



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ORLANDO POLICE PENSION FUND, on)
behalf of itself and all other similarly)
situated stockholders of TWITTER, INC.,)
Plaintiff,) C.A. No. 2022-____
v.)
TWITTER, INC., PARAG AGRAWAL,)
MIMI ALEMAYEHOU, JACK DORSEY,)
EGON DURBAN, MARTHA LANE FOX,)
OMID KORDESTANI, FEI-FEI LI,)
PATRICK PICHETTE, DAVID)
ROSENBLATT, BRET TAYLOR,)
ROBERT ZOELLICK, and ELON MUSK,)
Defendants.)

VERIFIED STOCKHOLDER CLASS ACTION COMPLAINT

Plaintiff Orlando Police Pension Fund (“Plaintiff”), on behalf of itself and all other similarly situated public stockholders of Twitter, Inc. (“Twitter” or the “Company”), based on personal knowledge as to itself and on information and belief as to all other matters, alleges as follows:

INTRODUCTION

1. On April 25, 2022, Twitter entered into an Agreement and Plan of Merger (the “Merger Agreement”) to be acquired by an entity wholly-owned by Elon Musk (“Musk”) in exchange for \$54.20 per share in an all-cash deal valued at approximately \$44 billion (the “Proposed Takeover”), subject to approval by a simple majority of Twitter’s outstanding voting stock. Because Musk was an “interested stockholder” under 8 *Del. C.* § 203 (“Section 203”) before the Merger

Agreement was approved by Twitter's board of directors (the "Board"), however, the Proposed Takeover may not lawfully close until 2025 absent approval by the affirmative vote of 66²/₃% of Twitter's voting stock not "owned" by Musk within the meaning of Section 203.

2. Musk began acquiring Twitter shares in January 2022 and owned approximately 9.6% of Twitter's outstanding voting stock when the Board approved the Proposed Takeover. In connection with his efforts to acquire Twitter, Musk also had an "agreement, arrangement or understanding" within the meaning of Section 203 with at least two other significant beneficial owners of Twitter's outstanding voting stock: (i) Morgan Stanley, which beneficially owns approximately 8.8% of Twitter's outstanding voting stock and serves as Musk's financial adviser and primary financier in connection with the Proposed Takeover; and (ii) Twitter co-founder, former CEO, and director Jack Dorsey ("Dorsey"), who beneficially owns approximately 2.4% of Twitter's outstanding voting stock, encouraged Musk to take Twitter private through the Proposed Takeover, and appears likely to receive equity in the newly-private Company following the Proposed Takeover should it close.

3. Additionally, according to public reporting, it appears likely Musk also had and has additional AAUs with other significant holders of Twitter common stock whose support for the Proposed Takeover Musk secured prior to the Twitter Board's approval of the deal.

4. Musk, therefore, was an “interested stockholder” within the meaning of Section 203 before the Board approved the Proposed Takeover. The Merger Agreement, however, incorrectly states that: (i) in the three years prior to its execution Musk was not an “‘interested stockholder’ (as defined in Section 203 of the DGCL) of the Company”; and (ii) the Proposed Takeover may lawfully close this year provided that it is approved by the “affirmative vote of a majority of the outstanding shares of Company Common Stock entitled to vote,” including such stock owned by Musk.

5. Plaintiff brings this action: (i) for a declaratory judgment that Musk is an “interested stockholder” within the meaning of Section 203 and that the Proposed Takeover may not lawfully close within three years of the time that Musk became an “interested stockholder,” unless the Proposed Takeover is approved by the affirmative vote of at least $66\frac{2}{3}\%$ of Twitter’s outstanding voting stock not “owned” by Musk within the meaning of Section 203; and (ii) to hold the members of the Board accountable for their failure to properly condition the Proposed Takeover on the $66\frac{2}{3}\%$ vote required by Section 203.

6. Plaintiff seeks a prompt trial to ensure the vote of Twitter stockholders on the Proposed Takeover is properly informed concerning the applicability of Section 203 and its implications for the Proposed Takeover and the interests of Twitter’s public stockholders in connection therewith.

PARTIES

7. Plaintiff is, and at all relevant times has been, a beneficial owner of Twitter common stock.

8. Defendant Twitter is a Delaware corporation headquartered in San Francisco, California. Twitter has a single class of voting common stock, which trades on the New York Stock Exchange under the ticker symbol TWTR.

9. Defendant Parag Agrawal has served as CEO and a director of Twitter continuously since November 2021.

10. Defendant Mimi Alemayehou has served as a director of Twitter continuously since June 2021.

11. Defendant Jack Dorsey co-founded Twitter and has served as a director of Twitter continuously since 2007. Dorsey owns approximately 18 million shares or 2.4% of Twitter's outstanding common stock.

12. Defendant Egon Durban has served as a director of Twitter continuously since March 2020.

13. Defendant Martha Lane Fox has served as a director of Twitter continuously since April 2016.

14. Defendant Omid Kordestani has served as a director of Twitter continuously since October 2015.

15. Defendant Fei-Fei Li has served as a director of Twitter continuously since May 2020.

16. Defendant Patrick Pichette has served as a director of Twitter continuously since December 2017.

17. Defendant David Rosenblatt has served as a director of Twitter continuously since December 2020.

18. Defendant Bret Taylor has served as a director of Twitter continuously since July 2016.

19. Defendant Robert Zoellick has served as a director of Twitter continuously since July 2018.

20. The Defendants identified above in paragraphs 9 through 19 constitute the entirety of the Twitter board of directors (the “Board” or “Director Defendants”) and constituted the entirety of the Board at the time it approved the Merger Agreement.

