



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RICHARD J. TORNETTA, Individually
and on Behalf of All Others Similarly
Situating and Derivatively on Behalf of
Nominal Defendant TESLA, INC.

Plaintiff,

v.

ELON MUSK, ROBYN M. DENHOLM,
ANTONIO J. GRACIAS, JAMES
MURDOCH, LINDA JOHNSON RICE,
BRAD W. BUSS, IRA EHRENPREIS,
STEVE JURVETSON, and KIMBAL
MUSK,

Defendants,

and

TESLA, INC, a Delaware corporation,

Nominal Defendant.

C.A. No. 2018-0408-VCS

PUBLIC VERSION

Filed June 7, 2018

**VERIFIED STOCKHOLDER CLASS ACTION AND
DERIVATIVE COMPLAINT**

Plaintiff Richard J. Tornetta ("Plaintiff"), on behalf of himself and all other similarly situated stockholders of Tesla, Inc. ("Tesla" or the "Company"), and for the benefit of nominal defendant Tesla, brings the following Verified Stockholder Class Action and Derivative Complaint (the "Complaint") against (i) the Tesla board of directors (the "Tesla Board" or "Board") for breaching their fiduciary duties and for waste and (ii) Elon Musk ("E. Musk") for breaching his fiduciary duties as

Tesla's controlling stockholder and for unjust enrichment. The allegations of the Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief, including the investigation of counsel, the review of publicly-available information, and the review of certain books and records produced by the Company in response to Plaintiff's demand made under 8 *Del. C.* § 220, as to all other matters.

I. INTRODUCTION

1. This case arises from the Tesla Board's approval of a massive, unfair and unprecedented compensation package for the Company's Chief Executive Officer ("CEO"), Chairman and controlling stockholder, E. Musk (the "New E. Musk Compensation Plan").

2. On January 21, 2018, the Tesla Board approved the New E. Musk Compensation Plan, which consists of a 10-year grant of Tesla stock options to E. Musk that vest in twelve tranches. Each of the twelve tranches vests upon satisfaction of certain market capitalization and operational milestones. Upon satisfaction of the twin milestones corresponding to *each* of the twelve tranches, stock options held by E. Musk representing 1% of Tesla's current total outstanding shares (*i.e.*, approximately 1.69 million shares) will vest.

3. The absolute size of the New E. Musk Compensation Plan is staggering. Tesla itself has publicly stated that the estimated fair value of the New E. Musk Compensation Plan is **\$2.6 billion**. If Tesla continues to grow at a rate even remotely

close to its historic growth rate, the value of the New E. Musk Compensation Plan could balloon to more than *\$55 billion*.

4. The New E. Musk Compensation Plan is so large that it dwarfs the pay package of every other public company CEO. As proxy advisory firm Glass Lewis aptly stated, “[a]ny comparison of the grant’s size would be akin to stacking nickels against dollars.”

5. The absurdity of the New E. Musk Compensation Plan is underscored by comparing it to the compensation packages of visionary founders and CEOs of technology companies like Mark Zuckerberg of Facebook, Inc. (“Facebook”) and Larry Page of Alphabet Inc. (formerly Google), who each received \$1 in compensation for 2017 (excluding certain personal security costs).

6. In light of its dramatic unfairness, the New E. Musk Compensation Plan cannot possibly withstand scrutiny under entire fairness, the applicable standard of review for this conflicted controlling stockholder transaction.

7. Through this action, Plaintiff seeks to recover for the harm caused by E. Musk and the other Defendants’ breaches of fiduciary duty and other misconduct in connection with the New E. Musk Compensation Plan.

II. THE PARTIES

8. Plaintiff is and has been, at all relevant times, a beneficial owner of shares of Tesla common stock.

9. Nominal Defendant Tesla is a Delaware corporation headquartered in Palo Alto, California. Tesla designs, develops, manufactures and sells high-performance fully-electric vehicles and energy storage products. Tesla's stock trades on the NASDAQ Global Select Market under the ticker symbol "TSLA".

10. Defendant E. Musk has served as Tesla's CEO since October 2008 and as Chairman of the Tesla Board since April 2004. He is Tesla's largest stockholder, owning 21.9% of Tesla's common stock through the Elon Musk Revocable Trust (the "Musk Trust"). Since May 2002, E. Musk has also served as CEO, Chief Technology Officer and Chairman of Space Exploration Technologies Corporation ("SpaceX"), a private company which is developing and launching advanced rockets for satellite and eventually human transportation. According to CNBC, SpaceX is the one of the "world's most valuable private companies."¹ E. Musk is the trustee of a private trust that owns 54% of the outstanding stock of SpaceX, and has voting control over 78% of the outstanding stock of SpaceX.² E. Musk also served as Chairman of SolarCity Corporation ("SolarCity") from July 2006 until its

¹ Katie Benner & Kenneth Chang, "SpaceX is now one of the world's most valuable privately held companies," CNBC.com, July 27, 2017, <https://www.cnbc.com/2017/07/27/spacex-is-now-one-of-the-worlds-most-valuable-privately-held-companies.html> (last accessed June 2, 2018).

