

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

7 *Attorneys for Plaintiffs Dmitry Borodaenko and Hana Thier,*
 8 *on behalf of themselves and all others similarly situated*

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

12
 13 DMITRY BORODAENKO AND HANA
 14 THIER, on behalf of themselves and all others
 similarly situated,

15 Plaintiffs,

16 v.

17 TWITTER, INC. AND X CORP.

18 Defendants
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Case No. 3:22-cv-7226-AMO

**SECOND AMENDED CLASS ACTION
 COMPLAINT AND JURY DEMAND**

1. DISCRIMINATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §§ 12101, *et seq.*
2. DISCRIMINATION IN VIOLATION OF TITLE VII, 42 U.S.C. § 2000e, *et seq.*
3. DISCRIMINATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, Gov. Code § 12940

1 **I. INTRODUCTION**

2 1. Plaintiffs Dmitry Borodaenko and Hana Thier file this Class Action Complaint
3 against Defendants Twitter, Inc. and X Corp. (collectively “Twitter”), on their own behalf and on
4 behalf of other Twitter employees across the country who are disabled and who have been
5 terminated or constructively discharged from their jobs during the chaotic months since multi-
6 billionaire Elon Musk purchased the company.

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

16 3. Plaintiff Hana Thier also brings a claim of discrimination under Title VII, 42
17 U.S.C. § 2000e, *et seq.*, challenging the company’s termination, or constructive termination, of
18 female employees since Elon Musk’s acquisition of the company.

19 4. As described further below, shortly after Elon Musk completed his purchase of
20 Twitter, he immediately began laying off more than half of its workforce.

21 5. Many of the employees who have lost their jobs since Musk’s purchase of the
22 company are disabled.

23 6. Prior to Musk’s purchase of the company, Twitter employees were permitted to
24 work remotely. In fact, over the spring and summer of 2022, Twitter reassured employees that,
25 following Musk’s purchase of the company, they would be permitted to continue working
26 remotely for at least a year.

1 12. Plaintiffs file this action on their own behalf and on behalf of similarly situated
2 individuals, bringing claims of disability and sex discrimination.

3 **II. PARTIES**

4 13. Plaintiff Dmitry Borodaenko is an adult resident of Scotts Valley, California,
5 where he worked for Twitter from June 2021 until November 2022. Mr. Borodaenko was
6 employed by Twitter as an Engineering Manager. Throughout his employment with Twitter, Mr.
7 Borodaenko's performance met the Company's expectations.
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9 14. Plaintiff Hana Thier is an adult resident of Seattle, Washington, where she worked
10 for Twitter from May 2021 until November 2022. Ms. Thier was employed by Twitter as a
11 Senior Software Engineer. Throughout her employment with Twitter, Ms. Thier's performance
12 met the Company's expectations.

13 15. Plaintiffs bring this lawsuit as a Rule 23 class action on behalf of all similarly
14 situated Twitter employees across the United States who are disabled and whose jobs have been
15 affected by the company's layoffs, terminations, and constructive discharges based on the
16 heightened and unreasonable demands placed on the company's workforce since Elon Musk
17 acquired the company.

18 16. Ms. Thier also brings this lawsuit as a Rule 23 class action on behalf of all
19 similarly situated female Twitter employees across the United States whose jobs have been
20 affected by the company's layoffs, terminations, and constructive discharges since Elon Musk
21 acquired the company.

22 17. Defendant Twitter, Inc. is a Delaware corporation, headquartered in San
23 Francisco, California.

24 18. Defendant X Corp. is a Nevada corporation, headquartered in San Francisco,
25 California.
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1 19. In or about March 2023, Twitter merged with X Corp., and as a result Twitter and
2 X Corp. are a single entity. X Corp. has successor liability for Twitter’s unlawful acts. Twitter
3 and X Corp. are referred to herein as “Twitter”.

