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May 31, 2023

SERVICE VIA EMAIL

Sheri F. Eisner
Senior Vice President, General Counsel
JAMS

Re: TWITTER, INC.'S REQUEST FOR UNIVERSAL DISCOVERY PROTOCOL

Dear Ms. Eisner,

Pursuant to Rule 6 of the JAMS Employment Arbitration Rules and Procedures ("Rules"), Respondent X Corp. as successor in interest to Respondent Twitter, Inc. ("Twitter¹") submits this Request for a Universal Discovery Protocol in connection with approximately 2,000 substantially similar (and in many cases, identical) arbitration demands.

Given the identical and/or overlapping legal claims and factual allegations in these thousands of pending matters, a coordinated, universal discovery plan is imperative to litigate these matters efficiently, effectively, and fairly. Thoughtful coordination on the front-end across all pending matters will result in speedier resolutions, while also preventing prejudice, undue burden and waste of resources and expense for the parties and JAMS. Indeed, a coordinated, universal plan is the only practical way to resolve such an enormous number of similar arbitration matters. Twitter's proposal does not prejudice or otherwise limit any individual claimant's ability to pursue their claims; rather, the concepts in Twitter's discovery proposal, as outlined more fully below, provide every single individual claimant with more discovery than they are entitled to under JAMS' rules.

For these reasons, Twitter requests JAMS' assistance, consistent with its Rules, to implement a coordinated discovery protocol across all similar matters against Twitter (and all Respondents). Indeed, Twitter has already reached an agreement on a universal discovery protocol with the Bloom/Dixon firms, who collectively represent dozens of claimants in the pending cases. See **Exhibit A**, *Universal Discovery Plan Between Twitter and Bloom/Dixon*, 5.22.23. This

¹ On March 15, 2023, Respondent Twitter, Inc. was merged into X Corp. and ceased to exist. X Corp. is Twitter, Inc's successor in interest and, as such, succeeded to all of Twitter, Inc's assets, liabilities, rights and obligations. Moreover, for purposes of this letter, "Twitter" includes any other respondent named in a demand that is the subject of this request.

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agreement contains the general framework and parameters of discovery that Twitter proposes should apply to all similar arbitrations.

I. Background

On April 25, 2022, X Holdings I, Inc. and X Holdings II, Inc. entered into an Agreement and Plan of Merger with Twitter ("Merger Agreement"). The merger ultimately closed on October 27, 2022. After the close, Twitter reorganized the business to improve its financial health and to become more profitable. As part of this ongoing reorganization, Twitter made the difficult decision to downsize its workforce and realign its operations. Those who were involuntarily terminated were given the opportunity to receive severance pay in exchange for signing a release agreement.

Since the deal closed last Fall, numerous former employees have filed significant and widespread litigation surrounding Twitter's decisions. In addition to nine (9) pending civil lawsuits alleging individual, class action and collective action claims (as well as California Private Attorneys General Act representative action claims), in federal and state courts in California and federal court in Delaware, **approximately 2,000 former Twitter employees have filed individual arbitration demands with JAMS (and also AAA²)**. Every demand is rooted in the same core fact – a post-merger separation.

II. The Arbitrations Involve the Same Parties and Substantially Overlap on the Facts and Witnesses

All claimants across the approximately 2,000 JAMS arbitrations generally allege that Twitter made written and oral representations to them about the alleged severance benefits to which they would be entitled if they were laid off post-merger. The claimants allege that these representations constitute enforceable contracts that Twitter has breached.³ All claimants will rely on substantially the same (and in scores of cases, precisely the same) evidence to pursue their claims against Twitter.

² Hundreds of demands have also been filed with AAA, by several of the same law firms who are identified in this letter.

³ On these general allegations, the claimants have asserted claims against Twitter for breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, fraud, violation of the federal and California WARN Acts, failure to pay all wages and benefits in violation of numerous different state laws, wrongful termination in violation of public policy, discrimination in violation of the Americans with Disabilities Act ("ADA"), discrimination in violation of the California Fair Employment and Housing Act, discrimination in violation of Title VII, retaliation, violation of the Family and Medical Leave Act ("FMLA"), and violation of the California Family Rights Act ("CFRA"), among other things.

