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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**
15

16 SECURITIES AND EXCHANGE COMMISSION,

17 Applicant,

18 v.

19 ELON MUSK,

20 Respondent.
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22
23
24

Misc. No.

**SECURITIES AND EXCHANGE
COMMISSION'S NOTICE AND
APPLICATION FOR AN ORDER
COMPELLING COMPLIANCE
WITH AN ADMINISTRATIVE
SUBPOENA AND
MEMORANDUM IN SUPPORT**

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE AND APPLICATION 1

MEMORANDUM OF POINTS AND AUTHORITIES..... 2

I. INTRODUCTION 2

II. STATEMENT OF FACTS 3

 A. The SEC’s Investigation and Respondent’s Involvement 3

 B. The SEC’s May 2023 Subpoena to Respondent..... 4

 C. Respondent’s Failure to Comply with the SEC’s Subpoena 5

III. ARGUMENT..... 6

 A. This Court Has Jurisdiction to Enforce the SEC’s Validly Issued Administrative Subpoena in a Summary Proceeding..... 6

 B. The SEC’s Administrative Subpoena to Musk Should Be Enforced..... 7

 C. Musk Has No Valid Basis for Failing to Comply with the SEC’s Subpoena 10

IV. CONCLUSION..... 12

TABLE OF AUTHORITIES

CASES

Administrator, US EPA v. Alyeska Pipeline Serv. Co., 836 F.2d 443 (9th Cir. 1988) 9

EEOC v. Fed. Exp. Corp., 558 F.3d 842 (9th Cir. 2009) 9

EEOC v. St. Regis Paper Co.-Kraft Div., 717 F.2d 1302 (9th Cir. 1983) 6

Endicott Johnson v. Perkins, 317 U.S. 501 (1943) 9

Flatt v. SEC, Case No. 10-60073-MC, 2010 WL 1524328 (S.D. Fla. Apr. 14, 2010) 8

Gewerter v. SEC, Case No. 16-02556-PHX, 2016 WL 4074117 (D. Ariz. July 29, 2016) 9

Nelson v. SEC, Case No. 08-80080-JF, 2008 WL 2444794 (N.D. Cal. June 16, 2008) 9

RNR Enters., Inc. v. SEC, 122 F.3d 93 (2d Cir. 1997) 7

Rosiere v. SEC, Case No. 09-01975-JCM, 2010 WL 489526 (D. Nev. Feb. 5, 2010) 8

Sansend Fin. Consultants Ltd. v. Fed. Home Loan Bank Bd., 878 F.2d 875 (5th Cir. 1989) 8

SEC v. Blackfoot Bituminous, Inc., 622 F.2d 512 (9th Cir. 1980) 7, 10

SEC v. Brigadoon Scotch Distributing Co., 480 F.2d 1047 (2d Cir. 1973) 7, 10

SEC v. Custodian of Records R.R. Donnelley & Sons Co., Case No. 12-07331-SVW,
2012 WL 12930953 (C.D. Cal. Oct. 11, 2012) 6, 7

SEC v. Harman Wright Group, LLC, Case No. 18-00190-CMA,
2018 WL 6102758 (D. Colo. Nov. 21, 2018) 7, 9

SEC v. Jerry T. O’Brien, Inc., 467 U.S. 735 (1984) 8

SEC v. McCarthy, 322 F.3d 650 (9th Cir. 2003) 6

SEC v. Musk, Case No. No. 22-1291, 2023 WL 3451402 (2d Cir. May 15, 2023) 11

SEC v. Obioha, Case No. 12-80109-WHA, 2012 WL 4889286 (N.D. Cal. Oct. 12, 2012) 7