21. Defendant Elon Musk is a prominent entrepreneur who is party to the Merger Agreement and stands to acquire Twitter if the Proposed Takeover closes.

SUBSTANTIVE ALLEGATIONS

Twitter Agrees to be Acquired by Musk

22. Twitter is a social media company that operates a microblogging platform that is among the world's most popular websites.

23. Musk is a prominent entrepreneur, widely-reported to be the world's richest person, and an active user of Twitter. Musk has long been critical of certain decisions by Twitter's Board and management regarding Twitter's platform.

24. Musk began acquiring shares of Twitter common stock in January 2022 and reported in a Schedule 13G filing with the U.S. Securities and Exchange Commission ("SEC") on April 4, 2022 that he had acquired beneficial ownership of approximately 9.2% of Twitter's outstanding common stock. SEC rules required that Musk publicly disclose within ten days his acquisition of a five percent equity stake in Twitter, but Musk failed to do so. A representative of Better Markets, a corporate and regulatory transparency watchdog, said regulators had an obligation to look into the disclosure issue to send a message that all investors are treated the same and "[t]he rule of law breaks down if billionaires get to play by a different set of rules[.]"¹

¹ Matthew Goldstein, "*Disclosure issues could complicate Musk's Twitter bid, legal experts say*," NEW YORK TIMES (Apr. 14, 2022) (available at: <https://www.nytimes.com/2022/04/14/business/twitter-lawsuit-elon-musk.html>).

25. The same day, Musk and Twitter executed a letter agreement providing, *inter alia*, that: (i) Musk would join the Twitter Board; and (ii) Musk would not, alone or as a member of a group, become the beneficial owner of more than 14.9% of Twitter's outstanding common stock during his tenure on the Board or for 90 days thereafter. Twitter publicly disclosed the terms of the letter agreement the following day, April 5, 2022, in a Form 8-K filed with the SEC.

26. Four days later, on April 9, 2022, Musk reversed course. As Twitter disclosed in a Form 8-K filed with the SEC on April 11, 2022: "Pursuant to the April 4, 2022 letter agreement, Elon Musk was invited to serve on the board of directors (the "Board") of Twitter, Inc. (the "Company"). On April 9, 2022, Mr. Musk informed the Company that he is not joining the Board."

27. Rather than join the Board, Musk determined to launch an unsolicited bid to acquire Twitter in its entirety. On April 13, 2022, Musk sent a letter to Defendant and Board Chairman Bret Taylor ("Taylor") stating an initial and purportedly "best and final" offer to buy all outstanding shares of Twitter for \$54.20 per share in cash. The letter, which was made public by Musk in a Schedule 13D/A filing the next day, read:

Bret Taylor
Chairman of the Board,

I invested in Twitter as I believe in its potential to be the platform for free speech around the globe, and I believe free speech is a societal imperative for a functioning democracy.

However, since making my investment I now realize the company will neither thrive nor serve this societal imperative in its current form. Twitter needs to be transformed as a private company.

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

Twitter has extraordinary potential. I will unlock it.

/s/ Elon Musk

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

29. Dorsey took the highly unusual step of criticizing the Board for this. “On April 16, Jack Dorsey . . . tweeted that the board had been the ‘consistent dysfunction of the company.’ When asked by a Twitter user whether he was allowed to say that, Mr. Dorsey responded, ‘no.’”²

² Lauren Hirsch and Mike Isaac, “How Twitter’s Board Went From Fighting Elon Musk to Accepting Him,” NEW YORK TIMES (April 30, 2022) (available at: <https://www.nytimes.com/2022/04/30/technology/twitter-board-elon-musk.html>).

30. Thereafter, Musk began laying the groundwork for a hostile tender offer to acquire Twitter over the Board’s objection. He alluded to the possibility of a tender offer in a series of tweets, posting “Love me tender” on April 16, 2022 and “_____ is the Night” on April 19, 2022 (an apparent allusion to the famous F. Scott Fitzgerald novel *Tender is the Night*). Then, in an April 21, 2022 Schedule 13D/A filing with the SEC, Musk disclosed that he was “exploring whether to commence a tender offer” and that he had secured commitment letters from a group of lenders, led by Morgan Stanley, to provide approximately \$46.5 billion to finance his acquisition of Twitter. According to public reporting, Musk then spoke directly with Taylor on Saturday April 23, 2022 and “threatened to take his offer directly to Twitter’s shareholders.”³

31. The following day, Sunday April 24, 2022, the Twitter Board capitulated in the face of Musk’s pressure and determined to accept his initial and purportedly “best and final” offer to purchase all of Twitter’s outstanding common stock for \$54.20 per share. The next day, April 25, 2022, the Twitter Board unanimously approved Twitter’s entry into a definitive agreement (previously defined as the “Merger Agreement”) to be acquired by an entity wholly-owned by

³ Lauren Hirsch and Mike Isaac, “*How Twitter’s Board Went From Fighting Elon Musk to Accepting Him*,” NEW YORK TIMES (Apr. 30, 2022) (available at: <https://www.nytimes.com/2022/04/30/technology/twitter-board-elon-musk.html>).

Musk for \$54.20 per share in cash, in a transaction valued at approximately \$44 billion (previously defined as the “Proposed Takeover”). The Board’s agreement to the Proposed Takeover was announced via a Form 8-K filed by Twitter that same day. The Merger Agreement was disclosed publicly as an attachment to a Form 8-K filed the following day.

