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 9 *on behalf of himself and all others similarly situated*

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

13 FABIEN HO CHING MA, on behalf of himself
 14 and all others similarly situated,

15 Petitioner,

16 v.

17 TWITTER, INC., AND X CORP.,

18 Respondents.
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Case No. 3:23-cv-3301

PETITION TO COMPEL ARBITRATION

1. FEDERAL ARBITRATION ACT,
 9 U.S.C. § 4

1 Petitioner files this Petition for an Order compelling Respondents Twitter, Inc. and X
2 Corp. (collectively, “Twitter”) to arbitration as follows:

3 **NATURE OF THE PETITION**

4 1. Petitioner Fabien Ho Ching Ma, on his own behalf and on behalf of other
5 similarly situated former Twitter employees with whom Twitter has refused to engage in
6 arbitration — despite having compelled employees to arbitrate their claims — files this Petition
7 to Compel Arbitration against Twitter, pursuant to the terms of the arbitration agreements signed
8 by the parties.

9 2. Since Elon Musk’s acquisition of Twitter in October 2022, the company has been
10 accused of a variety of unlawful acts, including failing to pay laid off employees promised
11 severance payments, discriminating against employees on the basis of sex, race, age, and
12 disability, failing to pay promised bonuses, violating the WARN Act and FMLA, and other
13 violations. Approximately 2,000 of Twitter’s former employees have attempted to pursue
14 arbitration claims against the company, following Twitter’s successfully moving to compel
15 arbitration in several federal class action cases in court against it.

16 3. Petitioner and these thousands of other former Twitter employees signed nearly
17 identical arbitration agreements that state that they are applicable to any disputes arising from or
18 related to their employment with Twitter or separation of their employment. *See* Exhibit A
19 (Petitioner’s arbitration agreement).

20 4. The majority of these agreements provide that the parties agree to bring any
21 claims in arbitration before Judicial Arbitration and Mediation Services (“JAMS”), an arbitration
22 service provider, pursuant to the then-current JAMS Rules.

23 5. JAMS Rules include a provision stating that, whenever parties have provided for
24 arbitration by JAMS, the parties shall be deemed to have incorporated JAMS Rules as a part of
25 their arbitration agreement. The Rules further provide that any other agreements the parties may
26 make with respect to procedures for employment-related arbitrations must comport with the
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1 JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness (“JAMS
2 Minimum Standards”). *See* Exhibit B.

3 6. Pursuant to the Minimum Standards, an employee who brings an arbitration case
4 to JAMS must pay an initial relatively nominal filing fee (similar to the fee that would be
5 required for a court). However, all other arbitration fees, including fees to pay the arbitrator,
6 must be borne by the employer. *See* Exhibit B, at 4 (Standard No. 6).

7 7. Following Twitter’s moving to compel arbitration in several class action lawsuits
8 brought against it in court, Petitioner and approximately two thousand other former employees,
9 in accordance with their arbitration agreements, filed arbitration demands against Twitter with
10 JAMS. In each of these cases, JAMS has notified the parties that it has determined the Minimum
11 Standards for employment disputes apply. Twitter agreed to their application by including
12 JAMS in its arbitration agreements, not objecting timely to the designation (*see infra* at 6 n.2),
13 and (as explained in JAMS Minimum Standards letter) by proceeding in the arbitration process.

14 8. Pursuant to JAMS procedures, a number of these arbitrations began
15 administration, a number of arbitrators were appointed, and hearing dates and other dates began
16 to be scheduled.

17 9. Petitioner Fabien Ho Ching Ma filed his arbitration demand on January 11, 2023.
18 *See* Exhibit C. An arbitrator was appointed to his case, and a final hearing was scheduled for
19 December 2023.

20 10. However, on June 2, 2023, after approximately 2,000 individual arbitrations had
21 been filed against it, Twitter reversed course. Despite knowing that JAMS rules require
22 employers to pay the full arbitrator fees in employment cases under the Minimum Standards,
23 Twitter submitted a letter to JAMS’ General Counsel, Sheri Eisner, requesting that all arbitration
24 fees be split equally among the parties (in all states other than California and a few other states,
25 including Nevada and Oregon). Counsel for claimants quickly objected.
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1 18. Respondent X Corp. is a Nevada corporation headquartered in San Francisco,
2 California.

3 19. In or about March 2023, Twitter, Inc. merged with X Corp., and as a result
4 Twitter, Inc. and X Corp. are a single entity. X Corp. has successor liability for the unlawful acts
5 of Twitter, Inc. Twitter, Inc. and X Corp. are referred to herein as “Twitter”.

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7 **JURISDICTION AND VENUE**

8 20. This Court has jurisdiction over this action pursuant to 9 U.S.C. § 4 and 28 U.S.C.
9 § 1332 because the underlying matters in controversy collectively exceed the sum or value of
10 \$5,000,000, exclusive of interest and costs, and the vast majority of, if not all, members of the
11 Petitioner class reside in a different state from Respondents.

12 21. This Court has personal jurisdiction over Twitter, Inc. and X Corp. because both
13 entities have their headquarters and principal places of business in California.

