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Case No. 2020-0477-

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. _____-_____

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff The Police and Fire Retirement System of the City of Detroit ("PFRS" or "Plaintiff") brings this Verified Stockholder Derivative Complaint ("Complaint") derivatively on behalf of Tesla, Inc. ("Tesla" or the "Company") against certain members of the Company's current and former board of directors (the "Board" or "Defendants"), namely: Brad Buss ("Buss"), Robyn M. Denholm ("Denholm"), Ira Ehrenpreis ("Ehrenpreis"), Lawrence J. Ellison ("Ellison"), Antonio J. Gracias ("Gracias"), Stephen t. Jurvetson ("Jurvetson"), Kimbal Musk

("Kimbal"), James Murdoch ("Murdoch"), Linda Johnson Rice ("Rice"), Kathleen Wilson-Thompson ("Wilson-Thompson"), and Hiromichi Mizuno ("Mizuno") (collectively, the nonemployee "Director Defendants") and fellow director and Tesla's controlling stockholder, Elon Musk ("Musk"). Plaintiff's allegations are based upon the knowledge of Plaintiff as to itself and upon information and belief, including the investigation conducted by its undersigned attorneys and a review of public information, including court documents and filings with the U.S. Securities and Exchange Commission ("SEC").

INTRODUCTION

1. The Director Defendants, in conspicuous disregard of their fiduciary duties to Tesla and in league with Musk, a Tesla director and Tesla's controlling stockholder, consistently awarded themselves unfair and excessive compensation every year from 2017 through 2020. Their disloyal, self-interested compensation determinations have deprived the Company of tens—if not hundreds—of millions of dollars. The Director Defendants' lavish compensation came in several forms, including not just cash retainers but also option awards which have generated, and will continue to generate, massive windfalls. The present value of the options awards which are the subject of this Complaint, if exercised today, is approximately $437

million[1] and grossly exceeds norms for corporate board compensation. Plaintiff brings this derivative action alleging claims for breach of fiduciary duty and unjust enrichment to see these excessive payments returned to Tesla's coffers and prevent similar misuse of Company funds in the future.

2. Musk has installed his family and friends on the Company's Board and through them he dominates and exercises control over Tesla and is able to avoid independent oversight of the way he runs the Company. In return, with Musk's blessing and vote as a director, the Director Defendants have consistently paid themselves unfair and lavish compensation.

3. Before 2019, Tesla directors paid themselves pursuant to different iterations of the Tesla, Inc. 2010 Equity Incentive Plan (the "2010 Plan"). One of the amendments to the 2010 Plan, which incorporated the Company's then-existing director compensation policy into the Plan and thereby fixed the number of options which directors were granted, was effectuated in 2014 (the "2014 Amendment" to the 2010 Plan). However, at the 2014 Annual Meeting, a majority of fully informed, uncoerced, and disinterested stockholders did ***not*** support this amendment. The 2014 Amendment only carried because Musk cast his votes in the affirmative.

[1] The present value of the challenged awards is based on the total number of options granted to the Director Defendants during the time of the wrongdoing, and does not take into account potentially reduced *pro rata* vesting of Buss and Rice's awards due to their resignation from the Board effective June 11, 2019.

4. Since then, the Director Defendants have abused the permissive terms of the 2010 Plan by repeatedly granting themselves excessive and unfair compensation. In 2015, for example, the Board paid its nonemployee directors compensation worth, on average, $6,337,521 ***per director***.

5. In 2017, four directors received compensation with a grant date fair value ranging from $1,933,914 to $4,921,810.

6. The Defendants saved their most audacious behavior for 2018. That year, excepting two directors who joined the Board in December 2018, ***the nonemployee directors received compensation worth an average grant date value of $8,706,126***. That year, Tesla's Board Chair was the second highest Board chair in the United States.

7. To make matters worse, on April 18, 2019, the Board approved the Tesla, Inc. 2019 Equity Incentive Plan (the "2019 Plan"). The 2019 Plan ***does not have even a theoretical limit on the number of shares that Tesla's nonemployee directors can grant themselves***.

8. Once again, the majority of the Company's unaffiliated stockholders voted against approval of the 2019 Plan. And once again, Musk cast his shares to force the measure through even though he was not independent of the beneficiary Director Defendants; *i.e.*, his friends and family. Consequently, the Director Defendants' self-compensation determinations are constrained only by the total

number of Tesla shares subject to the 2019 Plan[2] and the outer bounds of their own greed.

9. Their open season license thus extended, the Board members who did not step down in 2019 received compensation with a grant date fair value of, on average, ***$2,161,063 per director***.

10. The Director Defendants have used their positions on the Board to enrich themselves at the Company's expense. Demonstrably unmoored from independent stockholder checks on their self-compensation, they have granted themselves millions in excessive compensation and are poised to continue this unrelenting avarice into the indefinite future.

11. Plaintiff brings this action for breach of fiduciary duty and unjust enrichment to put an end to this looting. Plaintiff did not make a demand on Tesla's Board because disabling conflicts of interest and self-interest render each Defendant incapable of considering a litigation demand. Absent recourse to this Court, Plaintiff has no way to compel the Director Defendants to return the excessive compensation they paid themselves or stop them from overcompensating themselves in the future.

[2] That is, 12,500,000 shares, plus any shares subject to stock options or similar awards granted under the 2010 Plan that expire or otherwise terminate without having been exercised in full and shares issued pursuant to awards granted under the 2010 Plan that are forfeited to or repurchased by the Company due to failure to vest, provided that no more than a maximum aggregate of 13,000,000 shares may be covered by grants of option awards.

PARTIES

A. Plaintiff

12. Plaintiff The Police and Fire Retirement System of the City of Detroit is, and has continuously been since May of 2017, a holder of the Company's common stock.

B. Defendants

i. Nominal Defendant Tesla

13. Nominal Defendant Tesla, Inc., f/k/a Tesla Motors, Inc., is a Delaware corporation which maintains its principal executive offices at 3500 Deer Creek Road, Palo Alto, California 94304. The Company's stock is traded on the NASDAQ Global Select Market under the ticker symbol "TSLA". Tesla is a Delaware corporation headquartered in Palo Alto, California. According to Tesla's most recent annual report, the Company "design[s], develop[s], manufacture[s,] sell[s,] and lease[s] high-performance fully electric vehicles and energy generation and storage systems, and offer[s] services related to [Tesla's] products."

ii. Defendant Musk

14. Defendant Elon Musk has served as Tesla's Chief Executive Officer ("CEO") since 2008 and as a director since 2004. Musk also served as Chair of the Board from 2004 until 2018, when he was forced to step down from the role pursuant to a settlement with the SEC, and he has served as "Chief Product Architect" at

Tesla. Between December 31, 2010 and December 31, 2019, Musk owned between 20.8% and 29.06% of Company stock. Through this ownership of stock, his executive employment at Tesla, his close relationships with the Director Defendants and the extensive, actual power he exercised over Tesla as detailed herein, Musk controls Tesla.

15. Musk has also served as the CEO, chief technology officer, and chairman of Space Exploration Technologies Corporation, a company which is developing and launching advanced rockets for satellite and eventually human transportation ("SpaceX"), since May 2002, and he served as chairman of the board of SolarCity Corporation, a solar installation company ("SolarCity"), from July 2006 until its acquisition by Tesla in November 2016.

iii. The Director Defendants

16. Defendant Brad W. Buss was a member of the Board from November 2009 until his resignation on June 11, 2019. As a member of the Board's compensation committee ("Compensation Committee"), Buss voted to adopt the director compensation policy effective upon the IPO. Buss, together with the other Compensation Committee members, also approved a revision of the director compensation policy in 2012, which the entire Board approved on June 12, 2012. Buss was on the Board when it approved a further amendment of the 2010 Plan on April 10, 2014 and when it approved the 2019 Plan on April 18, 2019. During the

time of the wrongdoing challenged herein, Buss was awarded options to purchase a total of 77,000 shares of Tesla stock.[3] These options, which had a grant date fair value of $10,166,851.98 per Tesla's disclosures, would have a net present value of $44,227,020 based on the closing price of Tesla stock on June 12, 2020:

Grant Date	**Number of Shares Underlying Option Award**	**Strike Price**	**Grant Date Fair Value**	**Net Present Value of Options based on $935.28 price of Tesla stock on 6/12/2020**
7/24/2017	12,000	$342.52	$1,479,223.10	$7,113,120.00
7/24/2017	9,000	$342.52	$1,109,417.33	$5,334,840.00
7/24/2017	6,000	$342.52	$739,611.55	$3,556,560.00
6/18/2018	50,000	$370.83	$6,838,600.00	$28,222,500.00
TOTAL=	***77,000***		***$10,166,851.98***	***$44,227,020.00***

17. Defendant Robyn M. Denholm has been a member of the Board since August 2014, and succeeded Musk as Chair of the Board in November 2018. Denholm was on the Board when it approved the 2019 Plan on April 18, 2019. She has been a member of the Compensation Committee since joining the Board in 2014. During the time of the wrongdoing challenged herein, Denholm was awarded options to purchase a total of 115,000 shares of Tesla stock. These options, which had a grant date fair value of $14,239,849.99 per Tesla's disclosures, have a net present value of $69,209,500 based on the closing price of Tesla stock on June 12, 2020:

[3] These options awards were subject to time-based vesting in monthly increments over a three-year period. Buss's resignation from the Board, effective June 11, 2019, preceded the conclusion of the vesting period.

Grant Date	Number of Shares Underlying Option Award	Strike Price	Grant Date Fair Value	Net Present Value of Options based on $935.28 price of Tesla stock on 6/12/2020
8/18/2017	6,000	$347.46	$750,278.46	$3,526,920.00
8/18/2017	12,000	$347.46	$1,500,556.92	$7,053,840.00
8/18/2017	12,000	$347.46	$1,500,556.92	$7,053,840.00
8/18/2017	9,000	$347.46	$1,125,417.69	$5,290,380.00
6/18/2018	50,000	$370.83	$6,838,600.00	$28,222,500.00
4/29/2019	12,000	$241.47	$1,184,605.00	$8,325,720.00
4/29/2019	6,000	$241.47	$592,302.00	$4,162,860.00
7/11/2019	8,000	$238.60	$747,533.00	$5,573,440.00
TOTAL=	***115,000***		***$14,239,849.99***	***$69,209,500.00***

18. Defendant Ira Ehrenpreis has been a member of the Board since May 2007. As a member of the Compensation Committee, Ehrenpreis voted to adopt the director compensation policy effective upon the IPO. Ehrenpreis, together with the other Compensation Committee members, also approved a revision of the director compensation policy in 2012, which the entire Board approved on June 12, 2012. Ehrenpreis was on the Board when it approved a further amendment of the 2010 Plan on April 10, 2014 and when it approved the 2019 Plan on April 18, 2019. During the time of the wrongdoing challenged herein, Ehrenpreis was awarded options to purchase a total of 74,000 shares of Tesla stock. These options, which had a grant date fair value of $9,872,744.80 per Tesla's disclosures, have a net present value of $42,442,740 based on the closing price of Tesla stock on June 12, 2020:

Grant Date	Number of Shares Underlying Option Award	Strike Price	Grant Date Fair Value	Net Present Value of Options based on $935.28 price of Tesla stock on 6/12/2020

6/12/2018	6,000	$342.77	$758,536.20	$3,555,060.00
6/12/2018	3,000	$342.77	$379,268.10	$1,777,530.00
6/12/2018	9,000	$342.77	$758,536.20	$5,332,590.00
6/12/2018	6,000	$342.77	$1,137,804.30	$3,555,060.00
6/18/2018	50,000	$370.83	$6,838,600.00	$28,222,500.00
TOTAL=	***74,000***		***$9,872,744.80***	***$42,442,740.00***

19. Defendant Antonio J. Gracias has been a member of the Board since May 2007. Gracias served as Tesla's purported "Lead Independent Director" from September 2010 until that position was eliminated in April 2019. As a member of the Compensation Committee, Gracias voted to adopt the director compensation policy effective upon the IPO. Gracias, together with the other Compensation Committee members, also approved a revision of the director compensation policy in 2012, which the entire Board approved on June 12, 2012. Gracias was on the Board when it approved a further amendment of the 2010 Plan on April 10, 2014 and when it approved the 2019 Plan on April 18, 2019. During the time of the wrongdoing challenged herein, Gracias was awarded options to purchase a total of 105,000 shares of Tesla stock. These options, which had a grant date fair value of $13,286,157.70 per Tesla's disclosures, have a net present value of $59,367,710 based on the closing price of Tesla stock on June 12, 2020:

Grant Date	**Number of Shares Underlying Option Award**	**Strike Price**	**Grant Date Fair Value**	**Net Present Value of Options based on $935.28 price of Tesla stock on 6/12/2020**
6/12/2018	24,000	$342.77	$3,034,144.80	$14,220,240.00
6/12/2018	9,000	$342.77	$1,137,804.30	$5,332,590.00
6/12/2018	6,000	$342.77	$758,536.20	$3,555,060.00

6/12/2018	12,000	$342.77	$1,517,072.40	$7,110,120.00
6/18/2018	50,000	$370.83	$6,838,600.00	$28,222,500.00
3/6/2020	4,000	$703.48	not available	$927,200.00
TOTAL=	***105,000***		***>$13,286,157.70***	***$59,367,710.00***

20. Defendant Stephen T. Jurvetson has been a member of the Board of Directors since at least June 2009. Though the Company discloses that Jurvetson's Board service began at this time, external sources claim that he joined the Board in 2007 in connection with his former fund's investment in Tesla that year. Jurvetson was on the Board when it approved amendments to the 2010 Plan in 2012 and 2014, as well as when it voted to approve the 2019 Plan on April 18, 2019. During the time of the wrongdoing challenged herein, Jurvetson was awarded options to purchase a total of 12,000 shares of Tesla stock. These options, which had a grant date fair value of $1,184,605 per Tesla's disclosures, have a net present value of $8,325,720 based on the closing price of Tesla stock on June 12, 2020:

Grant Date	**Number of Shares Underlying Option Award**	**Strike Price**	**Grant Date Fair Value**	**Net Present Value of Options based on $935.28 price of Tesla stock on 6/12/2020**
4/29/2019	12,000	$241.47	$1,184,605.00	**$8,325,720.00**

21. Defendant Kimbal Musk, Musk's brother, has been a member of the Board since April 2004. Kimbal was on the Board when it approved amendments to the 2010 Plan in 2012 and 2014, as well as when it voted to approve the 2019 Plan on April 18, 2019. During the time of the wrongdoing challenged herein, Kimbal was awarded options to purchase a total of 50,000 shares of Tesla stock. These

options, which had a grant date fair value of $6,838,600 per Tesla's disclosures, have a net present value of $28,222,500 based on the closing price of Tesla stock on June 12, 2020:

Grant Date	Number of Shares Underlying Option Award	Strike Price	Grant Date Fair Value	Net Present Value of Options based on $935.28 price of Tesla stock on 6/12/2020
6/18/2018	50,000	$370.83	$6,838,600.00	**$28,222,500.00**

22. Defendant James Murdoch has been a member of the Board since July 2017. Murdoch was on the Board when it voted to approve the 2019 Plan on April 18, 2019. During the time of the wrongdoing challenged herein, Murdoch was awarded options to purchase a total of 84,668 shares of Tesla stock. These options, which had a grant date fair value of $10,922,518.98 per Tesla's disclosures, have a net present value of $49,455,854.28 based on the closing price of Tesla stock on June 12, 2020:

Grant Date	Number of Shares Underlying Option Award	Strike Price	Grant Date Fair Value	Net Present Value of Options based on $935.28 price of Tesla stock on 6/12/2020
7/17/2017	16,668	$319.57	$1,916,972.00	$10,262,654.28
6/14/2018	12,000	$357.72	$1,583,240.40	$6,930,720.00
6/18/2018	50,000	$370.83	$6,838,600.00	$28,222,500.00
10/5/2018	6,000	$261.95	$583,706.58	$4,039,980.00
TOTAL=	***84,668***		***$10,922,518.98***	***$49,455,854.28***

23. Defendant Linda Johnson Rice was a member of the Board from July 2017 until her resignation on June 11, 2019. Rice was on the Board when it voted to

approve the 2019 Plan on April 18, 2019. She was a member of the Compensation Committee from the time she joined the Board in 2017 until her resignation in 2019. During the time of the wrongdoing challenged herein, Rice was awarded options to purchase a total of 75,668 shares of Tesla stock.[4] These options, which had a grant date fair value of $9,943,002.30 per Tesla's disclosures, would have a net present value of $43,683,194.28 based on the closing price of Tesla stock on June 12, 2020:

Grant Date	**Number of Shares Underlying Option Award**	**Strike Price**	**Grant Date Fair Value**	**Net Present Value of Options based on $935.28 price of Tesla stock on 6/12/2020**
7/17/2017	16,668	$319.57	$1,916,972.00	$10,262,654.28
6/14/2018	9,000	$357.72	$1,187,430.30	$5,198,040.00
6/18/2018	50,000	$370.83	$6,838,600.00	$28,222,500.00
TOTAL=	***75,668***		***$9,943,002.30***	***$43,683,194.28***

24. Defendant Lawrence J. Ellison has been a member of the Board since December 2018. Ellison was on the Board when it voted to approve the 2019 Plan on April 18, 2019. During the time of the wrongdoing challenged herein, Ellison was awarded options to purchase a total of 58,334 shares of Tesla stock. These options, which had a grant date fair value of $5,848,976 per Tesla's disclosures, have a net present value of $40,530,066.88 based on the closing price of Tesla stock on June 12, 2020:

[4] These options awards were subject to time-based vesting in monthly increments over a three-year period. Rice's resignation from the Board, effective June 11, 2019, preceded the conclusion of the vesting period.

