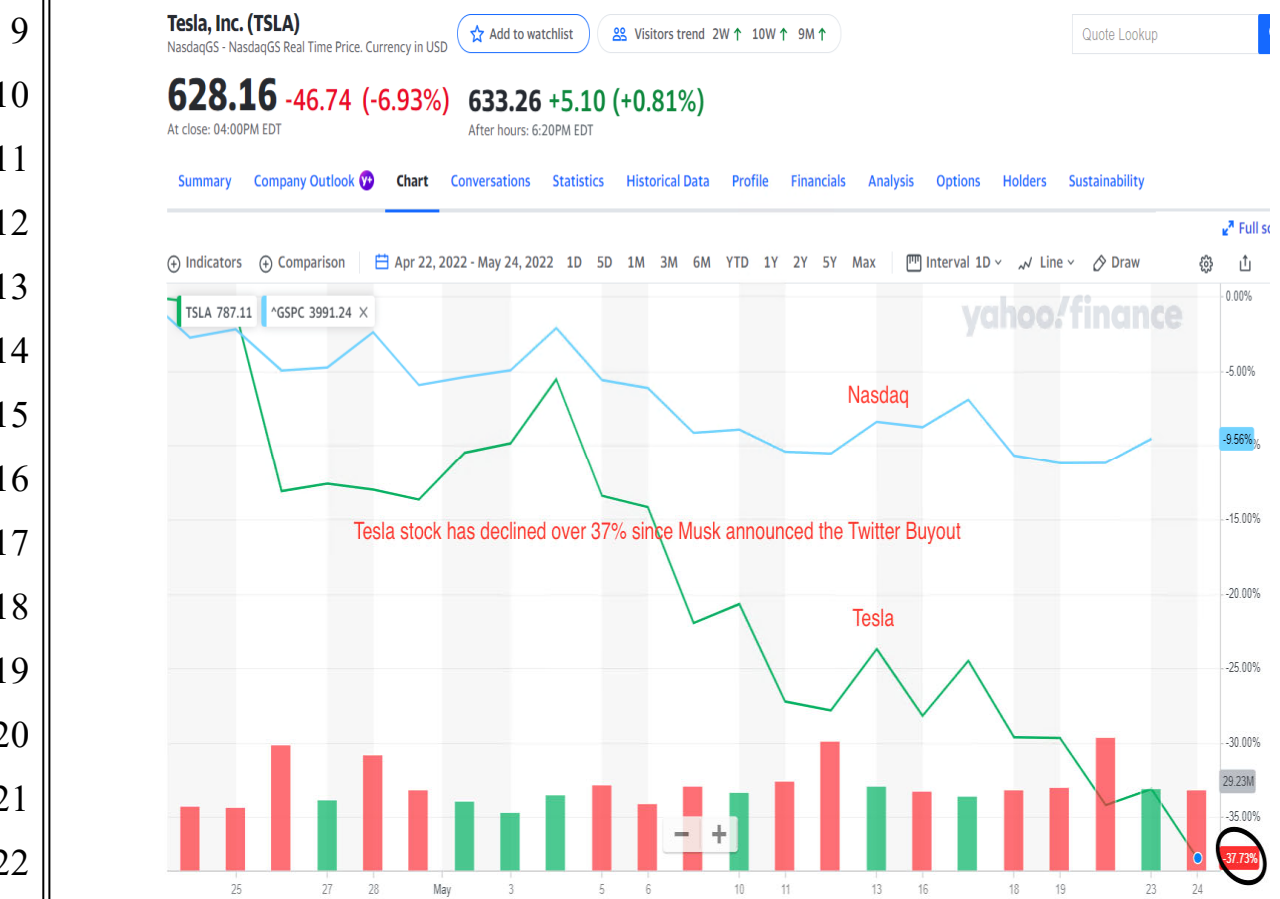
82. There are several problems with this financing scenario which provide Musk with a strong motive to make false statements about Twitter and engage in market manipulation.