14 22. Venue is proper in this district (San Francisco Division) pursuant to 9 U.S.C. § 4
15 and 28 U.S.C. § 1391(b) because both Twitter, Inc. and X Corp. are headquartered and conduct
16 business in San Francisco County, and many of the acts and omissions complained of occurred in
17 San Francisco County.
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20 **BACKGROUND**

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

23 24. In April 2022, it was announced that multi-billionaire Elon Musk would be
24 purchasing the company. Since his purchase, the company has laid off, terminated, or
25 constructively discharged a very substantial portion (75% or more) of its employees.

26 25. These employees have made various claims against the company concerning their
27 separations from Twitter, including claims related to unpaid severance payments, discrimination,
28 and other legal obligations that Twitter has refused to comply with.

1 26. Petitioner and the majority of those similarly situated signed substantially
2 identical arbitration agreements with Twitter that require their claims to be pursued in arbitration
3 proceedings conducted by JAMS. *See* Exhibit A.

4 27. When class action lawsuits were filed against Twitter in court, Twitter regularly
5 moved to compel arbitration, and it succeeded (with respect to employees who were bound by an
6 arbitration clause). *See Borodaenko v. Twitter, Inc.*, 2023 WL 3294581 (N.D. Cal. May 5,
7 2023); *Rodriguez v. Twitter, Inc.*, 2023 WL 3168321 (N.D. Cal. May 1, 2023); *Cornet v. Twitter,*
8 *Inc.*, 2023 WL 187498 (N.D. Cal. Jan. 13, 2023); *see also Gadala v. Twitter, Inc.*, No. 3:23-cv-
9 01595-JSC (N.D. Cal. May 15, 2023)¹; *Adler v. Twitter, Inc.*, No. 3:23-CV-01788 (N.D. Cal.
10 May 12, 2023) (Dkt. 14) (Twitter’s motion to compel arbitration, which was withdrawn because
11 plaintiff opted out of arbitration).

12 28. These arbitration agreements provide: “Employee and the Company agree to
13 bring any claim in arbitration before Judicial Arbitration and Mediation Services (‘JAMS’),
14 pursuant to the then-current JAMS Rules....” Exhibit A at 2, § 5.

15 29. JAMS Rules provide: “(a) The JAMS Employment Arbitration Rules and
16 Procedures (‘Rules’) govern binding Arbitrations of disputes or claims that are administered by
17 JAMS and in which the Parties agree to use these Rules or, in the absence of such agreement, the
18 disputes or claims are employment-related, unless other Rules are prescribed. (b) The Parties
19 shall be deemed to have made these Rules a part of their Arbitration Agreement (‘Agreement’)
20 whenever they have provided for Arbitration by JAMS under its Employment Rules or for
21 Arbitration by JAMS without specifying any particular JAMS Rules and the disputes or claims
22 meet the criteria of the first paragraph of this Rule.”
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26 ¹ In its Order regarding arbitration, the court in *Gadala* stated: “Plaintiff [a Florida
27 resident] shall only be required to pay the JAMS arbitration filing fee up to the amount she
28 would pay to initiate an action in this Court; Defendants shall be required to pay all other costs of
arbitration.” No. 3:23-cv-01595-JSC (Dkt. 18).

1 30. JAMS Rules further provide: “The Parties may agree on any procedures not
2 specified herein or in lieu of these Rules that are consistent with the applicable law and JAMS
3 policies (including, without limitation, the JAMS Policy on Employment Arbitration Minimum
4 Standards of Procedural Fairness and Rules 15(i), 30 and 31).”

5 31. The JAMS Policy on Employment Arbitration Minimum Standards of Procedural
6 Fairness provides: “The only fee that an employee may be required to pay is JAMS’ initial Case
7 Management Fee. All other costs must be borne by the company, including any additional JAMS
8 Case Management Fee and all professional fees for the arbitrator’s services.” Exhibit B, at 4
9 (Standard No. 6).

10 32. Petitioner and those similarly situated have filed with JAMS demands for
11 arbitration against Twitter. *See, e.g.*, Exhibit C.

12 33. Since late in 2022, when arbitration demands began being filed, arbitrations have
13 proceeded, arbitrators have been appointed, and arbitration conferences and hearings have been
14 scheduled.

15 34. As described above, Twitter has recently informed JAMS, Petitioner, and others
16 similarly situated, through counsel, that it will not proceed in JAMS with arbitration under the
17 Minimum Standards for arbitrations outside California and several other states because Twitter
18 refuses to pay the full arbitration fees for these cases.² *See* Exhibit E.

19 35. On June 30, 2023, following Twitter’s notice of its refusal to pay these fees,
20 JAMS notified the parties that: “JAMS will close its file as JAMS will not proceed with cases
21 that we have determined fall under our Employment Minimum Standards if Respondent will not
22 abide by those standards.”
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25 ² In addition to being incorrect in its objection to these Minimum Standards, Twitter’s
26 objection was too late. JAMS’ rules provide that “If Respondent disagrees with the assertion of
27 Claimant regarding whether this IS or IS NOT a CONSUMER ARBITRATION [which includes
28 employment disputes], Respondent should communicate this objection in writing to the JAMS
case manager and Claimant within seven (7) calendar days of service of the Demand for
Arbitration”. Exhibit C, at 5.

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Respectfully submitted,

FABIEN HO CHING MA, on behalf of himself and
all others similarly situated,

By his attorneys,

/s/ Shannon Liss-Riordan

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