Grant Date	Number of Shares Underlying Option Award	Strike Price	Grant Date Fair Value	Net Present Value of Options based on $935.28 price of Tesla stock on 6/12/2020
1/7/2019	8,334	$334.96	$1,255,136	$5,003,066.88
6/18/2019	50,000	$224.74	$4,593,840	$35,527,000.00
TOTAL=	***58,334***		***$5,848,976***	***$40,530,066.88***

25. Defendant Kathleen Wilson-Thompson has been a member of the Board since December 2018. Wilson-Thompson was on the Board when it voted to approve the 2019 Plan on April 18, 2019. She has been a member of the Compensation Committee since joining the Board in 2018. During the time of the wrongdoing challenged herein, Wilson-Thompson was awarded options to purchase a total of 73,334 shares of Tesla stock. These options, which had a grant date fair value of $7,329,732.25 per Tesla's disclosures, have a net present value of $50,937,216.88 based on the closing price of Tesla stock on June 12, 2020:

Grant Date	Number of Shares Underlying Option Award	Strike Price	Grant Date Fair Value	Net Present Value of Options based on $935.28 price of Tesla stock on 6/12/2020
1/7/2019	8,334	$334.96	$1,255,136	$5,003,066.88
4/29/2019	6,000	$241.47	$592,302.6	$4,162,860.00
4/29/2019	9,000	$241.47	$888,453.9	$6,244,290.00
6/18/2019	50,000	$224.74	$4.593.840	$35,527,000.00
TOTAL=	***73,334***		***$7,329,732.50***	***$50,937,216.88***

26. Defendant Hiromichi Mizuno has been a member of the Board since April 23, 2020 and has been awarded options covering 6,778 shares. According to the Company's most recent annual report filed with the SEC on April 28, 2020,

Mizuno is set to receive an annual award of options covering 16,668 Tesla shares at or about the time of the upcoming meeting of stockholders.

Grant Date	**Number of Shares Underlying Option Award**	**Strike Price**	**Grant Date Fair Value**	**Net Present Value of Options based on $935.28 price of Tesla stock on 6/12/2020**
5/4/2020	2,778	$761.19	not available	$483,622.02
5/4/2020	4,000	$761.19	not available	$696,360.00
TOTAL=	***6,778***			***$1,179,982.02***

27. At the times relevant to the wrongdoing which is the subject of this Complaint, the Board was composed of Musk and the Director Defendants:

Board Composition			
2016-17	**2017-18**	**2018-19**	**2019-20***
Musk	Musk	Musk	Musk
Buss	Buss	Buss**	
Denholm	Denholm	Denholm	Denholm
Ehrenpreis	Ehrenpreis	Ehrenpreis	Ehrenpreis
Gracias	Gracias	Gracias	Gracias
Jurvetson	Jurvetson***	Jurvetson***	Jurvetson
Kimbal	Kimbal	Kimbal	Kimbal
	Murdoch	Murdoch	Murdoch
	Rice	Rice**	
		Ellison	Ellison
		Wilson-Thompson	Wilson-Thompson

* = Mizuno joined the Board on April 23, 2020.
** = resigned on June 11, 2019
*** = on leave of absence, November 2017 - April 2019

FURTHER SUBSTANTIVE ALLEGATIONS

I. MUSK TAKES CONTROL OF TESLA AND INSTALLS HIS FRIENDS AND FAMILY ON THE BOARD.

28. Entrepreneurs Martin Eberhard ("Eberhard") and Marc Tarpenning ("Tarpenning") founded the Company in 2002 and formally incorporated Tesla Motors, Inc. in 2003. Eberhard and Tarpenning had previously worked together at NuvoMedia, which produced the Rocketbook, one of the first electronic book displays, or "ebooks". In 2000, they sold NuvoMedia for roughly $187 million, and three years later the duo started Tesla, which they named after the eponymous engineer and inventor Nikola Tesla, to realize Eberhard's vision of an electric sportscar. Initially, Eberhard served as CEO and Tarpenning served as Tesla's president, vice president of engineering, and interim chief financial officer ("CFO").

A. Musk Joins Tesla.

29. In 2004, Eberhard and Tarpenning turned to Musk for additional funding. Musk had by then amassed a fortune by parlaying proceeds from the sale of Zip2, a startup he had founded with his brother Kimbal in 1995, into X.com, which was subsequently merged into the company that became PayPal Inc. ("PayPal"). Musk made an initial investment of $6.35 million as part of Tesla's $7.5 million Series A financing round and began serving as Chair of Tesla's Board.

30. In the following years, Musk also led the Company's Series B round, co-led the Company's Series C round, and stepped up his involvement at Tesla. It

was around this time that Musk began to dominate Tesla's affairs, as well as insist that others bear witness to his influence. For example, when Musk believed that he had been given insufficient credit in connection with the July 2006 unveiling of Tesla's initial model, the Roadster, he emailed Tesla's Vice President of Customer Service & Support to complain about the way his "role [had] been portrayed to date" and call attention to a perceived "need to make a serious effort to correct this perception."

31. Development of the Roadster fell behind schedule, however, and as reported by *Business Insider*, "according to employees who worked at Tesla at the time, Musk himself bore some responsibility for the Roadster's delays. While he had a keen eye for styling and always offered constructive feedback, he was rarely present in the office — which meant that his infrequent dictates created chaos."

32. In 2007, Eberhard floated to the Board the idea of his stepping down as CEO and bringing in executives experienced with finance and administration, which would allow him to focus on production. Musk then took steps to look for a new CEO in the following months.

33. Notwithstanding Eberhard's candor, in August 2007—while Eberhard was at a speaking engagement—Musk and the members of the Board other than Eberhard convened a meeting and voted to replace Eberhard as CEO. In a subsequent lawsuit by Eberhard against Tesla, Eberhard alleged that Musk wanted

him gone:

> At that time, Musk also approached Eberhard and informed him that he no longer wanted Eberhard to be a part of the company, either as the President of Technology or as a member of the [Board]. Musk threatened to convert enough of his Preferred Stock Options to Common Stock Options to give himself control over three more [Board] seats in addition to the three seats he already controlled. This would have resulted in Musk gaining full control of Tesla Motors by appointing seven out of eight seats on the [Board].

B. Musk Solidifies His Control of Tesla's Board.

34. After forcing out Eberhard, Tesla shuffled through two other CEOs, Michael Marks and Ze'ev Drori, in less than one year. Musk then installed himself as CEO in 2008. That same year, the remaining co-founder, Tarpenning, left the Company.

35. By the time Tarpenning left, Musk had already tightened his stranglehold on the Board without needing to follow through on his alleged threat to convert preferred stock options to common stock options. In connection with his arranging financing for Tesla, including the Series D and E financing rounds which he "co-led" according to Company press releases, Musk arranged for his friends and family to sit on Tesla's Board. These individuals included not only his brother Kimbal, but also his friends Gracias at Valor Equity Partners ("Valor") and

Jurvetson at Draper Fisher Jurvetson ("DFJ"). The chart below[5] shows Tesla's funding rounds and Musk's increasing control over Tesla and its Board:

Series:	Series A	Series B	Series C	Series D	Series E	Series F
Year:	2004	2005	2006	2007	2008	2009
Amount:	$7.5 million	$13 million	$40 million	$45 million	$40 million	$50 million
Investors:	Elon Musk Compass	Elon Musk Compass Valor Equity	Elon Musk Capricorn Compass Draper Fisher Google JP Morgan Valor Equity VantagePoint	Elon Musk Capricorn Compass Draper Fisher JP Morgan Valor Equity VantagePoint Tech. Venture	Daimler	Daimler Al Wahada
Board:	Musk Eberhard Tarpenning	Musk Eberhard K. Musk Gracias (Valor) Tarpenning	Musk Eberhard Gracias (Valor) Jurvetson (Draper) Marver (Vantage) K. Musk Tarpenning	Musk Eberhard Ehrenpreis (Tech.) Gracias (Valor) Jurvetson (Draper) Marver (Vantage) K. Musk Tarpenning	Musk Ehrenpreis (Tech.) Gracias (Valor) Jurvetson (Draper) Kohler (Daimler) Marver (Vantage) K. Musk Sonsini (counsel)	Musk Buss (outsider) Al Darmaki (Wahada) Ehrenpreis (Tech.) Gracias (Valor) Jurvetson (Draper) Kohler (Daimler) K. Musk Sonsini (counsel)
Chairman:	Musk	Musk	Musk	Musk	Musk	Musk
Audit:	None	None	None	None	None	Buss Gracias Jurvetson
Comp:	None	None	None	None	None	Buss Ehrenpreis Gracias
Nom/Gov:	None	None	None	None	None	Buss Ehrenpreis Gracias

36. On June 29, 2010, Tesla conducted its IPO on the NASDAQ Global

[5] Source: David F. Larcker and Brian Tayan, "Tesla Motors: The Evolution of Governance From Inception to IPO", Stanford Closer Look Series (May 16, 2011), available at: https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-closer-look-15-tesla.pdf

Select Market. It raised $226.1 million by offering 13.3 million shares at a price of $17 per share. After going public, the Company did not meaningfully reconstitute its Board. Musk's handpicked directors have comprised a majority of not only the Board, but also its audit committee ("Audit Committee"), Compensation Committee, and nominating and corporate governance committee ("Nominating Committee"), and have done so for over a decade. As shown in further detail below (*see* § III.B, *infra*), these directors are bound to Musk in at least one of four ways.

37. First, Musk has installed his brother, Kimbal, on the Board, just as Kimbal was also installed on the boards of SpaceX and Solar City.

38. Second, Musk has installed his investors-cum-friends on the Board. Each of Gracias, Jurvetson, Ehrenpreis, and Ellison is not only a Tesla investor, but also a personal friend of Musk.

39. Third, Musk has selected directors who derive(d) a majority of their income from Musk, including Denholm, who has year-over-year made more money from Tesla than her primary employers, and Buss, who Musk employed as the CFO of SolarCity.

40. Fourth, Musk has used his substantial share ownership to provide cover for the Director Defendants' excessive compensation. As demonstrated below, without Musk voting his shares in favor of the proposals to approve 2014 Amendment and 2019 Plan, those proposals would have been rejected by

disinterested and independent Tesla stockholders. Because Musk voted his shares in favor of those proposals, however, the Director Defendants were able to pay themselves excessive and unfair compensation, with Musk lending a supporting vote in his capacity as a member of the Board, under a guise of stockholder approval.

C. Musk Makes the Board Personally Dependent upon Him.

41. As if these familial, amicable, fiduciary, professional, and pecuniary relationships were not enough to guarantee director fealty, Musk has tethered each Board members' personal liability to himself. On April 28, 2020, Tesla filed an annual report in which it disclosed that Musk had established proof-positive control over the Board:

> Tesla ***determined not to renew its directors and officers liability insurance policy*** for the 2019-2020 year due to disproportionately high premiums quoted by insurance companies. Instead, ***Elon Musk agreed with Tesla to personally provide coverage*** substantially equivalent to such a policy for a one-year period, and the other members of the Board are third-party beneficiaries thereof. The Board concluded that because such arrangement is governed by a binding agreement with Tesla as to which Mr. Musk does not have unilateral discretion to perform, and is intended to replace an ordinary course insurance policy, it would not impair the independent judgment of the other members of the Board.

(emphasis added). Allowing Musk to personally serve as the Board's D&O insurer brings the entire Board under the yoke. Any offer to compromise an action to recover for a breach of the directors' fiduciary duties, including this litigation, is now wholly determined by Musk's personal whim, and not an independent insurer.

42. Following the filing of the annual report, several media reports

questioned the numerous conflicts arising from this new liability coverage arrangement. Charles Elson, a professor of corporate governance at the University of Delaware, told *CNBC* that "[h]aving the CEO provide D&O personally for the directors is highly problematic because it is meant to protect them from decisions they make about him, among other things. He added that "[u]sually D&O [insurance] gives them an ability to make decisions without fear of personal liability when they act appropriately", and that coverage by Musk is a "bad idea". Noting that "the directors have to sign off on it", former general counsel of Marriott International, Inc. Ed Ryan said "I've never heard of anything like this before." *See* Phillip Bantz, "In Good Hands? Elon Musk Provides Tesla's Directors and Officers Liability Insurance" THE RECORDER (April 28, 2020).

43. Indeed, Musk and Tesla invite so much stockholder litigation that they were used as the posterchild for director and officer insurance coverage in a weblog post by brokerage firm Foundershield LLC. *See* Carl Neidbala, "Elon Musk vs. Investors: Why D&O Insurance is Essential" FOUNDERSHIELD.COM (Oct. 10, 2018) ("As Musk and Tesla illustrate, proper D&O insurance is a must to protect both the entity and executives from financial loss when trouble arises.").

44. Directors at Tesla are now no longer operating under the shield of a directors and officers' liability policy in the "ordinary course". Rather, the sole shield between the Director Defendants and personal liability is Musk.

45. This highly unorthodox change in the typical structuring of corporate liability is reflective of the peculiar case that is Tesla. Musk has built a company where third-party insurers have, apparently, deemed it uneconomical to hedge against Musk's singularly actionable behavior. Musk, in turn, has not only voted in favor of the Director Defendants' unprecedented self-compensation decisions, but has pledged to personally defend them in the event their decisions are challenged. Defendants have created a case study in corporate mismanagement, whereby directors' liability runs to a controller who allows the Company to pay unprecedented sums to the directors in return for abject fealty.

* * *

46. In short, through his role as CEO, substantial stock ownership, and domination of the Board, Musk had established indisputable control over Tesla. This Court has recognized as much. *See In re Tesla Motors S'holder Litig.*, Consol. C.A. No. 12711-VCS, 2018 Del. Ch. LEXIS 102, at *32-47 (Del. Ch. Mar. 28, 2018) ("*In re Tesla*"); *Tornetta v. Musk*, C.A. No. 2018-0408-JRS, 2019 Del. Ch. LEXIS 999, at *4 n.5 (Del. Ch. Sep. 20, 2019).

II. THE BOARD, WITH MUSK'S SUPPORT, REPEATEDLY PAYS ITS MEMBERS EXCESSIVE AND UNFAIR COMPENSATION.

47. Prior to going public, Tesla created the 2010 Plan to grant equity-based compensation to its employees, directors, and consultants. The Board adopted the 2010 Plan on December 16, 2009 and Tesla's then-private stockholders approved it

on May 21, 2010. In January 2010, the Board adopted an outside director compensation policy applicable to all of Tesla's nonemployee directors which became effective upon completion of the IPO. The Board has voted to change this policy and the 2010 Plan several times since they were enacted.

48. Not one of the various iterations of Tesla's director compensation policy, however, has ever been approved by a majority of Tesla's unaffiliated stockholders.

49. In other words, the very same Director Defendants who have personal and professional ties to Musk and allow him to run Tesla pursuant to his personal whims, have also set the terms of their own compensation. Musk has, unsurprisingly, voted in favor of this problematic compensation of his brother, friends, business partners, and other members of his pliant Board. And every time Tesla's public stockholders have been asked to weigh in via the stockholder franchise, unaffiliated stockholders have voted against the plans pursuant to which the Director Defendants pay themselves unfair equity awards.

50. In flagrant disregard of unaffiliated stockholders' mandate and their fiduciary duties, the Director Defendants created a compensation scheme that is out of step with corporate norms and pays them excessively and unfairly. According to its charter, the Compensation Committee is tasked with "making recommendations to the Board with respect to compensation for service as a member of the Board or

a Board committee". Similarly, Tesla acknowledges that its Compensation Committee is responsible for, among other things, "administering the compensation of members of the Board and Tesla's equity compensation plans". The Compensation Committee voted to adopt the Company's director compensation policy prior to Tesla's IPO and since that time the Compensation Committee's director compensation determinations have been supported by the entire Board.