Musk was an “Interested Stockholder” Within the Meaning of Section 203 at the Time the Merger Agreement Was Executed

32. Twitter has not opted out of Section 203. Indeed, in its Annual Report on Form 10-K filed with the SEC on February 16, 2022, Twitter explained:

As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation law, which prevents certain stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations without approval of the holders of at least two-thirds of our outstanding common stock not held by such 15% or greater stockholder. (emphasis added)

33. Pursuant to Section 203, subject to certain exceptions not applicable here, “a corporation shall not engage in any business combination with an interested stockholder for a period of 3 years following the time that such stockholder became an interested stockholder” unless “the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66²/₃% of the outstanding voting stock which is not owned by the interested stockholder.”

34. Musk became an “interested stockholder” within the meaning of

Section 203 sometime between when he first began acquiring shares of Twitter common stock and the time that the Merger Agreement was executed on April 25, 2022. Pursuant to Section 203, an “interested stockholder” is any person who is the owner of 15% or more of the outstanding voting stock of the corporation. A person is deemed to be the “owner” of stock if the person “[b]eneficially owns such stock, directly or indirectly” or, as is pertinent here, “[h]as any agreement, arrangement or understanding for the purposes of acquiring, holding, voting [], or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.”

35. In connection with his efforts to acquire Twitter, Musk became the “owner” of more than 15% of Twitter’s outstanding stock within the meaning of Section 203 because, as detailed below, he had an “agreement, arrangement or understanding” (“AAU”) with at least two other significant beneficial owners of Twitter common stock: Morgan Stanley and Dorsey.

36. According to a Schedule 13D/A filed with the SEC on April 27, 2022 and the Merger Agreement itself, Musk personally beneficially owned 73,115,038 shares, or approximately 9.6%, of Twitter’s outstanding common stock, at the time

the Merger Agreement was entered.⁴ Based on public filings, Musk is Twitter's second largest stockholder.

37. According to Twitter's most recent Schedule 14A annual Proxy Statement, filed April 12, 2022, Morgan Stanley and its affiliate Morgan Stanley Investment Management, Inc. beneficially own 67,033,579 shares, or approximately 8.8%, of Twitter's outstanding common stock. Based on public filings, Morgan Stanley is Twitter's third largest stockholder.

38. According to Twitter's most recent Schedule 14A annual Proxy Statement, filed April 12, 2022, Dorsey owns 18,042,428, or approximately 2.4% of Twitter's outstanding common stock. Based on public filings, Dorsey is Twitter's seventh largest stockholder.

39. Collectively, therefore, Musk, Morgan Stanley, and Dorsey own and owned approximately 20.8% of Twitter's outstanding common stock. Indeed, Musk and Morgan Stanley alone owned approximately 18.4% of Twitter's outstanding common stock. Because, as detailed below, Musk had and has a triggering AAU with each of Morgan Stanley and Dorsey (and likely with others), Musk became an

⁴ As noted above, Musk first disclosed an ownership interest in Twitter on April 4, 2022, when he reported in a Schedule 13G filing with the SEC that he had acquired beneficial ownership of approximately 9.2% of Twitter's outstanding common stock.

“interested stockholder” prior to the Board’s approval of the Merger Agreement and remains an “interested stockholder” today.

40. Accordingly, the Proposed Takeover cannot lawfully close until three years after Musk became an “interested stockholder”—*i.e.*, sometime in early 2025—unless the Proposed Takeover is approved by the affirmative vote of at least 66²/₃% of the outstanding voting stock that is not beneficially owned by Musk, Morgan Stanley, Dorsey, or any other person or entity with which Musk had a relevant AAU.

Musk had an AAU with Morgan Stanley

41. Musk has a longstanding and close relationship with Morgan Stanley that spans more than a decade. Morgan Stanley served as an underwriter for the initial public offering of Tesla in 2010 (a company Musk co-founded and leads and in which he owns a substantial interest currently worth in excess of \$150 billion) and Musk’s family office is headed by a former Morgan Stanley banker, Jared Birchall (“Birchall”). Musk has repeatedly turned to Morgan Stanley in connection with his personal finances. As Birchall noted in a 2018 text message to Musk made public in other litigation, Morgan Stanley has provided Musk with his largest personal line of credit: “[Morgan Stanley has] been our best resource on the personal side, by far. They provide you with the largest (\$350M) of all the lines and each time we have pressed them for more borrow [sic] power or a lower rate, they’ve come through.”

Indeed, as of late 2017, when Musk disclosed he had pledged approximately 40% of his shares in Tesla to obtain personal loans, the majority of those shares were pledged with Morgan Stanley. Musk also turned to Morgan Stanley in late 2018 for \$61 million in mortgages on five properties he owned in California. According to a recent *Financial Times* report, “Between 2016 and 2020, Morgan Stanley had loans outstanding to Musk of between \$208.9mn and \$344mn.”⁵