The high-level summary below of the demands and the four⁴ law firms that have collectively filed nearly all the demands demonstrate the clear need for a coordinated discovery plan:

- To date, Twitter has received 1,986 demands for arbitration.
- More than 97% of the demands include claims for breach of contract and promissory estoppel.
- More than 97% of the demands include a WARN Act claim (demands reference both Federal and state WARN Acts).
- Seven-hundred and sixty-two (762) demands contain a discrimination claim.

Lichten & Liss-Riordan

- To date, this firm has filed 1,848 demands on behalf of former Twitter employees, which represents well over 90% of all claimants at issue. Of these:
 - 1,829 demands contain the following claims: breach of contract, promissory estoppel, violations of CA and federal WARN Acts, and failure to pay all wages due;
 - 605 demands contain gender discrimination claims;
 - 170 demands contain disability discrimination and family leave discrimination claims;
- Not only do these claimants bring the same causes of action stemming from the same set of facts, but their allegations are also **entirely identical**.
- Indeed, each demand contains the same or similar generic language in the JAMS form, and then attaches one or more of four class action complaints that Lichten & Liss-Riordan has already filed in federal court.⁵

Kamerman, Uncyk, Soniker & Klein, P.C.

- To date, this firm has filed 66 demands on behalf of former Twitter employees.
- Every demand contains claims alleging promissory estoppel, federal WARN, fraud, and a California failure to pay wages claim.
- All but four demands contain a discrimination claim, with 35 based on sex and 31 based on race.

⁴ A few other law firms have filed one demand against Twitter. These firms are not included in the general summary in the body of this letter, but the demands contain the same breach of contract claims.

⁵ See, e.g., "Nature of Dispute" section from Demand for *Pan, Jessica v. Twitter, Inc.*, Ref # 1100115270 ("Claimant Jessica Pan was laid off from her job at Twitter. She brings claims against Twitter related to breaches of contract and promissory estoppel, including claims related to her severance pay, as set forth in the class action complaint *Cornet et al v. Twitter, Inc.*, No. 22-cv-6857 (N.D. Cal.) (attached as Exhibit A). She also brings claims challenging her layoff as sex discrimination under Title VII and the California Fair Housing and Employment Act, as set forth in the class action complaint *Strifling et al v., Twitter, Inc.* No. 22-cv-7739 (N.D. Cal.) (attached as Exhibit B).")

Outten & Golden LLP

- To date, this firm has filed 22 demands on behalf of former Twitter employees.
- Every demand contains claims alleging breach of contract, promissory estoppel, unpaid expenses, and failure to pay wages under state law.
- Every demand also contains **identical** allegations.

The Bloom Firm and Dixon, Diab & Chambers LLP

- To date, these firms, jointly, have filed 49 demands on behalf of former Twitter employees.
- Every demand contains claims alleging breach of contract, breach of implied contract, promissory estoppel, intentional infliction of emotional distress, intentional interference with prospective economic advantage, and negligent interference with prospective economic advantage.
- All but two of the demands contain a fraud claim.
- Twenty-seven (27) of the demands contain claims alleging a California WARN and failure to pay wages under California law.

III. Twitter Proposes a Universal Discovery Plan

Twitter prepared a proposed Universal Discovery Plan ("UDP"), which it previously exchanged with the Lichten & Liss-Riordan firm and the Bloom/Dixon firms. Those firms represent the most claimants, and they are the only ones with whom preliminary conferences have already occurred. Twitter's proposal, consistent with the spirit and purpose of Rule 6, is intended to promote coordination, order, and efficiency for discovery purposes throughout these arbitrations. Twitter does not seek to limit the ability of any individual claimant to fairly prosecute their claims; Twitter simply seeks to implement a reasonable, agreed-upon discovery plan that avoids unnecessary duplication of effort, undue burden upon witnesses, and excessive expense for **all** parties, including JAMS. Indeed, taking the time to collectively, with JAMS' support, develop a universal discovery protocol will ultimately lead to more efficient and speedy resolutions of these matters – which should be a shared goal.

