



Legal Document

Delaware Court of Chancery
Case No. 2020-0477-KSJM

**The Police and Fire Retirement System of the City of
Detroit v. Elon Musk, et al.**

Document 143



View Document



View Docket



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE POLICE AND FIRE
RETIREMENT SYSTEM OF THE
CITY OF DETROIT, derivatively on
behalf of TESLA, INC.,

Plaintiff,

v.

ELON MUSK, BRAD BUSS,
ROBYN M. DENHOLM, IRA
EHRENPREIS, LAWRENCE J.
ELLISON, ANTONIO J. GRACIAS,
STEPHEN T. JURVETSON, LINDA
JOHNSON RICE, JAMES
MURDOCH, KIMBAL MUSK,
KATHLEEN WILSON-
THOMPSON, and HIROMICHI
MIZUNO,

Defendants,

-and-

TESLA, INC., a Delaware
Corporation,

Nominal Defendant.

C.A. No. 2020-0477-KSJM

**STIPULATION AND AGREEMENT OF COMPROMISE AND
SETTLEMENT BETWEEN PLAINTIFF AND SETTLING DEFENDANTS**

This Stipulation and Agreement of Compromise and Settlement

("Stipulation") is entered into this 14th day of July 2023, by and among:

(i) plaintiff, the Police and Fire Retirement System of the City of Detroit

("Plaintiff"), derivatively on behalf of Tesla, Inc. (f/k/a Tesla Motors, Inc.,

“Tesla”) pursuant to Court of Chancery Rule 23.1; (ii) non-employee former and current Tesla directors Brad Buss, Robyn M. Denholm, Ira Ehrenpreis, Lawrence J. Ellison, Antonio J. Gracias, Stephen T. Jurvetson, Kimbal Musk, James Murdoch, Linda Johnson Rice, Kathleen Wilson-Thompson, and Hiromichi Mizuno (collectively, “Director Defendants”); and (iii) fellow Tesla director and Tesla’s Chief Executive Officer, Elon Musk (“Musk” and, together with Director Defendants, “Defendants”) (collectively, Defendants and Tesla are referred to as “Settling Defendants” and, together with Plaintiff, “Settling Parties”).

This Stipulation states the terms for the settlement and resolution of this matter among Settling Parties and is intended to fully and finally release, resolve, compromise, settle, and discharge the Released Claims, as that term is defined herein,¹ in connection with the action *The Police and Fire Retirement System of the City of Detroit v. Elon Musk, et al.*, C.A. No. 2020-0477-KSJM (Del. Ch.) (“Action”), subject to the approval of the Court of Chancery of the State of Delaware (“Court”).

WHEREAS, between June 17, 2017 and the present (“Relevant Period”), Director Defendants were granted certain options and cash during their service on the Tesla Board (“Relevant Period Director Compensation”).

¹ Unless otherwise specified, capitalized terms shall have the meaning set forth in this Stipulation.

WHEREAS, on June 17, 2020, Plaintiff filed a derivative complaint (“Complaint”) alleging breach of fiduciary duty against Defendants and unjust enrichment against Director Defendants relating to Director Defendants’ compensation.

WHEREAS, on September 17, 2020, Defendants served their Answer and Affirmative Defenses to the Complaint, and nominal defendant Tesla served its answer to the Complaint.

WHEREAS, on October 29, 2020, Plaintiff served a first request for production of documents on Settling Defendants, and Defendants served a first request for production of documents on Plaintiff.

WHEREAS, on November 13, 2020, Settling Parties filed a stipulation and proposed scheduling order, which the Court granted the same day.

WHEREAS, on November 30, 2020, Settling Defendants served responses and objections to Plaintiff’s first request for production, and Plaintiff served responses and objections to Defendants’ first request for production.

WHEREAS, on April 9, 2021, Settling Parties filed an amended stipulation and proposed scheduling order, which the Court granted on May 3, 2021.

WHEREAS, in June 2021 and May 2022, the Tesla Board unanimously approved and adopted resolutions to forego any automatic grants of annual stock option awards under Tesla’s Outside Director Compensation Policy (or otherwise

previously approved by the Tesla Board) until July 2023 (“2021 and 2022 Foregone Options”).

WHEREAS, on September 9, 2021, Plaintiff served a first set of interrogatories on Settling Defendants. Settling Defendants served their responses and objections between November 12, 2021, and December 17, 2021.

WHEREAS, on July 29, 2022, the Parties were notified that the case was reassigned to Chancellor Kathaleen St. Jude McCormick.

WHEREAS, on September 13, 2022, Plaintiff served a second set of interrogatories on Settling Defendants. Settling Defendants served their responses and objections between October 20, 2022, and April 5, 2023, and certain Defendants served amended responses and objections on January 27, 2023.

WHEREAS, on September 23, 2022, Plaintiff served a third set of interrogatories. Tesla served its responses and objections on October 24, 2022.

WHEREAS, on October 24, 2022, Plaintiff filed a motion to compel the production of certain documents by Settling Defendants. Following briefing and a hearing, on January 31, 2023, the Court granted in part and denied in part Plaintiff’s motion.