² Fred Lambert, "Elon Musk's Stake In SpaceX Is Actually Worth More Than His Tesla Shares," Electrek, Nov. 16, 2016, <https://electrek.co/2016/11/16/elon-musk-stake-spacex-tesla-shares/> (last accessed June 4, 2018).

acquisition by Tesla in 2016. Through the Musk Trust, E. Musk is an investor and limited partner in Valor Equity Partners II, L.P. (“Valor Equity”), an investment firm that is managed by Valor Management Corporation (“VMC” and together with Valor Equity, “Valor”). Defendant Antonio J. Gracias (“Gracias”) is the CEO, director and majority owner of VMC.

11. Defendant Kimbal Musk (“K. Musk”) has been a member of the Tesla Board since April 2004. K. Musk is E. Musk’s brother. Tesla concedes in its filings with the U.S. Securities and Exchange Commission (“SEC”) that K. Musk is not an independent director of the Company. He also serves as a director of SpaceX. Additionally, K. Musk is a limited partner and investor in Valor alongside his brother and Defendant Gracias. K. Musk is also a limited partner in Valor Equity Partners III-A, L.P. another investment firm managed by VMC.

12. Defendant Gracias has been a member of the Tesla Board since May 2007 and has served as the Company’s purported “Lead Independent Director” since September 2010. Gracias serves as a member of Tesla’s Compensation Committee and Nominating and Governance Committee (the “Compensation Committee” or “Committee”). Gracias was formerly a member of SolarCity’s Board of Directors. Currently, he is a member of the Board of Directors of SpaceX, which is controlled by E. Musk. Gracias is the founder, managing partner, CEO, Chief Investment Officer, director and sole owner of private equity firm VMC, d/b/a Valor Equity

Partners.

13. Defendant Steve Jurvetson (“Jurvetson”) has been a member of the Tesla Board since June 2009. He also serves on the Board of Directors of SpaceX, which is controlled by E. Musk. Jurvetson was a Managing Director of Draper Fisher Jurvetson (“DFJ”), a venture capital firm from 1995 to late 2017. E. Musk is an investor and limited partner in Draper Fisher Jurvetson Fund X, L.P., an affiliate fund of DFJ.

14. Defendant Ira Ehrenpreis (“Ehrenpreis”) has been a member of the Tesla Board since May 2007. He also is the Chair of Tesla’s Compensation Committee. Since 2014, Ehrenpreis has also been a Managing Partner and co-owner of venture capital firm DBL Partners, which he co-founded with fellow managing partner and co-owner Nancy Pfund (“Pfund”). Ehrenpreis is a manager of DBL Partners Fund III (“DBL III”). Both Ehrenpreis and DBL III are investors in SpaceX. Ehrenpreis is an investor and member of the board of directors of Mapbox, Inc., a provider of custom online maps.

15. Defendant Buss has been a member of the Tesla Board since November 2009. Since July 2017, Buss has been a member of Tesla’s Compensation Committee. From August 2014 until his retirement in February 2016, Buss served as the Chief Financial Officer (“CFO”) of SolarCity. During his 18-month tenure as

SolarCity's CFO, Buss earned \$32 million, allowing him to retire at the age of 52.³

[REDACTED]

16. Defendant Robyn M. Denholm ("Denholm") has been a member of the Tesla Board since August 2014. Denholm is a member of the Compensation Committee. [REDACTED]

[REDACTED] She is currently the COO of Telstra Corporation Ltd. ("Telstra"). According to Telstra's public filings, Denholm earned a comparatively modest \$890,006 in total compensation from Telstra in 2017.

17. Defendant James Murdoch has been a member of Tesla's Board since July 2017.

18. Defendant Linda Johnson Rice has been a member of Tesla's Board since July 2017.

19. The Defendants identified in Paragraphs 10 through 18, *supra*, are referred to collectively as the "Director Defendants", the "Board" or the "Tesla Board."

³ According to Buss's LinkedIn profile, he does not currently have full-time employment. See LinkedIn Profile of Brad W. Buss, <https://www.linkedin.com/in/brad-w-buss-38434a47/> (last accessed June 3, 2018).