A. The Elements of Tesla Directors' Compensation

51. As compensation for their service on the Board, Tesla's nonemployee directors receive a mix of cash and equity-based awards. The Company noted in 2011 that its "compensation programs reflect [Tesla's] startup origins in that they consist primarily of salary and stock options". Though Tesla has not been a startup for some time, its options-heavy nonemployee director compensation practices have remained largely the same, without regard to increases in the trading price of Tesla stock.

i. Cash

52. The cash component of director compensation has at all relevant times been comprised of an annual cash retainer for: (i) general Board service of $20,000; (ii) serving as the chair of the Audit Committee of $15,000, serving as the chair of the Compensation Committee of $10,000, and serving as the chair of the Nominating Committee of $7,500; (iii) serving on the Audit Committee of $7,500 per member,

serving on the Compensation Committee of $5,000 per member, and serving on the Nominating Committee of $5,000 per member.

ii. Initial Options Award

53. In addition to their cash retainer awards, the Director Defendants all receive awards of options to purchase Tesla stock.

54. Prior to 2017, upon joining the Board, directors were given an initial grant of options covering 33,333 shares, a quarter of which would vest after one year provided the director was still serving on the Board (the "Initial Options Award"). The remainder would vest at a rate of 1/48 per month over the next three years, contingent upon continued Board service. This system appears to have yielded a one-time windfall for Denholm, who received an option covering 33,333 shares in 2014 and still received another option covering 50,000 shares just ten months later as a triennial award, discussed below.

55. Since July 13, 2017, directors receive an initial grant of options covering a number of shares equal to 1,389 multiplied by the number of months (rounded up to a whole number) between the date on which the director joins the Board and the following June 18, on which date the options vest in full. For example, if a director joined the Board on April 1, 2020, *i.e.*, three months prior to June 18, 2020, that director would have received an initial grant of options covering 4,167 shares.

iii. Triennial Awards

56. Initially after the IPO in 2010, every year directors stood to receive an automatic annual options grant covering 16,666 shares which would vest in its entirety approximately one year after the grant date.

57. In 2012, the Company revised its director compensation arrangements to provide for nonemployee directors to receive an option award every three years, vesting in 1/36th installments each month after the option grant date (the "Triennial Awards"). On June 12, 2012, the directors received their first Triennial Award. Each director's option award covered 33,334 shares of Tesla stock. These options were in addition to those covering the 16,666 shares they had already received that year under the previous director compensation policy.

58. Subsequently, the Board, comprising Musk and his friends and family, adopted the 2014 Amendment to the 2010 Plan, which Musk and a minority of unaffiliated Tesla stockholders subsequently "approved". The 2014 Amendment contained a provision, new Section 11(d) of the 2010 Plan, providing for Triennial Awards of options covering 50,000 shares:

> Triennial Award. Every three (3) years, each Outside Director will be automatically granted an Option to purchase 50,000 Shares (a "***Triennial Award***"). The initial Triennial Award for each Outside Director will be granted on the earlier of: (1) the seventh (7th) business day after the date of the 2015 annual meeting of the stockholders of the Company or (2) for Outside Directors appointed or elected after June 12, 2012, the seventh (7th) business day after the date of the meeting of the stockholders of the Company immediately following the

> date such Outside Director is initially appointed or elected to the Board. Subsequent Triennial Awards will be granted on the seventh (7th) business day following the third annual meeting of stockholders following the grant date of such Outside Director's previous Triennial Award.

59. Since then, Tesla's directors have received Triennial Awards of options covering 50,000 shares on each of June 12, 2015, and June 18, 2018. Ellison and Wilson-Thompson received their Triennial Awards on June 18, 2019, rather than in 2018.

60. In its most recent annual report filed with the SEC, the Company disclosed that under its director compensation policy as amended in February 2020 (the "February 2020 Policy"), going forward directors will receive an automatic annual grant of options covering 16,668 shares instead of Triennial Awards of options covering 50,000 shares.

iv. Lead Independent Director Award

61. Beginning in 2012, Antonio Gracias, in his capacity as Tesla's purported "Lead Independent Director", received grants of options covering 24,000 shares per grant on each of June 12, 2012, June 12, 2015, and June 12, 2018 (the "Lead Independent Director Award"). These grants were in addition to the Triennial Awards which Gracias received in his ordinary capacity as a nonemployee director on the Board.

v. Committee Service Awards

62. Also beginning in 2012, those directors who sit on any of the Board's committees received extra options grants and those who served as chairpersons of such committees received additional grants, as follows (the "Committee Service Awards"):

	Chair	Member
Audit Committee	12,000	12,000
Compensation Committee	6,000	9,000
Nominating Committee	3,000	6,000

By way of example, director Ehrenpreis has served as chairperson of both the Compensation and Nominating Committees. As a result he received awards of options covering 9,000, 6000, 6,000, and 3000 shares in each of 2012, 2015, and 2018, in addition to the Triennial Awards he has received during that time and the option covering 16,666 shares which he received in his capacity as a Board member on June 13, 2011.

63. The February 2020 Policy restructured the Committee Service Awards, such that the future awards will cover one-third of the above-described numbers of shares and be automatically granted annually, instead of every three years.

B. The Director Defendants' Compensation Initially Appeared Reasonable at the Time It Was Awarded.

64. In the first few years after the Company's IPO, the value of Tesla's nonemployee director compensation bore some reasonable relation to the directors' roles at the Company. Other than Herbert Kohler, who waived his cash compensation, directors received between $20,000 and $45,000 in cash each year, and the grant date fair value of the option grants awarded to each director did not result in any eye-popping largess.

65. On June 13, 2011, for example, each member of the Board received options to purchase 16,666 shares of Tesla stock at a conversion price of $28.43 per share, which would vest in their entirety on the earlier of the first anniversary of the grant date or the day prior to the date of the next Tesla annual meeting following the grant date. The Company determined that the grant date fair value of this options award was $265,053.

66. As mentioned above, in 2012 the Company adopted its Triennial Award policy, pursuant to which the directors received 33,334 apiece to cover the next three years.

67. Even after accounting for the 2012 grants, for the first few years after the IPO Tesla's directors were paid compensation that, while on the generous side of the scale, was at least within the realm of reasonableness:

	2010	2011	2012	2013	2014	Average Annual Compensation
Brad W. Buss	22,500[1]	310,053	1,523,407	45,000	38,750	$387,942
Robyn M. Denholm	--	--	--	--	7,181,066	$7,181,066
Ira Ehrenpreis	110,522	302,553	1,263,129	37,500	37,500	$350,241
Antonio J. Gracias	135,344	310,134	1,733,506	60,957	37,500	$455,488
Stephen T. Jurvetson	13,750	292,553	1,051,263	27,500	27,500	$282,513
Kimbal Musk	101,035	294,153	849,836	26,661	35,423	$261,422
Ahmed Saif Al Darmaki	10,000	285,053	--	--	--	$147,527
Herbert Kohler	5,000	265,053	821,877	--	--	$363,977
Harald Kroeger	--	--	515,008	0	--	$257,504

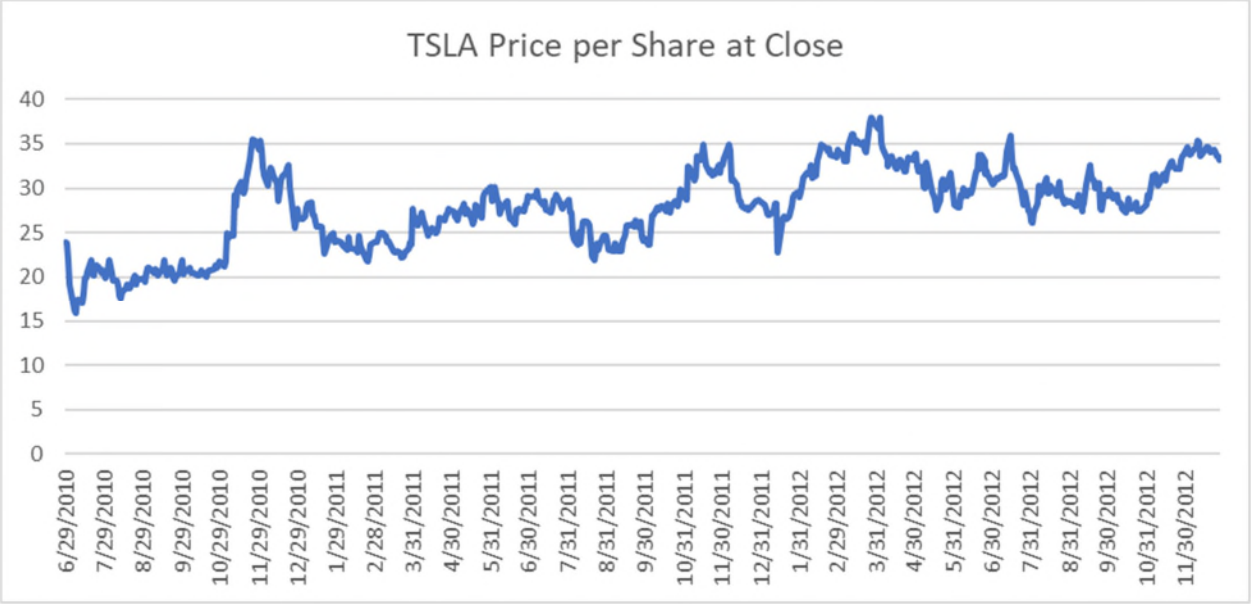
[1] All figures are in U.S. dollars. Based on grant date fair value as disclosed by the Company.

68. The obvious outlier in the above table is Denholm's 2014 compensation, which far exceeded every other director's compensation that year because of her options award. Denholm joined the Board in August 2014 and received her initial award of options covering 33,334 shares in addition to options covering 12,000, 12,000, 9,000, and 6,000 share she received as Chair and member of the Audit Committee and member of the Compensation and Nominating Committees. All told, these options to purchase 72,333 had a grant date fair value of $7,163,580, according to the Company's public filings.

69. Previously, options awards at Tesla did not result in such lavish remuneration for the recipient. Just over two years before Denholm's 2014 option awards, Buss was awarded options covering 72,334 shares. These June 2012 awards only had a grant date fair value of $1,477,974, according to Tesla's public filings. The reason why the grant date fair value of Denholm's 72,333 share purchase option was worth 485% as much as the comparable award granted to Buss two years earlier

was that Tesla's stock price had skyrocketed and, with it, the expected value of equity awards.

70. From the date of the June 29, 2010 IPO through the end of 2012, the trading price of Tesla stock hovered around $30 per share:



71. Beginning in 2013, however, Tesla realized a marked increase in the trading price of its stock:

72. The Board members were, of course, aware of the spike in the trading price of shares of Tesla stock. In 2014, the Board recommended that stockholders approve the 2014 Amendment to the 2010 Plan and specifically observed that "[o]n April 10, 2014, the closing price on the NASDAQ Global Select Market of [Tesla's] common stock was $204.19 per share." (2014 Proxy at 21).

73. As a result of this increase in the trading price of Tesla's stock, the value of options to purchase Tesla stock similarly soared. Numerous Board members got in on the bonanza and sold shares after the price climbed higher than $200 per share:

- Between May 1, 2014 and May 1, 2015, Kimbal sold 42,610 shares at prices exceeding $200 per share, for proceeds of approximately $10,466,134. By way of example, on May 1, 2015, Kimbal exercised options to purchase 2,735 shares at a price of $28.43 per share (*i.e.*, options granted on June 13, 2011) and options to purchase 3,666 at a price of $9.96 per share (*i.e.*, options

granted in 2010 before Tesla went private), for a total of 6,401 shares purchased at a price of $114,269.41. That same day Kimbal sold 6,401 shares at prices ranging from $220.63 to $226.22, receiving proceeds of $1,429,437.28. On this purchase and sale of just a fraction of the equity compensation he received from Tesla in 2010 and 2011, Kimbal made a profit of $1,315,167.87;

- On May 27-28, 2014, Gracias—as the beneficiary of a trust and a fund—sold 20,000 shares at prices exceeding $200 per share, for proceeds of approximately $4,209,753;

- On September 2, 2014, Ehrenpreis—through TP Management VIII, LLC, an affiliate of the venture capital fund Technology Partners of which Ehrenpreis is general partner—sold 30,424 TSLA shares at a price of $ 283.55, realizing proceeds of approximately $8,626,725; and

- On February 18, 2015, Buss sold 5,882 shares in multiple transactions at prices ranging from $205.33 to $205.47 for proceeds of approximately $1,208,086.

74. The members of the Board made an affirmative decision to personally profit and pay themselves compensation which bore no reasonable relation to any benefit they may have conferred on the Company through Board service.

C. The Directors Vote to Lock in the Compensation Program and Concretize Their Excessive Awards of Options.

75. Before April 2014, all director compensation decisions were made without input from unaffiliated stockholders. Mindful of the increase in Tesla's stock price, in April 2014, the Board resolved to solicit stockholder preapproval of their compensation.

76. On April 10, 2014, the Board approved the 2014 Amendment, subject to stockholder approval. Using the 2014 Amendment, the Board sought to secure

stockholders' approval of an iteration of the 2010 Plan that explicitly provided for each director to receive one or more of an Initial Options Award covering 33,333 shares, a Triennial Award covering 50,000 shares, a Lead Independent Director Award covering 24,000 shares, and various Committee Service Awards ranging from 3,000 shares to 12,000 shares.

77. The Board sold the 2014 Amendment to stockholders by claiming that it was designed with an eye towards constraining compensation awarded under the 2010 Plan:

> The 2014 Restatement sets limits on awards that may be granted to participants under the 2010 Plan. ***These limits are intended to be meaningful restrictions on the equity-based compensation*** that the administrator of the 2010 Plan may grant to participants while allowing us to provide equity compensation sufficient to attract, retain and incentivize highly qualified, experienced individuals at our Company. Furthermore, the 2014 Restatement is designed to aid the 2010 Plan administrator in granting awards under the 2010 Plan that closely align the realization of payments thereunder to the types of performance criteria that are the most relevant measures of the Company's performance and success. Because such amendments are material, the Company is submitting the 2014 Restatement to the approval of its stockholders pursuant to the listing standards of NASDAQ.

2014 Proxy at 15 (emphasis added).

78. The 2014 Annual Meeting of Stockholders of Tesla ("2014 Annual Meeting") was held on June 3, 2014. According to a Form 8-K current report filed by Tesla with the SEC on June 6, 2014, Tesla stockholders approved the 2014 Amendment at the 2014 Annual Meeting:

> Proposal 3 was a management proposal to approve an amendment and restatement of the Tesla Motors, Inc. 2010 Equity Incentive Plan, as described in the proxy materials. This proposal was approved.
>
> | For | Against | Abstained | Broker Non-Votes |
> |---|---|---|---|
> | 46,319,147 | 24,922,861 | 2,334,237 | 26,938,394 |

In fact, however, this disclosure makes clear that the Board did not secure the affirmative vote of a majority of those independent and disinterested stockholders who casted votes "For" or "Against" approval of the 2014 Amendment.

79. Musk, predictably, voted his shares in favor of the 2014 Amendment, resulting in increased remuneration to his friends and family on the Board and rewarding them for allowing him to run Tesla unchecked. As of December 31, 2013, Musk beneficially owned 35,001,294 Tesla shares.[6] His ownership included 28,288,622 shares held of record by his personal trust, as well as 6,712,672 shares issuable to him upon exercise of options exercisable within 60 days after December 31, 2013. The 28,288,622 shares held by Musk's trust were enough to swing the vote.[7] But for Musk's affirmative vote on the 2014 Amendment, it would not have received more "for" votes than "against" votes.

[6] The table of beneficial ownership in the 2014 Proxy "set[] forth certain information regarding the beneficial ownership of Tesla's common stock, as of December 31, 2013". No public filings between that date and April 14, 2014, the record date for the 2014 Annual Meeting, reflect a change in Musk's beneficial ownership. Accordingly, Musk would have beneficially owned these same 35,001,294 shares of Tesla stock at the time of the record date and been empowered to vote such shares.

[7] In addition, the Director Defendants owned approximately 891,076 shares of Tesla stock as of December 31, 2013.

80. Because Musk and the other members of the Board cannot act independently of one another (*see infra* § III), the 2014 Amendment was not passed by a majority of fully informed, uncoerced, and disinterested stockholders. Accordingly, Tesla's unaffiliated stockholders never approved the equity compensation which the entire Board, including Musk, voted to award to the Director Defendants.