WHEREAS, on October 26, 2022, Plaintiff served a fourth set of interrogatories on Tesla. On November 28, 2022, Tesla served its responses and objections, which it amended on February 14, 2023.

WHEREAS, between December 2022 and April 2023, Plaintiff deposed 22 fact witnesses, including each Defendant.

WHEREAS, Settling Defendants produced documents to Plaintiff, with the first production of documents on December 14, 2020, and the last production of documents on March 23, 2023.

WHEREAS, on March 29, 2023, Plaintiff served a first request for admission on Settling Defendants. On April 28, 2023, Settling Defendants served their responses and objections.

WHEREAS, on April 14, 2023, Plaintiff served contention interrogatories on Settling Defendants. On June 2, 2023, Settling Defendants served their responses and objections.

WHEREAS, on April 20, 2023, Plaintiff served a second request for admission on Settling Defendants. On May 26, 2023, Settling Defendants served their responses and objections.

WHEREAS, Plaintiff served numerous third-party subpoenas and obtained third-party document productions between November 10, 2021 and May 1, 2023.

WHEREAS, on April 28, 2023, Plaintiff served the opening expert reports of Jesse M. Fried, Carl S. Saba, and David L. Yermack, and Defendants served the opening expert report of Kevin J. Murphy. On June 9, 2023, Plaintiff served the

rebuttal expert report of Jesse M. Fried, and Defendants served the rebuttal expert report of Kevin J. Murphy.

WHEREAS, beginning in November 2022, Plaintiff and Defendants from time to time engaged in arm's-length negotiations in efforts to settle Plaintiff's Claims without involvement of the Court. These efforts included participation in several mediation sessions before JAMS Mediator Robert A. Meyer, as well as numerous other settlement communications between Plaintiff and Defendants facilitated by Mr. Meyer.

WHEREAS, on June 20, 2023, following extensive negotiations, Settling Parties accepted a recommendation from Mr. Meyer relating to the Settlement Options and foregone compensation. On June 28, 2023, following further negotiations, Settling Parties agreed to the corporate governance reforms covered by this Stipulation. With Mr. Meyer's assistance, the Settling Parties finalized their negotiations of the Stipulation terms.

WHEREAS, this Stipulation is intended fully, finally, and forever to release, resolve, compromise, settle, and discharge the Released Claims and terminate the Action with prejudice.

WHEREAS, entry by Settling Parties into this Stipulation is not, and shall not be construed as or deemed to be evidence of, an admission as to the merit or lack of merit of any Claims or defenses asserted in the Action.

WHEREAS, Plaintiff and Plaintiff's Counsel have conducted discovery relating to the events and transactions underlying Plaintiff's claims. Plaintiff and Plaintiff's Counsel believe that they have meritorious claims and could prevail at trial. Nevertheless, based upon their evaluation of Settling Parties' claims and defenses, Plaintiff and Plaintiff's Counsel have determined that the Settlement terms set forth in this Stipulation are fair, reasonable, and adequate and that the Settlement confers substantial benefits upon Tesla and its stockholders given the costs, delay, and risk of continued litigation.

WHEREAS, Settling Defendants deny any and all allegations of wrongdoing, fault, liability, or damage whatsoever. Specifically, Settling Defendants deny that they breached any duties. Settling Defendants also maintain that they have meritorious defenses to all claims alleged in the Action and could prevail at trial. Settling Defendants also deny that Tesla or its stockholders were harmed by any conduct of Settling Defendants alleged in the Action or that could have been alleged. Each of Settling Defendants asserts that, at all relevant times, they acted in good faith and in a manner they reasonably believed to be in the best interests of Tesla and all of its stockholders. Nevertheless, based upon their evaluation of Settling Parties' claims and defenses, Settling Defendants, wishing to eliminate the uncertainty, risk, burden, and expense of further litigation to

themselves and to Tesla, have therefore determined to settle the Action on the terms and conditions set forth in this Stipulation.

WHEREAS, nothing in this Stipulation shall be construed as any admission by Settling Defendants of wrongdoing, fault, liability, or damages whatsoever. Nothing in this Stipulation shall be construed as an allocation of fault or liability between or among Settling Defendants.

WHEREAS, Settling Parties recognize that the Action has been filed and prosecuted by Plaintiff in good faith and defended by Settling Defendants in good faith and further that the terms of the Settlement as set forth herein, were negotiated at arm's length, were negotiated in good faith, and reflect an agreement reached voluntarily, based on the recommendation of a neutral mediator and after consultation with experienced legal counsel.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Settling Parties, through their undersigned attorneys, subject to the approval of the Court under Court of Chancery Rule 23.1, for the good and valuable consideration set forth herein and conferred on Tesla, the sufficiency of which is hereby acknowledged, that the Action against Settling Defendants shall be finally and fully settled, compromised, and dismissed with prejudice, and the Released Claims shall be finally and fully released, resolved, compromised,

settled, discharged, and dismissed with prejudice as against the Released Persons, in the manner set forth herein.

