

1 SHANNON LISS-RIORDAN, SBN 310719
2 (sliss@llrlaw.com)
3 BRADLEY MANEWITH (*pro hac vice* forthcoming)
4 (bmanewith@llrlaw.com)
5 LICHTEN & LISS-RIORDAN, P.C.
6 729 Boylston Street, Suite 2000
7 Boston, MA 02116
8 (617) 994-5800

9 Attorneys for Plaintiffs FRANCK MAX
10 BORGHINO, LAUREN TOM,
11 and BRIAN RUTKIN

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN FRANCISCO**

14 FRANCK MAX BORGHINO, LAUREN
15 TOM, and BRIAN RUTKIN,

16 Plaintiffs,

17 v.

18 TWITTER, INC., and X CORP.,

19 Defendants.

Case No. _____

COMPLAINT AND JURY DEMAND

1. BREACH OF CONTRACT
2. BREACH OF CONTRACT (THIRD-PARTY BENEFICIARY)
3. PROMISSORY ESTOPPEL

1 **I. INTRODUCTION**

2 1. This case is brought by Plaintiffs Franck Max Borghino, Lauren Tom, and Brian
3 Rutkin against Defendants Twitter, Inc. and X Corp. (collectively, “Twitter”), challenging the
4 company’s breach of contract with respect to severance and asserting claims of promissory
5 estoppel.

6 2. As described further below, multi-billionaire Elon Musk recently purchased
7 Twitter and immediately began laying off most of its workforce. Plaintiffs had been promised
8 that, should layoffs occur after the sale of the company, they would be entitled to the same
9 severance that employees had previously received. However, following Musk’s purchase of the
10 company, Twitter reneged on this agreement.

11 3. Plaintiffs file this action, bringing claims of breach of contract and promissory
12 estoppel.

13 **II. PARTIES**

14 4. Plaintiff Franck Max Borghino is an adult resident of San Francisco, California.
15 He worked for Twitter from February 28, 2011, until January 4, 2023.

16 5. Plaintiff Lauren Tom is an adult resident of Petaluma, California. She worked for
17 Twitter from April 12, 2021, until January 4, 2023.

18 6. Plaintiff Brian Rutkin is an adult resident of Culver City, California. He worked
19 for Twitter from February 10, 2014, until January 20, 2023.

20 7. Plaintiffs resided and worked in California throughout their employment with
21 Twitter. They all opted out of Twitter’s arbitration agreement.

22 8. Defendant Twitter, Inc. (“Twitter”) is a Delaware corporation, headquartered in
23 San Francisco, California.

24 9. Defendant X Corp. is a Nevada corporation, headquartered in San Francisco,
25 California.

1 10. 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 11. This Court has jurisdiction over Plaintiffs’ claims pursuant to California Code of
6 Civil Procedure § 410.10.

7 12. Venue is proper in this Court pursuant to Cal. Civ. Proc. Code §§ 395 and 395.5
8 as Twitter is headquartered in San Francisco County. Furthermore, Twitter engages in business
9 activities in and throughout the State of California, including San Francisco County. Pursuant to
10 Cal. Lab. Code Ann. § 925, the choice of forum and choice of law provisions in the merger
11 agreement through which Musk purchased Twitter are void, as Plaintiffs have elected to bring
12 this suit in California.
13

14 **IV. STATEMENT OF FACTS**

15 13. Twitter is a social media company that formerly employed thousands of people
16 across the United States.

17 14. In April 2022, it was announced that multi-billionaire Elon Musk would be
18 purchasing the company.

19 15. Following this announcement, many employees raised concerns regarding the
20 company’s policies following this anticipated acquisition, including concerns of possible mass
21 layoffs.

22 16. In order to assuage employees’ concerns and try to prevent them from leaving
23 Twitter to work at other companies, Twitter made various promises to employees, including
24 Plaintiffs.

25 17. These promises were communicated to employees, including Plaintiffs, orally
26 (including at periodic “all-hands” meetings) and in writing by Twitter’s management, including
27 its former CEO, human resources personnel, and others.
28

1 18. Included amongst these promises was that, if there were layoffs, employees would
2 receive severance at least as favorable as the severance that Twitter previously provided to
3 employees.

