

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 Plaintiff Dmitry Borodaenko,*
 8 *on behalf of himself and all others similarly situated*

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

12
 13 DMITRY BORODAENKO, on behalf of
 14 himself and all others similarly situated,

15 Plaintiff,

16 v.

17 TWITTER, INC.

18 Defendant
 19
 20
 21
 22

Case No. 3:22-cv-7226

**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 THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, Gov. Code § 12940
3. DECLARATORY JUDGMENT ACT, 28 U.S.C. §§ 2201-02

1 **I. INTRODUCTION**

2 1. Plaintiff Dmitry Borodaenko files this Class Action Complaint against Defendant
3 Twitter, Inc. (“Twitter”), on his own behalf and on behalf of other disabled Twitter employees
4 across the country who have been discharged or constructively discharged from their jobs during
5 the chaotic weeks since multi-billionaire Elon Musk purchased the company.
6

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

14 3. As described further below, shortly after Elon Musk completed his purchase of
15 Twitter, he immediately began laying off half of its workforce.

16 4. Many of the employees who have lost their jobs since Musk’s purchase of the
17 company are disabled.

18 5. Prior to Musk’s purchase of the company, Twitter employees were permitted to
19 work remotely. In fact, over the spring and summer of 2022, Twitter reassured employees that,
20 following Musk’s purchase of the company, they would be permitted to continue working
21 remotely for at least a year.

22 6. However, shortly after Musk completed the purchase of Twitter, he declared that
23 working remotely would no longer be allowed and that all remaining employees would need to
24 work out of a company office – with only rare exceptions for “exceptional” employees, that
25 Musk himself would have to approve.
26
27

1 13. Plaintiff seeks immediate injunctive relief, as well as a declaratory judgment
2 under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, on behalf of himself and all
3 similarly situated employees.

4 **II. PARTIES**

5 14. Plaintiff Dmitry Borodaenko is an adult resident of Scotts Valley, California,
6 where he worked for Twitter from June 2021 until November 2022.

7 15. Plaintiff brings this lawsuit as a Rule 23 class action on behalf of all similarly
8 situated disabled Twitter employees across the United States whose jobs have been affected by
9 the company’s layoffs, terminations, and heightened demands on the workforce.

10 16. Defendant Twitter, Inc. (“Twitter”) is a Delaware corporation, headquartered in
11 San Francisco, California.

12 **III. JURISDICTION**

13 17. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1331 and
14 29 U.S.C. § 2104(a)(5).

15 18. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiff’s
16 state law claims, because those claims derive from a common nucleus of operative facts with
17 Plaintiff’s federal claims.

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

20 **IV. STATEMENT OF FACTS**

21 20. Twitter is a social media company that employs thousands of people across the
22 United States.

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

1 22. Following this announcement, many employees raised concerns regarding the
2 company's policies following this anticipated acquisition.

3 23. In order to allay employees' concerns and try to prevent them from leaving
4 Twitter to work at other companies, Twitter made various promises to employees.

5 24. One of the promises was that employees would be able to continue working
6 remotely, for at least a year after Musk's acquisition of the company. This promise was made
7 repeatedly to employees by managers, the CEO, and other staff.

8 25. However, following the purchase of the company by Elon Musk in late October
9 2022, Twitter openly reneged on this promise.

10 26. On the evening of November 9, 2022, Musk announced that all employees were
11 expected to begin reporting to Twitter offices immediately.

12 27. At a meeting with Twitter employees on November 10, 2022, Musk reiterated that
13 employees needed to return to the office full time. He told employees: "if you can show up at an
14 office and you do not show up at the office, resignation accepted -- end of story." He elaborated:
15 "Let me be crystal clear, if people do not return to the office when they are able to return to the
16 office -- they cannot remain at the company." Victor Ordonez and Stephanie Wash, Exclusive
17 audio: Musk talks potential Twitter bankruptcy, return to office meeting, ABC News (November
18 11, 2022), [https://abcnews.go.com/Business/exclusive-audio-elon-musk-tells-twitter-employees-
19 return/story?id=93087987](https://abcnews.go.com/Business/exclusive-audio-elon-musk-tells-twitter-employees-return/story?id=93087987).

20 28. Musk further stated that exceptions to this policy would be made only for
21 "exceptional people".

22 29. In addition to requiring remaining employees to work at physical offices, Musk
23 also immediately began a mass layoff that has been reported to have affected half of Twitter's
24 workforce. See Kate Conger, Ryan Mac, and Mike Isaac, Confusion and Frustration Reign as
25
26
27

1 Elon Musk Cuts Half of Twitter’s Staff, NEW YORK TIMES (November 4, 2022),
2 <https://www.nytimes.com/2022/11/04/technology/elon-musk-twitter-layoffs.html>.

3 30. Twitter’s new requirement that employees report to physical offices, as well as
4 rampant terminations and layoffs, have affected disabled employees, including Plaintiff Dmitry
5 Borodaenko.