1. DEFINITIONS

In addition to the terms defined elsewhere in this Stipulation, the following capitalized terms, used in this Stipulation, shall have the meanings specified below:

1.1 “Business Day” means any day other than a day on which banks in Delaware are required or permitted to close.

1.2 “Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, diminutions in value, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys’ fees, expert or consulting fees, actions, potential actions, causes of action, suits, agreements, judgments, defenses, counterclaims, offsets, decrees, matters, issues, and controversies of any kind, nature, or description whatsoever, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, which now exist, or heretofore or previously existed, or may hereafter exist, including known claims and unknown claims, whether direct, derivative, individual, class, representative, legal, equitable, or of any other type, or in any other capacity, whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule (including claims

within the exclusive jurisdiction of the federal courts); provided, however, that Claims shall not include claims to enforce this Stipulation or any claims by Settling Defendants or any other insured to enforce any rights they may have under any contract or policy of insurance.

1.3 “Current Director Defendants” means the non-employee Director Defendants who continue to serve as Directors on the Tesla Board as of the date of this Stipulation, namely; Robyn M. Denholm, Ira Ehrenpreis, Kimbal Musk, James Murdoch, and Kathleen Wilson-Thompson.

1.4 “Current Stockholders” means any Person or Persons who are record or beneficial owners of Tesla common stock as of the close of business on the date of this Stipulation, excluding Defendants and their legal representatives, heirs, successors, or assigns.

1.5 “Effective Date” means the first Business Day following the date of the Final Approval.

1.6 “Exhibits” means the Final Judgment (Exhibit A hereto), the Notice (Exhibit B hereto), and the Scheduling Order (Exhibit C hereto).

1.7 “Fee and Expense Award” means the Court’s award to Plaintiff’s Counsel of fees and expenses to be paid by Tesla and approved by the Court in full satisfaction of any and all claims for attorneys’ fees that have been, could be, or could have been asserted by Plaintiff’s Counsel or any other counsel with respect

to the Settlement or against Settling Defendants. For the avoidance of doubt, the Fee and Expense Award shall be subject to the terms of Section 6.1 and 7.1 of this Stipulation.

1.8 “Final Approval” with respect to the Final Judgment approving the Settlement of the Action, means: (a) if no appeal from the Final Judgment is timely filed, the expiration date of the time provided for filing or noticing any appeal under Delaware Supreme Court Rule 6; or (b) if any appeal is taken, the date on which all appeals, including petitions for rehearing or reargument, have been finally disposed of (whether through expiration of time to file, through denial of any request for review, by affirmance on the merits, or otherwise).

1.9 “Final Judgment” means the Order and Final Judgment to be entered by the Court dismissing this Action with prejudice, substantially in the form attached as **Exhibit C** hereto.

1.10 “Non-Employee Directors” means the members of the Tesla Board who are not employees or officers of Tesla.

1.11 “Notice” means the Notice of Pendency and Proposed Settlement of Derivative Action, substantially in the form attached hereto as **Exhibit B**.

1.12 “Notice Costs” means the costs and expenses associated with providing Notice.

1.13 “Other Tesla Directors” means any directors other than Director Defendants who serve on the Tesla Board during the Settlement Governance Period, including Joe Gebbia, JB Straubel, and any future director(s) who serve(s) on the Tesla Board during the Settlement Governance Period, limited to the period while such directors serve on the Tesla Board.

1.14 “Person” means an individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, syndicate, person, trust, estate, association, organization, or other entity, including any governmental authority, and including any successor, by merger or otherwise, of any of the foregoing.

1.15 “Plaintiff’s Counsel” means Fields Kupka & Shukurov LLP, Bleichmar Fonti & Auld LLP, McCarter & English LLP, and Clark Hill PLC.

1.16 “Released Claims” means Released Settling Defendant Parties’ Claims and Released Plaintiff Parties’ Claims, collectively. Released Claims do not include claims relating solely to conduct postdating the date of this Stipulation.

1.17 “Released Persons” means Released Settling Defendant Parties and Released Plaintiff Parties.

1.18 “Released Plaintiff Parties” means (i) Plaintiff and (ii) as applicable, its respective past, present, or future family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations,

agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, limited liability companies, corporations, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, financing sources, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, associates, and insurers, coinsurers, and re-insurers.

1.19 “Released Plaintiff Parties’ Claims” means any and all Claims that were asserted in the Complaint or could have been asserted, whether known or unknown, by Released Plaintiff Parties or Tesla or any of its stockholders or affiliates against Settling Defendants that arise out of, are based upon, or relate in any way to the Relevant Period Director Compensation, including any actions, inactions, deliberations, discussions, decisions, votes, disclosures, non-disclosures, or any other conduct of any kind alleged, set forth, or referred to in the Complaint, or to the institution, prosecution, settlement, or dismissal of the Action. For the avoidance of doubt, the Released Plaintiff’s Claims does not include claims already asserted in an action other than this Action, including, but not limited to, the claims asserted in *Tornetta v. Elon Musk, et al.*, C. A. 2018-0408-KSJM (Del. Ch).

1.20 “Released Settling Defendant Parties” means (i) Settling Defendants and (ii) as applicable, their respective past, present, or future family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, limited liability companies, corporations, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, financing sources, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, associates, and insurers, coinsurers, and re-insurers.

