



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

**AFFIDAVIT OF JOSEPH A. FONTI IN SUPPORT OF
SETTLEMENT APPROVAL, AWARD OF ATTORNEYS' FEES AND
EXPENSES, AND INCENTIVE AWARD**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Joseph A. Fonti, being duly sworn, deposes and states as follows:

1. I am a partner of Bleichmar Fonti & Auld LLP (“BFA”) and a member in good standing of the State Bar of New York admitted *pro hac vice* in the above-referenced action (the “Action”). BFA serves as co-counsel for Plaintiff the Police and Fire Retirement System of the City of Detroit (“Plaintiff”) in the Action.

2. I submit this Affidavit in support of the proposed settlement and Plaintiff’s Counsel’s application for a Fee and Expense Award, and Plaintiff’s incentive award.¹ I make this Affidavit based on personal knowledge and am competent to testify.

3. BFA undertook this Action on an entirely contingent basis.

4. Table 1 below is a schedule summarizing the amount of time spent by each of BFA’s attorneys and professional support staff from the Action’s inception through and including July 14, 2023, the rates applicable to each individual, and a lodestar calculation for each individual.

5. Table 1 is based on contemporaneous time records prepared and maintained by BFA in the ordinary course. As the lead partner responsible for supervising BFA’s work on this case, I supervised and participated in a review of these time records to prepare this affidavit. The purpose of this review was to confirm both the accuracy of the time entries and the necessity for, and

¹ Capitalized terms not defined herein have the meanings specified in the Stipulation and Agreement of Compromise and Settlement Between Plaintiff and Settling Defendants (Trans. ID 70397017) (the “Stipulation”).

reasonableness of, the time committed to the Action. As a result of this review, reductions were made in the exercise of billing judgment. For example, Table 1 excludes all time for BFA attorneys and staff who billed less than 15 hours to the Action, all time expended after July 14, 2023, the date on which the parties executed the Stipulation, and all time concerning Fee and Expense Award matters.

6. Following this review and the adjustments made, as set forth in Table 1, BFA attorneys and professional support staff devoted 10,546.50 hours with a collective lodestar of \$6,926,670.25 from the inception of the Action through July 14, 2023, the date on which the parties executed the Stipulation. I believe that the time reflected in BFA's lodestar calculation, as set forth herein, is reasonable in amount and was necessary for the effective and efficient prosecution and resolution of the Action.

TABLE 1 – BFA LODESTAR

Timekeeper Name	Position	Hours	Hourly Rate	Lodestar
George Bauer	Partner	1,173.80	\$895	\$1,050,551.00
Peter Borkon	Former Partner	49.30	\$950	\$46,835.00
Javier Bleichmar	Partner	133.25	\$1,150	\$153,237.50
Derrick Farrell	Partner	20.60	\$895	\$18,437.00
Joseph A. Fonti	Partner	604.05	\$1,150	\$694,657.50
Nancy A. Kulesa	Partner	738.10	\$995	\$734,409.50
Sara Simnowitz	Special Counsel	54.55	\$860	\$46,913.00
William Green	Associate	19.30	\$620	\$11,966.00
Mathew Hough	Former Associate	142.80	\$665	\$94,962.00
Thayne Stoddard	Associate	905.60	\$760	\$688,256.00
Franklyn Williams	Senior Projects Associate	936.80	\$545	\$510,556.00
Peter Patrikios	Projects Associate	1,557.10	\$525	\$817,477.50
Sylvia Sum	Staff Associate	268.40	\$470	\$126,148.00
David Wax	Former Staff Associate	70.50	\$460	\$32,430.00
Joseph Guglielmelli	Staff Attorney	1,275.50	\$495	\$631,372.50
Yihong Huang	Former Staff Attorney	736.90	\$495	\$364,765.50
Geoffrey Luan	Former Staff Attorney	313.20	\$495	\$155,034.00
Haoyu Zheng	Former Staff Attorney	852.60	\$495	\$422,037.00
Jennifer Jurmark	Senior Discovery Operations Manager	446.95	\$525	\$234,648.75
Masiel Feliz	Paralegal	189.10	\$385	\$72,803.50
Cory Ezring	Summer Associate	58.10	\$330	\$19,173.00
TOTALS		10,546.50		\$6,926,670.25

7. As reflected in Table 1, the hourly rates for BFA attorneys and professional support staff range from \$330 to \$1,150. Current rates are used for current personnel; for attorneys and professional support staff who are no longer

employed by BFA, the hourly rate used is the hourly rate for such employee in his or her final year of employment by BFA.

8. BFA's rates are the usual and customary rates set by BFA for each individual. Different timekeepers within the same employment category (e.g., partner, associate) may have different rates depending on their respective years of experience, years at the firm, years in current position, relevant experience, relevant expertise, and/or rates of similarly situated individuals at BFA or at peer firms.