SEC v. Sprecher, 594 F.2d 317 (2d Cir. 1979) 6

1 | *SEC v. Tajyar*, Case No. 18-00113-DMG, 2018 WL 6313475 (C.D. Cal. Oct. 15, 2018) 7
 2 | *United States v. Morton Salt Co.*, 338 U.S. 632 (1950) 8
 3 | *United States v. Jose*, 131 F.3d 1325 (9th Cir. 1997) 7, 10
 4 | *United States v. Powell*, 379 U.S. 48 (1964) 7
 5 |

6 | **REGULATIONS**

7 | 17 C.F.R § § 200.30-4(a)(1)..... 10
 8 |

9 | **STATUTES**

10 | 15 U.S.C. § 77s(b) 3
 11 | 15 U.S.C. § 77s(c) 10
 12 | 15 U.S.C. § 77t(a) 8
 13 | 15 U.S.C. § 77u(b) 10
 14 | 15 U.S.C. § 77v(b) 1, 6
 15 | 15 U.S.C. § 78u(b) 3, 8, 11
 16 | 15 U.S.C. § 78u(c) 1, 6
 17 |
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NOTICE AND APPLICATION

1
2 PLEASE TAKE NOTICE that on November 9, 2023 at 1:30 p.m., or as soon thereafter
3 as the matter can be heard, in the courtroom of the assigned General Duty Judge located at 450
4 Golden Gate Avenue, San Francisco, California, Applicant Securities and Exchange
5 Commission will and hereby does apply for an order compelling Respondent Elon Musk to
6 comply with the administrative subpoena issued by Applicant.

7 This is an administrative subpoena enforcement action. The Court has jurisdiction under
8 Section 22(b) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77v(b), and Section
9 21(c) of the Securities and Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78u(c). Venue
10 is appropriate under Section 22(a) of the Securities Act, 15 U.S.C. § 77v(b), and Section 21(c) of
11 the Exchange Act, 15 U.S.C. § 78u(c). This application is based on Respondent’s failure to
12 comply with a valid administrative subpoena without excuse. This application is supported by
13 the accompanying Memorandum of Points and Authorities, the Declaration of Robin Andrews in
14 support thereof, the proposed order, and such further evidence and argument as the Court may
15 consider.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Securities and Exchange Commission (“SEC” or “Commission”) asks this Court to
4 compel Respondent Elon Musk to appear for investigative testimony pursuant to an SEC
5 investigative subpoena.

6 Musk failed to appear for testimony on September 15, 2023, as required by the
7 investigative subpoena served by the SEC, despite (1) in May 2023, agreeing to appear for
8 testimony on a date nearly four months later, in September 2023, (2) having been served with a
9 subpoena in May 2023 requiring his appearance for testimony in the SEC’s San Francisco
10 Regional Office on that mutually agreed upon date in September, (3) raising no objection to the
11 subpoena at the time it was served or during the following months, and (4) approximately two
12 weeks before his scheduled testimony, requesting and receiving an accommodation to move his
13 scheduled testimony by one day. Instead, two days before his scheduled testimony, Musk
14 abruptly notified the SEC staff that he would not appear. Musk attempted to justify his refusal to
15 comply with the subpoena by raising, for the first time, several spurious objections, including an
16 objection to San Francisco as an appropriate testimony location.

17 Notwithstanding the specious nature of Musk’s untimely objections, the SEC staff
18 attempted to negotiate in good faith with Musk to find an alternative date and location for his
19 testimony. The SEC staff offered to conduct Musk’s testimony at the SEC’s Fort Worth, Texas
20 office (the closest SEC office to Musk’s current personal residence) or any other of the
21 Commission’s offices, and proposed multiple dates in October and November 2023. These good
22 faith efforts were met with Musk’s blanket refusal to appear for testimony.

23 The subpoena with which Musk failed to comply relates to an ongoing nonpublic
24 investigation by the SEC regarding whether, among other things, Musk violated various
25 provisions of the federal securities laws in connection with (1) his 2022 purchases of Twitter,
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1 Inc. (“Twitter”)¹ stock, and (2) his 2022 statements and SEC filings relating to Twitter. As
 2 described below, the SEC seeks Musk’s testimony to obtain information not already in the SEC’s
 3 possession that is relevant to its lawful investigation. The SEC has followed all appropriate
 4 administrative steps required in seeking Musk’s testimony. In the face of Musk’s blatant refusal
 5 to comply with the SEC’s subpoena, the SEC now asks the Court to intervene and compel
 6 Musk’s compliance.