81. Nevertheless, when it came time to pay compensation in 2015, the Director Defendants still chose to grant themselves Triennial Awards of options covering 50,000 shares per director, which the Board apparently believed was appropriate recompense for the, on average, ***five meetings per year*** which the Board had convened each year between fiscal 2011-2014, and would also convene in 2015. The result, as disclosed in the Company's proxy solicitation the following year, was as expected:

Name	Fees Earned or Paid in Cash ($)	Option Awards ($)(1)(2)(3)	All Other Compensation(4)	Total ($)
Brad W. Buss	20,000	4,934,785	—	4,954,785
Robyn M. Denholm	45,000	4,934,785	—	4,979,785
Ira Ehrenpreis.	37,500	7,202,183	—	7,239,683
Antonio J. Gracias	37,500	9,753,005	—	9,790,505
Stephen T. Jurvetson	27,500	6,068,484	—	6,095,984
Kimbal Musk	20,000	4,934,785	9,596	4,964,381

82. Due to these mammoth awards of stock options, the Board members pocketed compensation with a grant date fair value of, on average, $6,337,521 per director.

D. The Board Persists with Their Egregious Self-Compensation Practices.

83. 2016 was a down year for the Board. Having received the outsized 2015 Triennial Awards and other equity compensation, the Board only paid its nonemployee members their annual cash retainers and reimbursement for travel expenses. Each year thereafter, however, the Board made sure to make up for 2016 and granted its members excessive and unfair equity compensation, notwithstanding yet another large increase in the trading price of shares of Tesla stock.

i. The Challenged 2017 Compensation

84. The Board awarded its members a slew of options for various reasons in 2017:

- On June 17, 2017, Rice and Murdoch received their initial option award, covering 16,668 shares apiece, for joining the Board.
- Buss, who had previously stepped down from service on the Board's committees after Musk had made him CFO of SolarCity, resumed his position on each of the Audit, Compensation, and Nominating Committees. Accordingly, on July 24, 2017, Buss was awarded three options awards covering a total of 27,000 shares.
- On August 18, 2017, Denholm received option awards covering 39,000 shares for her service on each of the Audit, Compensation, and Nominating Committees, as well as serving as Chair of the Audit Committee.

85. These option awards predictably resulted in exorbitant compensation:

Name	Fees Earned or Paid in Cash ($)	Option Awards ($)(1)(2)	All Other Compensation	Total ($)
Brad Buss	28,750	3,328,252	—	3,357,002
Robyn Denholm	45,000	4,876,810	—	4,921,810
Ira Ehrenpreis	37,500	—	—	37,500
Antonio Gracias	37,500	—	—	37,500
Stephen Jurvetson	27,500	—	—	27,500
James Murdoch	10,000	1,916,972	—	1,926,972
Kimbal Musk	20,000	—	1,721(3)	21,721
Linda Johnson Rice	10,000	1,916,972	6,942(3)	1,933,914

86. While this ***$1.53 million average*** compensation is skewed towards the recipients, it presaged what would come the following year.

ii. The Challenged 2018 Compensation

87. In 2018, the Board granted each of its members a Triennial Award of options covering 50,000 shares, together with awards in connection with Board members' service on the Board's committees and, in Gracias's case, the purported Lead Independent Director Award. All told, in 2018 the Company granted options awards which translated into outrageous director compensation remuneration:

Name	Fees Earned or Paid in Cash ($)	Option Awards ($)(1)(2)(3)	All Other Compensation	Total ($)
Brad Buss	37,500	6,838,600(4)	1,303(9)	6,877,403
Robyn Denholm	42,670	6,838,600(4)	9,812(9)	6,891,082
Ira Ehrenpreis	37,500	9,872,745(4)(5)	—	9,910,245
Lawrence J. Ellison	—	—	—	—
Antonio Gracias	37,500	13,286,158(4)(5)	—	13,323,658
Stephen Jurvetson	—	—	—	—
James Murdoch	25,536	9,005,547(4)(6)(7)	—	9,031,083
Kimbal Musk	20,000	6,838,600(4)	1,924(9)	6,860,524
Linda Johnson Rice	22,858	8,026,030(4)(8)	—	8,048,888
Kathleen Wilson-Thompson	—	—	—	—

88. These astronomical sums, which based on grant date fair value equate to ***average director compensation of $8,706,126***, make little sense even by Tesla's historical standards, to say nothing of the disparity evident when they are compared

to director compensation figures across the market generally. And this disparity is heightened when taking into account the additional value conferred by the current trading price of Tesla stock. If exercisable on June 12, 2020, the equity awards which the Director Defendants received in 2018 would be worth approximately $258,164,490.[8]

89. By way of illustration, on February 20, 2020, Gracias paid $9,505,729.68 to exercise options covering 26,652 shares which he was awarded in 2018. That same day, Gracias sold shares at an average weighted volume price of $892.65 per share for approximately $23,790,886, gaining a windfall worth $14,285,156.48. These 26,652 shares Gracias exercised represent approximately only 26.39% of the shares covered by the options he received in 2018.

90. Similarly, on June 1, 2020, Kimbal paid $1,511,132.25 to exercise options covering 4,075 shares; *i.e.*, just 8% of his 2018 Triennial Award. He sold these shares on the same day at an average weighted volume price of $895 per share for approximately $3,647,125, realizing proceeds of $2,135,992.75.

91. According to the 2018 U.S. Spencer Stuart Board Index ("Spencer Stuart Report"), the average total compensation in 2018 for directors at companies

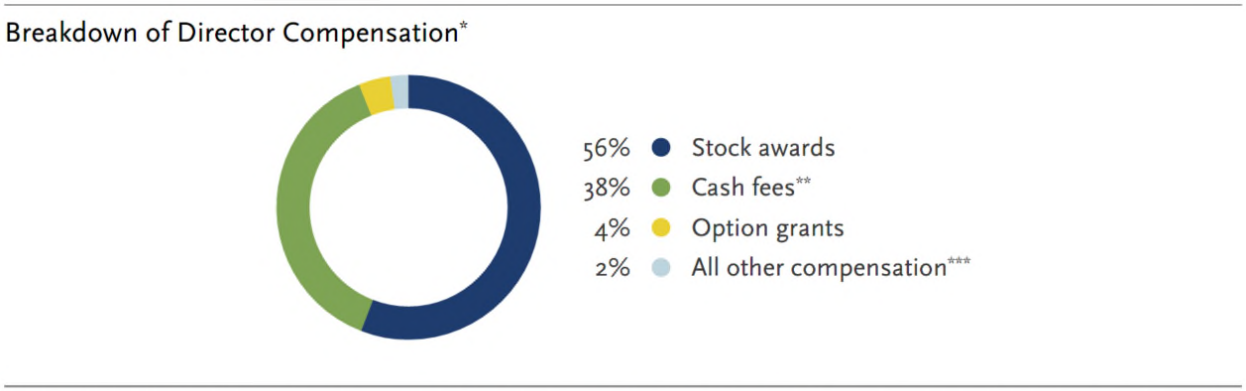
[8] The present value of these awards is based on the total number of options granted to the Director Defendants in 2018, and does not take into account potentially reduced *pro rata* vesting of Buss and Rice's awards due to their resignation from the Board effective June 11, 2019.

in the S&P 500 index was just 3.43% of Tesla's average 2018 director compensation. Indeed, the Spencer Stuart Report lays bare the unfair disparity between industry standard compensation and the amounts awarded to the Board, even after accounting for the triennial nature of the options awards:

	S&P 500 Average in 2018	Tesla in 2018[1]	Tesla in 2018 (divided by 3)[1]
Director Compensation	$298,981	$8,706,126	$2,902,042
Lead Independent Director Compensation	Nearly $40,000	$3,034,145	$1,011,382
Committee Chair Retainer Value	$21,036	$10,833 (cash) $568,902 (options)[2 3]	$3,611 (cash) $189,634 (options)[2 3]
Committee Member Retainer Value	$12,027	$5833 (cash) $1,083,016 (options)[4]	$1,944 (cash) $361,005 (options)[4]

[1] All options figures are based on grant date fair value determined by Tesla.
[2] Does not account for Denholm's 2017 option grant covering 12,000 shares worth $1,500,557.
[3] Does not account for chairpersons' dual receipt of options as both chairs and members.
[4] Does not account for 2017 option grants awarded to Buss and Denholm worth $3,328,252 and $3,376,253, respectively.

92. This disparity arises from, among other things, the nature of the Board's equity awards. According to the Spencer Stuart Report, across the S&P 500 just 12% of boards granted stock options. The average value of annual option grants for S&P 500 companies was just $100,530, compared to $8,672,326 for 2018 Tesla triennial option awards. Only 4% of S&P 500 director compensation took the form of options:



*Based on non-employee director compensation tables in 484 proxies for fiscal year 2018. Includes all board and committee retainers and meeting fees, non-executive chairman and lead/presiding director supplemental fees when applicable, the value of equity compensation and all other compensation paid to non-employee directors in 2017. Retiring and new directors are included when paid compensation for at least three quarters of the year.
**Includes deferred compensation amounts.
***Includes, for example, insurance premiums, charitable award programs and incremental cost to company of products provided.

93. The findings in the Spencer Stuart Report track determinations reached by other compensation analysts. In November 2019, Frederic W. Cook & Co., Inc. ("F.W. Cook"), an independent compensation advisory firm, published a 2019 Director Compensation Report (the "F. W. Cook Report") evaluating nonemployee director compensation at 300 companies of various sizes in various industries. For Large-Cap companies (*i.e.*, those with a market capitalization between $1 and $5 billion), F.W. Cook reported that the median, nonemployee director compensation in 2018 was $274,583. Tesla's average 2018 director compensation of $8,706,126 was 3,171% as much as the 2018 Large-Cap median determined by F.W. Cook. Even 1/3 of the Tesla figure—accounting for the triennial nature of the option awards—would still have been equal to 1,057% of the Large-Cap median. Tesla's directors were paid compensation worth ***an order of magnitude*** more than what similarly situated directors received.

94. Likewise, Steven Hall & Partners LLP ("Steven Hall"), another compensation advisory firm, has published a 2019 Director Compensation Study in which it analyzed proxy statements filed between June 1, 2018 and May 31, 2019 by 600 companies which it sorted into three groups: (i) a "Small Cap 200" comprising 200 companies in the S&P SmallCap 600; (ii) a "Mid Cap 200" comprising 200 companies in the S&P MidCap 400; and (iii) a "Top 200" comprising "200 companies with the largest revenues in fiscal 2018". Steven Hall found that the median compensation of a "Pro Forma Director"—*i.e.*, a chair of one committee and member of a second committee, who receives both general board- and committee-related compensation—was $309,333. Tesla's average 2018 director compensation of $8,706,126 was 2,815% as much as the Steven Hall figure. Again, accounting for the triennial nature of the option awards, 1/3 of the 2018 Tesla average director compensation was still 938% of the Steven Hall figure.

95. Specific comparisons to Tesla's self-identified peer companies are difficult because the Company does not appear to analyze any peer compensation practices. Indeed, the Board has not even retained a compensation consultant to identify peers for director compensation purposes or advise generally on director compensation since 2012.

96. A look across the automotive sector, however, makes clear that the Board's compensation is not grounded in the industry standard. Indeed, Tesla's

Board compensation is stratospheric, especially considering Tesla's revenues compared to its peer firms at the time the challenged 2018 compensation was awarded:

Peer Company	**2017 Total Revenues (approximate)**	**Average 2018 Director Compensation**
Volkswagen AG	248.70 billion	$268,821
Daimler AG	177.85 billion	$260,690
Ford Motor Company	156.78 billion	$359,105
General Motors Company	145.59 billion	$316,945
Honda Motor Co. Ltd.	131.67 billion	$159,386
Fiat Chrysler	114.55 billion	$186,632
Bayerische Motoren Werke	106.48 billion	$335,650
Nissan Motor Co. Ltd.	102.44 billion	$168,183
Tata Motors	43.11 billion	$131,946
Tesla, Inc.	***11.76 billion***	***$2,902,042****

* 1/3 of Tesla's average 2018 director compensation of $8,706,126.

97. Looking beyond the automotive sector only serves to confirm the absurdity of the Director Defendants' self-compensation practices. The largest public companies in the world do not pay their nonemployee directors anything close to what Tesla's Board elected to pay its members:

Company	**Market Capitalization (as of June 18, 2018)**	**Average 2018 Director Compensation**
Apple Inc.	948.40 billion	$404,575
Amazon.com, Inc.	834.31 billion	$270,000 - $298,000
Alphabet Inc.	815.26 billion	$440,060
Microsoft Corporation	776.42 billion	$361,333
Facebook, Inc.	576.29 billion	$401,147
Tesla, Inc.	***62.72 billion***	***$2,902,042****

* 1/3 of Tesla's average 2018 director compensation of $8,706,126.

98. Comparison to Amazon.com, Inc. ("Amazon") is particularly illustrative. As disclosed in public filings, Amazon also uses triennial equity awards to compensate the nonemployee members of its board of directors. However, the awards Amazon pays to its directors are—according to Amazon's most recent proxy statement—"based on an assumed value of the restricted stock units vesting in each year, which compensation represents the 50th percentile for annual director compensation among a group of peer companies." By way of example, in March 2018, Amazon's board granted a restricted stock unit award covering 621 shares to a director which would vest in three equal annual installments on February 15, 2019, February 15, 2020, and February 15, 2021 and "was designed to provide approximately $298,000 in compensation annually". Based on the closing price of Amazon's stock on June 12, 2020, that director's equity award provided compensation worth $526,819 for board service in 2018. Amazon did not pay cash compensation for service on its board.

99. In contrast, by June 18, 2019, one third of the Triennial Award would have covered 16,667 shares of Tesla stock at an exercise price of $370.83. Based on the closing price of Tesla's stock on June 12, 2020, this option is worth $9,407,688. This figure excludes the other equity compensation paid to Board members for committee service or service as purported "Lead Independent Director", nor does it include cash compensation.

iii. The Challenged 2019 Compensation

100. This past year the Board showed no signs of changing its egregious and self-interested compensation scheme:

- On July 11, 2019 Denholm received an option award covering 8,000 shares relating to her installation as purported "independent Chair of the Board" in November 2018, when Musk was forced from the role by the SEC. ***These shares are in addition to an annual cash retainer of $300,000 she is slated to receive***. The Board has since eliminated the related position of Lead Independent Director. On April 29, 2019, Denholm received two option awards covering 12,000 and 6,000 shares which appear to be duplicative of one third of the awards which Denholm was granted in 2017;

- On January 7, 2019 both Ellison and Wilson-Thompson received initial option grants covering 8,334 shares apiece in connection with their joining the Board. Ellison and Wilson-Thompson both received Triennial Awards of options covering 50,000 shares apiece on June 18, 2019; and

- On April 29, 2019, Jurvetson received an option award covering 12,000 shares for service on the Audit Committee. Also, on April 20, 2019, Wilson-Thompson received option awards covering 9,000 and 6,000 shares for her service on the Compensation and Nominating Committees, respectively.

Name	Fees Earned or Paid in Cash ($)	Option Awards ($)(1)(2)(3)	All Other Compensation	Total ($)
Robyn Denholm	191,257(4)	2,524,440(4)	27,982(5)	2,743,679
Ira Ehrenpreis	37,500	—	—	37,500
Lawrence J. Ellison	20,000	5,848,976	—	5,868,976
Antonio Gracias	25,240	—	—	25,240
Stephen Jurvetson	19,265	1,184,605	—	1,203,870
James Murdoch	32,500	—	—	32,500
Kimbal Musk	20,000	—		20,000
Kathleen Wilson-Thompson	27,005	7,329,733	—	7,356,738
Brad Buss(6)	15,310	—	—	15,310
Linda Johnson Rice(6)	11,196	—	—	11,196

101. Prospectively, Tesla stockholders can expect more of the same. Gracias received an option award covering 4,000 shares on March 6, 2020, and Mizuno received awards of options covering 6,778 shares on May 4, 2020. The balance of the 2020 director options awards are still forthcoming. Indeed, even though the

Board have created the appearance of changing their compensation structure via the February 2020 Policy, the Board left their compensation unchanged – under prior iterations of the director compensation policy and the February 2020 Policy, the Director Defendants receive a baseline award of 50,000 options over a three-year period.

iv. The 2019 Plan Fails to Garner the Support of Unaffiliated Stockholders, Yet the Board Nevertheless Continues to Pay Its Members Excessive Compensation.

102. In 2019, the Board once again could have made the decision to abandon its disloyal self-compensation scheme and implement a framework which would result in fair compensation of its members. Instead, Tesla's directors chose to adopt a new equity incentive plan which fails to check their corporate looting.

103. The Board claims that the Tesla, Inc. 2019 Equity Incentive Plan (the "2019 Plan"), which it voted to approve on April 18, 2019, "incorporate[s] developments in strong equity plan governance practices". (*See* April 30, 2019 Tesla, Inc. Def 14A Proxy ("2019 Proxy") at 18).

104. Notwithstanding the Board's endorsement and marketing of the 2019 Plan, unaffiliated stockholders rejected it just as they had rejected the 2014 Amendment.

105. In a Form 8-K Current Report which the Company filed with the SEC on June 12, 2019, Tesla announced the outcome of the stockholder vote on approval

of the 2019 Plan:

> **Proposal 2**
>
> Proposal 2 was a management proposal to approve the 2019 Plan. This proposal was approved.