1.21 “Released Settling Defendant Parties’ Claims” means all Claims that could have been asserted, whether known or unknown, by Settling Defendants against any Released Plaintiff Parties or Tesla or any of its stockholders or affiliates that arise out of, are based upon, or relate in any way to the Relevant Period Director Compensation, including any actions, inactions, deliberations, discussions, decisions, votes, disclosures, non-disclosures, or any other conduct of any kind alleged, set forth, or referred to in the Complaint, or to the institution, prosecution, settlement, or dismissal of the Action.

1.22 “Scheduling Order” means the scheduling order to be entered pursuant to Rule 23.1 of the Rules of the Court of Chancery, substantially in the form attached hereto as **Exhibit A**.

1.23 “Settlement” means the settlement contemplated by this Stipulation and its Exhibits.

1.24 “Settlement Governance Period” means the period from the Effective Date until five (5) years after the Effective Date.

1.25 “Settlement Hearing” means the hearing to be held by the Court to determine whether: (i) Plaintiff and Plaintiff’s Counsel have adequately represented the interests of Tesla and its stockholders; (ii) the proposed settlement of the Action should be approved by the Court as fair, reasonable, adequate, and in the best interests of Tesla and its stockholders; (iii) the Action should be dismissed with prejudice and all Released Claims against Released Persons should be fully, finally, and forever released, settled, and discharged; (iv) whether and in what amount any Fee and Expense Award should be paid to Plaintiff’s Counsel out of the Settlement Option Amount; and (v) Final Judgment approving the Settlement of the Action should be entered in accordance with the terms of this Stipulation.

1.26 “Settlement Stock Price” means the closing price of Tesla stock on June 16, 2023, as recorded by finance.yahoo.com (*i.e.*, \$260.54).

1.27 “Tesla Board” means the Board of Directors of Tesla, Inc.

1.28 “Total Weighted Average Strike Price” means the weighted average strike price of all options awarded to Director Defendants during the Relevant Period that were not cancelled or forfeited (approximately \$24.6286, rounded to four decimals).

2. SETTLEMENT CONSIDERATION

In consideration for the full and final release, settlement, and discharge of any and all Released Claims against Released Persons upon Final Approval, Settling Parties have agreed to the following consideration:

2.1 Director Defendants shall, jointly and severally, provide to Tesla the value of 3,130,406 options (“Settlement Options”) using the methods set forth in this Section, which shall have the total value set forth in Section 2.6 of this Stipulation.

2.2 Director Defendants shall return the Settlement Options in the form of (i) cash (“Returned Cash”), (ii) unrestricted common shares of Tesla stock (“Returned Stock”), and/or (iii) unexercised Tesla options awarded as compensation to the Director Defendants during the Relevant Period (“Returned Options”). The Director Defendants shall have sole discretion on the ratio of Returned Cash, Returned Stock, and Returned Options that they provide to Tesla, provided that the total value of Returned Cash, Returned Stock, and Returned

Options, using the methods set forth in this Section, equals the Settlement Option Amount (as defined in Section 2.6).

2.3 The value of each Returned Option shall be the difference between the Settlement Stock Price and the actual strike price of each Returned Option. Tesla shall cause the Returned Options to be canceled on the next Business Day after Final Approval, subject to Section 7.3. The number of authorized shares under Tesla's 2019 Equity Incentive Plan (as described in Tesla's SEC's filings) shall be increased by the total number of Returned Options upon cancelation of the Returned Options.

2.4 For purposes of determining the amount of Returned Cash, each Settlement Option shall be converted to an amount of Returned Cash by calculating the difference between the Settlement Stock Price and the Total Weighted Average Strike Price (approximately \$235.9114, rounded to four decimals). For illustrative purposes only, to provide 1,000 Settlement Options in Returned Cash, a Director Defendant would pay \$235,911 (rounded) (*i.e.*, 1,000 x \$235.9114).

2.5 For purposes of determining the amount of Returned Stock, each Settlement Option shall be converted to a number of Returned Shares by calculating the difference between the Settlement Stock Price and the Total Weighted Average Strike Price, divided by the Settlement Stock Price, regardless

of the price of Tesla common stock on the Effective Date. For illustrative purposes only, to provide 1,000 Settlement Options in Returned Stock, a Director Defendant would return 906 Tesla shares (rounded up) (*i.e.*, $1,000 \times \$235.9114$ ($\$235,911$) / $\$260.54$). The value of each share of Returned Stock shall be the Settlement Stock Price, *i.e.* $\$260.54$, regardless of the price of Tesla common stock on the Effective Date.