7 **II. STATEMENT OF FACTS**

8 **A. The SEC’s Investigation and Respondent’s Involvement**

9 On April 14, 2022, the Commission issued an Order Directing Private Investigation and
 10 Designating Officers to Take Testimony in an investigation titled *In the Matter of Certain*
 11 *Purchases, Sales and Disclosures of Twitter Shares* (SEC File No. SF-4519) (“Formal Order”).
 12 See Declaration of Robin Andrews (“Andrews Decl.”), ¶¶ 2, 5. On July 15, 2022, the
 13 Commission issued a Corrected Order Directing Private Investigation and Designating Officers
 14 to Take Testimony (“Corrected Formal Order”) in that same investigation. Among other things,
 15 the Formal Order and Corrected Formal Order authorize the SEC staff to investigate whether any
 16 persons or entities may have violated the federal securities laws in connection with Musk’s 2022
 17 purchases of Twitter’s stock, and his 2022 statements and SEC filings relating to Twitter.
 18 Andrews Decl., ¶ 3. The Formal Order and Corrected Formal Order also designate and authorize
 19 certain SEC staff to issue subpoenas in this investigation, to obtain documents, and to take
 20 testimony. See *id.*, ¶ 5; 15 U.S.C. §§ 77s(b), 78u(b).

21 As part of its investigation in this matter, in June 2022, the SEC served Musk with a
 22 subpoena seeking his testimony. Andrews Decl., ¶ 6. On July 12, 2022 and July 27, 2022, Musk
 23 appeared for half-day sessions of testimony by videoconference. *Id.* Since Musk’s last half-day
 24 of testimony on July 27, 2022, the Commission has received thousands of new documents from
 25

26 ¹ Musk acquired Twitter through X Holding Corp., a corporation that he established. He
 27 subsequently renamed Twitter, X Corp. As the conduct at issue in the SEC’s investigation
 28 involves the period in which Twitter was a publicly traded stock, this memorandum refers to
 the company as Twitter.

1 various parties as part of its investigation, including hundreds of new documents produced by
2 Musk. *Id.*, ¶ 7. Indeed, nearly half of the documents Musk has produced to the Commission in its
3 investigation were produced after Musk’s last half-day session of testimony, including
4 documents Musk authored. *Id.* The SEC has not yet had an opportunity to question Musk about
5 those documents and other substantial information it has obtained in its investigation since July
6 27, 2022.

7 **B. The SEC’s May 2023 Subpoena to Respondent**

8 In light of the substantial new information the SEC obtained following Musk’s last half-
9 day session of testimony, in April 2023, the SEC staff discussed with Musk’s counsel the need
10 for Musk to appear for another day of testimony. *Id.*, ¶ 8. The SEC staff informed Musk’s
11 counsel at that time that it intended to subpoena Musk for testimony in person at the SEC’s San
12 Francisco Regional Office. *Id.* Although Musk’s counsel informed the SEC staff of certain
13 scheduling conflicts between June and early August 2023, at no point during the April 2023
14 conversation did Musk’s counsel object either to Musk’s appearance for another day of
15 testimony or to having the testimony conducted in person in San Francisco. *Id.*

16 After multiple communications between the SEC staff and Musk’s counsel in May 2023,
17 on May 23, 2023, Musk’s counsel agreed that Musk would appear for investigative testimony on
18 September 14, 2023. *Id.*, ¶ 9. Later that same day, the SEC served a subpoena on Musk requiring
19 his attendance for testimony at the SEC’s San Francisco Regional Office on September 14, 2023.
20 *Id.*, ¶ 9, Ex. 2. Musk did not raise any objection to the subpoena after having been served with it
21 on May 23, 2023. *Id.*, ¶ 10.