For	Against	Abstained	Broker Non-Votes
60,406,466	29,813,269	110,040	48,955,274

106. Discounting the votes that Musk himself cast through his ownership of 33,824,680 shares as of December 31, 2018 (excluding 4,748,110 shares issuable to Musk upon exercise of options exercisable within 60 days after December 31, 2018), there were only 26,581,786[9] votes cast in favor of the 2019 Plan. Because the 29,813,269 votes against adoption won the vote, a majority of fully informed, uncoerced, and disinterested stockholders did not approve the 2019 Plan.

107. Because neither the 2019 Plan nor the 2014 Amendment were approved by a majority of unaffiliated Company stockholders, ***Tesla has never in its public existence operated with an incentive plan approved by unaffiliated and disinterested stockholders***.

E. The Directors Cash in on Their Lucrative Equity Awards.

108. At all times, the Board had the power to change its self-interested compensation scheme to provide fair compensation for Board service, as is—and

[9] This number does not account for approximately 4,305,717 shares owned by the Director Defendants as of December 31, 2018, and that were predictably voted in favor of the 2019 Plan.

always was—required by the fiduciary duty of loyalty which the Company's directors owe to Tesla stockholders. Nevertheless, the Board affirmatively disregarded its members' fiduciary obligations and chose to loot Tesla's coffers.

i. Sales by Tesla Directors of Shares Covered by Previously Awarded Options

109. As was the case with the directors' 2015 equity awards, Board members' contemporaneous sales of Tesla stock covered by previously awarded options show that they were aware that the self-interested option awards challenged herein were excessive and unfair:

- Between January 2017 and December 2018, Gracias exercised portions of the options awards he received on March 3, 2010 and June 8, 2012, at respective strike prices of $9.96 per share and $30.08 per share, realizing proceeds of more than $8.2 million.

- In the second and third quarters of 2019, Buss sold shares covered by options he was awarded in June 2012. By exercising at strike prices of $29.66 per share and $30.08 per share and selling at prices between $228.372 and $303.946 per share, Buss realized proceeds of more than $18 million.

- Between January 2017 and October 2018, Kimbal sold blocs of shares covered by his 2012 Triennial Award. These exercises at a strike price of $29.66 and corresponding sales at weighted average prices between $211.785 and $368.91 per share yielded proceeds of more than $5.6 million.

- On May 8, 2017, Denholm exercised her option to purchase 20,000 shares pursuant to her August 8, 2014 award. By selling these shares at a weighted average price of $311.763, she realized proceeds of more than $1 million.

- On August 22, 2017, Jurvetson exercised his option to purchase 44,777 shares pursuant to his June 2015 awards. By selling these shares at a weighted average price of $340.362, he realized proceeds of more than $3.6 million.

110. The foregoing sales represent just a fraction of the shares covered by the equity awards which the Director Defendants received for sitting on the Board. For example, Buss received awards of options covering a total of 155,666 shares between June 13, 2011 and June 18, 2015. His exercise and sale of 77,082 of those shares, described above, netted him $18,001,352. Buss still has options covering 78,584 shares from prior to 2017, all of which are fully vested. And from 2017 through 2019, Buss was awarded options covering an additional 77,000 shares.

111. A table of recent sales of Tesla stock by the Director Defendants, which demonstrate their knowledge of the mammoth and unfair windfalls resulting from the director compensation policy they administered, is attached hereto as Exhibit A.

112. As shown below, the challenged awards granted to the Director Defendants represent potential ***overpayment of hundreds of millions of dollars*** from Tesla's coffers for nonemployee Board service.

ii. The Director Defendants Stand to Make Hundreds of Millions of Dollars from the Challenged Option Awards.

113. The options awards from 2017 to present, which were unfair and excessive at the time they were granted, now have the potential to result in ludicrous payouts based on the current trading price of Tesla stock, which has soared to $935.28 per share. Based on this trading price, the equity awards challenged herein

would have a combined worth of $437,581,504.34.[10] A table of the options awards challenged in this action is annexed hereto as Exhibit B.

114. The Board granted the Director Defendants these self-interested options awards in breach of Defendants' fiduciary duties to the Company so that they could realize extraordinary personal bonanzas in the form of massive overpayments of Company funds.

III. MUSK PERSONALLY BENEFITS IN EXCHANGE FOR PROVIDING COVER FOR THE DIRECTOR DEFENDANTS' EXCESSIVE COMPENSATION.

115. By voting his shares in favor of the 2014 Amendment and the 2019 Plan, Musk has created a façade which gives the appearance that the Director Defendants' compensation is being issued under the auspices of stockholder approval. As demonstrated above, however, the 2014 Amendment and 2019 Plan were only approved because Musk voted in favor of them. Greater percentages of the Company's unaffiliated stockholders voted against both proposals than for them.

116. In exchange for providing this cover to the Director Defendants, Musk has bought himself absolute control over Tesla with a completely subservient Board. As the price of this control, Musk's friends and family abuse the Company coffers to extract tremendous amounts of money for themselves.

[10] The present value of the challenged awards is based on the total number of options granted to the Director Defendants during the time of the wrongdoing, and does not take into account potentially reduced *pro rata* vesting of Buss and Rice's awards due to their resignation from the Board effective June 11, 2019.

A. The Director Defendants Allow Musk to Run Tesla Completely Unchecked.

117. Musk has taken to heart the Board's complete abdication of its responsibility to check his behavior. He repeatedly called Tesla "my Company" on an August 1, 2016 conference call and, in an interview with *60 Minutes*, stated his belief that he can call a stockholder vote and "get anything done that I want."

118. True to his boasts, not one action in Musk's seemingly endless string of dubious behavior has provoked a meaningful response from the Board. Such actions include, but are not limited to, the following:

- In a weblog entry posted on June 21, 2016, Tesla announced that it had offered to acquire SolarCity Corporation, a solar energy installation company controlled by Musk, who was also its largest stockholder. SolarCity was by many accounts insolvent – indeed, the company's auditors conducted an audit in January 2017 and concluded that SolarCity could not operate as a going concern. Tesla nevertheless purchased the company for a whopping $2.6 billion. Musk has since admitted that "if [he] could wind back the clock, you know, [he] would say [he] probably would have let SolarCity execute by itself; would have let Tesla execute by itself." The debacle is currently the subject of stockholder litigation pending in this Court. *See In re Tesla*, C.A. No. 12711-VCS.

- From June 2016 through May 2017, Musk hyped Tesla's Model 3 while the Company was under investigation by the SEC. As uncovered in a December 14, 2017 research report by *Probes Reporter*, the SEC's June 15, 2016 subpoena sought documents concerning reservations, orders, production times and rates, cancellations, refunds, and deposits for the Model 3, as well as questions concerning a May 18, 2017 offering and analyst report issued by Goldman Sachs. *Probes Reporter* concluded: "Elon Musk and his team could tell investors more about what is taking place with regulators. We have criticized them for bad governance and staying silent regarding undisclosed SEC probes we repeatedly found at Tesla and Solar City. At any time, Tesla could stop playing Disclosure Games® with investors, become more

transparent, and simply let time prove them right. Instead, this team continues to act like the rules (on many fronts) don't apply to them."

- In August 2018 *The New York Times* reported that, "in an hourlong interview . . . [Musk] choked up multiple times, noting that he nearly missed his brother's wedding this summer and spent his birthday holed up in Tesla's offices". The report also sourced "two people familiar with the board" for the claim that "some board members have expressed concern not only about Mr. Musk's workload but also about his use of Ambien", and Musk stated in the interview that his friends had expressed concern about his health. During the interview Musk alternated between laughter and tears and claimed he had been working up to 120 hours a week recently. He also asserted that "from a personal pain standpoint, the worst [was] yet to come."

- On August 7, 2018, Musk tweeted that he was "considering taking Tesla private at $420. Funding secured." Musk subsequently disclosed that he had composed the tweet while driving himself to the airport, and that nobody else had seen or reviewed the tweet. It would subsequently be revealed that this tweet was based on Musk's impression of his July 31, 2018 meeting with the managing director of Saudi Arabia's sovereign wealth fund, which had not conducted due diligence nor made a formal offer. Musk told *The New York Times* that no directors complained about the tweet: "I don't recall getting any communications from the board at all," he said. "I definitely did not get calls from irate directors." A Tesla spokesperson later claimed that Gracias had contacted Musk about the tweet.

  The SEC initially offered to resolve Musk's glaring violation of the securities laws, but—again, as reported by *The New York Times*—"Musk had given the board little choice: In a phone call with directors before their lawyers went back to federal regulators with a final decision, Mr. Musk threatened to resign on the spot if the board insisted that he and the company enter into the settlement. Not only that, he demanded the board publicly extol his integrity. Threatened with the abrupt departure of the man who is arguably Tesla's single most important asset, the board caved to his demands, according to three people familiar with the board's decision."

- On September 27, 2018, the SEC subsequently commenced civil actions against both Musk and the Company, which were settled two days after filing. Among other things, Musk and Tesla were required to pay $20 million apiece in fines, Musk was banned from serving as Chairman of the Board for three

years, and the Company was required to implement mandatory procedures and controls to oversee all of Musk's communications regarding the Company. On February 19, 2019, Musk violated the terms of the SEC settlement by tweeting, without preapproval, incorrect information concerning Tesla's production capabilities, which he sought to clarify four hours later. On April 26, 2019, the SEC and Musk amended their settlement to expand upon the procedures and controls governing Musk's communications about Tesla. Musk's tweeting is currently the subject of derivative litigation pending in this Court. *See Laborers' Dist. Council & Contractors' Pension Fund of Ohio v. Musk*, C.A. No. 2019-0187-JRS (Del. Ch.).

- On May 1, 2020, Musk went on another twitter spree, notwithstanding the terms of his settlement with the SEC. Amidst claims that he was "selling almost all physical possessions. Will own no house" and tweeting the words to the Star-Spangled Banner, Musk opined that "Tesla stock price is too high imo" – *i.e.*, "in my opinion". When *The Wall Street Journal* subsequently asked whether Tesla's specifically appointed Disclosure Controls Committee had reviewed Musk's tweet, Musk replied "No."

119. Despite this (inexhaustive) list of controversial actions, any of which alone would have been met with action by an independent board, the Board took no meaningful action to reign in Musk until forced to by the SEC's lawsuit. Since then it has likewise done nothing. Nor has Musk suffered consequences from the Board for any of his numerous public spats. Again, by way of example and not limitation:

- On December 14, 2017, Musk took to Twitter to insult transit expert Jarrett Walker, who had had the temerity to assert that Musk's stated antipathy towards public transportation "is a luxury (or pathology) that only the rich can afford." Musk responded: "You're an idiot." At 1:13 in the morning, Musk added that he "[m]eant to say 'sanctimonious idiot'".

- On Tesla's first quarter earnings call held on May 2, 2018, in response to an analyst's question concerning "where specifically will [Tesla] be in terms of capital requirements", Musk replied: "Excuse me. Next. Boring bonehead questions are not cool. Next?" The next analyst asked a question concerning

how many individuals who had made reservations for Tesla's Model 3 car had taken the step to configure their options. Musk's response was: "We're going to go to YouTube. Sorry. These questions are so dry. They're killing me."

- On July 5, 2018, Musk took to Twitter to accost *Business Insider* reporter Linette Lopez, questioning her as to whether she "bribed" former Tesla employee Martin Tripp ("Tripp") for inside information about the Company and wondering aloud whether she was "serving as an inside trading source for one of Tesla's biggest short-sellers". As to Tripp, as reported by *Bloomberg Businessweek*, "Musk saw him as a dangerous foe who engaged in 'extensive and damaging sabotage,' as he wrote in a staff memo", and "implied that Tripp had shared the data not only with the press but also with 'unknown third parties.'" On June 20, 2018 the Company sued Tripp for $167 million. *Bloomberg Businessweek* further reported that Tripp was also contacted by the sheriff's department in Storey County, Nevada that day: "Tesla's security department had passed a tip to police. An anonymous caller had contacted the company to say Tripp was planning a mass shooting at the Gigafactory." Subsequently the security manager at the Gigafactory, former marine Sean Gouthro, "filed a whistleblower report with the SEC. Gouthro says Tesla's security operation behaved unethically in its zeal to nail the leaker. Investigators, he claims, hacked into Tripp's phone, had him followed, and misled police about the surveillance. Gouthro says that Tripp didn't sabotage Tesla or hack anything and that Musk knew this and sought to damage his reputation by spreading misinformation." Musk had personally emailed a *Guardian* reporter: "I was just told that we received a call at the Gigafactory that he was going to come back and shoot people".

- In July 2018, British diver Vernon Unsworth ("Unsworth"), who was part of a successful effort to rescue a boys' soccer team trapped in an underwater cave, characterized Musk's much-publicized effort to construct a submarine to assist in the rescue as a "PR stunt". In response, Musk took to Twitter on July 15, 2018, to call Unsworth a "pedo guy". Musk subsequently hired a confidence man holding himself as a private investigator, whom the head of Musk's home office directed to leak information to the UK press to smear Unsworth. When *BuzzFeed News* reached out to Musk for comment on a threat by Unsworth's lawyer to sue for defamation, Musk emailed back: "I suggest that you call people you know in Thailand, find out what's actually going on and stop defending child rapists, you f[---]ing a[--]hole." Musk claimed that Unsworth had moved "to Chiang Rai for a child bride who was about 12 years old at the time." None of Musk's scurrilous claims about

Unsworth enjoyed any basis in reality.

- In a December 2019 interview with *60 Minutes*, Musk proclaimed that he does "not respect the SEC."

120. Numerous corporate governance experts have publicly asserted that the Board has failed to take necessary actions to oversee Musk's operation of the Company. William Klepper, a professor at Columbia Business School has stated that the Board "has to do more management oversight of the company. The board of directors is not meant to be a cheering committee." In response to Musk's interview with *The New York Times* about the personal toll he claimed work at Tesla was taking on him and his health, Charles Elson, director of the corporate governance center at the University of Delaware, opined that the Board has a duty to evaluate whether Musk can lead Tesla: "It paints a picture of someone who is deeply troubled. . . . Running a business is difficult enough. Finding yourself in that state of mind is something different."

121. John C. Coffee Jr., a professor at Columbia Law School, claimed that the Board's rejection of the SEC's initial settlement overtures in its lawsuits against Musk and Tesla arising from Musk's "$420" tweet was "proof that [Musk] needs monitoring": "He didn't have a legal leg to stand on, and I'm sure his lawyer told him that. But he got very touchy about not being able to proclaim his innocence." In a CNBC interview, Jeffrey Sonnenfeld of the Yale School of Management similarly criticized the Board for allowing Musk to strongarm it into rejecting the SEC's

proposed settlement terms: "What it tells us is this board, as a strategic plan, must be using the Jim Jones-Jonestown suicide pact. They are drinking the Kool-Aid of the founder. It is completely as self-destructive as Musk is." Sonnenfeld has also told Forbes that "[t]he board is completely negligent here. . . . They have to feel some personal jeopardy. . . . They are violating a duty of care. They have a reckless disregard for facts and for operational, financial and communications failures." John Wilson, head of research and corporate governance at Cornerstone Capital Group, has noted the need for companies to "have someone to tell the CEO when they are messing up" and observed that "Musk's behavior demonstrates that there doesn't appear to be" any such person at Tesla to check Musk.

122. Indeed, even some of Tesla's lawyers had apparently had enough. Between December 2018 and December 2019, three different general counsels left the Company. As noted by trade publication *Compliance Week* in December 2019, these attorneys "join[ed] the list of dozens of other Tesla executives who have left in the last three years, some who held their roles for just a few weeks."

123. Media outlets, this Court, ***and Musk himself*** have all recognized that Musk dominates Tesla. *See In re Tesla*, 2018 Del. Ch. LEXIS 102, at *31. Stockholders, proxy advisory firms, and corporate governance experts have all called for the Board to step up and satisfy its duty of oversight over Musk. Yet the feckless Board has conspicuously failed to check Musk. The reason, of course, is

money.

B. Musk Maintains Personal, Familial, and Business Relationships with the Director Defendants.

124. By providing cover for their excessive compensation, Musk has allowed the Director Defendants to profit immensely at Tesla's expense. (*See* Exhibits A & B). Musk has personal, familial, and/or professional relationships with most of the Director Defendants. Indeed, when the 2014 Amendment was approved, Musk had personal relationships with, not counting himself, five of the six directors: Gracias, Jurvetson, Ehrenpreis, Buss, and Kimbal.[11]

i. Gracias Is a Tesla Investor and Friend to Musk.