2.6 Using the valuation methods set forth in this Stipulation, Director Defendants shall deliver to Tesla the value of the Settlement Options, which is equal to $\$735,266,505$ (seven hundred thirty-five million, two hundred sixty-six thousand, five hundred five U.S. Dollars) (“Settlement Option Amount”). The Settlement Option Amount consists of (i) $\$458,649,785$ in Returned Options, using the valuation method for Returned Options set forth in Section 2.3 of this Stipulation, and (ii) $\$276,616,720$ in Returned Cash and/or Returned Stock, combined, using the valuation methods for Returned Cash and Returned Stock set forth in Sections 2.4 and 2.5, respectively, of this Stipulation. In the event that Director Defendants return a different combination of (i) Returned Options and (ii) Returned Cash and/or Returned Stock than what is reflected in this Section 2.6, such adjustment shall not decrease the Settlement Option Amount, and Director Defendants shall inform the Court of any such adjustments no later than five (5) Business Days prior to the Settlement Hearing.

2.7 Director Defendants, jointly and severally, shall cause the Settlement Option Amount (using the valuation methods set forth in this Section) to be provided to Tesla within fifteen (15) Business Days after entry of the Final Judgment. The Settlement Option Amount shall be applied in the manner set forth in Section 7 of this Stipulation.

2.8 Director Defendants shall forego permanently the 2021 and 2022 Foregone Options (to the extent Director Defendants served on the Tesla Board during such period) and shall not hereafter receive any compensation for Tesla Board service for 2021 or 2022. The Current Director Defendants shall also forego permanently any compensation for Tesla Board service for 2023.

2.9 Tesla and the Tesla Board (including, as applicable, Current Director Defendants and Other Tesla Directors) shall implement and maintain in substance the measures set forth in Sections 2.10 through 2.14 of this Stipulation during the Settlement Governance Period.

2.10 As soon as practicable after the Effective Date, the Compensation Committee of the Tesla Board (“Compensation Committee”) shall amend its charter to provide that the Compensation Committee shall be responsible for:

- (a) conducting annually a review and assessment of all compensation, including cash and equity-based compensation, paid by Tesla to Non-Employee Directors;
- (b) engaging an independent compensation consultant (“Independent Consultant”) annually to advise the Compensation Committee in

connection with such annual review and assessment, including with respect to (i) the amount and type of Non-Employee Director compensation, and (ii) any comparative data deemed appropriate by such consultant; and

- (c) recommending to the Tesla Board, on the basis of such annual review and assessment, the amount and type of compensation payable to Non-Employee Directors.

2.11 The Tesla Board (including, as applicable, Current Director Defendants and Other Tesla Directors) shall review annually all compensation payable to Non-Employee Directors, including the recommendation by the Compensation Committee as to such compensation.

2.12 On an annual basis, Tesla shall submit the proposed annual compensation to be paid to Non-Employee Directors to an approval vote of the majority of Unaffiliated Tesla Stockholders present in person or represented by proxy and entitled to vote on such decision. For purposes of this Stipulation, “Unaffiliated Tesla Stockholders” means all Tesla stockholders of record other than (i) Defendants and (ii) Other Tesla Directors (but only while such Other Tesla Directors serve on the Tesla Board). For the avoidance of doubt, Defendants and Other Tesla Directors (but only while such Other Tesla Directors serve on the Tesla Board) shall (with respect to any and all shares over which they hold beneficial ownership, as that term is defined in 17 CFR § 240.13d-3(a)) abstain from voting in their capacity as stockholders on the votes required by this Section

and shall not be counted as shares present or entitled to vote for purposes of determining the majority.

2.13 Prior to any stockholder vote on compensation to be paid to Non-Employee Directors, Tesla shall disclose to stockholders in a proxy at least the following information, in a manner consistent with Tesla's operative bylaws:

- (a) a description of the philosophy relating to Non-Employee Director compensation;
- (b) the process by which decisions were made concerning Non-Employee Director compensation, including with respect to the role and analysis of the Independent Consultant and any peer group or other comparative data deemed appropriate by such Independent Consultant (or that no such data was deemed appropriate); and
- (c) the proposed compensation of Non-Employee Directors, including the cash and equity value of such compensation, on a director-by-director basis.

2.14 As soon as practicable after the Effective Date, Tesla shall review its internal controls specific to Non-Employee Director compensation and implement any changes necessary to continue to ensure appropriate administration of Non-Employee Director compensation. On an annual basis, Tesla shall continue to review its internal controls specific to Non-Employee Director compensation and continue to report the results of that review to the Audit Committee of the Tesla Board ("Audit Committee") and the Audit Committee minutes shall reflect that such report was provided.

3. SCOPE OF THE SETTLEMENT

3.1 Upon the entry of the Final Judgment, the Action against Settling Defendants shall be dismissed with prejudice. The foregoing dismissal is without fees or costs, except as expressly provided in this Stipulation.

3.2 Upon the Effective Date, Plaintiff and Tesla and, as applicable, its stockholders (excluding Defendants), and their respective past, present, or future family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, limited liability companies, corporations, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, financing sources, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, associates, and insurers, coinsurers, and re-insurers shall thereupon be deemed to have fully, finally, and forever released, settled, and discharged Released Settling Defendant Parties from and with respect to every one of Released Plaintiff Parties' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Plaintiff Parties' Claims against any Released Settling Defendant Parties.