22 On August 28, 2023, just over two weeks prior to the September 14, 2023 date for
23 Musk’s testimony, Musk’s counsel requested that the SEC move Musk’s testimony date from
24 September 14, 2023 to September 15, 2023. *Id.*, ¶ 11. In requesting that Musk’s testimony be
25 moved a day, Musk’s counsel raised no objection to Musk appearing for testimony or to San
26 Francisco as the location for Musk’s testimony. *Id.* The SEC staff agreed to Musk’s requested
27 accommodation and served him with a new subpoena requiring Musk to appear for testimony at
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1 the SEC’s San Francisco Regional Office on September 15, 2023. *Id.*, Ex. 3. Between August 28,
2 2023 and September 13, 2023, Musk raised no objection to the subpoena, including as to the date
3 or location of Musk’s testimony. *Id.*, ¶ 12.

4 **C. Respondent’s Failure to Comply with the SEC’s Subpoena**

5 On September 13, 2023, Musk’s counsel sent a letter informing SEC staff for the first
6 time that Musk would not appear for testimony on September 15, 2023, as previously agreed. *Id.*,
7 ¶ 13, Ex. 4. Musk’s counsel also raised certain objections to the SEC’s subpoena for the first
8 time, including an objection to San Francisco as the location for testimony. *Id.*

9 On September 14, 2023, the SEC responded to Musk’s letter and addressed Musk’s
10 stated objections. *Id.*, ¶ 14, Ex. 5. On September 15, 2023, Musk failed to appear for his
11 testimony as required by the SEC’s subpoena. *Id.*

12 Following Musk’s failure to comply with the SEC’s subpoena, the SEC attempted to
13 negotiate a new date for Musk’s testimony. On September 19, 2023, the SEC sent an email to
14 Musk’s counsel offering to conduct Musk’s testimony on certain dates in October 2023. *Id.*, ¶ 15,
15 Ex. 6. As one of Musk’s stated objections was that the testimony was scheduled for San
16 Francisco – where, he complained, he “does not live” – the SEC also offered to conduct Musk’s
17 testimony at the Commission’s Fort Worth, Texas office (the closest office to Musk’s residence)
18 or any of the other Commission offices across the country (there are eleven). *Id.*, ¶¶ 13, 15, Exs.
19 4, 6. On September 21, 2023, the SEC offered potential testimony dates in November 2023, in
20 addition to the dates in October 2023 that the SEC had already offered. *Id.*, ¶ 16, Ex. 7.

21 On September 24, 2023, Musk’s counsel responded by informing the SEC that Musk
22 would not appear for testimony in any location. *Id.*, ¶ 17, Ex. 8. The next day, the SEC sent a
23 letter to Musk’s counsel asking that Musk inform the Commission by September 29, 2023, if he
24 had reconsidered and would agree to appear for testimony. *Id.*, ¶ 18, Ex. 9. Musk did not do so.
25 *Id.*

III. ARGUMENT

1
2 Musk’s ongoing refusal to comply with the SEC’s administrative subpoena is hindering
3 and delaying the SEC staff’s investigation to determine whether violations of the federal
4 securities laws have occurred. Accordingly, the SEC now asks the Court to compel Musk to
5 appear for investigative testimony.

6 **A. This Court Has Jurisdiction to Enforce the SEC’s Validly Issued** 7 **Administrative Subpoena in a Summary Proceeding**

8 When a subpoenaed party, such as Musk, refuses to comply with an SEC administrative
9 subpoena issued in the course of an investigation, the SEC is authorized to seek a court order
10 compelling compliance. *See* 15 U.S.C. §§ 77v(b), 78u(c). Section 22(b) of the Securities Act of
11 1933 (“Securities Act”) and Section 21(c) of the Securities Exchange Act of 1934 (“Exchange
12 Act”) specifically grant jurisdiction over these subpoena enforcement actions to district courts.