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

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

12 33. Mr. Borodaenko informed his manager of his disability and how it prevented him
13 from working out of a company office.

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

18 35. Mr. Borodaenko was not given any information about how formally to request an
19 “exception” to the return to the office policy that Musk instituted at Twitter.

20 36. Not long after sending this message to his manager, Mr. Borodaenko was
21 terminated.

22 37. On November 15, 2022, Mr. Borodaenko received an email from Twitter Human
23 Resources that stated: “Hi, We regret to inform you that your employment is terminated effective
24 immediately. Your recent behavior has violated company policy.”
25
26
27

1 38. Mr. Borodaenko had not received any notice of behavior he was alleged to have
2 engaged in that violated company policy, nor did he engage in any behavior that would appear to
3 him to have violated company policy (other than informing his manager that he could not
4 comply with Musk’s demand that employees begin working out of company offices).

5 39. In addition to the requirement that employees begin working out of company
6 offices, Musk also made clear that working for Twitter would demand extraordinary effort and
7 long work hours.

8 40. Following Musk’s purchase of the company, employees have been reported to
9 have worked 12 hour shifts, 7 days a week. Some employees were told: “The expectation is
10 literally to work 24/7 to get this out.” Some employees slept in Twitter offices while being
11 required to work around the clock. Grace Dean, Twitter staff have been told to work 84- weeks
12 and managers slept at the office over the weekend as they scramble to meet Elon Musk’s Tight
13 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)
14 [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).

15 41. These demands occurred while the company was in the process of mass layoffs,
16 thus signaling to employees that these extraordinary efforts were required in order to keep their
17 jobs.

18 42. Indeed, Mr. Borodaenko’s workload vastly increased following the beginning of
19 Twitter’s mass layoffs. As a manager, the number of employees assigned to report to him
20 increased from about 10 to 16.

21 43. On November 16, 2022, Musk sent the following email to remaining Twitter
22 employees:

23
24 Going forward, to build a breakthrough Twitter 2.0 and succeed in an increasingly
25 competitive world, we will need to be extremely hardcore. This will mean working long
26 hours at high intensity. Only exceptional performance will constitute a passing grade.

1 Twitter will also be much more engineering-driven. Design and product management will
2 still be very important and report to me, but those writing great code will constitute the
3 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.

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

6 [LINK]

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

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

10 Elon

11 44. This further ultimatum from Musk that working at Twitter will require “working
12 long hours at high intensity”, in which “[o]nly exceptional performance” will be acceptable, is
13 highly discriminatory against disabled employees.

14 45. This ultimatum does not allow for employees who require reasonable
15 accommodation for their disabilities but who are nevertheless capable of adequately performing
16 their jobs.

17 46. Further, this ultimatum, as well as Musk’s behavior since he took control of
18 Twitter, is clearly deterring disabled employees from feeling they can continue to work at the
19 company. Plaintiff asserts that Twitter’s requirements for employees, under Musk’s leadership,
20 will force many disabled employees to leave their jobs.

21 47. As indicated in the November 16th email from Musk, Twitter has indicated that
22 employees who do not accept Musk’s ultimatum will receive a severance package. Plaintiff is
23 concerned that, absent court intervention, as part of that severance package, Twitter will seek
24 releases from employees without informing them of their rights, including their right to challenge
25 Twitter’s actions as discriminatory, or the pendency of this case. Plaintiff therefore seeks
26 immediate relief to ensure that Twitter does not violate the law and then seek to obtain releases
27

1 from the many employees who do not have notice of their rights or the pendency of the claims
2 brought here on their behalf.

3 48. Indeed, Elon Musk engaged in similar behavior with respect to mass layoffs
4 conducted earlier this year at another company he owns, Tesla. In the summer of 2022, Tesla
5 engaged in mass layoffs without providing advanced written notice as required by the federal and
6 California WARN Acts. Former Tesla employees brought a suit against Tesla for these violations.
7 See Lynch et al. v. Tesla, Inc., Civ. Act. No., 1:22-cv-00597-RP (W.D. Tex.). Tesla sought to
8 obtain full releases of all federal and California WARN Act claims in exchange for small
9 severance payments for less than the employees were legally entitled to, as alleged in the federal
10 lawsuit. (Tesla offered one or two weeks' severance pay, rather than the 60 days pay required to
11 satisfy the federal and California WARN Acts). See Lynch, 2022 WL 4295295, at *1-4.) A
12 federal court ruled that Tesla's conduct was "misleading because [the separation agreements] fail
13 to inform potential class members of this lawsuit and the rights that they are potentially giving up
14 under the WARN Act." Id. at *4.