125. Antonio Gracias has been characterized by *Bloomberg* as "one of Musk's closest friends". As detailed in a biography of Musk by Ashlee Vance, "In the first half of 2008, Antonio Gracias, the founder and CEO of Valor, met Musk for dinner. ***Gracias*** had been an investor in Tesla and ***had become one of Musk's closest friends and allies***, and he could see Musk agonizing over his future."

126. As alleged by Eberhard in a lawsuit arising from his dismissal from the Company, Musk and Gracias are so close that Musk gave Gracias the second Tesla Roadster ever made, notwithstanding that that car had been contractually promised to Eberhard.

[11] The remaining director was Harald Kroeger.

127. Musk and Gracias's professional relationship dates back to the latter's investment in PayPal, where Gracias met Musk. Musk invited Gracias to invest in Tesla.

128. Gracias is the founder, CEO, managing partner, Chief Investment Officer, principal owner, and a director of Valor. After meeting Musk, Gracias brought a possible investment in Tesla to Valor's board; thereafter, Valor invested in Tesla's Series B, C, D, and E financing rounds.

129. Valor has provided consultation services to Tesla. According to Tesla's public filings, Valor Management Corporation, of which Gracias is the CEO, "provided certain consulting services to Tesla relating to operational optimization in 2017 and costs of $34,347 were reimbursed to it as part of those services."

130. Gracias's Valor also invested in both SpaceX and SolarCity. Musk, in turn, installed Gracias on the boards of both SpaceX and SolarCity. Valor's investment in the latter company was saved when Musk caused Tesla to purchase SolarCity to prevent that company's bankruptcy. Indeed, Gracias was so conflicted with respect to the SolarCity acquisition that he recused himself from voting on the matter in his capacity as a director of Tesla.

131. Musk has reciprocated Gracias's investments in Tesla, SpaceX, and Solar City with investments of Musk's own. Specifically, through his personal Elon Musk Revocable Trust dated July 22, 2003, Musk has invested in three Valor-related

funds with subscription commitments of $2 million, $2 million, and $10 million.

132. Like Musk, Kimbal also is a limited partner of Valor-affiliated funds.

133. Investment funds affiliated with Gracias are investors in the Kitchen Cafe, LLC, which operates a chain of restaurants ("The Kitchen"). Kimbal co-founded The Kitchen with chef Hugo Matheson in 2004.

ii. Jurvetson Is a Tesla Investor and Friend to Musk.

134. *Bloomberg* has characterized Jurvetson, like Gracias, as a "close friend" of Musk. And like Gracias, Musk allowed Jurvetson an early-production Tesla automobile. Indeed, Jurvetson is so close to Musk that he has received ***three*** such vehicles, namely: the first Model S, the second Model X, and the fifth Model 3 manufactured by Tesla.

135. Indeed, Musk has stuck with Jurvetson through a scandal that saw Jurvetson voted out of DFJ. According to a source cited by technology-focused *Recode*, DFJ caught Jurvetson lying about what it considered serious allegations. *Recode* reported that "DFJ's investigation found, in part, a pattern of dishonesty with women, according to other sources, including extra-marital affairs that, in the eyes of some, crossed into the professional world. Jurvetson also contributed to a difficult work environment, a source alleged."

136. Notoriously, Jurvetson hosted a party, chronicled in a book by Emily Chang of *Bloomberg* and *Vanity Fair*, which followed DFJ's "Big Think"

conference and was attended by DFJ partners, DFJ staff, and Musk. The party reportedly featured recreational use of controlled substances and avant-garde behavior, though Musk, through a representative, expressly disclaimed subsequent salacious characterizations of the gathering as a "sex party":

> Elon was at the party for a couple hours and left around 1 A.M. after talking with several DFJ-funded entrepreneurs about technology and building companies. His impression was that it was a corporate party with a costume theme, not a "sex party", and there was no indication that it would become one after he left.

Musk later told *Wired* that "that DFJ party was boring and corporate, with zero sex or nudity anywhere". Regardless of the veracity of certain characterizations of the party, a DFJ representative subsequently stated that "behavior at the party . . . was completely at odds with DFJ's culture".

137. Jurvetson nevertheless took only a leave of absence from Tesla's Board and SpaceX's board, and was subsequently reinstated.

138. Prior to his ouster in late 2017, Jurvetson served as a DFJ Managing Director since 1995. Funds affiliated with DFJ invested significant sums in SpaceX, SolarCity, and Tesla. Jurvetson, through a trust, personally held shares of SolarCity. *Recode* has reported that "the relationship between SpaceX and DFJ, sources say, is very much a relationship between Musk and Jurvetson specifically." Jurvetson has accordingly served as a director of SpaceX, and Jurvetson's partner at DFJ, John H. N. Fisher, served as a director on SolarCity's board.

139. Jurvetson has defended Musk in the press. According to *The Wall Street Journal*, Jurvetson has claimed that Musk's "passion is breathtaking" and praised Musk's dedication and vision. *The Wall Street Journal* tried to speak with Jurvetson about personal loans which Musk made to Tesla and are backed by a pledge of some of Musk's Tesla shares as collateral. When asked whether these loans were in stockholders' best interests and whether Tesla's directors had discussed the matter, Jurvetson replied that he did not "have a desire to take on that question."

140. Musk, through his trust, has invested in a DJF-affiliated fund with a subscription commitment of $250,000.

141. Jurvetson, like Gracias, has also invested in Kimbal's restaurant chain, The Kitchen.

iii. Ehrenpreis Is a Tesla Investor and Friend to Musk.

142. Like Gracias and Jurvetson, Ehrenpreis was close enough to Musk to be granted the right to receive an early production Tesla vehicle, *to wit*: one of the first five Model X's. The following day, Ehrenpreis took to Twitter to express his gratitude: "Its X time!!! A total honor to be the first one last night to congratulate Elon and get my new keys!"

143. Ehrenpreis took it a step further than Gracias and Jurvetson and ***purchased the right to receive the first Model 3 before giving it to Musk as a 46th birthday present***. Musk likewise took to Twitter the next day to express his gratitude.

144. Ehrenpreis and Musk have elsewhere expressed amicable sentiments towards one another on social media. When Ehrenpreis wrote on Twitter that he was "[p]lanning a romantic dinner tonight to celebrate" the ten-year anniversary of initial production of the Roadster, Musk replied "Thanks for your support over all those years!" Ehrenpreis has also made flattering statements about Musk's mother on Twitter, calling her "an inspiration" and a "#rolemodel for all of us!!!"

145. Kimbal shares in the affection. In an entry on his personal weblog concerning an awards program for the Colorado Cleantech Industry Association—on whose board of directors Kimbal sat—Kimbal wrote the following about Ehrenpreis:

> At the celebration event where we announce the winners, we've invited a ***close friend and business associate of mine***, ***Ira Ehrenpreis*** of Palo Alto's Technology Partners, to speak. ***He's called a Venture Capital Visionary and a Cleantech Expert in his bio, and I can attest that it's all true and much, much more***. As a board member of Tesla Motors, I've worked closely with him, experiencing his broad knowledge and keen business and cleantech acumen. It's no mystery to me why our event was sold out two weeks in advance -- the "secret sauce" was being fortunate enough to have Ira Ehrenpreis as our keynote speaker.

146. In another instance of symmetry, Ehrenpreis later invited Musk to give the keynote speech at the World Energy Innovation Forum—which is chaired by Ehrenpreis. Tesla hosted the event at its facility in Fremont, California. The event featured, among other speakers, Ehrenpreis, Lyndon Rive, and Ehrenpreis's partner, Nancy Pfund ("Pfund").

147. The amicable feelings between Ehrenpreis and the brothers Musk dovetail with their business dealings. Ehrenpreis joined venture capitalist firm Technology Partners in 1996 and was appointed to Tesla's Board in connection with its investment in Tesla's Series D round through Technology Partners Fund VIII, LP. Ehrenpreis served as managing member of TP Management VIII, LLC, which managed the Technology Partners affiliate fund.

148. At the time of Ehrenpreis's appointment, Pfund was also serving on the Board as an observer. In this capacity she served on the Board from 2006 until the Company's "IPOin June 2010. Pfund's fund DBL Investors, which had spun off from a J.P. Morgan investment vehicle, had initially invested in Tesla in 2006. DBL Investors also invested in SolarCity, and Pfund resultingly sat on that company's board. In an interview with the *ImpactAlpha* podcast, Pfund discussed her relationship with Musk, agreed with the host that Musk had "always been a master of the universe in [her] mind", and called Musk an "amazing man; so smart, so hard working, [and] so visionary . . . ."

149. In 2014, Ehrenpreis and Pfund started a new venture capital firm, "DBL Partners", which has invested in SpaceX. Ehrenpreis has also personally invested in SpaceX and sits on that company's board.

150. Ehrenpreis has also invested in, and sat on the board of directors of, Mapbox, Inc., which entered into an agreement with Tesla in December 2015

relating to a vehicle map-related project, pursuant to which Tesla made a prepayment of $3 million in 2016 for certain fees. Tesla will pay Mapbox, Inc. to the extent any additional fees for services are incurred in excess of such prepaid fees.

iv. Musk Has Close Personal and Business Ties to Buss.

151. While Musk was initially independent from Buss, whom Stanford corporate governance experts David Larcker and Brian Tayan described in May 2011 as Tesla's "first fully independent director", they would go on to develop what *The New York Times* would characterize as "close personal and professional ties".

152. These ties started with related party transactions between Tesla and Buss's former employer, Cypress Semiconductor Corporation ("Cypress"), where Buss served as executive vice president of finance and administration and chief financial officer. Cypress provided semiconductors to a third-party manufacturer engaged by Tesla to build certain components for the Company's use. Payments made by Tesla to the third-party manufacturer allocable to the semiconductors supplied by Cypress were approximately $35,000 in 2012, $605,000 in 2013, and $817,000 in 2014. When Cypress reported its financial results for the third quarter of 2012, it touted that Tesla would use Cypress's TrueTouch automotive touchscreen solution for the infotainment system in its Model S, which at seventeen inches would be the largest in an automobile to date and the first to integrate all functional controls.

153. In August 2014, Buss left Cypress and was named CFO of SolarCity.

He served in this position until February 2016—not long before SolarCity was merged into Tesla—subsequent Tesla public filings indicate that Buss's departure from SolarCity was his "retirement". Buss subsequently served as an advisor to SolarCity. During his tenure at SolarCity, Buss was paid compensation worth approximately $32 million.

v. Kimbal Is Musk's Brother.

154. The mainstays of the Board have not been just Musk's close friends and employees. Musk's brother, Kimbal, has served on the Board since 2004, the same year that Musk joined the Company. Tesla concedes Kimbal's lack of independence in its public filings.

155. Kimbal also serves on the board of SpaceX.

156. Kimbal's ties do not extend just to his brother. As noted above, he is a "close friend and business associate" of Ehrenpreis. Kimbal has also invested in certain partnerships affiliated with Gracias's investment firm, Valor. Gracias's affiliated investment funds have in turn invested in Kimbal's The Kitchen. Jurvetson has likewise invested in The Kitchen.

vi. Musk Has Installed Denholm as a Figurehead Chair.

157. As part of his settlement with the SEC, Musk was compelled to relinquish his position as Chair of Tesla. Unwilling to cede any actual control, however, Musk chose to install Denholm—who receives a majority of her income

from Tesla—as his "successor".

158. Not long after Denholm's installation Musk nonchalantly undermined her. Musk tweeted on December 11, 2018—after Denholm became Chair—that "'Chairman' is an honorific, not executive role, which means it's not needed to run Tesla. Will retire that title at Tesla in 3 years."

159. Musk does not feel that Denholm will provide a meaningful check on his unfettered authority. In a *60 Minutes* interview Musk said the following:

> Lesley Stahl: Did you handpick her?
>
> Elon Musk: Yes.
>
> Lesley Stahl: The impression was that she was put in to kind of watch over you.
>
> Elon Musk: Yeah, I mean that's not realistic. I mean I'm the largest --
>
> Lesley Stahl: Like a babysitter --
>
> Elon Musk: Yeah. It -- it's not realistic in the sense that I am the largest shareholder in the company. And I can just call for a shareholder vote and get anything done that I want.

160. Musk's sentiments are perhaps unsurprising given the massive compensation Tesla is paying Denholm for part-time work.

vii. Ellison Is a Tesla Investor and Friend to Musk.

161. Like Gracias, Jurvetson, and Ehrenpreis, Ellison is a close friend of Musk's. Indeed, he confirmed as much during an October 2018 call with analysts covering his company, Oracle Corporation. Ellison said that Tesla, to whose Board

he had just recently been appointed, "has a lot of upside", and noted he was "not sure how many people know, but [he is] very close friends with Elon Musk, and [is] a big investor in Tesla."

162. Indeed, Tesla is Ellison's second biggest investment. On January 7, 2019, Tesla filed a Form 3 with the SEC revealing that Ellison, through the Lawrence J Ellison Revocable Trust u/a 1/22/88, had purchased 3 million shares of Company stock, representing a nearly $1 billion investment given the trading price of Tesla stock during that period. Ellison purchased additional Tesla shares in a registered common stock offering which settled on February 19, 2020.

163. Ellison also participated in (for him) minor related-party transactions with Tesla. By way of example, Tesla has revealed in its public filings that "an entity of which Mr. Ellison is a significant shareholder purchased a Tesla Energy microgrid system . . . for approximately $1.9 million", and Ellison's Oracle Corporation has provided software and database services to Tesla, including $667,139 worth of such services in 2018.

C. Musk and the Director Defendants' Inextricable Conflicts Are Well Known to the Market.

164. CtW Investment Group, an affiliate of union pension funds which advocates for best practices in corporate governance ("CtW"), wrote a June 28, 2016 letter complaining of "underlying governance deficiencies" at Tesla. CtW called on Tesla to add two independent directors to the Board, separate the roles of Chair and

CEO, declassify the Board to afford stockholders an annual vote on the election of all directors, and forbid immediate family members of directors from serving concurrently on the Board. In response to this letter, Tesla took precisely none of the recommended actions.

165. The following year, a group of investors including a New York office overseeing public investment funds, retirement funds from California and Connecticut, and Hermes Equity Ownership Service wrote a similar letter to Gracias dated April 10, 2017. The investors complained that numerous Tesla directors had "professional or personal ties to Mr. Musk that could put at risk their ability to exercise independent judgment" and called for the installation of two independent Board members to "provide a critical check on possible dysfunctional group dynamics."

166. New York City Comptroller Scott Stringer ("Stringer") also issued a statement calling for the Board "to take a hard look at Tesla's governance and compensation structures to ensure that there are proper processes in place for strong board independence and oversight." Musk responded to the April 10, 2017 letter and Stringer's statement with sarcasm, tweeting that the investors "should buy Ford stock" because "their governance is amazing". Ford Motor Co. is controlled by the family of founder Henry Ford through a dual-class structure.

167. Repeated stockholder complaints were perhaps best encapsulated in a

May 9, 2018 letter to Tesla stockholders from CtW in which it observed that "the current board is in many respects a holdover from Tesla's earliest days, when it was a private company fully under Elon Musk's control." CtW told stockholders that "since the 2010 IPO, Tesla should have been steadily identifying qualified, independent, and experienced directors to replace board members such as Antonio Gracias and Kimbal Musk, whose presence owes to their venture capital investments and personal relationships to Elon Musk." CtW concluded that with Tesla's IPO in the rear-view mirror, "a modernization of the Tesla board is long overdue."

168. Media reports about Tesla treat Musk's domination of the Board as a foregone conclusion. By way of example, writers for *The Associated Press* have recognized that "[a]t least five of the company's eight non-executive directors have strong ties to Musk or one of his other companies, throwing their independence into question." Likewise, *Forbes* observed in 2008 that "[e]arly-stage tech companies typically have friendly boards loaded with VC types. But as they mature and expand, their need for strong-willed, independent board members does too. Eight years after its IPO, two-thirds of Tesla's nine-member board appear to be rock-solid Musk allies."

169. Proxy advisory firms have likewise questioned the makeup of the Board. Institutional Shareholder Services ("ISS") has recommended that Tesla stockholders vote against Gracias, Murdoch, and Ehrenpreis. Glass Lewis has

recommended votes against Gracias, Murdoch, and Kimbal.

170. Despite these concerns, Musk has not changed the composition of the Board because its members grant him *carte blanche*. Musk's actions at Tesla have shown that there is virtually nothing he could do that would cause the Board to so much as install a chief operating officer to assist Musk, much less check Musk's absolute control of the Company in any way.

DEMAND UPON THE BOARD WOULD BE FUTILE

171. Plaintiff has continuously owned Tesla stock from the time of the beginning of the wrongdoing complained of herein to present.

172. Plaintiff will adequately and fairly represent Tesla's interests and has retained competent counsel experienced in stockholder derivative litigation.

173. Plaintiff brings this action derivatively in the right of Tesla, and for the Company's benefit, to redress the Defendants' breaches of fiduciary duty and unjust enrichment.