13 Moreover, an SEC subpoena enforcement action may be brought in any federal court
14 “within the jurisdiction of which such investigation or proceeding is carried on.” 15 U.S.C. §
15 78u(c); *see also* 15 U.S.C. § 77v(b). This Court is therefore the proper venue for this subpoena
16 enforcement action because the Commission’s San Francisco Regional Office is conducting the
17 investigation at issue. *See SEC v. Custodian of Records R.R. Donnelley & Sons Co.*, Case No.
18 12-07331-SVW, 2012 WL 12930953, at *1 (C.D. Cal. Oct. 11, 2012) (holding U.S. District
19 Court for Central District of California was a proper court to consider subpoena enforcement
20 action in investigation conducted by the SEC’s Los Angeles Regional Office).

21 The court may grant an application to enforce an investigative subpoena in a summary
22 proceeding. *EEOC v. St. Regis Paper Co.-Kraft Div.*, 717 F.2d 1302, 1304 (9th Cir. 1983) (“[a]
23 subpoena enforcement action is a summary procedure” with no discovery absent “exceptional
24 circumstances”); *see also SEC v. McCarthy*, 322 F.3d 650, 655-59 (9th Cir. 2003) (explaining
25 that Section 21(e) of the Exchange Act permits the court to enforce an SEC subpoena in a
26 summary proceeding “upon application from the Commission”); *SEC v. Sprecher*, 594 F.2d 317,
27 319-20 (2d Cir. 1979) (Section 22(b) of the Securities Act permits courts to enforce a subpoena
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1 in summary proceeding “upon application by the Commission”). This summary procedure,
2 rather than an action instituted by complaint, is appropriate because investigative agencies, like
3 the SEC, “must be free without undue interference or delay to conduct an investigation which
4 will adequately develop a factual basis for a determination as to whether particular activities
5 come within the Commission’s regulatory authority.” *SEC v. Brigadoon Scotch Distributing Co.*,
6 480 F.2d 1047, 1053 (2d Cir. 1973). This Court may therefore rule upon the SEC’s application in
7 a summary show cause proceeding.

8 **B. The SEC’s Administrative Subpoena to Musk Should Be Enforced**

9 An administrative agency’s investigative subpoena should be judicially enforced if the
10 following criteria are met: (1) the SEC’s “investigation will be conducted pursuant to a
11 legitimate purpose,” (2) the subpoena seeks information that “may be relevant to that purpose,”
12 (3) “the information sought is not already within the [SEC’s] possession,” and (4) all
13 “administrative steps required . . . have been followed.” *United States v. Powell*, 379 U.S. 48, 57-
14 58 (1964) (enforcing IRS subpoena); *see also United States v. Jose*, 131 F.3d 1325, 1327-28 (9th
15 Cir. 1997) (quoting *Powell*); *SEC v. Blackfoot Bituminous, Inc.*, 622 F.2d 512, 513-14 (9th Cir.
16 1980). Indeed, courts routinely grant relief in SEC subpoena enforcement proceedings upon the
17 requisite showing. *See, e.g., R.R. Donnelley & Sons*, 2012 WL 12930953; *SEC v. Tajyar*, Case
18 No. 18-00113-DMG, 2018 WL 6313475 (C.D. Cal. Oct. 15, 2018), *adopted by* 2018 WL
19 6308106 (C.D. Cal. Nov. 30, 2018); *SEC v. Obioha*, Case No. 12-80109-WHA, 2012 WL
20 4889286 (N.D. Cal. Oct. 12, 2012). A declaration from a government official is sufficient to
21 establish that the *Powell* requirements have been met. *See RNR Enters. v. SEC*, 122 F.3d 93, 97
22 (2d Cir. 1997); *see also SEC v. Harman Wright Group, LLC*, Case No. 18-00190-CMA, 2018
23 WL 6102758, at *2 (D. Colo. Nov. 21, 2018) (clarifying that the SEC’s burden is a “slight one”
24 generally satisfied by an affidavit from the agent seeking enforcement).