The Lichten & Liss-Riordan firm has rejected the concept of a universal discovery plan. Instead, they are seeking to schedule cases on a case-by-case basis with hearing dates as soon as September 2023. In one of their matters, the arbitrator has scheduled a hearing for January 10-12, 2024. That decision and its implications for the rest of these related matters warrants JAMS' immediate consideration of Twitter's request.

The Bloom/Dixon firms, on the other hand, have negotiated and now executed an agreed upon UDP with Twitter. **See Exhibit A.** In their matters, the arbitrators have agreed with the parties' sensible approach, i.e., to reach an agreement on discovery across all their similar matters and set a full schedule and hearing date **after** the parties exchange initial disclosures and have a better sense of what additional discovery will be sought and the reasonable timeframe for it to be completed.

Two obvious consequences of moving forward without coordination and agreement across matters would be extensive delay in the arbitrations and inconsistent and even conflicting discovery obligations. The purpose of arbitration is to simplify the proceedings and obtain a

speedier resolution. But the disputes and corresponding delay and inconsistency that they cause would be unavoidable without a universal plan. For example, absent a universal plan, the parties and the arbitrators in each individual arbitration would need to separately address:

- *ESI*. This aspect of the discovery process will be extensive and complicated, and the negotiations would each take a substantial amount of time and effort on their own. To be expected to do it at least four times, with four different protocols (e.g., different custodians, search terms, etc.), and potentially thousands of times if certain claimants continue to insist on case-by-case discovery, is unnecessary and highly inefficient, risks imposing conflicting obligations on Twitter, and would cause extensive delays in the discovery process across all matters.
- *Depositions*. Twitter will seek coordination across the matters and various law firms because for most, if not all, witnesses, the testimony would be equally applicable across all arbitrations (or a large subset of them). These disputes will have to be briefed and resolved by potentially several hundred (or more) arbitrators. An obvious example is Elon Musk. Without conceding that Mr. Musk should be subject to deposition in the first place, whatever testimony Mr. Musk has to offer will be equally applicable to all other matters, in whole or in part, and it would be wholly unreasonable to permit repeated depositions of him or other individuals across the numerous arbitrations. Indeed, even if Twitter were to make separate agreements with each firm to depose only an individual one time and share the testimony across all *their own* matters, it would still mean the same individual could be deposed a minimum of four times, because at least three other firms would seek their deposition as well. The testimony should be used across all similar actions against Twitter, and therefore will require coordination among all the parties and law firms involved.
- *Live Testimony*. Like depositions, without a universal agreement, Twitter would seek protection from individual arbitrators to ensure that any witness who would provide the same testimony that is relevant across all (or a subset) of cases would only be expected to testify live one time.

JAMS should use its authority under Rule 6, at a point where no substantive litigation has occurred in any of the matters, to require each of the parties and their respective law firms to develop a universal discovery protocol that promotes the coordination, order, and efficiency that will be essential to administering and litigating 2,000 substantially similar matters.

IV. Discussion

It is a fundamental tenet of American jurisprudence that litigation should be administered in a manner that allows the parties to secure a “just, speedy, and inexpensive determination” of legal proceedings. *See, e.g., Dietz v. Bouldin*, 579 U.S. 40, 45, 136 S. Ct. 1885, 1891, 195 L. Ed. 2d 161 (2016) (citing Fed. R. Civ. P. 1) (noting that the “paramount command” of Rule 1 is “the just, speedy, and inexpensive resolution of disputes”).