3.3 Upon the Effective Date, Settling Defendants and, as applicable, their respective past, present, or future family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, limited liability companies, corporations, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, financing sources, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, associates, and insurers, coinsurers, and re-insurers shall thereupon be deemed to have fully, finally, and forever released, settled, and discharged Released Plaintiff Parties and Tesla and its stockholders (excluding Defendants) from and with respect to every one of Released Settling Defendant Parties' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Settling Defendant Parties' Claims against any Released Plaintiff Parties or Tesla and its stockholders (excluding Defendants).

3.4 The contemplated releases given by Settling Parties in this Stipulation extend to Released Claims that Settling Parties did not know or suspect to exist at

the time of the release, which if known, might have affected the decision to enter into this Settlement.

3.5 With respect to any and all Released Claims, Settling Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of the United States, any law of any state, or principle of common law which governs or limits a person's release of unknown claims to the fullest extent permitted by law, and to have relinquished, to the full extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code (or any similar, comparable or equivalent provision of any law of any state or territory of the United States, federal law, or principle of common law), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Settling Parties and Current Stockholders shall be deemed by operation of law to have acknowledged that the foregoing waiver was separately bargained for and is a key element of the Settlement.

3.6 Settling Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to

the Released Claims, but that it is their intention to fully, finally, and forever settle any and all such Released Claims, known or unknown, suspected or unsuspected, without regard to the subsequent discovery or existence of such additional or different facts, to the fullest extent permitted by law.

3.7 The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and the Released Claims as against Settling Parties. It is the intention of Settling Parties that the Settlement eliminate all further risk and liability relating to the Released Claims as against Settling Parties, and that the Settlement shall be a final and complete resolution of all disputes asserted or which could be or could have been asserted with respect to the Released Claims as against Settling Parties.

4. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR APPROVAL

4.1 As soon as practicable, and in no event later than two (2) Business Days after this Stipulation has been executed, Settling Parties shall submit to the Court this Stipulation, together with its Exhibits, and shall jointly apply to the Court for entry of the Scheduling Order establishing the procedure for: (i) the provision of Notice, (ii) the Court's consideration of the Settlement, and (iii) the application of Plaintiff's Counsel for reasonable attorneys' fees and expenses incurred in connection with the Action ("Fee and Expense Application").

4.2 As soon as practicable after the date of entry of the Scheduling Order, and in no event fewer than sixty (60) calendar days before the Settlement Hearing, Tesla shall (i) use reasonable best efforts, pursuant to customary notice practices, to cause the Notice to be mailed to all Current Stockholders; and (ii) file a Form 8-K with the U.S. Securities & Exchange Commission notifying stockholders of the Settlement and attaching a copy of the Notice (and post the 8-K on Tesla's investor relations website). Tesla shall request that Current Stockholders who held or hold Tesla common stock on behalf of beneficial owners and who receive the Notice forward the Notice promptly to such beneficial owners. Tesla shall use reasonable best efforts to provide notice to such beneficial owners by making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners. Any and all costs with respect to the mailing of the Notice shall be paid by Tesla, subject to Section 7.1 of this Stipulation, such that none of the Released Persons shall have any liability or responsibility for the expenses associated with providing the Notice. Fields Kupka & Shukurov LLP and Bleichmar Fonti & Auld LLP shall post, at their expense, copies of the Notice and the Stipulation on their websites (www.fksfirm.com and www.bfalaw.com).

4.3 If the Court approves the Settlement (including any modification thereto made with the consent of the parties as provided for herein) as fair,

reasonable, adequate, and in the best interests of Plaintiff and Tesla and its stockholders, Settling Parties shall jointly request that the Court enter the Final Judgment substantially in the form attached hereto as **Exhibit C**.

5. CONDITIONS OF SETTLEMENT

5.1 This Settlement shall be subject to the following conditions, which Settling Parties shall use their reasonable best efforts to achieve:

- (a) The Court enters the Scheduling Order in all material respects in the form attached hereto as **Exhibit A**;
- (b) The Court enters in all material respects the Final Judgment in the form attached hereto as **Exhibit C**;
- (c) Dismissal of the Action with prejudice, without the award of any damages, costs, or fees, except as expressly provided for in this Stipulation;
- (d) The Effective Date shall have occurred; and
- (e) Settling Parties have complied with their obligations set forth herein.

6. ATTORNEYS' FEES AND EXPENSES

6.1 Plaintiff's Counsel will submit a Fee and Expense Application to the Court. Settling Parties acknowledge and agree that any Fee and Expense Award in connection with the Settlement shall be paid by Tesla out of the Settlement Option

Amount, as set forth in Section 7 of this Stipulation, and shall reduce the settlement consideration paid to Tesla accordingly.

6.2 Defendants shall bear no expenses, costs, damages, or fees alleged or incurred by Released Plaintiff Parties.

6.3 The disposition of the Fee and Expense Application is not a material term of this Stipulation, and it is not a condition of this Stipulation that such application be granted. The Fee and Expense Application may be considered separately from the proposed Settlement. Any disapproval or modification of the Fee and Expense Application by the Court or on appeal shall not affect or delay the enforceability of this Settlement, provide any of Settling Parties with the right to terminate the Settlement, or affect or delay the binding effect or finality of the Final Judgment and the release of the Released Claims. In the event the Settlement does not become final, nothing herein shall preclude Plaintiff or Plaintiff's Counsel from seeking and receiving an award of attorneys' fees and expenses in connection with Plaintiff's Claims against Settling Defendants.