15 49. With respect to employees who were laid off by Twitter following Musk's
16 purchase of the company, Twitter stated that it would begin distributing severance agreements,
17 including releases of claims, beginning last week. However, after employees filed a class action
18 lawsuit and emergency motion seeking to block the distribution of releases without employees
19 being informed of their claims and the pendency of the case, see Cornet et al v. Twitter, Inc., C.A.
20 No. 3:22-cv-06857-JD (N.D. Cal.) (Dkts. 6 and 7), Twitter agreed not to distribute releases until
21 after the plaintiffs' motion could be heard (assuming it could be heard promptly).

22 50. In this case as well, Plaintiff seeks immediate relief to ensure that Twitter does
23 not violate the law and then seek to obtain releases from the many disabled Twitter employees
24 who do not have notice of their rights or the pendency of the claims brought here on their behalf.
25
26
27

1 **COUNT I**

2 **Americans With Disabilities Act,**
3 **42 U.S.C. §§ 12101, *et seq.***

4 Plaintiff and other employees with disabilities, or who have been perceived to be disabled,
5 who have worked for Twitter, and could perform the essential functions of their job with or
6 without reasonable accommodation, have been entitled to the protections of the Americans With
7 Disabilities Act (“ADA”), 42 U.S.C. §§ 12101, *et seq.* Plaintiff is disabled, as defined by the
8 ADA, 42 U.S.C. § 12102, and could perform the essential functions of his job with the
9 reasonable accommodation of working remotely. Twitter required its employees, including
10 Plaintiff, to report physically to its offices, and terminated Plaintiff after he requested that he be
11 permitted to continue to work remotely on account of his disability. Twitter, through the rigid
12 enforcement of its return to office policy, as well as its unreasonable physical demands on
13 employees since Elon Musk’s purchase of the company, has discriminated against Plaintiff and
14 other disabled Twitter employees in violation of the ADA.

15 **COUNT II**

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

18 Plaintiff and other employees with disabilities, or who have been perceived to be disabled,
19 who have worked for Twitter in California, and could perform the essential functions of their job
20 with or without reasonable accommodation, have been entitled to the protections of the
21 California Fair Employment and Housing Act (“FEHA”), Gov. Code § 12940. Plaintiff is
22 disabled, as defined by the FEHA, Gov. Code § 12926.1, and could perform the essential
23 functions of his job with the reasonable accommodation of working remotely. Twitter required
24 its employees, including Plaintiff, to report physically to its offices, and terminated Plaintiff after
25 he requested that he be permitted to continue to work remotely on account of his disability.
26 Twitter, through the rigid enforcement of its return to office policy, as well as its unreasonable
27

1 physical demands on employees since Elon Musk’s purchase of the company, has discriminated
2 against Plaintiff and other disabled Twitter employees who have worked in California in
3 violation of the FEHA.
4

5 **COUNT III**

6 **Declaratory Judgment Act,**
7 **28 U.S.C. §§ 2201-02**

8 Plaintiff seeks a declaratory judgment and an injunction prohibiting Twitter from
9 soliciting disabled employees to sign separation agreements that release their discrimination
10 claims asserted herein, without first informing them of their rights under these statutes, the
11 pendency of this case filed on their behalf, and Plaintiff’s counsel’s contact information.

12 **JURY DEMAND**

13
14 Plaintiff requests a trial by jury on the claims asserted here.

15
16 WHEREFORE, Plaintiff requests that this Court enter the following relief:

- 17
- 18 a. Declare and find that Twitter is liable to Plaintiff and other similarly situated disabled
19 employees under the Americans With Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*,
20 and, with respect to employees who have worked out of California, the Fair
21 Employment and Housing Act, Gov. Code § 12940;
 - 22 b. Certify this case as a class action;
 - 23 c. Enter declaratory relief and an injunction enjoining Twitter from seeking releases of
24 claims asserted herein from employees without first informing them of their rights
25 under the law, the pendency of this lawsuit, and contact information for Plaintiffs’
26 counsel;
- 27
28

- 1 d. Reinstate disabled employees who wish to return to their jobs with reasonable
2 accommodations;
3 e. Award compensatory and any other appropriate damages, in an amount according to
4 proof;
5 f. Award pre- and post-judgment interest;
6 g. Award reasonable attorneys' fees, costs, and expenses; and
7 h. Award any other relief to which Plaintiff and other similarly situated Twitter
8 employees may be entitled.
9

10 Respectfully submitted,

11
12 DMITRY BORODAENKO, on behalf of himself
13 and all others similarly situated,

14 By his attorneys,

15
16 /s/ Shannon Liss-Riordan
17 Shannon Liss-Riordan, SBN 310719
18 Thomas Fowler (*pro hac vice* forthcoming)
19 LICHTEN & LISS-RIORDAN, P.C.
20 729 Boylston Street, Suite 2000
21 Boston, MA 02116
22 (617) 994-5800
23 Email: sliss@llrlaw.com; tfowler@llrlaw.com

24 Dated: November 16, 2022