25 In this case, all of the requirements are met for enforcement of the SEC’s subpoena. First,
26 the SEC’s investigation is being conducted pursuant to a lawfully authorized and legitimate
27 purpose. “The provisions vesting the SEC with power to issue and seek enforcement of
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1 subpoenas are expansive.” *SEC v. Jerry T. O’Brien, Inc.*, 467 U.S. 735, 743 (1984); *see also*
2 *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950). When Congress created the SEC
3 and assigned it the responsibility of protecting investors, it gave the SEC broad authority to
4 conduct investigations. *O’Brien, Inc.*, 467 U.S. at 741. This authority includes the power to
5 “subpoena witnesses, compel their attendance, take evidence, and require the production of any
6 books, papers, correspondence, memoranda, or other records which the Commission deems
7 relevant or material to the inquiry.” 15 U.S.C. § 78u(b); *see also* 15 U.S.C. § 77t(a).

8 Here, the SEC has exercised its broad statutory authority and authorized the SEC staff to
9 investigate, among other things, whether provisions of the federal securities laws have been
10 violated in connection with Musk’s 2022 purchases of Twitter stock and his 2022 statements and
11 SEC filings relating to Twitter. Andrews Decl., ¶ 3. The SEC authorized this investigation by
12 issuing a Formal Order on April 14, 2022. *Id.*, ¶ 5. The Commission issued a Corrected Formal
13 Order on July 15, 2022. *Id.* The SEC’s investigation and the subpoena issued to Musk are
14 unquestionably within the scope of the Formal Order, Corrected Formal Order, and the SEC’s
15 authorized law-enforcement powers.

16 Second, the information sought by the SEC’s subpoena is relevant to the SEC’s
17 investigation. The subpoena seeks the testimony of Musk so that the Commission may obtain
18 information from him regarding his 2022 purchases of Twitter stock and his 2022 statements and
19 SEC filings relating to Twitter. Musk’s testimony on those subjects is plainly relevant to the
20 Commission’s investigation. Moreover, in the context of an administrative investigation, “the
21 notion of relevance is a broad one. An agency can investigate merely on the suspicion that the
22 law is being violated, or even just because it wants assurance that it is not. So long as the material
23 requested *touches* a matter under investigation, an administrative subpoena will survive a
24 challenge that the material is not relevant.” *Flatt v. SEC*, Case No. 10-60073-MC, 2010 WL
25 1524328, at *5 (S.D. Fla. Apr. 14, 2010) (quoting *Sansend Fin. Consultants Ltd. v. Fed. Home*
26 *Loan Bank Bd.*, 878 F.2d 875, 882 (5th Cir. 1989)); *see also Rosiere v. SEC*, Case No. 09-01975-

1 JCM, 2010 WL 489526 (D. Nev. Feb. 5, 2010); *Gewerter v. SEC*, Case No. 16-02556-PHX,
2 2016 WL 4074117, at *2 (D. Ariz. July 29, 2016).

3 The relevance required to enforce an investigative subpoena is much broader than in
4 litigation. *See Nelson v. SEC*, Case No. 08-80080-JF, 2008 WL 2444794, at *2 (N.D. Cal. June
5 16, 2008). For that reason, as the Ninth Circuit has explained, “The scope of the judicial inquiry
6 in an . . . agency subpoena enforcement proceeding is quite narrow.” *EEOC v. Fed. Exp. Corp.*,
7 558 F.3d 842, 848 (9th Cir. 2009) (internal quotation marks and citations omitted). Thus, a court
8 must enforce an administrative subpoena unless the evidence sought by the subpoena is plainly
9 incompetent or irrelevant to any lawful purpose of the agency. *Id.* at 854; *see also Endicott*
10 *Johnson v. Perkins*, 317 U.S. 501, 509 (1943); *Administrator, US EPA v. Alyeska Pipeline Serv.*
11 *Co.*, 836 F.2d 443, 447 (9th Cir. 1988); *Harman Wright Group*, 2018 WL 6102758, at *2.