83. According to Tesla’s regulatory filings, Musk had already pledged about half of his 173 million shares of Tesla stock to fund other ventures and activities. He has now pledged an additional 40 percent to secure the new loans to buy Twitter. That leaves only 10 percent of his Tesla shares available as collateral. Because Tesla’s policies allow major shareholders to borrow only 25 percent of the value of each share that is pledged, that would appear to limit further borrowing against his Tesla shares to less than \$5 billion. As noted by Tesla’s Amended Form 10-K filed May 2, 2022:

In order to mitigate the risk of forced sales of pledged shares, *the Board has a policy that limits pledging of Tesla stock by our directors and executive officers. Pursuant to this policy,*

1 **directors and executive officers may pledge their stock** (exclusive of options, warrants,
 2 **restricted stock units or other rights to purchase stock)** as collateral for loans and investments,
 3 **provided that the maximum aggregate loan or investment amount collateralized by such**
 4 **pledged stock does not exceed twenty-five percent (25%) of the total value of the pledged**
 5 **stock.**¹⁵

6 84. As Musk is well aware, the Twitter financing is in major peril since the value of the
 7 collateral — Tesla stock (TSLA) — needs to remain at or near the \$1,000 per share it was trading at
 8 when the deal was announced. Yet that has not happened, as Tesla stock dropped by over 35% since the
 9 announcement of the Buyout, as shown in the following chart:



10 85. If Tesla’s stock falls below \$750, Musk could violate Tesla’s own leverage ratio. Since it
 11 has now done so, Musk appears to be in violation of Tesla’s stock pledging policy.

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¹⁵ Tesla Form 10-K/A, filed May 2, 2022, at p. 21.

1 86. Should Tesla stock fall below \$600, Morgan Stanley and other banks could demand that
 2 Musk post additional collateral, requiring him to quickly sell some of his Tesla shares, which Musk
 3 does not want to do at current prices.

4 87. Tesla's annual report also warned of the potential consequences of Musk's personal
 5 loans on its stock, stating:

6 ***If Elon Musk were forced to sell shares of our common stock that he has pledged to secure
 7 certain personal loan obligations, such sales could cause our stock price to decline.***

8 Certain banking institutions have made extensions of credit to Elon Musk, our Chief Executive
 9 Officer, a portion of which was used to purchase shares of common stock in certain of our
 10 public offerings and private placements at the same prices offered to third-party participants in
 11 such offerings and placements. We are not a party to these loans, which are partially secured by
 12 pledges of a portion of the Tesla common stock currently owned by Mr. Musk. ***If the price of
 13 our common stock were to decline substantially, Mr. Musk may be forced by one or more of
 14 the banking institutions to sell shares of Tesla common stock to satisfy his loan obligations*** if
 15 he could not do so through other means. Any such sales could cause the price of our common
 16 stock to decline further.¹⁶

17 88. The following chart from Tesla's Form 10-K/A filed May 2, 2022 sets forth Musk's
 18 current ownership of Tesla stock:

Beneficial Owner Name	Shares Beneficially Owned	Percentage of Shares Beneficially Owned
5% Stockholders		
Elon Musk(1)	231,715,206	21.2%
The Vanguard Group(2)	62,448,572	6.0%
Blackrock, Inc.(3)	52,918,395	5.1%
Named Executive Officers & Directors		
Elon Musk(1)	231,715,206	21.2%
Zachary J. Kirkhorn(4)	635,271	*
Andrew Baglino(5)	257,383	*
Robyn Denholm(6)	654,159	*
Ira Ehrenpreis(7)	560,335	*
Lawrence J. Ellison(8)	15,270,141	1.5%
Hirohichi Mizuno(9)	117,230	*
James Murdoch(10)	475,765	*
Kimbal Musk(11)	683,490	*
Kathleen Wilson-Thompson(12)	260,139	*
All current executive officers and directors as a group (10 persons)(13)	250,629,119	22.9%

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 28 ¹⁶ See Tesla's Form 10-K, filed Feb. 7, 2022, at p. 27.