Consistent with this fundamental tenet, the JAMS Employment Arbitration Rules and Procedures contemplate that JAMS may consolidate separate arbitrations where such arbitrations present “common issues of fact or law[.]” *See generally* Rule 6(e). Consolidation is appropriate

where, among other circumstances, (i) a party files more than one arbitration with JAMS; and (ii) where a demand or demands for arbitration is or are submitted naming parties already involved in another arbitration or arbitrations pending under the JAMS Rules. Rule 6(e)(i)–(ii). “When rendering its decision, JAMS will take into account all circumstances, including the links between the cases and the progress already made in the existing Arbitrations.” Rule 6(e).

JAMS President Kimberly Taylor recently underscored the importance of coordinated discovery efforts when adjudicating mass arbitrations involving the same law firms or lawyers against the same companies at the same time, to ensure “an efficient, fair and neutral proceeding that leads to a final arbitration award that will be upheld in court.” *See* Mar. 3, 2023, *Insight from the President: JAMS Policy Regarding Mass Arbitration Filings*. Allowing these approximately 2,000 arbitrations to proceed without coordination of discovery would be the very opposite of “efficient, fair and neutral,” leading to a mess of lengthy delays and conflicting discovery rulings.

Here, Twitter does not seek full consolidation of all employee arbitrations, but rather, more modestly, only coordination of discovery, a lesser form of relief within the scope of Rule 6. *See* Rule 6(e)(ii) (permitting consolidation of “proceedings”).

The consolidation that JAMS’ rules contemplate in mass arbitrations tracks closely the rules promulgated by Congress and used by courts in multidistrict litigation to coordinate mass tort actions in federal courts. Therefore, it is appropriate to look to those rules for guidance when administering and managing mass arbitrations. *See, e.g.*, 28 U.S.C.A. § 1407. Under Section 1407, “civil actions involving one or more common questions of fact . . . may be transferred to any district for coordinated or consolidated proceedings.” Consolidated discovery is appropriate in multidistrict litigation when it “will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” *Id.* Among other things, such “[c]entralization . . . is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings [], and conserve the resources of the parties, their counsel and the judiciary.” *In re Tri-State Water Rights Litig.*, 481 F. Supp. 2d 1351, 1352 (J.P.M.L. 2007).

Similarly, with respect to the approximately 2,000 mass arbitrations that these four law firms have filed against Twitter, implementing a universal discovery protocol is reasonable and appropriate—indeed, necessary—to eliminate duplicative discovery, prevent inconsistent pre-hearing rulings, and conserve the resources of the parties, their counsel, JAMS, and its arbitrators. These arbitrations require a consolidated discovery protocol because of the substantial overlap of facts (which will frequently be identical) and law across all claimants, and the sheer volume of demands that claimants and their lawyers have filed against Twitter. Under JAMS Employment Arbitration, Rule 6, JAMS can and should coordinate discovery across all of these arbitrations. Twitter has proposed reasonable and fair protocols to apply across the matters. ***See generally, Exhibit A.***

V. Conclusion

We have arrived at an inflection point for these mass arbitrations. In the absence of an agreed-upon universal discovery protocol, adjudicating these approximately 2,000 arbitrations will be wholly impractical, there will be countless duplicative and unnecessary disputes, as well as the potential for inconsistent and even conflicting rulings, and the parties will waste enormous amounts of time, resources (including JAMS’) and effort across the arbitrations. Accordingly,

Sheri F. Eisner
May 31, 2023
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Twitter respectfully asks that JAMS exercise its authority and discretion under Rule 6, and direct and assist the parties to agree on and implement a universal discovery protocol.⁶

Sincerely,

/s/

Sari M. Alamuddin

SMA

c: Dixon Diab & Chambers LLP
Lichten & Liss-Riordan, P.C.
Kammerman, Uncyk, Soniker & Klein, P.C.
Outten & Golden LLP

⁶ If the parties cannot agree on every detail in a proposed plan, the Discovery Panel, as proposed in Exhibit A, can resolve any disputes and approve a final discovery protocol to apply across the arbitrations.