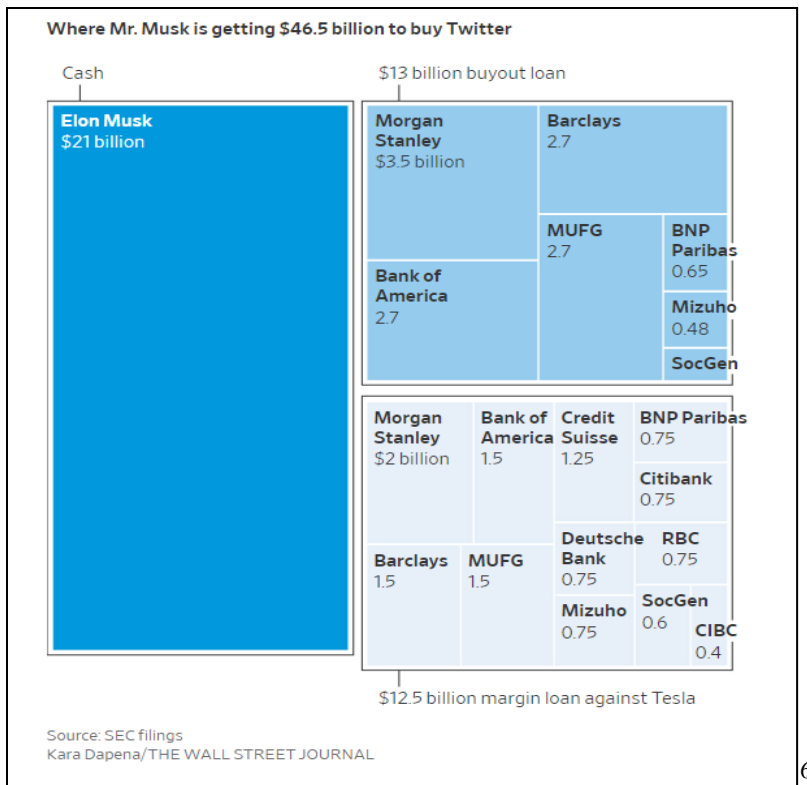
42. Unsurprisingly, Musk enlisted Morgan Stanley to serve as his closest partner and financial advisor in connection with his efforts to acquire Twitter. Morgan Stanley’s role was disclosed publicly on April 13, 2022, when Musk filed his Schedule 13D/A disclosing his bid to acquire Twitter for \$54.20 per share in cash. The same filing disclosed that Musk “ha[d] engaged Morgan Stanley as [his] financial advisor” in connection with his efforts to acquire Twitter.

43. Morgan Stanley also arranged tens of billions of dollars in financing to facilitate Musk’s ability to close the Proposed Takeover and committed to serve as the largest single lender facilitating the deal. Morgan Stanley’s role in financing Musk’s bid for Twitter was disclosed publicly in his April 21, 2022 Schedule 13D/A filing, which reported that he had received commitment letters to provide, in addition

⁵ Joshua Franklin, *et al.*, “Elon Musk’s Twitter deal rewards risk-taking at Morgan Stanley,” *Financial Times* (May 2, 2022) (available at: <https://www.ft.com/content/e59af9a0-11f8-4d14-804a-cdf4ca6b154d>).

to a \$21 billion contribution of his own cash, an aggregate of approximately \$25.5 billion in financing as follows: (i) a debt commitment letter dated April 20, 2022, from Morgan Stanley and certain other financial institutions to provide \$13 billion in financing to Musk via a \$6.5 billion senior secured term loan facility (the “Term Loan Facility”), a \$500 million senior secured revolving facility (the “Revolving Facility”), a \$3 billion senior secured bridge loan facility (the “Secured Bridge Facility”) and a \$3 billion senior unsecured bridge loan facility (the “Unsecured Bridge Facility”); and (ii) a separate debt commitment letter dated April 20, 2022 from Morgan Stanley and certain other financial institutions pursuant to which they committed to provide Musk with \$12.5 billion in margin loans.

44. The chart below, published by the *Wall Street Journal*, depicts the financing package arranged for the Proposed Takeover by Morgan Stanley:



45. According to public reporting, Morgan Stanley acted aggressively to arrange financing for the Proposed Takeover on Musk’s behalf, pushing its fellow lenders to work with unprecedented speed to assemble the financing package Musk required to facilitate his acquisition of Twitter. According to one report in the *Financial Times*:

Morgan Stanley, the Wall Street investment bank, was instrumental in helping Musk line up the financing at breakneck speed, according to people close to Musk and Twitter’s board. The lender contacted rivals on Easter Sunday, when some bankers were on holiday with family, and told them they would need to commit by Wednesday, the people added.

⁶ Cara Lombardo and Liz Hoffman, “How Elon Musk Won Twitter,” WALL STREET JOURNAL (Apr. 26, 2022) (available at: <https://www.wsj.com/articles/how-elon-musk-won-twitter-11650943029>).

Chief executives at some lenders were quickly briefed on the discussions so they could decide if their banks would join in financing Musk's deal, people involved in the negotiations said. Morgan Stanley's leveraged finance team, led by banker Andrew Earls, held a series of due diligence calls on the takeover, codenamed Project X, people briefed on the calls said. "The whole street was running around like crazy," said one banker involved in the deal.⁷

46. According to another *Financial Times* article, the other lenders on the deal "accelerated due diligence processes at the behest of Morgan Stanley, Musk's financial adviser and one of the biggest lenders on the deal."⁸

47. Though the precise terms of its engagement have not been publicly disclosed, it is plain that Morgan Stanley stands to profit handsomely from its role in facilitating Musk's Proposed Takeover. According to a *Bloomberg* article titled "*Goldman and Morgan Stanley Lead Six Banks Sharing Twitter Deal Fees,*" investment banks typically receive approximately 1% to 3% of the value of a merger deal in fees, which is allocated among the banks involved. Based on the approximately \$44 billion Proposed Takeover purchase price, the range of

⁷ James Fontanella-Khan, *et al.*, "From punchline to deal in under 2 weeks: how Elon Musk won his Twitter prize," *FINANCIAL TIMES* (Apr. 26, 2022) (available at: <https://www.ft.com/content/427218b5-f6c7-4287-b493-2bd299081b1c>).