12 The minimal relevance required to enforce the administrative subpoena served on Musk
13 is easily satisfied here. The SEC’s investigation here pertains to purchases of securities by Musk
14 and statements and SEC filings made by Musk relating to his purchases of securities. The
15 subpoena seeks Musk’s testimony so that the SEC staff may question Musk on those topics.
16 Because he is the very individual who made the securities purchases, statements, and filings at
17 issue, the SEC’s subpoena for Musk’s testimony meets the relevance requirement.

18 Third, the information sought pursuant to the SEC’s subpoena is not in the SEC’s
19 possession. Musk has not appeared for testimony in this investigation since July 2022 when he
20 appeared for two separate half-day sessions. *Andrews Decl.*, ¶ 6. Since that time, the SEC has
21 received thousands of new documents from various parties as part of its investigation, including
22 hundreds of documents produced by Musk. *Id.*, ¶ 7. Nearly half of the documents produced to
23 the Commission by Musk in this investigation were produced after Musk’s prior investigative
24 testimony over a year ago, including documents Musk authored. *Id.* The SEC has therefore not
25 yet had the opportunity to question Musk regarding, among other things, the information
26 contained in those documents.

1 Fourth, the SEC has satisfied all administrative prerequisites. The federal securities laws
2 authorize the SEC to compel the attendance of witnesses that the SEC deems relevant or material
3 to its investigation. *See* 15 U.S.C. §§ 77s(c), 77u(b). Here, the SEC’s subpoena was issued
4 pursuant to a Corrected Formal Order and signed by an SEC attorney who is specifically
5 designated by the Corrected Formal Order to issue subpoenas. *See* 17 C.F.R. § 200.30-4(a)(1).
6 The SEC served Musk with the subpoena and Musk’s attorney confirmed that he received the
7 subpoena. Nevertheless, Musk refuses to make himself available for testimony as the subpoena
8 requires.

9 **C. Musk Has No Valid Basis for Failing to Comply with the SEC’s Subpoena**

10 Because the SEC has established that its subpoena was lawfully issued, the burden shifts
11 to Respondent to establish an affirmative defense for failing to comply with the subpoena. Musk
12 bears a heavy burden where, as here, “the agency inquiry is authorized by law and the
13 [information] sought [is] relevant to the inquiry.” *Brigadoon Scotch Dist. Co.*, 480 F.2d at 1056;
14 *see also United States v. Jose*, 131 F.3d at 1328 (after *prima facie* case made to enforce
15 investigative summons, heavy burden fell on respondent); *Blackfoot Bituminous*, 622 F.2d at 515
16 (respondent has burden of showing a defense to enforcement).

17 Musk cannot meet this high burden. He did not raise any objection to the SEC’s
18 subpoena until only two days prior to the date he was to appear for testimony. He then raised, for
19 the first time, a total of five objections. Andrews Decl., ¶ 13, Ex. 4. Not only are Musk’s stated
20 objections untimely, they are without merit.

21 First, Musk objected on the basis that Musk “has already sat for testimony twice in this
22 matter” and that it is unclear why the SEC needs him to appear for another day of testimony. *Id.*
23 Musk never raised this objection in April 2023, when the SEC staff discussed with his counsel
24 the need for further testimony. He did not raise this objection in May 2023, when he was served
25 with a subpoena requiring his testimony. Nor did he raise it on August 28, 2023, when he
26 requested and received an accommodation as to the date of the testimony and was served with a
27 subpoena with the new date. In any event, as described above, the SEC has obtained a substantial
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1 amount of new information since Musk sat for two half-day sessions of testimony more than one
2 year ago, including new information produced by Musk himself. The SEC is entitled to question
3 Musk regarding that information as part of its investigation.