174. At the time Plaintiff filed the Complaint, the Board consisted of Musk, Denholm, Ehrenpreis, Ellison, Gracias, Jurvetson, Mizuno, Murdoch, Kimbal, and Wilson-Thompson (the "Current Board").

175. Plaintiff did not demand that the Current Board commence litigation prior to commencing this litigation because doing so would have been futile.

IV. A MAJORITY OF THE BOARD IS NOT DISINTERESTED OR INDEPENDENT.

176. Demand is excused because a majority of the Current Board consists of Director Defendants who received, and are therefore personally interested in, the compensation challenged in this complaint. Additionally, Musk cannot consider a demand to challenge compensation paid to the very friends and family who allow him to run Tesla unchecked.

A. A Majority of the Current Board Has Received the Challenged Compensation.

177. Excepting Musk, each member of the Current Board is incapable of considering a litigation demand challenging Tesla directors' equity compensation because they are personally interested therein. These awards, based on the closing price of Tesla stock on June 12, 2020 of $935.28 per share, are worth a combined $349,671,290.

178. By way of example, Denholm has, since joining the Board in 2014, derived the majority of her income from Tesla instead of her primary employer. From August 2007 to February 2016, Ms. Denholm was employed in various executive capacities by Juniper Networks, Inc., a manufacturer of networking equipment ("Juniper"), where she was employed through July 29, 2016. Thereafter, she became the chief operating officer of Telstra Corporation Ltd. ("Telstra"). From 2014 through her departure in November 2018 from Telstra for Tesla, Denholm received a total of less than $13.5 million USD from her primary employers. In

contrast, Tesla has paid Denholm compensation worth, based on the grant date value of the underlying equity awards, a staggering $24 million USD during that time for her services as a nonemployee director:

	Full-Time Executive	**Tesla Director**
2014	$5,047,560	$7,181,066
2015	$5,085,059	$4,979,785
2016	$1,166,432	$45,000
2017	$664,184*	$4,921,810
2018	$1,391,244*	$6,891,082
Total =	$13,354,479	$24,018,743

*Converted from AUS to USD

179. In November 2018 Denholm was "promoted" to Board Chair in connection with an SEC settlement pursuant to which Musk was ousted from the position, as explained in further detail below.

180. To compensate her for this role, Tesla intends to pay Denholm both a $300,000 annual cash retainer and an automatic annual option grant covering 8,000 shares, in addition to what she already receives as a director. That option award alone, when it is fully vested on July 11, 2020 and based on the closing price of $935.28 per share of Tesla stock on June 12, 2020, will be worth a massive $5,573,440. This compensation, it bears repeating, is for her role as non-executive Chair of the Board only.

B. Musk Will Not Challenge the Compensation of His Pliant Board Consisting of His Friends, Family, and Business Associates.

181. Musk will not sue the Director Defendants because he allows them to pay themselves excessive and unfair compensation in exchange for the Board allowing him to act with impunity and without oversight, regardless of the harm he inflicts on the Company.

182. On top of that, Musk has sat on the Board with four members of the Current Board for more than a decade, and his independence from those directors is questionable on this basis alone:

Current Board		
Name	**Director Since**	**Position**
Musk	2004	Chief Executive Officer & Director
Denholm	2014	Director
Ehrenpreis	2007	Director
Ellison	2018	Director
Gracias	2007	Director
Jurvetson	(no later than) 2009	Director
Kimbal	2004	Director
Murdoch	2017	Director
Wilson-Thompson	2018	Director
Mizuno	2020	Director

183. Moreover, Musk has a disabling conflict of interest with the majority of the Director Defendants arising from his relationships with them, whether a personal relationship, a familial relationship, and/or a close relationship with them through Tesla, SolarCity, and/or SpaceX. (*See* § III.B, *supra*). As such, Musk is not

independent with respect to their compensation.

V. THE ENTIRE BOARD FACES A SUBSTANTIAL LIKELIHOOD OF LIABILITY FOR AUTHORIZING THE CHALLENGED COMPENSATION.

184. In addition to the extensive relationships and connections detailed above, the Defendants are incapable of considering a demand because each one of them faces a substantial likelihood of liability for authorizing the excessive compensation awarded to the Director Defendants.

185. As detailed above, the Board has compensated the Director Defendants pursuant to the director compensation schemes they have put in place, including those incorporated into and/or purportedly allowed under the 2010 Plan, the 2014 Amendment, and the 2019 Plan. Because the compensation awarded to the Director Defendants was excessive and unfair to Tesla, the Defendants violated their fiduciary duties and the Director Defendants were unjustly enriched.

CLAIMS FOR RELIEF

COUNT I
BREACH OF FIDUCIARY DUTY
(Derivatively against all Defendants)

186. Plaintiff realleges each allegation pleaded above.

187. By virtue of their positions on the Board, each of the Defendants owed the Company and its stockholders fiduciary duties, including the duty of loyalty.

188. The Director Defendants breached their duty of loyalty by granting themselves and accepting the compensation packages detailed herein, which were

excessive and unfair to Tesla.

189. Defendant Musk breached his fiduciary duty of loyalty by approving the excessive and unfair compensation.

190. Tesla has been and will continue to be damaged as a result of Defendants' actions.

191. The Company has no adequate remedy at law.

COUNT II
UNJUST ENRICHMENT
(Derivatively against the Director Defendants)

192. Plaintiff incorporates by reference and realleges each allegation set forth above.

193. The Director Defendants received excessive and unfair financial benefits as a result of the compensation packages challenged herein.

194. It would be unconscionable and against fundamental principles of justice and equity for the Director Defendants, who received the challenged compensation packages, to retain the benefits of the excessive and unfair payments described above.

195. Accordingly, this Court should order the Director Defendants to disgorge the proceeds obtained as a result of the excessive and unfair transactions described above.

196. The Company has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests entry of an order:

A. Declaring that the unfair and excessive compensation awarded to the Director Defendants as described herein constituted a breach of fiduciary duties;

B. Disgorging the unfair and excessive compensation paid to the Director Defendants;

C. Directing Defendants to account to the Company for all damages caused to it and to account for all excessive compensation paid to the Director Defendants as a result of their unlawful conduct;

D. Enjoining future awards of equity compensation to the Director Defendants until the adoption of an incentive plan providing for fair and reasonable compensation;

E. Awarding Plaintiff its costs and disbursements in this action, including reasonable allowance of fees and costs for attorneys, experts, and accountants; and

F. Granting such other relief as the Court may deem just and appropriate.

Dated: June 17, 2020

Respectfully submitted,

McCarter & English, LLP

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

Attorneys for Plaintiff

OF COUNSEL:

Fields Kupka & Shukurov LLP
William J. Fields
(wfields@fksfirm.com)
Christopher J. Kupka
(chriskupka@fksfirm.com)
Samir Shukurov
(sshukurov@fksfirm.com)
1370 Broadway, 5th Floor – #5100
New York, New York 10018
(T) 212.231.1500
(F) 646.851.0076

Bleichmar Fonti & Auld LLP
Javier Bleichmar
(jbleichmar@bfalaw.com)
Nancy A. Kulesa
(nkulesa@bfalaw.com)
7 Times Square, 27th Floor
New York, New York 10036
Telephone: (212) 789-1340
Facsimile: (212) 205-3960

-and-

Peter E. Borkon
(pborkon@bfalaw.com)
555 12th Street, Suite 1600
Oakland, California 94607
Telephone: (415) 445-4003
Facsimile: (415) 445-4020

Clark Hill PLC
Ronald A. King
(rking@clarkhill.com)
212 E. Cesar Chavez Ave
Lansing, MI 48906
Telephone: (517) 318-3015
Facsimile: (571) 318 3068

Additional Counsel for Plaintiff

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. _____-_____

UNSWORN DECLARATION AND VERIFICATION PURSUANT TO ADMINISTRATIVE ORDER NO. 3 AND 10 *DEL. C.* § 3927

David Cetlinski does hereby state as follows:

1. I, David Cetlinski, am the Executive Director of The Police and Fire Retirement System of the City of Detroit. I am authorized by The Police and Fire Retirement System of the City of Detroit to act on its behalf in this matter.

2. The Police and Fire Retirement System of the City of Detroit is, and was during all relevant times alleged in the Verified Stockholder Derivative Complaint (the "Complaint"), a holder of common stock of Tesla, Inc. ("Tesla").

3. I have read the Complaint, consulted with counsel, and authorized the Complaint's filing.

4. The facts alleged in the Complaint are true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

5. In accordance with Delaware Court of Chancery Rules 23.1(b) and 3(aa), The Police and Fire Retirement System of the City of Detroit has not received, been promised, or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this action except: (i) such fees, costs or other payments as the court expressly approves to be paid to or on behalf of The Police and Fire Retirement System of the City of Detroit; or (ii) reimbursement, paid by its attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.

[Continued on Following Page]

This declaration is unsworn, pursuant to 10 *Del. C.* § 3927, Administrative Order No. 3 (Del. March 22, 2020) and Administrative Order No. 7 (Del. June 5,2020). I declare under penalty of perjury under the law of Delaware that the foregoing is true and correct.

Executed on the 17th day
of June 2020.

David Cetlinski

Executive Director for The Police and Fire
Retirement System of the City of Detroit

EXHIBIT A

Table of Contemporaneous Exercises and Sales

Date	Number of Options Exercised	Option Exercise Price	Total Exercise Cost	Number of Shares Sold	Sale Price Per Share	Sales proceeds
Gracias same day exercise/sales						
2/20/2020	25,000	$ 261.89	$ 6,547,250.00	300	$ 883.827	$ 265,148.10
	25,500	$ 250.69	$ 6,392,595.00	1,584	$ 885.161	$ 1,402,095.02
	13,458	$ 342.77	$ 4,612,998.66	2,516	$ 886.054	$ 2,229,311.86
	13,194	$ 370.83	$ 4,892,731.02	5,218	$ 887.162	$ 4,629,211.32
				5,307	$ 888.208	$ 4,713,719.86
				4,417	$ 889.220	$ 3,927,684.74
				7,677	$ 890.192	$ 6,834,003.98
				11,608	$ 891.245	$ 10,345,571.96
				9,621	$ 892.213	$ 8,583,981.27
				3,404	$ 893.271	$ 3,040,694.48
				700	$ 894.113	$ 625,879.10
				1,215	$ 895.297	$ 1,087,785.86
				2,651	$ 896.464	$ 2,376,526.06
				4,915	$ 897.561	$ 4,411,512.32
				10,997	$ 898.385	$ 9,879,539.85
				4,922	$ 899.431	$ 4,426,999.38
				100	$ 900.050	$ 90,005.00
	77,152		**$ 22,445,574.68**	**77,152**		**$ 68,869,670.16**
6/3/2019*	9,000	$ 29.66	$ 266,940.00	9,000	$ 180.350	$ 1,623,148.20
	12,000	$ 29.66	$ 355,920.00	12,000	$ 180.350	$ 2,164,197.60
	2,000	$ 29.66	$ 59,320.00	2,000	$ 180.350	$ 360,699.60
	6,000	$ 29.66	$ 177,960.00	6,000	$ 180.350	$ 1,082,098.80
	29,000		**$ 860,140.00**	**29,000**		**$ 5,230,144.20**

*Due to sale of more shares than exercised, figures are based on volume-weighted average sales price

4/9/2019 - 4/10/19*	1,116	29.66	$ 33,100.56	1,116	$ 275.924	$ 307,931.18
	13,284	29.66	$ 394,003.44	13,284	$ 275.924	$ 3,665,374.42
	14,400		**$ 427,104.00**	**14,400**		**$ 3,973,305.60**

*Due to sale of more shares than exercised, figures are based on volume-weighted average sales price

3/12/19 - 3/13/19*	6,800	$ 29.66	$ 201,688.00	6,800	$ 285.456	$ 1,941,100.80
	400	$ 29.66	$ 11,864.00	400	$ 285.456	$ 114,182.40
	7,200	$ 29.66	$ 213,552.00	7,200	$ 285.456	$ 2,055,283.20
	14,400		**$ 427,104.00**	**14,400**		**$ 4,110,566.40**

*Due to sale of more shares than exercised, figures are based on volume-weighted average sales price

2/13/19 - 2/14/19*	7,200	$ 29.66	$ 213,552.00	7,200	$ 297.259	$ 2,140,264.80
	7,200	$ 29.66	$ 213,552.00	7,200	$ 297.259	$ 2,140,264.80
	14,400		**$ 427,104.00**	**14,400**		**$ 4,280,529.60**

*Due to sale of more shares than exercised, figures are based on volume-weighted average sales price

Table of Contemporaneous Exercises and Sales

Date	Number of Options Exercised	Option Exercise Price	Total Exercise Cost	Number of Shares Sold	Sale Price Per Share	Sales proceeds
1/16/19 - 1/17/19*	2,266	$ 30.08	$ 68,161.28	2,266	$ 390.112	$ 883,994.47
	4,934	$ 29.66	$ 146,342.44	4,934	$ 390.112	$ 1,924,814.09
	7200	$ 29.66	$ 213,552.00	7200	$ 390.112	$ 2,808,808.56
	14,400		**$ 428,055.72**	**14,400**		**$ 5,617,617.12**

*Due to sale of more shares than exercised, figures are based on volume-weighted average sales price

12/20/18 -	7,200	$ 30.08	$ 216,576.00	7,200	$ 318.621	$ 2,294,074.08
12/21/18*	7,200	$ 30.08	$ 216,576.00	7,200	$ 318.621	$ 2,294,074.08
	14,400		**$ 433,152.00**	**14,400**		**$ 4,588,148.16**

*Due to sale of more shares than exercised, figures are based on volume-weighted average sales price

2/24/2017	5,466	$ 9.96	$ 54,441.36	1,300	$ 257.699	$ 335,008.70
				1,366	$ 256.775	$ 350,754.65
				1,700	$ 255.935	$ 435,089.50
				400	$ 254.208	$ 101,683.20
				500	$ 252.474	$ 126,237.00
				200	$ 251.175	$ 50,235.00
	5,466		**$ 54,441.36**	**5,466**		**$ 1,399,008.05**

2/6/2017	5,600	$ 9.96	$ 55,776.00	700	$ 252.070	$ 176,449.00
				1,600	$ 253.364	$ 405,382.40
				1,200	$ 254.318	$ 305,181.60
				700	$ 255.572	$ 178,900.40
				1,300	$ 256.338	$ 333,239.40
				100	$ 257.240	$ 25,724.00
	5,600		**$ 55,776.00**	**5,600**		**$ 1,424,876.80**

1/25/2017	5,600	$ 9.96	$ 55,776.00	1,801	$ 252.816	$ 455,321.62
				1,500	$ 253.971	$ 380,956.50
				799	$ 254.630	$ 203,449.37
				700	$ 256.160	$ 179,312.00
				800	$ 256.770	$ 205,416.00
	5,600		**$ 55,776.00**	**5,600**		**$ 1,424,455.49**

Table of Contemporaneous Exercises and Sales

Date	Number of Options Exercised	Option Exercise Price	Total Exercise Cost	Number of Shares Sold	Sale Price Per Share	Sales proceeds
Jurvetson same day exercise/sales						
11/22/2019	13,889	$ 261.89	$ 3,637,390.21	17,223	$ 332.444	$ 5,725,683.01
	3,334	$ 250.69	$ 835,800.46			
	17,223		**$ 4,473,190.67**	**17,223**		**$ 5,725,683.01**
8/22/2017	36,111	$ 261.89	$ 9,457,109.79	20,118	$ 339.822	$ 6,836,539.00
	8,666	$ 250.69	$ 2,172,479.54	24,659	$ 340.803	$ 8,403,861.18
	44,777		**$ 11,629,589.33**	**44,777**		**$ 15,240,400.17**
11/13/2013	33,333	$ 6.63	$ 220,997.79	77,942	$ 140.311	$ 10,936,119.96
	16,666	$ 30.08	$ 501,313.28	1,000	$ 141.106	$ 141,106.00
	6,944	$ 29.66	$ 205,959.04			
	16,666	$ 28.43	$ 473,814.38			
	5,333	$ 29.66	$ 158,176.78			
	78,942		**$ 722,311.07**	**78,942**		**$ 11,077,225.96**
Kimbal same day exercise/sales						
6/1/2020	**4,075**	$ 370.83	**$ 1,511,132.25**	**7,275**	$ 895.000	**$ 6,511,125.00**
11/12/2019-11/13/2019*	49,905	$ 261.89	$ 13,069,620.45	49,905	$ 350.559	$ 17,494,626.93
	95	$ 261.89	$ 24,879.55	95	$ 350.559	$ 33,303.07
	50,000		**$ 13,094,500.00**	**50,000**		**$ 17,527,930.00**
10/1/2018	**1,875**	$ 29.66	**$ 55,612.50**	**1,875**	$ 306.000	**$ 573,750.00**
7/2/2018	1,875	$ 29.66	$ 55,612.50	300	$ 355.670	$ 106,701.00
				300	$ 357.337	$ 107,201.10
				800	$ 358.555	$ 286,844.00
				300	$ 359.633	$ 107,889.90
				175	$ 360.569	$ 63,099.58
	1,875		**$ 55,612.50**	**1,875**		**$ 671,735.58**
4/5/2018	**1,875**	$ 29.66	**$ 55,612.50**	**1,875**	$ 300.000	**$ 562,500.00**
1/2/2018*	**1,875**	$ 29.66	**$ 55,612.50**	**1,875**	$ 312.082	**$ 585,152.81**
7/3/2017*	**2,500**	$ 29.66	**$ 74,150.00**	**2,500**	$ 367.677	**$ 919,191.25**
6/1/2017*	**2,500**	$ 29.66	**$ 74,150.00**	**2,500**	$ 342.821	**$ 857,052.00**