4 **III. JURISDICTION**

5 20. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1331 and
6 29 U.S.C. § 2104(a)(5).

7 21. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Mr.
8 Borodaenko’s state law claims, because those claims derive from a common nucleus of operative
9 facts with Plaintiffs’ federal claims.

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

12 **IV. STATEMENT OF FACTS**

13 23. Twitter is a social media company that used to employ thousands of people across
14 the United States.

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

17 25. Following this announcement, many employees raised concerns regarding the
18 company’s policies following this anticipated acquisition.

19 26. In order to allay employees’ concerns and try to prevent them from leaving
20 Twitter to work at other companies, Twitter made various promises to employees.

21 27. One of the promises was that employees would be able to continue working
22 remotely, for at least a year after Musk’s acquisition of the company. This promise was made
23 repeatedly to employees by managers, the CEO, and other staff.

24 28. However, following the purchase of the company by Elon Musk in late October
25 2022, Twitter openly reneged on this promise.
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1 29. On the evening of November 9, 2022, Musk announced that all employees were
2 expected to begin reporting to Twitter offices immediately.

3 30. At a meeting with Twitter employees on November 10, 2022, Musk reiterated that
4 employees needed to return to the office full time. He told employees: "if you can show up at an
5 office and you do not show up at the office, resignation accepted -- end of story." He elaborated:
6 "Let me be crystal clear, if people do not return to the office when they are able to return to the
7 office -- they cannot remain at the company." Victor Ordonez and Stephanie Wash, Exclusive
8 audio: Musk talks potential Twitter bankruptcy, return to office meeting, ABC News (November
9 11, 2022), [https://abcnews.go.com/Business/exclusive-audio-elon-musk-tells-twitter-employees-
10 return/story?id=93087987](https://abcnews.go.com/Business/exclusive-audio-elon-musk-tells-twitter-employees-return/story?id=93087987).

11 31. Musk further stated that exceptions to this policy would be made only for
12 "exceptional people".

13 32. In the months after he acquired Twitter and prohibited the company's employees
14 from working remotely, Musk was openly hostile towards disabled employees and insinuated
15 that they were lazy. For example, he tweeted that a disabled former Twitter employee used his
16 disability as an excuse not to work. [https://www.cnn.com/2023/03/07/tech/elon-musk-twitter-
17 employee-disability/index.html](https://www.cnn.com/2023/03/07/tech/elon-musk-twitter-employee-disability/index.html). He has also joked about employees having Tourette's Syndrome.
18 Id. Moreover, he has chastised employees who work from home for being "morally wrong." See
19 <https://www.cbsnews.com/news/elon-musk-work-from-home-morally-wrong/>.

20 33. In addition to requiring remaining employees to work at physical offices, Musk
21 also immediately began a mass layoff that has affected well more than half of Twitter's
22 workforce. See See Kate Conger, Ryan Mac, and Mike Isaac, Confusion and Frustration Reign
23 as Elon Musk Cuts Half of Twitter's Staff, NEW YORK TIMES (November 4, 2022),
24 <https://www.nytimes.com/2022/11/04/technology/elon-musk-twitter-layoffs.html>; Kate Conger,
25 Ryan Mac, and Mike Isaac, In Latest Round of Job Cuts, Twitter is said to Layoff at Least 200
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1 Employees, NEW YORK TIMES (February 26, 2023),
2 <https://www.nytimes.com/2023/02/26/technology/twitter-layoffs.html>; Ryan Morrison, Twitter
3 'lays off 10% of its global workforce' in Elon Musk's latest job cuts, TECHMONITOR (February
4 27, 2023, updated March 9, 2023) ("The Company's headcount is down 75%.")
5 <https://techmonitor.ai/policy/digital-economy/twitter-job-cuts-elon-musk>.

6
7 34. Twitter's new requirement that employees report to physical offices, as well as
8 rampant terminations and layoffs, have disparately affected disabled employees, including
9 Plaintiffs Dmitry Borodaenko and Hana Thier.