7. USE AND CERTIFICATION OF THE SETTLEMENT OPTION AMOUNT

7.1 The Settlement Option Amount (provided in the form of Returned Cash, Returned Stock, and/or Returned Options) shall be applied as follows:

- (a) Tesla shall recoup its payment of the Notice Costs.

- (b) Tesla shall pay Plaintiff's Counsel the Fee and Expense Award, within twenty (20) Business Days of entry of the Final Judgment, notwithstanding the existence of objections thereto, or the potential for appeal therefrom, subject to Section 7.4 of this Stipulation.
- (c) Tesla shall retain the balance of the Settlement Option Amount, notwithstanding the existence of objections thereto, or the potential for appeal therefrom, subject to Sections 7.3 and 7.4 of this Stipulation.

7.2 Within thirty (30) Business Days of entry of the Final Judgment, Tesla's Chief Accounting Officer shall certify to the Court that:

- (a) Tesla has received the full Settlement Option Amount (returned in any form permitted by and calculated pursuant to Section 2 of this Stipulation). The certification shall include the aggregate amount and value of each of the Returned Cash, Returned Stock, and Returned Options (*e.g.*, the total number of Returned Options and the value of those Returned Options using the method set forth in Section 2).
- (b) The Settlement Option Amount has been applied pursuant to the terms of Section 7.1 of this Stipulation.

7.3 In the event that Final Approval is not granted within 30 calendar days of the Final Judgment, Tesla shall ensure that for any Returned Options that would have expired before Final Approval, the expiration date of those Returned Options shall be 30 Business Days after Final Approval.

7.4 In the event of a reversal or modification of the Final Judgment on appeal, in whole or in part, Plaintiff's Counsel and Tesla, as applicable, shall be obligated to repay to Director Defendants any amounts necessary, and shall not

cancel the Returned Options as necessary, to conform to the appellate decision, unless otherwise directed by the Court.

8. TERMINATION OF SETTLEMENT

8.1 If either (i) the Court alters the Final Judgment in any material respect prior to entry, or (ii) the Court enters the Final Judgment, but on or following appellate review, the Final Judgment is modified or reversed in any material respect, this Stipulation shall be canceled and terminated unless each Settling Party to this Stipulation, within twenty (20) Business Days from receipt of such ruling, agrees in writing with the other Settling Parties to proceed with the Settlement, including only with such modifications, if any, as to which all Settling Parties agree.

8.2 If this Stipulation is disapproved, canceled, or terminated pursuant to its terms, or the Settlement otherwise does not receive approval by the Court, (i) Settling Parties shall be deemed to have reverted to their respective litigation status as of the date of this Stipulation, and Settling Parties shall negotiate a proposed revised case schedule to file with the Court; (ii) all of Settling Parties' respective Claims and defenses shall be preserved without prejudice in any way; (iii) the statements made in connection with the negotiations of this Stipulation or the approval of the Settlement shall not be deemed or used to prejudice in any way the positions of any of Settling Parties with respect to the Action, or any other

litigation or judicial proceeding by Settling Parties or to constitute an admission by any Settling Party; and (iv) this Stipulation, its contents, and any statements made in connection with its negotiation or any settlement communications shall not be admissible in evidence in the Action, or in any other litigation or judicial proceeding by Settling Parties.

9. NO WAIVER

9.1 Any failure by any Settling Party to this Stipulation to insist upon the strict performance by any other Settling Party to this Stipulation of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Settling Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Settling Party.

9.2 No waiver, express or implied, by any Settling Party to this Stipulation of any breach or default by any other Settling Party to this Stipulation in the performance by the other Settling Party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

10. ENTIRE AGREEMENT

10.1 This Stipulation and the Exhibits hereto constitute the entire agreement among Settling Parties with respect to the subject matter hereof and

may not be amended nor may any of its provisions be waived except by a writing signed by all Settling Parties hereto. All of the Exhibits hereto are incorporated by reference as if set forth herein verbatim, and the terms of all Exhibits are expressly made part of this Stipulation. No representations, warranties or inducements have been made to or relied upon by any Settling Party concerning this Stipulation or its Exhibits, other than the representations, warranties and covenants expressly set forth in such documents.

11. RETENTION OF JURISDICTION

11.1 The Court retains exclusive jurisdiction to consider all further applications arising out of or connected with the proposed Settlement, including any claim of breach of this Stipulation. This Stipulation shall be deemed made and entered into in the State of Delaware, regardless of where it may be executed, and shall in all respects be interpreted, enforced, and governed exclusively under the internal laws of Delaware (without regard to the state's conflict of law provisions), and in the courts of the State of Delaware.

12. RIGHT TO INJUNCTIVE RELIEF

12.1 Settling Parties acknowledge and agree that: (i) any breach of this Stipulation may result in immediate and irreparable injury for which there is no adequate remedy available at law; and (ii) in addition to any other remedies

available, specific performance and injunctive relief are appropriate remedies to compel performance of this Stipulation.