⁸ Eric Platt, *et al.*, "Musk's Twitter financing tests Wall Street's mettle: 'What could go wrong?'," *FINANCIAL TIMES* (Apr. 28, 2022) (available at: <https://www.ft.com/content/f60b6385-eef6-461e-9fcc-b3cb999a70c6>).

investment banking fees for the deal is likely between \$440 million and \$1.3 billion.⁹ In light of its role as lead financial advisor and financier to Musk, Morgan Stanley will presumably receive the lion's share of those fees, potentially amounting to tens or possibly hundreds of millions of dollars. Indeed, the *Daily Mail* reports that Morgan Stanley would likely be the “biggest beneficiar[y]” of the bankers’ fees resulting from Musk’s takeover of Twitter, which is “set to trigger” a “fee[] bonanza for bankers working on the deal.”¹⁰ A *CNN Business* article likewise described Morgan Stanley as “[t]he big winner in Elon Musk’s Twitter deal” and noted “Morgan Stanley could be looking at taking in tens—or even hundreds—of millions of dollars from advising Musk, plus the Wall Street bragging rights.”¹¹

48. Accordingly, no later than April 20, 2022—the date of Morgan Stanley’s financing commitment to Musk and, significantly, before the Board’s agreement to the Proposed Takeover—Musk and Morgan Stanley had at least three

⁹ Matthew Monks, “*Goldman and Morgan Stanley Lead Six Banks Sharing Twitter Deal Fees*,” BLOOMBERG (April 25, 2022) (available at: <https://www.bloomberg.com/news/articles/2022-04-25/goldman-morgan-stanley-lead-six-banks-sharing-twitter-deal-fees>).

¹⁰ Mark Shapland, “*Morgan Stanley at head of queue as US bankers eye £1bn fees bonanza from Musk’s Twitter takeover*,” THE DAILY MAIL (Apr. 27, 2022) (available at: <https://www.thisismoney.co.uk/money/markets/article-10760297/US-bankers-eye-1bn-fees-bonanza-Musks-35bn-Twitter-takeover.html>).

¹¹ Paul R. La Monica, “*The big winner in Elon Musk’s Twitter deal*,” CNN BUSINESS (Apr. 27, 2022) (available at: <https://www.cnn.com/2022/04/26/investing/morgan-stanley-elon-musk-twitter/index.html>).

distinct “agreement[s], arrangement[s] or understanding[s] for the purpose of acquiring, holding, voting . . . or disposing” of Morgan Stanley’s Twitter stock.

49. *First*, Musk and Morgan Stanley had an AAU that Morgan Stanley would serve as Musk’s financial advisor in connection with Musk’s efforts to acquire Twitter and would work to accomplish Musk’s acquisition of all Twitter shares that he did not already own, including Morgan Stanley’s own shares of Twitter stock.

50. *Second*, Musk and Morgan Stanley had an AAU that Morgan Stanley would finance Musk’s acquisition of all Twitter shares that he did not already own, including Morgan Stanley’s own shares of Twitter stock.

51. *Third*, Musk and Morgan Stanley had an AAU that Morgan Stanley would vote its Twitter shares in favor of Musk’s bid to acquire Twitter. It is more than reasonably inferable that, given Morgan Stanley’s role as Musk’s primary adviser and financial backer in connection with his efforts to acquire Twitter and given the profit Morgan Stanley stood to receive in connection therewith, Musk and Morgan Stanley had an “understanding” that Morgan Stanley would vote its Twitter shares in favor of Musk’s acquisition offer.

52. Given the existence of these AAUs between Musk and Morgan Stanley, Musk became the “owner” of the 8.8% of Twitter shares beneficially owned by Morgan Stanley under Section 203(c)(9)(iii).

Musk had an AAU with Dorsey

53. Dorsey co-founded Twitter, has been a member of the Board at all relevant times, and served as Twitter’s Chief Executive Officer from May 2007 to October 2008 and from July 2015 to November 2021. Dorsey resigned his position as Twitter CEO in November 2021 under pressure from his fellow directors.

54. Dorsey and Musk are close friends who have spent years discussing Twitter’s future together and, in particular, the possibility of taking Twitter private. In 2019, Dorsey said of Musk: “I love him. I love what he’s trying to do, and I want to help in whatever way.”¹²

55. According to one public report in the *Wall Street Journal* describing Dorsey and Musk’s relationship:

One former Twitter executive said Mr. Dorsey would sometimes appear to space out in meetings because he was messaging Mr. Musk during the workday.

The two men’s shared interests, the former executives said, included exploring whether Twitter could be run more effectively as a private company, as it had been for its first seven years, after Mr. Dorsey launched it with several co-founders. Messrs. Dorsey and Musk were

¹² Biran Hiatt, “*Twitter CEO Jack Dorsey: The Rolling Stone Interview*,” ROLLING STONE (Jan. 23, 2019) (available at: <https://www.rollingstone.com/culture/culture-features/twitter-ceo-jack-dorsey-rolling-stone-interview-782298/>).

focused primarily on Twitter’s role as a potential public good, rather than a business focused on short-term profits.¹³

56. According to the same report, Dorsey helped to instigate Musk’s pursuit of the Proposed Takeover, specifically encouraging him to take the Company private: “Twitter’s co-founder and former Chief Executive Jack Dorsey, who resigned last year under pressure from his board, was whispering in Mr. Musk’s ear that Twitter should be a private company, people familiar with the matter say.”¹⁴

57. After the Board initially reacted defensively to Musk’s takeover bid, Dorsey sided with Musk. The *New York Times* has reported that, as Musk laid the groundwork for a potential tender offer,

Twitter’s board fractured. On April 16, Jack Dorsey . . . tweeted that the board had been the “consistent dysfunction of the company.” When asked by a Twitter user whether he was allowed to say that, Mr. Dorsey responded, “no.”