10 35. Mr. Borodaenko worked as an Engineering Manager. Throughout his
11 employment at Twitter, he worked remotely from his home. Indeed, when he was hired in June
12 2021, he was assured that he would always have the option to work remotely.

13 36. Mr. Borodaenko has a disability that makes him vulnerable to COVID-19. Thus,
14 working from an office while the pandemic is still ongoing would create an unacceptable risk to
15 his health and life.

16 37. Mr. Borodaenko informed his manager of his disability and how it prevented him
17 from working out of a company office.

18 38. Following Musk's announcement that employees would have to work out of
19 company offices, Mr. Borodaenko wrote to his manager: "In case I didn't mention it before, as
20 [a] cancer survivor I'm at extra risk from Covid (it also counts as a disability), so I'm definitely
21 not working from [the] office until the pandemic is over."

22 39. Mr. Borodaenko was not given any information about how formally to request an
23 "exception" to the return to the office policy that Musk instituted at Twitter, and Twitter never
24 engaged in any discussions about Mr. Borodaenko's request to continue the reasonable
25 accommodation he had always been provided for his disability.
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1 40. Not long after sending this message to his manager, Mr. Borodaenko was
2 terminated.

3 41. On November 15, 2022, Mr. Borodaenko received an email from Twitter Human
4 Resources that stated: “Hi, We regret to inform you that your employment is terminated effective
5 immediately. Your recent behavior has violated company policy.”

6 42. Mr. Borodaenko had not received any notice of behavior he was alleged to have
7 engaged in that violated company policy, nor did he engage in any behavior that would appear to
8 him to have violated company policy (other than informing his manager that he could not
9 comply with Musk’s demand that employees begin working out of company offices, and
10 therefore needed a reasonable accommodation for his disability).

11 43. In addition to the requirement that employees begin working out of company
12 offices, Musk also made clear that working for Twitter would demand extraordinary effort and
13 long work hours.

14 44. Following Musk’s purchase of the company, employees were reported to have
15 worked 12 hour shifts, 7 days a week. Some employees were told: “The expectation is literally
16 to work 24/7 to get this out.” Some employees slept in Twitter offices while being required to
17 work around the clock. Grace Dean, Twitter staff have been told to work 84- weeks and
18 managers slept at the office over the weekend as they scramble to meet Elon Musk’s Tight
19 deadlines, reports say, BUSINESS INSIDER (Nov. 1, 2022), [https://www.businessinsider.com/elon-](https://www.businessinsider.com/elon-musk-twitter-staff-layoffs-long-hours-shifts-work-jobs-2022-11)
20 [musk-twitter-staff-layoffs-long-hours-shifts-work-jobs-2022-11](https://www.businessinsider.com/elon-musk-twitter-staff-layoffs-long-hours-shifts-work-jobs-2022-11).

21 45. These demands occurred while the company was in the process of mass layoffs,
22 thus signaling to employees that these extraordinary efforts were required in order to keep their
23 jobs.
24

1 46. Indeed, Mr. Borodaenko’s workload vastly increased following the beginning of
2 Twitter’s mass layoffs. As a manager, the number of employees assigned to report to him
3 increased from about 10 to 16.

4 47. On November 16, 2022, Musk sent the following email to remaining Twitter
5 employees:

6
7 Going forward, to build a breakthrough Twitter 2.0 and succeed in an increasingly
8 competitive world, we will need to be extremely hardcore. This will mean working long
9 hours at high intensity. Only exceptional performance will constitute a passing grade.

10 Twitter will also be much more engineering-driven. Design and product management
11 will still be very important and report to me, but those writing great code will constitute
12 the majority of our team and have the greatest sway. At its heart, Twitter is a software
and servers company, so I think this makes sense.