Exhibit A

TWITTER ARBITRATIONS – UNIVERSAL DISCOVERY PLAN

Purpose: to limit unnecessary burden and expense for the parties and JAMS, and to ensure coordination, order, and efficiency for the discovery process across claims filed by Dixon Diab & Chambers (“matters”).

These matters require a consolidated discovery plan given the substantial overlap of facts (which are, in many cases, identical) and law across all claimants and the volume of demands.

Procedure: negotiate a universal discovery plan (“discovery plan”) and jointly present to JAMS for implementation across all pending matters subject to the agreement. We intend that the plan will apply equally to all AAA arbitrations.

Discovery Administration: under JAMS Employment Arbitration, Rule 6,¹ JAMS can and should coordinate these arbitrations for the purposes of discovery only. Such coordination would benefit the parties and JAMS, and result in a more consistent and efficient discovery process, including the resolution of possible discovery disputes.

- Establish a Discovery Panel - propose to JAMS that it identify a three-arbitrator panel who will be solely responsible for all discovery matters across the arbitrations.
 - We can ask JAMS to provide a new list of possible arbitrators, and Claimants’ counsel can select one, Respondents’ counsel can select one, and the two selected arbitrators can choose the third arbitrator.

- Discovery Panel Proposed Authority and Responsibilities
 - Review and approve a universal discovery plan to apply across all matters, including forms of discovery and limitations on discovery.
 - Rule on all discovery disputes raised by the parties.
 - Authorize the issuance of subpoenas to third-parties
 - Parties can raise discovery disputes with the panel to be ruled on once, and that decision will apply across all covered matters.²
 - Approve a universal Confidentiality Order.
 - Approve a Universal ESI Order.

Exclusions, Limitations: The parties agree any JAMS and/or AAA rule or protocol which requires a party to exchange and supplement documents and information, without a formal request by the other, shall apply in all matters and shall not be excluded or limited by this discovery plan unless otherwise stated.

¹ <https://www.jamsadr.com/rules-employment-arbitration/english#Rule-6>;

² In advance of raising the discovery dispute with the Discovery Panel, the parties shall meet and confer within 14 days of the dispute being raised. If the issue is not resolved, the parties may, within 7 days of a meet and confer, jointly submit a letter not to exceed 5 single-spaced pages, including footnotes, at Times New Roman size 12 Font, to the Discovery Panel. Either party can request a teleconference on the dispute. The Discovery Panel has the discretion to rule on the papers alone. All decisions must be per a written, reasoned opinion.

- JAMS Rule 17(a) and (c): Exchange of Information - notwithstanding anything to the contrary in this discovery plan, the parties shall comply with the requirements specified in JAMS Employment Arbitration Rules & Procedures ("JAMS Rules"), Rule 17(a) and (c) regarding Exchange of Information and obligations to supplement, except that the parties agree that the deadline in which the exchange of information under Rule 17 must be made shall be 60 days from the initial management conference unless the parties mutually agree otherwise.
- AAA Initial Discovery Protocols – notwithstanding anything to the contrary in this discovery plan, in matters administered by AAA, the parties shall comply with the requirements specified in the AAA's Initial Discovery Protocols For Employment Arbitration Cases ("Initial Discovery"); Part 2 regarding Initial Discovery except that the parties agree the deadline by which Initial Discovery must be exchanged shall be 60-days from the initial management conference unless the parties mutually agree otherwise.
- Discrimination Claims – the parties will meet and confer on any additional discovery needed to address any discrimination claims; the discovery plan should continue to apply to all other claims.

Document Requests

The parties may modify these rules by agreement. Absent an agreement, these rules may only be modified upon a showing of good cause, to be raised with and decided by the Discovery Panel.

- Universal RFPs and Productions – the parties will have 20 universal RFPs. Responses and objections and related productions will be made once and apply across all matters.
- Individualized RFPs and Productions – the parties will have 7 additional RFPs that apply to an individual claimant's claims; responses and objections and related productions will be made directly between the parties to that specific arbitration. This discovery will be limited to the individual matter unless the parties agree otherwise.