Mr. Dorsey’s criticism rankled other board members and Twitter executives, said two people who worked on the deal. Mr. Taylor asked Mr. Dorsey to stop tweeting negatively, one person said. Mr. Dorsey continued posting references to Twitter’s board.¹⁵

¹³ Rob Copeland, *et al.*, “*The Shadow Crew Who Encouraged Elon Musk’s Twitter Takeover*,” WALL STREET JOURNAL (Apr. 29, 2022) (available at: <https://www.wsj.com/articles/the-shadow-crew-who-encouraged-elon-musk-twitter-takeover-tesla-jack-dorsey-11651260119>).

¹⁴ *Id.*

¹⁵ Lauren Hirsch and Mike Isaac, “*How Twitter’s Board Went From Fighting Elon Musk to Accepting Him*,” NEW YORK TIMES (April 30, 2022) (available at: <https://www.nytimes.com/2022/04/30/technology/twitter-board-elon-musk.html>).

58. On April 18, 2022, for example, CNBC reporter Scott Wapner asked Dorsey for additional information concerning Dorsey’s expressed views that the “Board is/was so dysfunctional and kept the company from being great,” Dorsey responded on Twitter: “so much to say . . . but nothing that can be said.”

59. When Musk ultimately prevailed and secured the Board’s approval for the Proposed Takeover, Dorsey tweeted: “*Elon is the singular solution I trust. I trust his mission to extend the light of consciousness*” and “This is the right path . . . I believe it with all my heart.” (emphasis added).

60. In the same series of tweets, Dorsey, who had been forced out as the CEO of Twitter and was set to leave the Twitter board in May 2022, made clear how personal and important it was to him that Musk take over Twitter: “I love Twitter. Twitter is the closest thing we have to a global consciousness[.]” and “The ideas and service is all that matter to me, and I will do whatever it takes to protect both. . . .”

61. Following announcement of the Proposed Takeover, it has been widely speculated that upon closing of the deal, Musk may reinstate Dorsey as CEO of the newly-private Company to enact their shared vision for its future.¹⁶

¹⁶ See, e.g., Kurt Wagner, “*With Musk in Charge at Twitter, Could Jack Come Back?*,” BLOOMBERG (April 26, 2022) (available at <https://www.bloomberg.com/news/newsletters/2022-04-26/with-musk-in-charge-at-twitter-could-jack-come-back>).

62. Following announcement of the Proposed Takeover, it was also widely-reported that Dorsey may roll over his stake in Twitter or otherwise continue to enjoy an ownership interest alongside Musk following the Proposed Takeover.¹⁷ Musk effectively confirmed these reports in a Schedule 13D/A filing with the SEC on May 5, 2022, wherein he disclosed additional financing sources for the Proposed Takeover and noted that he “is having, and will continue to have, discussions with certain existing holders of Common Stock (including Jack Dorsey) regarding the possibility of contributing [their] shares of Common Stock to [Musk’s wholly-owned entity acquiring Twitter], at or immediately prior to the closing of the Merger, in order to retain an equity investment in Twitter following completion of the Merger in lieu of receiving Merger Consideration in the Merger.”

63. Given (a) Dorsey and Musk’s relationship, (b) that Dorsey personally instigated Musk’s pursuit of the Proposed Takeover by “whispering in Mr. Musk’s ear that Twitter should be a private company,” (c) that Dorsey sided with Musk against the rest of the Board in supporting an acquisition by Musk, (d) Dorsey’s subsequent comments expressing that “*Elon is the singular solution I trust*,” and (e) Dorsey and Musk’s ongoing conversations concerning a role for Dorsey in the

¹⁷ See, Chibuike Oguh and Krystal Hu, *Musk in talks for new Twitter financing-sources*, REUTERS (May 2, 2022) (available at <https://www.reuters.com/business/exclusive-musk-talks-new-twitter-financing-sources-2022-05-02>).

Company post-takeover, it is more than reasonably inferable that Dorsey and Musk had at minimum an “understanding” within the meaning of Section 203 that Dorsey would support Musk’s takeover bid and vote his shares in Musk’s favor. It is similarly inferable that this “understanding” existed at the outset of Musk’s efforts to acquire Twitter—particularly in light of reporting that Dorsey specifically instigated the commencement of those efforts by “whispering in Mr. Musk’s ear that Twitter should be a private company.”

64. Given the existence of an AAU between Musk and Dorsey, Musk became the “owner” of the approximately 2.4% of Twitter shares beneficially owned by Dorsey under Section 203(c)(9)(iii).

Musk Appears to Have Additional AAUs With Other Significant Beneficial Owners of Twitter Stock

65. The public record makes most clear Musk’s pre-Merger Agreement AAUs with Morgan Stanley and Dorsey. There is, however, strong reason to believe that Musk secured *additional* AAUs with other large stockholders prior to securing the Twitter Board’s agreement to the Proposed Takeover.