1 89. Tesla's Form 10-K/A also reveals the number of Tesla shares Musk has pledged for
2 personal debts, including the Twitter Buyout: "[Musk's shares include] 92,331,125 shares pledged as
3 collateral to secure certain personal indebtedness."¹⁷

4 **E. As Tesla's Stock Plunges in the 30 Days After Announcement of the Buyout,**
5 **Threatening a Margin Call and a Forced Sale of Musk's Tesla Stock, Musk**
6 **Begins to Make False Statements and Engage in Market Manipulation of**
7 **Twitter's Stock**

8 90. Between April 25, 2022, when the Proposed Buyout was announced, and May 12, 2022,
9 Tesla's stock declined by 27%. The substantial decline in Tesla's stock threatened a margin call on
10 Musk's Tesla stock which was pledged as collateral for his \$12.5 billion loan from Morgan Stanley and
11 other banks. In addition, according to his financing plan, Musk has not only pledged his Tesla stock for
12 the \$12.5 billion loan from Morgan Stanley and other banks, but will have to sell \$21 billion worth of
13 Tesla stock, about 20 million shares, to fund the cash part of the deal. With Tesla stock now entering a
14 bear market, selling millions of shares is equivalent to having to book a huge loss. Musk thus has a
15 strong motivation to attempt to delay the Proposed Buyout in the hope that Tesla shares will rebound in
16 value before he is forced to sell them. It has also been reported that due to his strong aversion to selling
17 more Tesla shares at current depressed valuations, Musk is also looking at funding the Twitter buyout
18 by selling some shares of SpaceX through a private placement.¹⁸ However, the current stock market
19 decline has made it difficult for Musk to do so at attractive valuations.

20 91. In response to these problems and the plunging value of Tesla stock, Musk promptly
21 acted to disparage Twitter in a false and baseless manner, and in violation of both the non-
22 disparagement and non-disclosure clauses of his contract with Twitter. In doing so, Musk hoped to
23 drive down Twitter's stock price and then use that as a pretext to attempt to re-negotiate the Buyout

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25 ¹⁷ See Tesla Form 10-K/A, filed May 2, 2022, at p. 23.

26 ¹⁸ See, e.g., Sissi Cao, "As Tesla Stock Falts, Elon Musk is Considering Selling SpaceX Shares to
27 Fund His Twitter Deal," The Observer, May 18, 2022 ("Elon Musk appears to be hesitating over his
28 \$44 billion acquisition of Twitter as a key funding source, his ownership in Tesla, quickly loses
value.").

1 price.¹⁹ He also began to baselessly state that the Proposed Buyout was “temporarily on hold” in an
2 effort to buy more time and avoid having to sell Tesla stock at depressed prices. Musk did so
3 predominantly by using his Twitter account, which he established when he was a California citizen.
4 Twitter is headquartered in San Francisco and Musk’s tweets were disseminated from San Francisco,
5 California.

6 92. Beginning on Friday, May 13, 2022, and continuing to the present, Musk has
7 disseminated the following false statements:

8 **1. Friday May 13, 2022 Tweet**

9 93. On Friday, May 13, 2022 (“Friday the 13th”), at 5:44 a.m. (*i.e.*, before the stock market
10 opened), Musk issued a tweet which stated that the buyout was “temporarily on hold:”



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23 94. Musk’s statement was false and misleading and constituted an effort to manipulate the
24 market for Twitter shares. The statement was false because the Buyout was not, in fact, “temporarily on
25 hold.” Vijaya Gadde, Twitter’s top lawyer, has stated that here is nothing in the buyout contract that

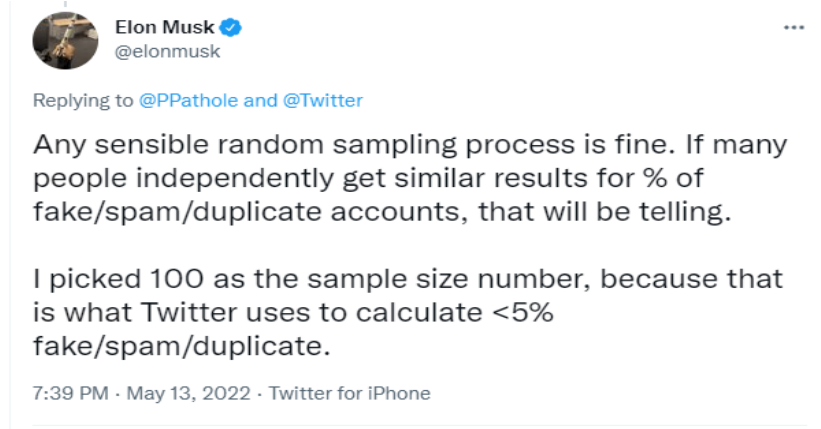
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27 ¹⁹ The Buyout agreement is also atypical in that it does not have a standstill agreement. Thus, Musk
28 could presumably also be buying additional Twitter shares at the depressed prices caused by his market
manipulation.