Interrogatories

The parties may modify these rules by agreement. Absent an agreement, these rules may only be modified upon a showing of good cause, to be raised with and decided by the Discovery Panel.

- Universal ROGs - the parties will have 15 universal ROGs. Responses and objections will be made once and apply across all matters.
- Individualized ROGs - the parties will have 10 additional ROGs that apply to an individual claimant's claims; responses and objections will be made directly between the parties to that specific arbitration. This discovery will be limited to the individual matter unless the parties agree otherwise.

Written Discovery Response Deadlines

- 30 days from service for Universal Discovery (excluding ESI, which is addressed below), unless extensions otherwise agreed to or obtained.
- 30 days from service for Individualized Discovery (excluding ESI, which is addressed below), unless extensions otherwise agreed to or obtained.

Depositions³

- **Universal Rules**
 - A deponent shall testify only once.
 - Depositions shall be a maximum of 7 hours.
 - Deposition testimony can be used across all matters subject to the Universal Discovery Plan.
 - The parties may modify these rules by agreement. Absent an agreement, these rules may only be modified upon a showing of good cause, to be raised with and decided by the Discovery Panel.
- **Fact Witness Depositions** – Claimants and Respondents subject to the Universal Discovery Plan may each take up to 4 fact depositions.
- **30(b)(6) Deposition** – Claimants subject to the Universal Discovery Plan may, collectively, serve one 30(b)(6) deposition notice.
- **Claimant Depositions** – In addition to the 4 fact depositions set forth above, Respondents may depose the Claimant in each individual arbitration.

Experts – Claimants and Respondents subject to the Universal Discovery Plan may each designate up to two (2) experts, collectively. Depositions of these designated experts will not count against the deposition allowances identified above. Deposition testimony and expert reports from these designated experts can be used across all matters governed by the Universal Discovery Plan.

Universal ESI Order – the parties will meet and confer to develop and agree to a Universal ESI Order. This order would be presented to the Discovery Panel for approval. ESI produced in accordance with the Universal ESI Order may be used in all arbitrations.

- We could consider setting a deadline—e.g., 60 days—by which an ESI Order must be jointly presented to the Discovery Panel (joint submission could include areas of dispute for the Discovery Panel to resolve).

Universal Confidentiality Order - the parties will meet and confer to develop and agree to a Universal Confidentiality Order. This order would be presented to the Discovery Panel for approval.

³ Under Rule 17(b), parties are entitled to one deposition as a matter of right. Any additional depositions, as well as the duration of depositions, would have to be by agreement or approved by the arbitrator.

- Respondent counsel will provide to Claimants' counsel for consideration a proposed Universal Confidentiality Order by June 2, 2023.

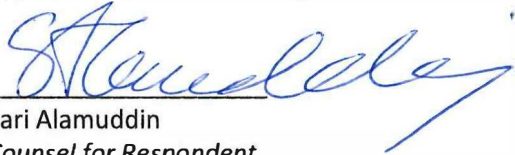
Trial/hearing Testimony - A witness shall testify only once live at a hearing. That testimony will be recorded and can be used thereafter in subsequent hearings.

- By agreement of all parties to a specific arbitration, or by order of the Discovery Arbitrator Panel upon a showing of good cause, a witness may testify live more than once.

Additional Parties to Universal Discovery Plan – at any time, and by agreement of counsel to the parties, a Claimant may become a covered party under the Universal Discovery Plan by signing (or having their counsel sign for them) the agreement.

Reservation of Rights/Modifications to the Universal Discovery Plan

Upon a showing of good cause, the parties reserve the right to seek modifications to this plan by raising the proposed modification(s) with the Discovery Panel, including but not limited to coordination of ESI and deposition testimony with other arbitrations. Further, the parties acknowledge that this plan may be subject to modification at JAMS' discretion, pursuant to its authority under Rule 6, without any approval from the Discovery Panel.



Sari Alamuddin
Counsel for Respondent

Date: 5/22/23



Deborah Dixon
Counsel for Claimants

Date: 5/22/2023____