4 19. The promise regarding severance pay was also included in Twitter’s merger
5 agreement with Musk and companies that would serve as the vehicles for the acquisition. This
6 merger agreement included a provision stating that, for at least a year after the acquisition
7 became effective, Twitter would “provide severance payments and benefits to each Continuing
8 Employee whose employment is terminated during such period that are no less favorable than
9 those applicable to the Continuing Employee” prior to the acquisition. Plaintiffs were each a
10 “Continuing Employee” under the terms of the agreement.
11

12 20. This promise that severance pay would remain at least as favorable as it was prior
13 to Musk’s acquisition of the company was also communicated by Twitter to its employees,
14 including Plaintiffs, in writing, including through distribution of a Frequently Asked Questions
15 (FAQs) document.

16 21. Another promise that Twitter made was that employees would be able to continue
17 working remotely after Musk purchased the company.

18 22. Employees, including Plaintiffs, reasonably relied on these promises and
19 maintained their employment at Twitter, rather than seeking job opportunities elsewhere. They
20 did so to their detriment.

21 23. Following the purchase of the company by Elon Musk in late October 2022,
22 Twitter openly reneged on these promises.

23 24. Shortly after he acquired the company, Musk announced that he was ending
24 Twitter’s remote work policy and that employees would need to begin working at company
25 offices, with few exceptions.

26 25. Musk also immediately began a mass layoff that has affected most of Twitter’s
27 workforce.
28

1 26. The layoffs began with approximately half of the workforce notified of their
2 layoff on November 4, 2022, with an effective date of January 4, 2023. See Kate Conger, Ryan
3 Mac, and Mike Isaac, Confusion and Frustration Reign as Elon Musk Cuts Half of Twitter’s
4 Staff, NEW YORK TIMES (November 4, 2022),
5 <https://www.nytimes.com/2022/11/04/technology/elon-musk-twitter-layoffs.html>.

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7 27. Plaintiffs Franck Max Borghino and Lauren Tom were notified that they were
8 being laid off on November 4, 2022, with an effective date of January 4, 2023. They were not
9 offered the severance that had been promised to employees prior to Musk’s acquisition of the
10 company.

11 28. Over the following weeks and months, Twitter continued the layoffs, ultimately
12 laying off at least three-quarters of the workforce. See Ryan Morrison, Twitter ‘lays off 10% of
13 its global workforce’ in Elon Musk’s latest job cuts, TECHMONITOR (February 27, 2023, updated
14 March 9, 2023) (“The Company’s headcount is down 75%.”),
15 <https://techmonitor.ai/policy/digital-economy/twitter-job-cuts-elon-musk>.

16 29. Further layoffs occurred after Musk sent the following message to remaining
17 Twitter employees on November 16, 2022:

18
19 Going forward, to build a breakthrough Twitter 2.0 and succeed in an increasingly
20 competitive world, we will need to be extremely hardcore. This will mean working long
21 hours at high intensity. Only exceptional performance will constitute a passing grade.

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

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

28 [LINK]

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

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

4 Elon

5 30. This ultimatum was intended to, and did, result in further layoffs.

6 31. Plaintiff Brian Rutkin, who had worked remotely throughout his employment at
7 Twitter, did not click “yes” via the link in Musk’s message. As a result, on November 18, 2022,
8 Rutkin was notified that he had been laid off effective January 20, 2023. He was not offered the
9 severance that had been promised to employees prior to Musk’s acquisition of the company.
10

11 32. Twitter’s previous policy had provided for greater severance pay for employees
12 than was offered to Plaintiffs. The previous severance policy had provided for a lump sum
13 payment of at least two months’ pay (or more, depending on the employee’s length of service),
14 bonus plan compensation, cash value of equity that would have vested within three months from
15 the separation date, and a cash contribution for health care continuation.

16 33. While Musk attempted to claim that the pay employees would receive during the
17 two months between their notification of layoff and their final termination date was severance
18 pay, this pay was not severance pay. Twitter appears to have offered this period of payment to
19 some employees in an attempt to comply with the federal and California WARN Acts (29 U.S.C.
20 §§ 2101 *et seq.* and Cal. Lab. Code §§ 1400 *et seq.*).