13 If you are sure that you want to be part of the new Twitter, please click yes on the link
14 below:

15 [LINK]

16 Anyone who has not done so by 5pm ET tomorrow (Thursday) will receive three months
17 of severance.

18 Whatever decision you make, thank you for your efforts to make Twitter successful.

19 Elon

20 48. This further ultimatum from Musk that working at Twitter would require
21 “working long hours at high intensity”, in which “[o]nly exceptional performance” would be
22 acceptable, was highly discriminatory against disabled employees.

23 49. This ultimatum did not allow for employees who require reasonable
24 accommodation for their disabilities but who are nevertheless capable of adequately performing
25 their jobs.

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2 58. Examples of Musk’s discriminatory and demeaning comments about women
3 include his posting of tweets on Twitter in which he joked about naming a school using the
4 acronym “TITS” and making other jokes about women’s breasts. See Chandra Steele, Elon
5 Musk is a Misogynist and It Matters, PCMag (December 13, 2021), [Elon Musk Is a Misogynist](#)
6 [and It Matters | PCMag](#) (quoting Musk’s tweet: “Am thinking of starting new university: Texas
7 Institute of Technology & Science”); Jon Christian, Elon Musk Deletes Sexist Tweets, The Byte
8 (October 31, 2021), [Elon Musk Deletes Sexist Tweets \(futurism.com\)](#); [Stock Joker on Twitter:](#)
9 ["@ZJAYres @PhilKoopman Now deleted, but only D cups need apply](#)
10 [https://t.co/40NBcDTonb" / Twitter](#)); Ananya Bhattacharya, In one tweet, Elon Musk captures
11 the everyday sexism faced by women in STEM, Quarz (November 1, 2021), [Elon Musk's tweet](#)
12 [captures everyday sexism faced by women in STEM \(qz.com\)](#).
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15 59. Shortly before acquiring Twitter, Musk, who has been vocal about promoting
16 women having a lot of babies (presumably disseminating the message that is more important
17 than keeping their jobs), tweeted: “Being a Mom is just as important as any career.” Twitter
18 (August 17, 2022), <https://twitter.com/elonmusk/status/1559823434028400640>. Within weeks
19 of announcing the layoffs, Musk tweeted “Testosterone rocks ngl”. Twitter (December 4, 2022),
20 <https://twitter.com/elonmusk/status/1599345615443746817>
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23 60. More recently, Musk had the “w” on the sign of the corporate headquarters
24 painted white so that the company’s name appeared to be “Titter.” See Twitter (April 9, 2023),
25 <https://twitter.com/elonmusk/status/1645266104351178752?cxt=HHwWgIC-7cGzINUtAAAA>
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1 **V. EXHAUSTION OF ADMINSTRATIVE REMEDIES**

2 61. Plaintiff Borodaenko has filed an administrative charge of disability
3 discrimination under the ADA with the Equal Employment Opportunity Commission and under
4 the California Fair Employment and Housing Act with the California Civil Rights Department.
5 He has received a Right to Sue letter to pursue these claims in court.
6

7 62. Plaintiff Thier has filed an administrative charge of disability discrimination
8 under the ADA and sex discrimination under Title VII with the Equal Employment Opportunity
9 Commission. She has received a Right to Sue letter to pursue these claims in court.
10

11 **COUNT I**

12 **Americans With Disabilities Act,
13 42 U.S.C. §§ 12101, *et seq.***

14 Plaintiffs and other employees with disabilities, or who have been perceived to be
15 disabled, who have worked for Twitter, and could perform the essential functions of their job
16 with or without reasonable accommodation, have been entitled to the protections of the
17 Americans With Disabilities Act (“ADA”), 42 U.S.C. §§ 12101, *et seq.* Plaintiffs are disabled, as
18 defined by the ADA, 42 U.S.C. § 12102, and could perform the essential functions of their jobs
19 with or without reasonable accommodation. However, after Musk’s acquisition of the company,
20 Twitter required its employees to report physically to its offices. Twitter terminated Plaintiff
21 Borodaenko after he requested that he be permitted to continue to work remotely on account of
22 his disability. Twitter laid off, or constructively discharged, Plaintiff Thier because she
23 reasonably believed she could no longer work for the company given her disability and Musk’s
24 unreasonable demands on the workforce. Twitter, through the rigid enforcement of its return to
25 office policy, as well as its unreasonable demands on employees since Elon Musk’s purchase of
26 the company, has discriminated against Plaintiffs and other disabled Twitter employees in
27 violation of the ADA.