66. Specifically, numerous press outlets have reported that—prior to securing the Twitter Board’s agreement to the Proposed Takeover—Musk met directly with myriad other large Twitter stockholders to secure their support for his acquisition of Twitter. The day the Merger Agreement was announced, for example, the *Washington Post* reported that “Musk had also met privately with several large

Twitter shareholders in recent days, *with some expressing their support for his bid*” citing “people familiar” with the events.¹⁸ The same day, the *Wall Street Journal* reported that “Musk made his pitch to select shareholders in a series of video calls, with a focus on actively managed funds . . . in the hopes that they could sway the company’s decision” and that “[s]ome shareholders rallied behind him following the meetings.”¹⁹ *Reuters* likewise reported that Twitter “kicked off deal negotiations with Elon Musk on Sunday [April 24, 2022] *after he wooed many of the social media company’s shareholders* with financing details on his \$43 billion acquisition offer, people familiar with the matter said.”²⁰

67. Though discovery is necessary to achieve greater visibility into the “support” Musk secured for his bid from these other shareholders, it appears likely based on these public reports that such discovery will yield evidence to support the

¹⁸ Douglas MacMillan, *et al.*, “*Elon Musk acquires Twitter for roughly \$44 billion*,” THE WASHINGTON POST (Apr. 25, 2022) (available at: <https://www.washingtonpost.com/technology/2022/04/25/twitter-elon-musk-deal/>) (emphasis added).

¹⁹ Cara Lombardo, *et al.*, “*Twitter, Elon Musk Deal Could Be Announced Monday*,” WALL STREET JOURNAL (Apr. 25, 2022) (available at: <https://www.wsj.com/articles/twitter-re-examines-elon-musks-bid-may-be-more-receptive-to-a-deal-11650822932>).

²⁰ Svea Herbst-Bayliss and Greg Roumeliotis, “*Twitter, under shareholder pressure, begins deal talks with Musk*,” *Reuters* (Apr. 25, 2022) (available at: <https://www.reuters.com/business/exclusive-twitter-under-shareholder-pressure-seek-deal-with-musk-sources-say-2022-04-24/>) (emphasis added).

existence of additional relevant AAUs between Musk and other significant shareholders prior to the Twitter Board’s agreement to the Proposed Takeover.

68. It appears these shareholders may have included, among others, Saudi Prince Alwaleed Bin Talal—who owns 34,948,975 shares, or approximately 4.57% of Twitter’s outstanding voting stock. When, on May 5, 2022, Musk filed a Schedule 13D/A with the SEC disclosing additional sources of financing for the Proposed Takeover, he disclosed that Bin Talal had “committed to contribute to [Musk’s wholly-owned entity acquiring Twitter], at or immediately prior to the closing of the Merger” his shares “in order to retain an equity investment in Twitter following completion of the Merger in lieu of receiving Merger Consideration in the Merger.” This makes clear that Musk now undeniably has a relevant AAU with Bin Talal. Discovery is required to determine the full extent and timing of that AAU.

69. The same 13D/A filing likewise disclosed numerous other entities that have committed to provide billions of dollars in additional financing to Musk in exchange for equity in the post-closing Company. Notably, these investors include Fidelity Management & Research Company LLC, which is providing Musk with \$316,139,386 and, according to its most recent public filing, owns 17,641,927 shares of Twitter stock amounting to approximately 2.31% of the Company’s outstanding voting stock. Thus, Musk now undeniably also has a relevant AAU with Fidelity. Discovery is required to determine the full extent and timing of that AAU.

70. Accordingly, while Musk’s AAUs with Morgan Stanley and Dorsey alone are sufficient to trigger application of Section 203 (indeed, his AAUs with Morgan Stanley are alone sufficient), it appears that he likely had and has AAUs with other stockholders relevant to the application of Section 203 and the appropriate voting standard (including who may participate in the vote) for stockholder approval of the Proposed Takeover.

***Defendants Are Incorrectly Proceeding as if Section 203
Does Not Apply to the Proposed Takeover***

71. The Merger Agreement disclaims that Musk is an “interested stockholder” within the meaning of Section 203 and contemplates that the Proposed Takeover may lawfully close this year provided it receives approval by a vote of a simple majority of Twitter stockholders, including Musk, Morgan Stanley, and Dorsey.

72. Section 5.8 of the Merger Agreement includes a representation that Musk is not an “interested stockholder” within the meaning of Section 203 and Section 4.20 of the Merger Agreement states based on that representation that “the affirmative vote of a majority of the outstanding shares of Company Common Stock entitled to vote to adopt this Agreement [] are the only votes of holders of securities of the Company that are required to consummate the [Proposed Takeover].”

73. Section 6.2(d) of the Merger Agreement, moreover, expressly contemplates that, for purposes of the stockholder vote on the Proposed Takeover,

Musk's shares will be counted for quorum purposes and requires that his shares be voted in favor of the Proposed Takeover.

74. Further, Section 8.1 of the Merger Agreement indicates that Defendants intend for the Proposed Takeover to close within three years of the date that Musk became an interested stockholder, notwithstanding the requirements of Section 203. Specifically, the Merger Agreement includes a termination date, subject to a potential six-month extension, of October 24, 2022.