21 34. Employees (including Plaintiffs) had reasonably relied to their detriment on
22 Twitter’s earlier promise that employees subject to layoff after Musk’s purchase of the company
23 would receive at least as favorable severance pay as they would have received prior to his
24 purchase of the company and, in the case of Rutkin, that employees would be permitted to
25 continue working remotely. Based on those promises, they did not seek or obtain employment
26 elsewhere during the uncertain time period prior to Musk’s purchase of the company.
27

1 **COUNT I**

2 **Breach of Contract**

3 As set forth above, from approximately April 2022 through October 2022, Twitter
4 repeatedly informed employees (including Plaintiffs) that, in consideration for the employees'
5 continued willingness to work for Twitter, if there were layoffs pay following Elon Musk's
6 purchase of the company, they would receive severance pay that was no less favorable than what
7 Twitter employees previously received. However, following Musk's purchase of the company,
8 Twitter breached that contract. Twitter did not offer Plaintiffs severance packages that were at
9 least as favorable as those Twitter provided to employees prior to the acquisition. Twitter had
10 also promised that employees would be permitted to continue working remotely, but Twitter
11 breached that contract as well after Musk's acquisition.

12
13 **COUNT II**

14 **Breach of Contract (Third-Party Beneficiary)**

15 Twitter has also breached its contractual obligations under the merger agreement through
16 which Elon Musk purchased the company. Twitter employees, including Plaintiffs, were third-
17 party beneficiaries to the agreement, which stated that, for at least a year following the
18 acquisition, Twitter would continue to provide its employees who were terminated with
19 severance packages that were no less favorable than the severance packages that were provided
20 to terminated employees prior to the acquisition. However, Twitter did not offer Plaintiffs
21 severance packages that were no less favorable as those Twitter provided to employees prior to
22 the acquisition. Twitter is thus liable for breach of a contract for which Plaintiffs are third-party
23 beneficiaries.

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COUNT III
Promissory Estoppel

From approximately April 2022 through October 2022, Twitter repeatedly informed employees, including Plaintiffs, that (in the event of layoffs) they would receive severance pay that was no less favorable than what Twitter employees previously received. Twitter also informed employees that the company's policy allowing for remote work would continue. In reasonable reliance on these promises, Plaintiffs continued to work for Twitter, rather than looking for and accepting other job opportunities. However, following Musk's purchase of the company, Twitter reneged on these promises. Twitter announced that employees may no longer work remotely (with few exceptions). It also failed to offer employees, including Plaintiffs, severance packages that were no less favorable than those Twitter provided to employees prior to the acquisition. Plaintiffs were harmed by their reliance on these promises, including that they lost the opportunity to obtain other employment, when the job market was more favorable.

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JURY DEMAND

Plaintiffs request a trial by jury on their claims.

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

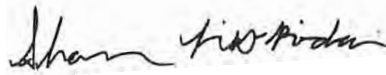
- a. Declare and find that the Defendants are liable to Plaintiffs as the result of Defendants' breach of contract with Plaintiffs;
- b. Declare and find that the Defendants are liable to Plaintiffs as third-party beneficiaries as the result of Defendants' breach of Twitter's merger agreement;
- c. Declare and find that the Defendants are liable to Plaintiffs under the doctrine of promissory estoppel;
- d. Award compensatory damages, in an amount according to proof;
- e. Award pre- and post-judgment interest;

- 1 f. Award reasonable attorneys' fees, costs, and expenses; and
2
3 g. Award any other relief to which the Plaintiffs may be entitled.

4 Respectfully submitted,

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6 FRANCK MAX BORGHINO, LAUREN TOM,
and BRIAN RUTKIN,

7 By their attorneys,

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11 Shannon Liss-Riordan, SBN 310719
12 Bradley Manewith (*pro hac vice* forthcoming)
13 LICHTEN & LISS-RIORDAN, P.C.
14 729 Boylston Street, Suite 2000
Boston, MA 02116
(617) 994-5800
Email: sliss@llrlaw.com; bmanewith@llrlaw.com

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