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15 Lead Counsel for Plaintiffs and Class

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19 GIUSEPPE PAMPENA, on behalf of
20 himself and all others similarly situated,

21 Plaintiff,

22 vs.

23 ELON R. MUSK,

24 Defendant.

CASE NO. 3:22-CV-05937-CRB

CLASS ACTION

**JOINT PROPOSAL FOR
DISSEMINATION OF NOTICE TO THE
CLASS**

Judge: Hon. Charles R. Breyer

Magistrate Judge: Hon. Donna M. Ryu

1 **I. INTRODUCTION**

2 On May 24, 2024, Lead Plaintiffs Brian Belgrave, John Garrett and Nancy Price (“Lead
3 Plaintiffs”) filed their motion for class certification. ECF 76. On September 27, 2024, the Court
4 granted Lead Plaintiffs’ motion, certifying this action as a Class action under Rule 23(a) and (b)(3)
5 of the Federal Rules of Civil Procedure, and appointing Lead Plaintiffs as Class Representatives
6 and appointing Cotchett, Pitre & McCarthy LLP and Bottini & Bottini, Inc. as Class Counsel.
7 ECF 106 (the “Class Certification Order”). The Court certified the following Class:

8 All persons and entities who sold the publicly traded stock or call options, or
9 purchased the put options, of Twitter, Inc. during the period from May 13, 2022
10 through October 4, 2022, both dates inclusive, and who suffered damages by
11 Defendant’s alleged violations of § 10(b) and of the Exchange Act.

12 *Id.*

13 The parties have met and conferred and pursuant to Rule 23(c)(2)(B) and request that the
14 Court approve the following joint proposal for dissemination of notice to the Class together with
15 the proposed notice schedule.

16 **II. LEGAL STANDARD**

17 Following certification of a class under Rule 23(b)(3), the Court must “direct to class
18 members the best notice that is practicable under the circumstances, including individual notice to
19 all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Notice
20 must provide sufficient information such that class members can “make an informed decision
21 regarding participation in the action.” *Rodriguez v. Kraft Foods Grp., Inc.*, 2016 WL 5844378, at
22 *3 (E.D. Cal. Oct. 5, 2016); *AdTrader, Inc. v. Google LLC*, 2021 WL 2073816, at *1 (N.D. Cal.
23 Mar. 23, 2021) (“Rule 23 further requires that members of certified classes be given the
24 opportunity to ‘request exclusion’ from having their claims tried as part of the class proceeding”)
25 (quoting Fed. R. Civ. P. 23(c)(2)(B)(v)). In “plain, easily understood language,” the notice must
26 “clearly and concisely” state:

- 27 i. The nature of the action;
28 ii. The definition of the class certified;

- 1 iii. The class claims, issues, or defenses;
- 2 iv. That a class member may enter an appearance through an attorney if the member so
- 3 desires;
- 4 v. That the court will exclude from the class any member who requests exclusion;
- 5 vi. The time and manner for requesting exclusion; and
- 6 vii. The binding effect of a class judgment on members under Rule 23(c)(3).

7 Fed R. Civ. P. 23(c)(B).

8 “Notice of the pendency of a Rule 23(b)(3) class action is to be made by ‘United States
9 mail, electronic means, or other appropriate means.’” *AdTrader*, 2021 WL 2073816, at *1.
10 “[D]ue process does not require actual notice, but rather a good faith effort to provide actual
11 notice.” *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 177 F.R.D. 216, 231 (D.N.J. 1997);
12 *see also AdTrader*, 2021 WL 2073816, at *1 (“The class must be notified in a manner that ‘does
13 not systematically leave any group without notice.’”).

14 “‘There is no one ‘right way’ to provide notice.” *In re Wireless Tel. Fed. Cost Recovery*
15 *Fees Litig.*, 2004 WL 3671053, at *8 (W.D. Mo. Apr. 20, 2004). “[D]irect mail postcard notice
16 supplemented with additional information accessible via the internet fully meets the requirements
17 of Rule 23.” *Utne v. Home Depot U.S.A., Inc.*, 2018 WL 11373654, at *1-*2 (N.D. Cal. Aug. 21,
18 2018) (approving “postcard notice [that] explains the nature of the action, defines the class and the
19 claims of the case, and informs class members of their rights and options”). For class members
20 whose names and addresses cannot be reasonably ascertained, “courts may use alternative means
21 such as notice through third parties, paid advertising, and/or posting in places frequented by class
22 members, all without offending due process.” *Mullins v. Direct Digit., LLC*, 795 F.3d 654, 665
23 (7th Cir. 2015).

24 **III. THE PROPOSED NOTICE PLAN**

25 The proposed notice plan, which was developed by Class Counsel, together with the
26 proposed administrator, ~~EpiqGlobal, Inc.~~ Epiq Class Action and Claims Solutions (“Epiq” or the
27 “Administrator”), with input from Defendant’s counsel, includes direct-mailed, or emailed where
28 possible, postcard notice, publication notice, and a case website (together, the “Notice Plan”).