1 allows Musk to put the deal “temporarily on hold.” Moreover, Musk’s statement was misleading
2 because it stated or implied that Musk’s obligation to consummate the Buyout was conditioned on his
3 satisfaction with due diligence to determine whether “spam/fake accounts do indeed represent less than
4 5% of users.” Musk had specifically waived detailed due diligence as a condition precedent to his
5 obligations under the Buyout contract. Thus, Musk has no right to cancel the Buyout based on any
6 results from due diligence concerning the number of fake accounts at Twitter.

7 95. In response to this Tweet, Twitter’s stock price declined. Later the same day, Musk
8 issued the following Tweet:



16 96. In response to a question about why he was using a sample of 100 Twitter users, Musk
17 replied:



25 **2. Musk’s May 14, 2022 Tweet**

26 97. Musk had allegedly obtained non-public information about the process Twitter uses to
27 investigate duplicate and fake accounts from Twitter as part of the Proposed Buyout diligence. Musk
28

1 sent a tweet on Saturday, May 14, 2022, disclosing that he had received a call from Twitter’s lawyers
2 advising him that he had violated the terms of the Non-Disclosure Agreement (“NDA”):



9 98. Musk’s supposed concern about the number of bots and fake accounts in Twitter would
10 appear to be pretextual, given the fact that Musk has known about the issue for long before he offered
11 to acquire Twitter.

12 99. For example, Musk and his lawyers were well aware of a **\$809.5 million settlement**
13 Twitter had been forced to enter into ***in September 2021, just hours before trial was set to begin*** in a
14 securities fraud class action alleging Twitter overstated its user numbers and growth rate -- *In re Twitter*
15 *Inc. Securities Litigation*, 16-cv-05314, U.S. District Court, Northern District of California (San
16 Francisco). All the documents from that case were publicly available to Musk, including a website
17 (www.twittersecuritieslitigation.com) containing, among other things, the Court’s order denying
18 Twitter’s motion for summary judgment. See **Exhibit A** (April 17, 2020 Order Denying Motion for
19 Summary Judgment, at p. 16)(holding that Twitter’s false statements about its Daily Active Users
20 (DAUs) and Monthly Active Users (MAUs) were material because “Twitter has publicly stated that its
21 success and financial performance depend, at least in part, on the size and engagement of its user
22 base.”).

23 100. Moreover, Twitter’s SEC filings have long disclosed that there are duplicate and fake
24 accounts on Twitter. For example’s Twitter’s 2021 Annual Report disclosed that:

25 The numbers of mDAU presented in this Annual Report on Form 10-K are based on internal
26 company data. While these numbers are based on what we believe to be reasonable estimates
27 for the applicable period of measurement, there are inherent challenges in measuring usage and
28 engagement across our large number of total accounts around the world. Furthermore, our
metrics may be impacted by our information quality efforts, which are our overall efforts to
reduce malicious activity on the service, inclusive of spam, malicious automation, and fake
accounts. For example, ***there are a number of false or spam accounts in existence on our***

1 *platform. We have performed an internal review of a sample of accounts and estimate that*
2 *the average of false or spam accounts during the fourth quarter of 2020 represented fewer*
3 *than 5% of our mDAU during the quarter. The false or spam accounts for a period represents*
4 *the average of false or spam accounts in the samples during each monthly analysis period during*
5 *the quarter. In making this determination, we applied significant judgment, so our estimation*
6 *of false or spam accounts may not accurately represent the actual number of such accounts,*
7 *and the actual number of false or spam accounts could be higher than we have estimated.*²⁰

6 101. In addition, news reports and blog posts as far back as 2017 had regularly reported that
7 “It has been extensively reported that incidences of spamming by bots and fake accounts on Twitter
8 have been increasing.”²¹

9 102. In fact, as noted sarcastically by one of his Twitter followers, getting rid of the bots and
10 fake accounts was one of Musk’s stated reasons for wanting to buy Twitter:



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16 **3. Musk’s May 16, 2022 Statement**

17 103. On May 16, 2022, Musk stated during the All In tech conference in Miami that fake and
18 spam accounts make up at least 20% of Twitter's users.

