



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.)

C.A. No. 2020-0477-KSJM)

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.)

[PROPOSED] ORDER AND FINAL JUDGMENT

On this __ day of _____, 2023, a hearing having been held before this Court to determine whether Plaintiff and Plaintiff’s Counsel have adequately represented the interests of Tesla and its stockholders; whether the proposed settlement of the Action, as reflected in the Stipulation and Agreement of Compromise and Settlement Between Plaintiff and Settling Defendants (the

“Stipulation”), including Exhibits A-C thereto, which are incorporated therein by reference,¹ are fair, reasonable, adequate, and in the best interests of Tesla and its stockholders; whether the above-captioned action (the “Action”) should be dismissed with prejudice and all Released Claims against Released Persons should be fully, finally, and forever released, settled, and discharged; whether and in what amount any Fee and Expense Award should be paid to Plaintiff’s Counsel out of the Settlement Option Amount; and whether Final Judgment approving the Settlement of the Action should be entered in accordance with the terms of the Stipulation; and the Court having considered all matters submitted to it at the hearing and otherwise;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over Settling Parties and each Tesla stockholder.

2. The dissemination of the Notice of Pendency and Proposed Settlement of Derivative Action (the “Notice”) pursuant to and in the manner prescribed in the Scheduling Order entered on _____, 2023 (the “Scheduling Order”),

¹ Capitalized terms not defined in this Judgment have the meaning set forth in the Stipulation (certain of which are repeated here for ease of reference only).

which was mailed by first-class mail on _____, 2023, is hereby determined to be the best notice reasonably practicable under the circumstances, to constitute due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement, and to have met the requirements of Court of Chancery Rules 23.1, due process, and applicable law. It is further determined that Tesla and its stockholders and all Released Persons are bound by this Final Judgment.

3. The Court hereby finds that the requirements of the Court of Chancery Rules and due process have been satisfied in connection with the Notice.

4. The Settlement is found to be fair, reasonable, and adequate, and in the best interests of Tesla and its stockholders, and is hereby approved in all respects pursuant to Court of Chancery Rule 23.1.

5. Settling Parties are hereby authorized and directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation, and the Register in Chancery is directed to enter and docket this Final Judgment.

6. The Action is hereby dismissed with prejudice. The foregoing dismissal is without fees or costs, except as expressly provided in the Stipulation.

7. 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.

8. 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).

- a. "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 the Stipulation.
- b. "Released Persons" means Released Settling Defendant Parties and Released Plaintiff Parties.
- c. "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.

- d. “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).

- e. “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.
- f. “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.

9. The releases given by Settling Parties in the 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.

- a. 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.

- b. 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 Settling Parties 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.

10. The obligations incurred pursuant to the Stipulation will 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.

EXHIBIT C

11. Within fifteen (15) Business Days after entry of the Final Judgment, Director Defendants, jointly and severally, shall cause the Settlement Option Amount (using the valuation methods set forth in Section 2 of the Stipulation) to be provided to Tesla. 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 Section 2 of the Stipulation, equals the Settlement Option Amount (as defined in Section 2.6 of the Stipulation).

12. Plaintiff's Counsel are hereby awarded a Fee and Expense Award in the amount of \$ _____, which amount the Court finds to be fair and reasonable. The Fee and Expense Award shall be paid pursuant to Sections 7.1 and 7.4 of the Stipulation and shall be paid from the Settlement Option Amount, reducing the settlement consideration paid to Tesla accordingly.

13. Plaintiff's Counsel, in their sole discretion, shall be responsible for distributing the Fee and Expense Award. Any fees or expenses associated with Plaintiff's Counsel's distribution of the Fee and Expense Award shall be borne solely by Plaintiff's Counsel.

14. Without affecting the finality of this Final Judgment in any way, this Court retains continuing and exclusive jurisdiction over Settling Parties for

EXHIBIT C

purposes of the administration, interpretation, implementation, and enforcement of the Settlement.

Chancellor McCormick

Dated: _____, 2023