1 Class Counsel represents that the Notice Plan is designed to reach the vast majority of potential
2 Class members – “more than 95%.” *See* ____ Declaration, ¶____. Class Counsel will bear the
3 initial costs of notice, subject to potential reimbursement.

4 The proposed Notice Plan includes the dissemination of: (1) a direct-mailed or emailed
5 postcard that will be mailed or emailed to potential Class members identified through trading
6 records and persons and entities known to hold Twitter publicly traded securities as nominees of
7 such potential Class members (“Postcard Notice”), filed concurrently herewith as Exhibit A, and
8 (2) a proposed summary notice for publication in prominent news publications (“Publication
9 Notice”), filed concurrently herewith as Exhibit B. Both the Postcard Notice and the Publication
10 Notice will direct potential Class members to a dedicated case website, www._____.com,
11 which will have posted to it the full-length “Long-Form Notice,” additional case information, and
12 a link to the operative pleadings, and the Class Certification Order. *See* ____ Declaration, ¶____.

13 As required by Rule 23(c)(2), the Long-Form Notice describes the nature of the litigation;
14 sets forth the definition of the Class; states the Class’s claims; and discloses the right of Class
15 members to exclude themselves from the Class, as well as the deadline and procedure for doing so,
16 and warns of the binding effect on Class members who do not exclude themselves. *See* Fed.R.
17 Civ. P. 23(c)(2)(B)(i)-(vii). In addition, both the Postcard Notice and the Long-Form Notice
18 provide contact information for Class Counsel and include a toll-free telephone number potential
19 Class members may call with any questions. Epiq will also cause both the Postcard Notice and
20 Long-Form Notice to be published by the Depository Trust Corporation (“DTC”) on the DTC
21 Legal Notice System, enabling participating banks and brokers to review both notices and directly
22 contact Epiq to obtain copies of the Postcard Notice and the Long-Form Notice for their clients
23 who may be Class members. *See* ____ Declaration, ¶____.

24 Courts in this Circuit have deemed similar notice plans to be adequate forms of notice at
25 this stage of the proceedings. *See, e.g., Utne*, 2018 WL 11373654, at *1 (approving notice where
26 “[a] postcard will direct class members to a class website, where they will have access to a long-
27 form notice, as well as a toll-free number they may call”); *AdTrader*, 2021 WL 2073816, at *1
28 (approving summary email and postcard notice that directed potential class members to the long-

1 form notice posted on the dedicated website); *see also*, Order Approving Amended Proposal for
2 Dissemination of Notice to the Class, *Purple Mountain Tr. v. Wells Fargo & Co.*, No. 3:18-cv-
3 03948-JD (N.D. Cal. Oct. 28, 2022) (ECF 219).

4 The proposed Notice Plan satisfies all of the requirements of Rule 23(c)(2)(B), and
5 provides efficient, cost-effective, and appropriate means of notice dissemination. The Notice Plan
6 satisfies Rule 23’s requirement that notice be disseminated “to all [Class] members who can be
7 identified through reasonable effort,” and that notice be clear and concise. Fed. R. Civ. P.
8 23(c)(2)(B).

9 **IV. PROPOSED NOTICE SCHEDULE**

10 To facilitate the dissemination of notice, Epiq will be responsible for contacting brokers
11 and nominees, mailing and emailing the notice to the Class, publishing summary notice,
12 establishing and driving traffic to the case website, and tracking and reporting any opt-out
13 requests. *See* _____ Declaration, ¶¶5-16. To that end, the parties jointly propose the following
14 schedule:

15 1. Twitter shall provide to Epiq a mailing list (including email addresses where
16 available) for all registered, record holders of Twitter publicly traded common stock during the
17 period from May 13, 2022 through October 4, 2022, both dates inclusive (the “Class Period”)
18 within ten (10) business days of the Court’s order approving this Notice Plan (“Notice Approval
19 Order”). Twitter shall not be obligated to obtain and provide information sufficient to identify
20 beneficial owners associated with the shares held by any record holder beyond such information
21 that is already in its possession. Moreover, because the publicly traded options on Twitter stock
22 during the Class Period were created by third parties, Twitter shall not be obligated to obtain and
23 provide information sufficient to identify any record holders of those options beyond such
24 information that is already in its possession. Class Counsel shall be responsible for all other costs
25 associated with providing the notices.

26 2. Within twenty-five (25) calendar days of entry of the Notice Approval Order, Epiq
27 shall commence mailing the Postcard Notice via USPS First-Class Mail (and emailing the
28 Postcard Notice where email addresses are available) to potential Class members (the “Notice