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24 ²⁰ See Form 10-K, filed 2/17/21, at p. 5.

25 ²¹ See Ankit Singh, Identifying Fake Accounts and Twitter Bots using Artificial Intelligence,” May
26 31, 2017, available at <https://blog.paralleldots.com/research/identifying-fake-accounts-twitter-bots-using-artificialintelligence/#:~:text=It%20has%20been%20extensively%20reported%20that%20incidences%20of,and%20opinions%2C%20creating%20confusions%20and%20potentially%2C%20spreading%20rumors.>
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1 104. Twitter’s CEO Parag Agrawal attempted to respond to Musk with the following tweet:



10 105. In response, Musk tweeted a poop emoji to Agrawal:



17 106. Musk later the same day tweeted the following follow-up comment, stating that
18 information about the number of fake accounts was “fundamental to the financial health of Twitter”:



26 **4. Musk’s May 17, 2022 Tweet**

27 107. On May 17, 2022, Musk doubled down on his “Friday the 13th” tweet and May 16th
28 statement and issued another tweet stating that the actual number of fake accounts at Twitter could be

1 “much higher” than 20% and that the deal “cannot go forward”



10 108. In response to this Tweet, Twitter’s stock price declined.

11 109. The same day (May 17, 2022), Musk invited the SEC to investigate Twitter.

12 **5. Musk’s May 21, 2022 Tweets**

13 110. On May 21, Musk suggested in a series of tweets that he could be seeking to reduce the
14 price of the Buyout by up to 25% of the original agreed-upon price. Replying to a tweet from Ion Miles
15 Chong, saying “If 25% of the users are bots then the Twitter acquisition deal should cost 25% less,”
16 Musk replied: “Absolutely.”

17 111. If the Buyout price is reduced by 25%, that would amount to an \$11 billion reduction in
18 proceeds to the Class.

19 112. “I’m worried that Twitter has a disincentive to reduce spam, as it reduces perceived daily
20 users,” Musk also tweeted on May 21, and asked whether Twitter had gotten back to him on the bots
21 number discrepancy, he added: “No, they still refuse to explain how they calculate that 5% of daily
22 users are fake/spam! Very suspicious.”

23 113. Musk’s false and misleading tweets and disparagement of Twitter had the desired effect,
24 as they caused Twitters’ stock to decline substantially in the days following the tweets, erasing over \$8
25 billion in market capitalization, reflected in the following chart:

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114. Musk’s false and disparaging statements have caused the spread between the \$54.20 Buyout price and Twitter’s stock price to exceed \$15 per share, which is highly unusual:



1 115. Unfortunately for Musk, Tesla's stock price also continued its decline. On Friday, May
2 20, 2022, Tesla stock closed at \$635.07. That represented an even further deterioration of Tesla's stock
3 since the Proposed Buyout was announced – *a 35% drop in Tesla's stock price*. As noted by the
4 Washington Post:

5 *Tesla's stock — and Elon Musk's wealth — took a huge hit Friday, continuing a*
6 *downward spiral and possibly imperiling the billionaire's deal to buy Twitter.*

7 *Shares of the electric car company, from which much of Musk's wealth comes, sank*
8 *more than 10 percent during trading Friday, falling at one point to about \$636 per*
9 *share. That's about a 35 percent drop from its price on the day Musk's deal to buy*
10 *Twitter* was announced.

The downturn of Tesla's stock could have more than just a superficial impact on Musk's
wealth.

11 Tesla's value dropped Tuesday by more than double the cost of Twitter
12 Musk has taken out extensive personal loans that are heavily tied to the value of Tesla's
13 stock. At times, he has put down as much as 50 percent of his Tesla shares as collateral
14 to back them. *As the company's share price approaches \$600, Musk enters dangerous*
15 *territory with lenders — where they could seek some of his equity to ease their*
16 *confidence in his ability to pay*, according to analysts.²²

17 116. On **May 25, 2022**, Twitter held its Annual Meeting. At the meeting, shareholders of
18 Twitter voted against re-electing Egon Durban, an ally to Musk, as a director to the board. Durban, the
19 co-head of private equity firm Silver Lake, had partnered with Musk when he sought to take Tesla
20 ((TSLA) - Get Tesla Inc Report), the electric carmaker, private as its CEO.