*Due to sale of more shares than exercised, figures are based on volume-weighted average sales price

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Table of Contemporaneous Exercises and Sales

Date	Number of Options Exercised	Option Exercise Price	Total Exercise Cost	Number of Shares Sold	Sale Price Per Share	Sales proceeds
5/1/2017	2,500	$ 29.66	$ 74,150.00	2,000	$ 315.543	$ 631,086.00
				500	$ 316.191	$ 158,095.50
	2,500		**$ 74,150.00**	**2,500**		**$ 789,181.50**
4/3/2017	2,500	$ 29.66	$ 74,150.00	1,475	$ 285.789	$ 421,538.78
				925	$ 286.912	$ 265,393.60
				100	$ 287.800	$ 28,780.00
	2,500		**$ 74,150.00**	**2,500**		**$ 715,712.38**
3/1/2017	2,500	$ 29.66	$ 74,150.00	2,200	$ 253.840	$ 558,448.00
				300	$ 254.620	$ 76,386.00
	2,500		**$ 74,150.00**	**2,500**		**$ 634,834.00**
2/1/2017	**2,500**	$ 29.66	**$ 74,150.00**	**2,500**	$ 252.395	**$ 630,987.50**
1/3/2017	2,500	$ 29.66	$ 74,150.00	1,200	$ 211.785	$ 254,142.00
				200	$ 212.600	$ 42,520.00
				1,100	$ 214.165	$ 235,581.50
	2,500		**$ 74,150.00**	**2,500**		**$ 532,243.50**
11/1/2016	2,779	$ 29.66	$ 82,425.14	1,979	$ 197.340	$ 390,535.86
				800	$ 198.250	$ 158,600.00
	2,779		**$ 82,425.14**	**2,779**		**$ 549,135.86**
5/2/2016	5,555	$ 29.66	$ 164,761.30	1,459	$ 237.339	$ 346,277.60
				3,196	$ 238.247	$ 761,437.41
				800	$ 240.190	$ 192,152.00
				100	$ 241.400	$ 24,140.00
	5,555		**$ 164,761.30**	**5,555**		**$ 1,324,007.01**
3/18/2016	**11,997**	$ 30.08	**$ 360,869.76**	**11,997**	$ 232.710	**$ 2,791,821.87**
12/4/2015	331	$ 28.43	$ 9,410.33	331	$ 229.873	$ 76,087.96
	4,669	$ 30.08	$ 140,443.52	4,669	$ 229.462	$ 1,071,358.08
	5,000		**$ 9,410.33**	**5,000**		**$ 1,147,446.04**
11/2/2015	6,800	$ 28.43	$ 193,324.00	200	$ 207.635	$ 41,527.00
				300	$ 208.740	$ 62,622.00
				1,700	$ 212.452	$ 361,168.40
				1,585	$ 213.205	$ 337,929.93
				1,615	$ 214.499	$ 346,415.89
				1,200	$ 215.258	$ 258,309.60
				200	$ 210.783	$ 42,156.60
	6,800		**$ 193,324.00**	**6,800**		**$ 1,450,129.41**

Table of Contemporaneous Exercises and Sales

Date	Number of Options Exercised	Option Exercise Price	Total Exercise Cost	Number of Shares Sold	Sale Price Per Share	Sales proceeds
8/3/2015	6,800	$ 28.43	$ 193,324.00	2,105	$ 263.566	$ 554,806.43
				3,895	$ 264.378	$ 1,029,752.31
				600	$ 265.180	$ 159,108.00
				200	$ 266.165	$ 53,233.00
	6,800		**$ 193,324.00**	**6,800**		**$ 1,796,899.74**
5/1/2015	2,735	$ 28.43	$ 77,756.05	1,500	$ 221.061	$ 331,591.50
	3,666	$ 9.96	$ 36,513.36	1,079	$ 222.081	$ 239,625.40
				900	$ 223.005	$ 200,704.50
				1,300	$ 224.320	$ 291,616.00
				700	$ 225.053	$ 157,537.10
				922	$ 225.990	$ 208,362.78
	6,401		**$ 114,269.41**	**6,401**		**$ 1,429,437.28**
Buss same day exercise/sales						
5/16/2019	33,334	$ 29.66	$ 988,686.44	14,931	$ 227.237	$ 3,392,875.65
	5,206	$ 29.66	$ 154,409.96	8,743	$ 227.951	$ 1,992,975.59
				6,230	$ 229.232	$ 1,428,115.36
				7,736	$ 230.069	$ 1,779,813.78
				900	$ 230.768	$ 207,691.20
	38,540		**$ 1,143,096.40**	**38,540**		**$ 8,801,471.58**
3/14/2019	8,333	$ 29.66	$ 247,156.78	19,271	$ 292.450	$ 5,635,803.95
	6,250	$ 29.66	$ 185,375.00			
	1,561	$ 29.66	$ 46,299.26			
	3,127	$ 29.66	$ 92,746.82			
	19,271		**$ 571,577.86**	**19,271**		**$ 5,635,803.95**
2/14/2019	16,666	$ 30.08	$ 501,313.28	1,000	$ 301.861	$ 301,861.00
	2,605	$ 29.66	$ 77,264.30	6,689	$ 302.906	$ 2,026,138.23
				4,547	$ 303.673	$ 1,380,801.13
				3,135	$ 304.804	$ 955,560.54
				3,800	$ 305.877	$ 1,162,332.60
				100	$ 306.500	$ 30,650.00
	19,271		**$ 578,577.58**	**19,271**		**$ 5,857,343.51**
5/12/2016-5/13/2016	3,333	$ 6.63	$ 22,097.79	5,333	$ 208.130	$ 1,109,957.29
	2,000	$ 28.43	$ 56,860.00	10,000	$ 207.555	$ 2,075,550.00
	10,000	$ 28.43	$ 284,300.00			
	15,333		**$ 363,257.79**	**15,333**		**$ 3,185,507.29**
8/23/2013	**10,000**	$ 6.63	**$ 66,300.00**	**10,000**	$ 158.308	**$ 1,583,077.00**
5/28/2013	**20,000**	$ 6.63	**$ 132,600.00**	**20,000**	$ 104.418	**$ 2,088,360.00**

Table of Contemporaneous Exercises and Sales

Date	Number of Options Exercised	Option Exercise Price	Total Exercise Cost	Number of Shares Sold	Sale Price Per Share	Sales proceeds
Ehrenpreis same day exercise/sales						
8/18/2015	**16,698**	$ 29.66	**$ 495,262.68**	**16,698**	$ 255.390	**$ 4,264,502.22**
9/2/2014	**20,035**	$ 29.66	**$ 594,238.10**	**20,035**	$ 285.550	**$ 5,720,994.25**
8/18/2015*	16,666	$ 28.43	$ 473,814.38	16,666	$ 163.958	$ 2,732,522.36
	16,666	$ 30.08	$ 501,313.28	16,666	$ 163.958	$ 2,732,522.36
	12,109	$ 29.66	$ 359,152.94	12,109	$ 163.958	$ 1,985,366.21
	45,441		**$ 1,334,280.60**	**45,441**		**$ 7,450,410.93**

*Due to sale of more shares than exercised, figures are based on volume-weighted average sales price

8/28/2013-2/29/2013 *	16,666	$ 28.43	$ 473,814.38	16,666	$ 163.960	$ 2,732,557.36
	16,666	$ 30.08	$ 501,313.28	16,666	$ 163.960	$ 2,732,557.36
	12,109	$ 29.66	$ 359,152.94	12,109	$ 163.960	$ 1,985,391.64
	45,441			**45,441**		**$ 7,450,506.36**

*Due to sale of more shares than exercised, figures are based on volume-weighted average sales price

Rice same day exercise/sales						
2/5/2019	**1,700**	$ 319.57	**$ 543,269.00**	**1,700**	$ 320.000	**$ 544,000.00**
1/7/2019	**1,700**	$ 319.57	**$ 543,269.00**	**1,700**	$ 321.600	**$ 546,720.00**
11/14/2018	**3,000**	$ 319.57	**$ 958,710.00**	**3,000**	$ 340.684	**$ 1,022,052.00**

Denholm same day exercise/sales						
5/8/2017	**20,000**	$ 259.94	**$ 5,198,800.00**	**20,000**	$ 311.763	**$ 6,235,260.00**

EXHIBIT B

Table of Challenged Awards

Grant Date	Recipient	Basis of the Award	Number of Options	Grant Date Fair Value Per Option as Determined by Tesla	Total Grant Date Fair Value as determined by Tesla	Option Exercise Price	Net Present Value based June 12, 2020 closing price of $935.28
2017 Awards							
7/17/17	Rice*	Initial Options Award	16,668	$ 115.01	$ 1,916,971.68	$ 319.57	$ 10,262,654.28
7/17/17	Murdoch	Initial Options Award	16,668	$ 115.01	$ 1,916,971.68	$ 319.57	$ 10,262,654.28
7/24/17	Buss*	Audit Committee Member	12,000	$ 123.27	$ 1,479,223.20	$ 342.52	$ 7,113,120.00
7/24/17	Buss*	Compensation Committee Member	9,000	$ 123.27	$ 1,109,417.40	$ 342.52	$ 5,334,840.00
7/24/17	Buss*	Nominating Committee Member	6,000	$ 123.27	$ 739,611.60	$ 342.52	$ 3,556,560.00
8/18/17	Denholm	Audit Committee Chair	12,000	$ 125.05	$ 1,500,556.80	$ 347.46	$ 7,053,840.00
8/18/17	Denholm	Nominating Committee Member	6,000	$ 125.05	$ 750,278.40	$ 347.46	$ 3,526,920.00
8/18/17	Denholm	Audit Committee Member	12,000	$ 125.05	$ 1,500,556.80	$ 347.46	$ 7,053,840.00
8/18/17	Denholm	Compensation Committee Member	9,000	$ 125.05	$ 1,125,417.60	$ 347.46	$ 5,290,380.00
			99,336		**$ 12,039,005.16**		**$ 59,454,808.56**

* Presumably did not vest in full due to retirement on June 11, 2019

Table of Challenged Awards

Grant Date	Recipient	Basis of the Award	Number of Options	Grant Date Fair Value Per Option as Determined by Tesla	Total Grant Date Fair Value as determined by Tesla	Option Exercise Price	Net Present Value based June 12, 2020 closing price of $935.28
2018 Awards							
6/12/2018	Gracias	Lead Independent Director Award	24,000	$ 126.42	$ 3,034,144.80	$ 342.77	$ 14,220,240.00
6/12/2018	Gracias	Compensation Committee Member	9,000	$ 126.42	$ 1,137,804.30	$ 342.77	$ 5,332,590.00
6/12/2018	Gracias	Nominating Committee Member	6,000	$ 126.42	$ 758,536.20	$ 342.77	$ 3,555,060.00
6/12/2018	Gracias	Audit Committee Member	12,000	$ 126.42	$ 1,517,072.40	$ 342.77	$ 7,110,120.00
6/12/2018	Ehrenpreis	Compensation Committee Chair	6,000	$ 126.42	$ 758,536.20	$ 342.77	$ 3,555,060.00
6/12/2018	Ehrenpreis	Nominating Committee Chair	3,000	$ 126.42	$ 379,268.10	$ 342.77	$ 1,777,530.00
6/12/2018	Ehrenpreis	Nominating Committee Member	6,000	$ 126.42	$ 758,536.20	$ 342.77	$ 3,555,060.00
6/12/2018	Ehrenpreis	Compensation Committee Member	9,000	$ 126.42	$ 1,137,804.30	$ 342.77	$ 5,332,590.00
6/14/2018	Murdoch	Audit Committee Member	12,000	$ 131.94	$ 1,583,240.40	$ 357.72	$ 6,930,720.00
6/14/2018	Rice*	Compensation Committee Member	9,000	$ 131.94	$ 1,187,430.30	$ 357.72	$ 5,198,040.00
6/18/2018	Gracias	Triennial Award	50,000	$ 136.77	$ 6,838,600.00	$ 370.83	$ 28,222,500.00
6/18/2018	Buss*	Triennial Award	50,000	$ 136.77	$ 6,838,600.00	$ 370.83	$ 28,222,500.00
6/18/2018	Ehrenpreis	Triennial Award	50,000	$ 136.77	$ 6,838,600.00	$ 370.83	$ 28,222,500.00
6/18/2018	Murdoch	Triennial Award	50,000	$ 136.77	$ 6,838,600.00	$ 370.83	$ 28,222,500.00
6/18/2018	Kimbal	Triennial Award	50,000	$ 136.77	$ 6,838,600.00	$ 370.83	$ 28,222,500.00
6/18/2018	Rice*	Triennial Award	50,000	$ 136.77	$ 6,838,600.00	$ 370.83	$ 28,222,500.00
6/18/2018	Denholm	Triennial Award	50,000	$ 136.77	$ 6,838,600.00	$ 370.83	$ 28,222,500.00
10/5/2018	Murdoch	Nominating Committee Member	6,000	$ 97.28	$ 583,706.58	$ 261.95	$ 4,039,980.00
			452,000		**$ 60,706,279.78**		**$ 258,164,490.00**

* Presumably did not vest in full due to retirement on June 11, 2019

Table of Challenged Awards

Grant Date	Recipient	Basis of the Award	Number of Options	Grant Date Fair Value Per Option as Determined by Tesla	Total Grant Date Fair Value as determined by Tesla	Option Exercise Price	Net Present Value based June 12, 2020 closing price of $935.28
2019 Awards							
1/7/2019	Ellison	Initial Options Award	8,334	$ 150.60	$ 1,255,136.00	$ 334.96	$ 5,003,066.88
1/7/2019	Wilson-Thompson	Initial Options Award	8,334	$ 150.60	$ 1,255,136.00	$ 334.96	$ 5,003,066.88
4/29/2019	Denholm	seemingly redundant w/ 2017 award	12,000	$ 98.72	$ 1,184,605.20	$ 241.47	$ 8,325,720.00
4/29/2019	Denholm	seemingly redundant w/ 2017 award	6,000	$ 98.72	$ 592,302.60	$ 241.47	$ 4,162,860.00
4/29/2019	Jurvetson	Audit Committee Member	12,000	$ 98.72	$ 1,184,605.20	$ 241.47	$ 8,325,720.00
4/29/2019	Wilson-Thompson	Nominating Committee Member	6,000	$ 98.72	$ 592,302.60	$ 241.47	$ 4,162,860.00
4/29/2019	Wilson-Thompson	Compensation Committee Chair	9,000	$ 98.72	$ 888,453.90	$ 241.47	$ 6,244,290.00
6/18/2019	Ellison	Triennial Award	50,000	$ 91.88	$ 4,593,840.00	$ 224.74	$ 35,527,000.00
6/18/2019	Wilson-Thompson	Triennial Award	50,000	$ 91.88	$ 4,593,840.00	$ 224.74	$ 35,527,000.00
7/11/2019	Denholm	Chair of the Board	8,000	$ 93.44	$ 747,532.00	$ 238.60	$ 5,573,440.00
			169,668		**$ 16,887,753.50**		**$ 117,855,023.76**

Table of Challenged Awards

Grant Date	Recipient	Basis of the Award	Number of Options	Grant Date Fair Value Per Option as Determined by Tesla	Total Grant Date Fair Value as determined by Tesla	Option Exercise Price	Net Present Value based June 12, 2020 closing price of $935.28
2020 Awards							
3/6/20	Gracias	seemingly redundant w/ 2018 award	4,000	undisclosed	undisclosed	$ 703.48	$ 927,200.00
5/4/20	Mizuno	Initial Options Award	2,778	undisclosed	undisclosed	$ 761.19	$ 483,622.02
5/4/20	Mizuno	Audit Committee Member	4,000	undisclosed	undisclosed	$ 761.19	$ 696,360.00
			10,778				**$ 2,107,182.02**
		Total Challenged Compensation =	***731,782***				***$ 437,581,504.34***