1 Date”).

2 3. In doing so, as explained in the _____ Declaration, ¶¶7-11, Epiq shall use
3 reasonable efforts to give notice to brokerage firms, banks, institutions, investment funds,
4 investment companies, investment advisors, investment portfolios, mutual fund trusts, mutual
5 investment funds, investment managers, and any other persons or entities who are or who claim to
6 be nominees that sold Twitter publicly traded securities during the Class Period for the benefit of
7 another person. Such nominees shall be given two options: (i) they can, within seven (7) calendar
8 days of receipt of the Postcard Notice, request from the Administrator sufficient copies of the
9 Postcard Notice to forward to all such beneficial owners (and then mail the Postcard Notice
10 themselves); or (ii) they can, within seven (7) calendar days of receipt of the Postcard Notice,
11 provide a list of the names and addresses or email addresses of all such beneficial owners to Epiq,
12 in which case the Administrator shall promptly mail or email the Postcard Notice to such
13 beneficial owners. Upon full and timely compliance with these directions, such nominees may
14 seek reimbursement from Epiq of their reasonable expenses actually incurred by providing the
15 Administrator with proper documentation supporting the expenses for which reimbursement is
16 sought. Any disputes with respect to the reasonableness or documentation of expenses incurred
17 shall be subject to review by the Court.

18 4. Contemporaneously with the mailing of the Postcard Notice, Epiq shall establish
19 the case-specific website, www._____.com, to make available to Class members the Long-Form
20 Notice and other relevant case information, such as the deadline for requesting exclusion, and
21 filings, including: (1) the Class Certification Order (ECF 106); (2) the First Amended Complaint
22 (ECF 31); (3) the Court’s Order Granting in Part and Denying in Part Defendant’s Motion to
23 Dismiss (ECF 48); (4) Defendant’s Answer to the Revised Consolidated Class Action Complaint
24 (ECF 58); (5) the Court’s Order Denying Motion for Judgment on the Pleadings (ECF 89), as well
25 as other such documents as the parties may agree or the Court shall require. The website will be
26 available until at least one (1) year after any settlement, other resolution, or the conclusion of trial
27 and exhaustion of all possible appeals in this action. Epiq also shall establish a toll-free telephone
28 number for Class members to call if they have questions or to request copies of the Class notices

1 or other documents. Epiq shall provide live operators during business hours to answer the
2 telephone, respond to ministerial matters such as requests for copies of the notices, and direct any
3 substantive questions to Class Counsel.

4 5. Within seven (7) calendar days of the Notice Date, Epiq shall cause the Publication
5 Notice to be published in *The Wall Street Journal* and posted on *PR Newswire* as a means of
6 reaching prospective Class members not receiving the Postcard Notice.

7 6. The Administrator will also cause the Postcard Notice and Long-Form Notice to be
8 published by the DTC on the DTC Legal Notice System.

9 7. Class members shall be bound by all determinations and judgments in this action,
10 whether favorable or unfavorable, unless such persons and entities request exclusion from the
11 Class in a timely and proper manner. The case website and Long-Form Notice shall provide an
12 address for the purpose of receiving requests for exclusion from the Class and requests for copies
13 of the Long-Form Notice from, inter alia, nominee sellers of Twitter common stock and call
14 options of Twitter stock and nominee purchasers of put options on Twitter stock. In particular,
15 Class members seeking to request exclusion from the Class shall submit a written request for
16 exclusion as set forth in the Long-Form Notice and it shall be postmarked no later than sixty (60)
17 calendar days after the Court's entry of the Notice Approval Order, the date of which shall be
18 included in the notice forms. A request for exclusion shall clearly state that the Class member
19 requests exclusion from the Class in *Pampena v. Musk*, No. 3:22-cv-05937-CRB, and must: (i)
20 state the name, address, and telephone number of the person or entity requesting exclusion; (ii)
21 state the number publicly traded stock or call options of Twitter sold, or put orders purchased,
22 during the Class Period by the person or entity requesting exclusion and the dates and prices of
23 such sales; and (iii) be signed by the person or entity requesting exclusion or an authorized
24 representative. The request for exclusion shall not be effective unless it provides the required
25 information and is made within the time stated above, or is otherwise accepted by the Court. The
26 Administrator shall promptly provide via email copies of any requests for exclusion received to
27 Class Counsel and counsel for the Defendant.

28 8. Within seven (7) calendar days following the exclusion deadline, Class Counsel

1 shall file with the Court proof of mailing and emailing of the Postcard Notice, proof of publication
2 of the Publication Notice, and an affidavit setting forth a list of all persons and entities who have
3 validly and timely requested exclusion from the Class, as well as a list of persons who requested
4 exclusion from the Class that were not deemed to be valid or timely.

5 The parties respectfully submit that this proposed Notice Plan sets forth the best notice that
6 is practicable under the circumstances, including individual notice to all potential members of the
7 Class who can be identified through reasonable effort. The proposed Notice Plan and schedule
8 satisfy Rule 23 and protect Class members' due process rights. Accordingly, the parties
9 respectfully request that the Court approve the proposed Notice Plan and direct that notices be
10 disseminated as proposed herein and in the Notice Approval Order.

1 DATED:

2 Respectfully submitted,

3 /s/ Mark C. Molumphy

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28 *Lead Counsel for Plaintiffs and the Class*

1
2 DATED:

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Tyson C. Redenbarger, attest that concurrence in the filing of this document has been obtained from the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this _____, at Burlingame, California.

By /s/ Tyson C. Redenbarger
Tyson C. Redenbarger