21 117. Also on **May 25, 2022**, Musk filed an Amended Form 13D. The Amended 13D
22 confirmed the incredible pressure that Musk's margin loan had been exerting on him. The filing
23 disclosed that he let the \$12.5 billion margin loan from Morgan Stanley and other banks, for which he
24 had pledged his Tesla stock as collateral, expire on May 24, 2022. The Amended Form 13D states that
25 Musk intends to replace the \$12.5 billion loan with "equity financing" but does not state where Musk
26 will obtain such equity financing or what form it will take.

27 ²² See Rachel Lerman, "Tesla's Stock Price Plummets as Twitter Deal Hangs in the Balance," THE
28 WASHINGTON POST, May 20, 2022.

1 **VII. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Cal. Corp. Code §§ 25400 and 25500**

4 **(Against Defendant Musk)**

5 118. Plaintiff incorporates by reference and realleges each and every allegation contained
6 above, as though fully set forth herein, except for the causes of action.

7 119. Defendant Musk violated Corp. Code Section 25400(d) directly and/or indirectly, in this
8 State, for the purpose of inducing the purchase or sale of Twitter securities by others, engaged in
9 manipulative transactions and/or made or materially participated in making the statements alleged in
10 this complaint, each of which contained false or misleading statements of material fact and/or omitted to
11 state material facts necessary in order to make the statements made, in light of the circumstances under
12 which they were made, not misleading. Defendant was aware that the relevant statements and omissions
13 were false and misleading and that the relevant transactions were manipulative.

14 120. Defendant Musk purchased or offered to purchase Twitter securities and/or willfully
15 participated in the relevant manipulative transactions for the purpose of inducing the purchase or sale of
16 Twitter securities by others. After purchasing over 9% of Twitter's shares, and entering into a contract
17 to purchase the remaining stock of Twitter he does not already own for \$54.20 per share, Defendant
18 Musk has willfully participated in making statements that were false and misleading, or that omitted
19 material facts necessary to make the statements made not false or misleading. Musk knew such
20 statements were false and misleading as detailed herein.

21 121. Through such conduct, Defendant Musk also violated Corp. Code Section 25400(b) by
22 effecting, alone or with one or more other persons, a series of transactions in Twitter securities creating
23 actual or apparent active trading in such securities or raising or depressing the price of such securities,
24 for the purpose of inducing the purchase or sale of such securities by others.

25 122. Through the conduct alleged herein, Defendant Musk also violated Corp. Code Section
26 25400(c). Musk was and is a person purchasing or offering to purchase Twitter securities. Musk also
27 induced the purchase or sale of Twitter securities by circulating or disseminating information to the
28 effect that the price of Twitter securities is or is likely to fall because of market operations of any one or

1 more persons conducted for the purpose of depressing the price of Twitter securities.

2 123. As a result of Defendant's misconduct, plaintiff and the other members of the Class have
3 suffered damages and been harmed. The fair market value of Twitter securities has been adversely
4 affected by Musk's false statements and wrongful conduct.

5 124. As a direct and proximate result of defendants' violation of law described herein,
6 plaintiff and members of the Class have been damaged.

7 **SECOND CAUSE OF ACTION**

8 **Cal. Corp. Code §§ 25401 and 25501**

9 **(Against Defendant Musk)**

10 125. Plaintiffs incorporate by reference and reallege each and every allegation contained
11 above, as though fully set forth herein, except for the causes of action.

12 126. This claim is brought on behalf of those Class members who Defendant Musk has
13 purchased or offered to purchase their Twitter securities.

14 127. Defendant Musk offered to purchase and/or purchased securities from plaintiff and
15 members of the Class in and from this state by means of written and oral communications that included
16 untrue statements of material fact and omitted to state material facts necessary to make the statements
17 made, in light of the circumstances under which the statements were made, not misleading.

18 128. Defendant Musk failed to exercise reasonable care to ensure the truth and accuracy of
19 such statements, and plaintiff had no knowledge of the falsity of such statements.

20 129. As a direct and proximate result of Defendant's violations of law described herein,
21 plaintiff and members of the Class have been damaged.