9. Courts across the country have consistently held that BFA's hourly rates are reasonable. *See, e.g., Police Ret. Sys. of St. Louis v. Granite Constr. Inc.*, No. C 19-04744 WHA, 2022 WL 816473, at *9 (N.D. Cal. Mar. 17, 2022) ("This order accepts [BFA's] claimed rates as generally tracking the going rate for those with the same levels of skill and experience in our geographic region."); Settlement Approval Hearing Transcript, *In re Teva Sec. Litig.*, No. 3:17-cv-00558 (SRU) (D. Conn.) (June. 2, 2022), 28-29 (granting full award requested and accepting BFA's rates as reasonable); *see also In re Dell Tech. Inc. Class V Stockholders Litig.*, No. 2018-0816-JTL, 2023 WL 4864861, at *31 (Del. Ch. July 31, 2023) (acknowledging "customary rates" that, per counsel's affidavits, amounted to as much as \$2,030 per hour for partners and \$1,245 per hour for associates).

10. None of the attorneys included in BFA's lodestar for the Action are (or were) "contract attorneys." All attorneys and employees listed in Table 1 were employed by BFA and, like other attorneys employed by BFA, worked remotely using BFA-provided hardware. BFA also assigned a firm email address to each attorney. These employees were fully supervised by BFA partners and associates. Except for the partners listed in Table 1, all other attorneys and professional support staff listed were W-2 employees of the firm eligible for firm benefits, and the firm paid FICA and Medicare taxes, along with state and federal unemployment taxes, on their behalf.

11. The work performed by BFA attorneys and professional support staff included, among other things:

- i. Investigating the claims underlying this Action;
- ii. Preparing and filing the Complaint;
- iii. Briefing and arguing a motion to compel;
- iv. Engaging in extensive fact discovery of Defendants and service of 23 third-party subpoenas, including reviewing nearly 100,000 pages of produced documents;
- v. Responding to Defendants' discovery requests, including by collecting and producing documents from Plaintiff's files and serving a privilege log;
- vi. Deposing twelve witnesses;
- vii. Engaging in significant expert work and discovery, including working with three testifying experts to submit opening reports

and one testifying expert to submit a rebuttal report, as well as working with several consulting experts;

- viii. Preparing an Amended Complaint to conform the pleading to the evidence, including drafting a motion for leave to amend;
- ix. Preparing for trial, including systemically reviewing, collecting, and organizing important deposition testimony and documents for reference in Plaintiff's pre-trial brief and at trial; and
- x. Mediating the Action with Robert A. Meyer, including the preparation of substantive opening and rebuttal mediation statements and multiple presentations, participating in three full-day mediation sessions, and further negotiating through numerous meetings and additional correspondence over the course of more than four months after the last full-day mediation session.

12. BFA and Fields Kupka & Shukurov LLP ("FKS") contributed to an Action-specific litigation fund through which most expenses incurred in litigating the Action were to be paid. Plaintiff's Counsel incurred a total of \$986,841.50 in expenses and charges from inception of the Action through August 31, 2023, that were to be paid from the litigation fund. These expenses exclude the work by Carl Saba in support of the proposed Settlement and Fee and Expense Award. The litigation fund expenses and charges are summarized below in Table 2:

TABLE 2 – LITIGATION FUND EXPENSES AND CHARGES

<i>CATEGORY</i>	<i>AMOUNT</i>
Service and Filing Fees	\$399.05
Court Reporter Services and Transcript Fees	\$138,094.00
Expert Fees	\$735,309.70
eDiscovery Database Hosting	\$70,490.89
Mediation Fees	\$38,512.12
After-Hours Facilities Fees	\$385.74
TOTAL	\$983,191.50

13. BFA separately incurred expenses specific to this case from inception of the Action through August 31, 2023, that were not paid from the litigation fund. Those expenses and charges are summarized below in Table 3:

TABLE 3 – BFA EXPENSES AND CHARGES

<i>CATEGORY</i>	<i>AMOUNT</i>
Computer Research	\$3,247.56
Service & Filing Fees	\$1,444.00
External Photocopies	\$446.39
Postage & Overnight Mail	\$977.64
Meals	\$1,287.71
Local Transportation	\$490.15
Out-of-Town Transportation	\$167.85
TOTAL	\$8,061.30

14. The expenses and charges pertaining to this case, including the expenses and charges to be paid by the litigation fund and those separately incurred by BFA, are reflected in the books and records of BFA. These books and records are prepared from receipts, expense vouchers, check records, and other documents and are an accurate record of the expenses and charges.



Joseph A. Fonti
BLEICHMAR FONTI & AULD LLP
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(212) 789-1340

SWORN AND SUBSCRIBED before me
this 31 day of August, 2023.



Notary Public

MICHAEL A RUSSO NOTARY PUBLIC, STATE OF NEW YORK Registration No. 01RU0001050 Qualified in Rockland County Commission Expires February 8, 2027
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This remote notarial act involved the use of communication technology

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2023, I caused a true and correct copy of the foregoing **Affidavit of Joseph A. Fonti in Support of Settlement Approval, Award of Attorneys' Fees and Expenses, and Incentive Award** to be served via File & ServeXpress on the following counsel of record:

Raymond J. DiCamillo, Esquire
Kevin M. Gallagher, Esquire
Kyle H. Lachmund, Esquire
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/s/ Andrew S. Dupre

Andrew S. Dupre (#4621)