75. No date has yet been set for the stockholder vote on the Proposed Takeover but, given the Merger Agreement's October 24, 2022 termination date, Plaintiff anticipates that such a vote is likely imminent. A prompt trial on Plaintiff's claim in advance of that vote will be necessary to ensure that Twitter stockholders are properly informed and that the vote on the Proposed Takeover is governed by the correct standard to allow the Proposed Takeover to lawfully close.²¹

²¹ Plaintiff believes it is particularly important to submit the Proposed Takeover to a proper stockholder vote given certain concerning aspects of the deal and the process leading to it. For example: (i) the Proposed Takeover offers Twitter stockholders per-share consideration significantly below prices at which Twitter common stock traded within the six months prior to Musk's bid; (ii) the Board accepted Musk's initial offer on an accelerated timeline without securing any additional economic consideration for stockholders; and (iii) the Board appears to have failed to take any steps to ensure stockholders received value for the valuable shareholder derivative claims currently being pursued by Plaintiff (against Defendants who include a majority of the current Board) in the action before this Court captioned *Orlando Police Pension Fund v. Dorsey, et al.*, C.A. No. 2021-0041-JTL.

CLASS ACTION ALLEGATIONS

76. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Twitter common stock (except for the Defendants named herein and their affiliates, including the beneficial holders of shares “owned” by Musk within the meaning of Section 203) (the “Class”).

77. This action is properly maintainable as a class action.

78. The Class is so numerous that joinder of all members is impracticable. There are thousands of Twitter stockholders who are scattered throughout the world. According to Twitter’s most recent Schedule 14A annual Proxy Statement, filed April 12, 2022, there were 763,577,533 shares of Twitter common stock issued and outstanding as of March 30, 2022.

79. There are questions of law and fact common to the Class including, *inter alia*, whether: (i) Musk had an AAU with Morgan Stanley, Dorsey and/or any other Twitter stockholder sufficient to render Musk “owner” of their shares within the meaning of Section 203; (ii) Musk was and is an “interested stockholder” within the meaning of Section 203; (iii) the Proposed Takeover may lawfully close on the timeline contemplated by Defendants without first being approved by the affirmative vote of 66²/₃% of Twitter’s voting stock not “owned” by Musk within the meaning

of Section 203; (iv) Plaintiff and the other members of the Class are entitled to declaratory relief; and (v) the Director Defendants breached their fiduciary duties.

80. A class action is superior to other available means for the fair and efficient adjudication of this controversy.

81. Plaintiff will fairly and adequately protect the interests of the Class and has no interests contrary to or in conflict with those of the Class. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff anticipates that there will be no difficulties in management of this litigation as a class action.

82. The prosecution of separate actions by individual members of the Class would create the 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 members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

83. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, thereby making appropriate the relief sought herein with respect to the Class as a whole.

COUNT I

(Declaratory Judgment Against All Defendants)

84. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein on behalf of itself and the Class.

85. Under the Delaware Declaratory Judgment Act, Delaware courts “have power to declare rights, status and other legal relations, whether or not further relief is or could be claimed.” 10 *Del. C.* § 6501. The power of Delaware courts to grant declaratory relief is to “be liberally construed and administered.” *Id.* § 6512.

86. As detailed herein, Musk had AAUs with other Twitter stockholders, including at least Morgan Stanley and Dorsey, which rendered Musk “owner” of their shares under 8 *Del. C.* § 203(c)(9)(iii), which increased Musk’s total ownership to greater than 15% for purposes of Section 203.

87. Thus, Musk is an “interested stockholder” of Twitter under 8 *Del. C.* § 203(c)(5) and subject to a three-year prohibition on “Business Combinations” with Twitter unless (1) prior to the time Musk became an “interested stockholder,” the Board approved the Proposed Takeover; (2) Musk became the owner of at least 85% of Twitter’s shares as a result of the AAUs; or (3) the Proposed Takeover is approved by the affirmative vote of 66²/₃% of Twitter’s voting stock not “owned” by Musk within the meaning of Section 203. Exceptions (1) and (2) were clearly not satisfied, and the simple majority vote contemplated by the Merger Agreement is insufficient to secure the safe harbor of exception (3).

88. Plaintiff and the Class are entitled to an order declaring that Musk is an “interested stockholder” within the meaning of Section 203 and that the Proposed Takeover may not lawfully close within three years of the time that Musk became an interested stockholder unless it is approved by the affirmative vote of 66²/₃% of Twitter’s voting stock not “owned” by Musk within the meaning of Section 203.

89. Such a declaration is necessary to ensure the vote of Twitter stockholders on the Proposed Takeover is properly informed concerning the applicability of Section 203 and its implications for the Proposed Takeover and the interests of Twitter’s public stockholders in connection therewith.

90. Plaintiff and the Class have no adequate remedy at law.

COUNT II

(Breach of Fiduciary Duty Against the Director Defendants)

91. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

92. As Twitter directors, the Director Defendants owed Plaintiff and the other public stockholders of Twitter fiduciary duties, including a fiduciary duty to ensure that Section 203 is not violated and that Twitter stockholders are provided the vote statutorily required by Section 203.

93. The Director Defendants breached their fiduciary duties by entering into the Merger Agreement, which fails to provide for the statutorily required vote

despite the fact that they knew or should have known that Musk became an “interested stockholder” (as defined in Section 203) prior to the time the Board agreed to the Proposed Takeover.

94. By virtue of the Director Defendants’ breaches, Plaintiff and the Class will suffer harm as alleged herein.

95. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- A. Declaring that this action is properly maintainable as a class action;
- B. Declaring that Musk is an “interested stockholder” within the meaning of Section 203 and that the Proposed Takeover may not lawfully close within three years of the time that Musk became an interested stockholder unless it is approved by the affirmative vote of 66²/₃% of Twitter’s voting stock not “owned” by Musk within the meaning of Section 203;
- C. Finding that the Director Defendants breached their fiduciary duties;
- D. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys’ fees; and
- E. Granting such other and further relief as this Court may deem to be just, equitable, and proper.

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May 6, 2022

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