22 **THIRD CAUSE OF ACTION**

23 **For Declaratory and Injunctive Relief**

24 **(Against Defendant Twitter, Inc. and Musk)**

25 130. Plaintiff seeks declaratory and injunctive relief against Defendants pertaining to
26 Defendant Musk's outstanding and current offer to buy the Twitter stock of Plaintiff and the Class for
27 \$54.20.

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1 131. A justiciable, present controversy exists between the parties. Defendant Musk signed a
2 binding contract to buy Plaintiff’s stock for \$54.20. But Defendant Musk thereafter publicly stated that
3 the Buyout is “temporarily on hold” and “cannot go forward” until certain conditions are met.

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

8 **FOURTH CAUSE OF ACTION**

9 **For Violation of Cal. Corp. Code § 25402 and 25502.5**

10 **(Against Defendants Musk and Twitter, Inc.)**

11 133. Plaintiff incorporates by reference and realleges each and every allegation contained
12 above, as though fully set forth herein, except for the causes of action.

13 134. As a result of the conduct alleged herein, Defendant Musk purchased Twitter securities
14 in this state at a time when he knew material information about Twitter which he knew would
15 significantly affect the market price of Twitter securities and which was not generally available to the
16 public, and which he knew was not intended to be so available.

17 135. Plaintiff seeks a declaratory judgment that Musk has violated Section 25402 and that
18 Defendant Twitter has an obligation to investigate Musk’s conduct and take appropriate action.
19 Plaintiff does not seek any damages on behalf of Twitter and this claim is not brought as a derivative
20 claim.

21 **FIFTH CAUSE OF ACTION**

22 **For Unjust Enrichment**

23 **(Against Defendant Musk)**

24 136. Plaintiff incorporates by reference and realleges each and every allegation contained
25 above, as though fully set forth herein, except for the causes of action.

26 137. Through the conduct alleged herein, Defendant Musk has been unjustly enriched.

27 138. As a matter of equity, Musk should not be allowed to retain the monies and benefits he
28 unjustly acquired through his false statements, market manipulation, and other improper conduct.

1 139. As a matter of equity, Musk should be ordered to disgorge his unjust monies and profits
2 and all interest and interest earned from such monies and benefits.

3 **VIII. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of himself and the Class, pray for the following judgment
5 and relief:

6 A. Certifying this action as a class action and certifying Plaintiff as the Class representative
7 and their counsel as Class counsel;

8 B. Directing that Defendant Musk account to Plaintiff and the other members of the Class
9 for all damages caused to them, and account for all profits and any special benefits obtained as a result
10 of his unlawful conduct;

11 C. Declaratory and injunctive relief from Twitter and Musk;

12 D. Awarding punitive damages at the maximum amount permitted by law;

13 E. Awarding Plaintiff and the other members of the Class compensatory damages;

14 F. Awarding Plaintiff and the other members of the Class declaratory, equitable and
15 injunctive relief;

16 G. Awarding Plaintiff and the other members of the Class pre-judgment and post
17 judgment interest,

18 H. Awarding Plaintiff the costs and disbursements of this action, including a reasonable
19 allowance for the fees and expenses of attorneys and experts; and

20 I. Granting Plaintiff and the other members of the Class such other and further relief as
21 may be just and proper.

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IX. JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: May 25, 2022

Respectfully submitted,
BOTTINI & BOTTINI, INC.

/s/ Francis A. Bottini, Jr.
Francis A. Bottini, Jr.

Francis A. Bottini, Jr. (SBN 175783)
Anne B. Beste (SBN 326881)
Albert Y. Chang (SBN 296065)
Yury A. Kolesnikov (SBN 271173)
Nicholas H. Woltering (SBN 337193)
7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037
Telephone: (858) 914-2001
Facsimile: (858) 914-2002

COTCHETT, PITRE & MCCARTHY, LLP

/s/ Anne Marie Murphy
Anne Marie Murphy

Joseph W. Cotchett (SBN 36324)
Mark C. Molumphy (SBN 168009)
Anne Marie Murphy (SBN 202540)
Tyson C. Redenbarger (SBN 294424)
Julia Q. Peng (SBN 318396)
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, California 94010
Telephone: (650) 697-6000

Counsel for Plaintiff