4 Second, Musk objected to the SEC’s subpoena on the grounds that “[i]n the context of an
5 investigation into the timing and substance of a Schedule 13G, enough is enough.” *Id.* This
6 objection fails at its premise. The SEC’s investigation pertains to considerably more than the
7 timing and substance of a particular SEC filing; it also relates to all of Musk’s purchases of
8 Twitter stock in 2022 and his 2022 statements and SEC filings. *See id.*, ¶ 3 (describing the nature
9 of the SEC’s investigation). But even if the SEC’s investigation were focused on the timing and
10 substance of a particular SEC filing, the SEC’s subpoena would be enforceable. Recipients of
11 lawfully issued subpoenas do not get to pick and choose whether to comply with those
12 subpoenas depending on the potential securities law violations at issue.

13 Third, Musk objected to San Francisco as a testimony location. *Id.*, ¶ 13, Ex. 4. Musk’s
14 subsequent refusal to appear for testimony at any of the SEC’s offices, including its Fort Worth,
15 Texas office, which is closest to where Musk resides, has exposed this objection as mere pretext.
16 Moreover, the SEC has statutory authority to compel attendance of witnesses for investigative
17 testimony in any place in the United States. 15 U.S.C. § 78u(b).

18 Fourth, Musk objected to compliance with the SEC’s subpoena on the grounds that the
19 Commission is using its subpoena power to “harass” him. Andrews Decl., ¶ 13, Ex. 4. This is not
20 the first time that Musk has characterized legitimate government investigatory steps as
21 “harassment.” The Second Circuit recently rejected Musk’s claim of SEC “harassment” in
22 affirming a district court’s denial of Musk’s motion to terminate a 2018 SEC consent decree,
23 finding it unsupported. *See SEC v. Musk*, Case No. 22-1291, 2023 WL 3451402, at *2 (2d Cir.
24 May 15, 2023) (affirming district court’s denial of Musk’s motion to terminate SEC consent
25 decree and finding “no evidence to support Musk’s contention” that SEC investigations
26 constituted harassment). Musk’s vague assertion of SEC harassment here is similarly
27 unsupported. For the reasons described above, the SEC’s subpoena to Musk is proper and well
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1 within the SEC’s power to conduct investigations into potential violations of the federal
2 securities laws.

3 Fifth, Musk objected to his testimony on the grounds that a biography of Musk was
4 published on September 12, 2023, “containing new information potentially relevant to this
5 matter.” Andrews Decl., ¶ 13, Ex. 4. Musk claims that his “[c]ounsel require time to review this
6 material.” *Id.* The publication of Musk’s biography is not a legitimate basis for Musk to avoid
7 compliance with a lawfully issued investigative subpoena. In any event, Musk’s initial refusal to
8 comply with the subpoena has now presented his counsel with plenty of time to review the
9 biography for any relevant information, and so this objection is now moot in addition to being
10 legally insufficient from inception.

11 None of Musk’s objections has any legal validity, and he has no justifiable excuse for his
12 non-compliance with the SEC’s subpoena.

13 IV. CONCLUSION

14 For the foregoing reasons, the Commission respectfully requests that the Court issue an
15 order compelling Elon Musk to comply with the Commission’s administrative subpoena
16 requiring his testimony.² A proposed order granting such relief is filed concurrently with this
17 application.

18
19
20 Dated: October 5, 2023

Respectfully submitted,

21 /s/ Bernard B. Smyth

22 BERNARD B. SMYTH

23 Attorney for Applicant

24 SECURITIES AND EXCHANGE COMMISSION

25
26 _____
27 ² The Commission staff is available to conduct Musk’s testimony the week of November 13,
28 2023. The SEC staff can also be available the weeks of November 27, 2023, December 4,
2023, and December 11, 2023.