13. COUNTERPARTS

13.1 This Stipulation may be executed in one or more counterparts and transmitted by facsimile, via e-mail as a PDF file, or as an original signature by any of the signatories hereto, and as so executed shall constitute one agreement.

14. EXECUTION AUTHORITY

14.1 Each of the attorneys executing this Stipulation has been duly empowered and authorized by his/her respective client(s) to do so.

15. SUCCESSORS AND ASSIGNS

15.1 This Stipulation is and shall be binding upon, and shall inure to the benefit of, Settling Parties (and, in the case of the releases, all Released Persons as third-party beneficiaries) and their respective legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing, including without limitation any corporation or other entity with which any party hereto may merge, reorganize, or otherwise consolidate.

16. REASONABLE BEST EFFORTS

16.1 Settling Parties and their respective counsel agree to cooperate fully with one another and to use their reasonable best efforts to obtain the Court's

approval of this Stipulation and the Settlement and a dismissal with prejudice of the Action (including, but not limited to, resolving any objections raised to the Settlement), and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain Final Approval by the Court of the settlement of the Action.

17. STIPULATION NOT AN ADMISSION

17.1 Neither this Stipulation nor any act or omission in connection therewith is intended or shall be deemed to be a presumption, concession, or admission by: (i) any of the Settling Defendants, any of the Released Settling Defendant Parties, or the Tesla Board as to the validity of any claims, causes of action, or other issues alleged or that could have been alleged in the Action or in any other litigation, or to be evidence of or constitute an admission of wrongdoing, fault, liability, or damages by any of them, and each of them expressly denies any such wrongdoing, fault, liability, or damages; or (ii) Plaintiff as to the infirmity of any claim or the validity of any defense, or to the amount of any damages.

17.2 Notwithstanding the foregoing, any of the Released Parties may file this Stipulation, the Final Judgment, or any other judgment or order of the Court related to this Stipulation in any other action that may be brought against them, in order to support any and all defenses or counterclaims based on res judicata,

collateral estoppel, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18. MISCELLANEOUS

18.1 All of the Exhibits attached hereto are material and integral parts hereof and shall be incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any Exhibit attached hereto, the terms of the Stipulation shall prevail.

18.2 This Stipulation may not be amended or modified, nor may any of its provisions be waived, except by a written instrument signed by counsel for Plaintiff and Settling Defendants or their successors-in-interest (or their counsel).

18.3 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

18.4 Plaintiff and Settling Defendants represent and agree that the terms of the Settlement reached between Plaintiff and Settling Defendants were negotiated at arm's length and in good faith by Plaintiff and Settling Defendants and reflect the Settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

18.5 Without further order of the Court, Settling Parties may agree to reasonable extensions of time to carry out the provisions of this Stipulation through written agreement signed by counsel for all Settling Parties.

18.6 To the extent permitted by law, all agreements made and orders entered during the course of or in the Action relating to the confidentiality of documents or information shall survive this Stipulation and any termination thereof.

18.7 This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one or more Settling Party, it being recognized that the Stipulation and its Exhibits are the result of arm's-length negotiations among Settling Parties and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

Dated: July 14, 2023

MCCARTER & ENGLISH, LLP

Of Counsel:

William J. Fields
Christopher J. Kupka
Samir Shukurov
FIELDS KUPKA & SHUKUROV LLP
1441 Broadway, 6th Floor #6161
New York, New York 10018
(212) 231-1500

Joseph A. Fonti
Nancy A. Kulesa
George N. Bauer
Thayne Stoddard
BLEICHMAR FONTI & AULD LLP
7 Times Square, 27th Floor
New York, New York 10036
(212) 789-1340

/s/ Andrew S. Dupre

Andrew S. Dupre (No. 4621)
Sarah E. Delia (No. 5833)
Renaissance Centre
405 N. King Street, 8th Floor
Wilmington, DE 19801
(302) 984-6300

Counsel for Plaintiff

OF COUNSEL:

Evan R. Chesler
Vanessa A. Lavelly
**CRAVATH, SWAINE &
MOORE LLP**
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
(212) 474-1000

/s/ Raymond J. DiCamillo

Raymond J. DiCamillo (#3188)
Kevin M. Gallagher (#5337)
Kyle H. Lachmund (#6842)
Richards, Layton & Finger, P.A.
920 N. King Street
Wilmington, Delaware 19801
(302) 651-7700

*Counsel for Defendants Elon Musk,
Brad Buss, Robyn M. Denholm, Ira
Ehrenpreis, Lawrence J. Ellison,
Antonio J. Gracias, Stephen T.
Jurvetson, Linda Johnson Rice, James
Murdoch, Kimbal Musk, Kathleen
Wilson-Thompson, and Hiromichi
Mizuno*

/s/ Jason C. Jowers

Jason C. Jowers (#4721)
Sarah T. Andrade (#6157)
Bayard, P.A.
600 N. King St, Suite 400
Wilmington, Delaware 19801
(302) 655-5000

*Attorneys for Nominal Defendant
Tesla, Inc.*