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COUNT II

**Title VII,
42 U.S.C. § 2000e, *et seq.***

Plaintiff Thier and other female employees have been entitled to the protections of Title VII, 42 U.S.C. § 2000e, *et seq.*, which prohibits discrimination on the basis of sex. Twitter’s conduct in conducting mass layoffs (which were carried out through termination and constructive discharge) in a manner that resulted in a disproportionate impact on women constitutes unlawful discrimination against Plaintiff Thier and other similarly situated female Twitter employees on the basis of sex in violation of Title VII.

COUNT III

**California Fair Employment and Housing Act,
Gov. Code § 12940**

Plaintiff Borodaenko and other employees with disabilities, or who have been perceived to be disabled, who have worked for Twitter in California, and could perform the essential functions of their job with or without reasonable accommodation, have been entitled to the protections of the California Fair Employment and Housing Act (“FEHA”), Gov. Code § 12940. Plaintiff Borodaenko is disabled, as defined by the FEHA, Gov. Code § 12926.1, and could perform the essential functions of his job with the reasonable accommodation of working remotely. Twitter required its employees, including Plaintiff Borodaenko, to report physically to its offices, and terminated Plaintiff Borodaenko after he requested that he be permitted to continue to work remotely on account of his disability. Twitter, through the rigid enforcement of its return to office policy, as well as its unreasonable demands on employees since Elon Musk’s purchase of the company, has discriminated against Plaintiff Borodaenko and other disabled Twitter employees who have worked out of California in violation of the FEHA.

JURY DEMAND

Plaintiffs request a trial by jury on the claims asserted here.

WHEREFORE, Plaintiffs request that this Court enter the following relief:

- a. Declare and find that Twitter is liable to Plaintiff Borodaenko, Plaintiff Thier, and other similarly situated disabled employees under the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, and, with respect to employees who have worked out of California, the Fair Employment and Housing Act, Gov. Code § 12940;
- b. Declare and find that Twitter is liable to Plaintiff Thier and other similarly situated female employees under Title VII, 42 U.S.C. § 2000e, *et seq.*,
- c. Certify this case as a class action;
- d. Reinstate disabled employees who wish to return to their jobs with reasonable accommodations, and reinstate female employees who wish to return to their jobs;
- e. Award compensatory and any other appropriate damages, in an amount according to proof;
- f. Award pre- and post-judgment interest;
- g. Award reasonable attorneys' fees, costs, and expenses; and
- h. Award any other relief to which Plaintiffs and other similarly situated Twitter employees may be entitled.

1 Respectfully submitted,

2 DMITRY BORODAENKO AND HANA THIER,
3 on behalf of themselves and all others similarly
4 situated,

5 By their attorneys,

6 /s/ Shannon Liss-Riordan

7 Shannon Liss-Riordan, SBN 310719

8 Thomas Fowler (*pro hac vice* forthcoming)

9 LICHTEN & LISS-RIORDAN, P.C.

10 729 Boylston Street, Suite 2000

11 Boston, MA 02116

12 (617) 994-5800

13 Dated: May 26, 2023

14 Email: sliss@llrlaw.com; tfowler@llrlaw.com

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CERTIFICATE OF SERVICE

I, Shannon Liss-Riordan, hereby certify that a true and accurate copy of this document was served on Defendants' counsel via the CM/ECF system on May 26, 2023.

/s/ Shannon Liss-Riordan

Shannon Liss-Riordan