⁴ [REDACTED]

III. SUBSTANTIVE ALLEGATIONS

A. E. Musk Controls Tesla

20. *First*, E. Musk is the clear public face of Tesla. As Ed Kim, vice president of industry analysis at AutoPacific explained: “Elon is Tesla, Tesla is Elon. He comes across as being extremely hands-on in the development process.”⁵

21. *Second*, E. Musk is Tesla’s largest stockholder. According to the Company’s definitive proxy statement (the “Proxy”) filed with the SEC on February 8, 2018, as of December 31, 2017, E. Musk beneficially owned 21.9% of Tesla’s outstanding shares of common stock.⁶

22. *Third*, E. Musk occupies a number of important positions at Tesla. He currently serves as the Company’s CEO and has served in this position since 2008. According to a July 3, 2014 article posted on *SFGate*⁷ and entitled “Musk will reassess his Tesla CEO role in 4-5 years,” E. Musk assumed the role of CEO because he believed “the company wasn’t going to make it.” In addition to serving as the Company’s CEO, E. Musk also serves as the Chairman of the Board and as Tesla’s

⁵ David Undercoffler, “Elon Musk The Showman Takes Center Stage At Tesla,” LOS ANGELES TIMES, Oct. 10, 2014, <http://www.latimes.com/business/autos/la-fi-the-tesla-show-20141011-story.html> (last accessed Jun. 3, 2018).

⁶ Tesla’s bylaws contain certain super-majority voting requirements allowing E. Musk significant control over certain corporate matters while only owning approximately 22% of Tesla’s outstanding common stock.

⁷ *SFGate* is a website published by the San Francisco Chronicle.

Chief Product Architect (“CPA”). As the Company’s CPA, E. Musk plays a key role in the design of all Tesla products.

23. *Fourth*, E. Musk has demonstrated a willingness to remove individuals at Tesla who challenge his overall strategy for the Company. For example, in August 2007, Musk, who held a Board meeting without giving notice to then-Tesla Motors’ CEO Martin Eberhard (“Eberhard”) – in violation of the Company’s bylaws – removed Eberhard as CEO.⁸ In commenting on Eberhard’s firing, Mike Harrigan, VP of Marketing for Tesla at the time, said “[E. Musk] is the kind of boss where day to day you don’t know if you have a job or not.”⁹ Harrigan further noted that E. Musk’s demonstrated willingness to remove people “happened many times to many people, and that’s what happened with Martin [Eberhard]. Once [E. Musk] determined that Martin [Eberhard] couldn’t be the CEO of Tesla any longer, that was it. He [*i.e.*, Eberhard] was fired.”¹⁰ As Dave Sullivan, an analyst with AutoPacific, explained: “All the people that worship at the church of [E.] Musk will come at you with a pitchfork if you say something bad. . . . They’re believers.”

24. *Fifth*, both Tesla and E. Musk have made a multitude of concessions

⁸ Drake Baer, “Tesla’s Original CEO Reveals What It’s Like To Get Fired By Elon Musk,” Business Insider, Nov. 18, 2014, <http://www.businessinsider.com/how-elon-musk-fired-tesla-ceo-2014-11> (last accessed June 3, 2018).

⁹ *Id.*

¹⁰ *Id.*

regarding E. Musk's powerful influence over the Company and the Tesla Board. As for the Company, its public filings disclose:

- “In addition to serving as the CEO since October 2008, Mr. Musk has contributed significantly and actively to us since our earliest days in April 2004 by recruiting executives and engineers, contributing to the Tesla Roadster's engineering and design, raising capital for us and bringing investors to us, and raising public aware of the Company.”¹¹
- “[Tesla is] highly dependent on the services of Elon Musk, [who is] highly active in [the Company's] management, [and if Tesla were to lose his services, it could] disrupt our operations, delay the development and introduction of our vehicles and services, and negatively impact our business, prospects and operating results as well as cause our stock price to decline.”¹²
- “Mr. Musk spends significant time with Tesla and is highly active in [Tesla's] management”¹³
- The “concentration of ownership among [Tesla's] existing executive officers, directors and their affiliates may prevent new investors from influencing significant corporate decisions,” [such that] “these stockholders will be able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, amendment of our certificate of incorporation and approval of significant corporate transactions.”¹⁴

¹¹ Tesla's Definitive Proxy Statement filed with the SEC on April 17, 2013 at 22.

¹² See Tesla's Form 10-K filed with the SEC on March 1, 2017 at 22-23.

¹³ *Id.* at 23.

¹⁴ See Tesla's Form 10-K filed with the SEC on February 26, 2015 at 40.

25. On an August 1, 2016 conference call, E. Musk repeatedly referred to Tesla as “my company.”

26. *Sixth*, E. Musk is the dominant force behind Tesla’s corporate strategy, which (a) proceeded for a decade according to E. Musk’s “Master Plan,” which was personally authored by E. Musk and was published to the Company’s website on August 2, 2006; and (b) now proceeds according to E. Musk’s “Master Plan, Part Deux,” which was published to the Company’s website on July 20, 2016.

27. *Seventh*, as detailed below in Section VI.A, a majority of the nine-member Tesla Board is not independent of E. Musk. Vivek Wadhwa, a professor at Carnegie Mellon University, refers to the Tesla Board as E. Musk’s personal “echo chamber”¹⁵ given the numerous ties between the Board members and himself.

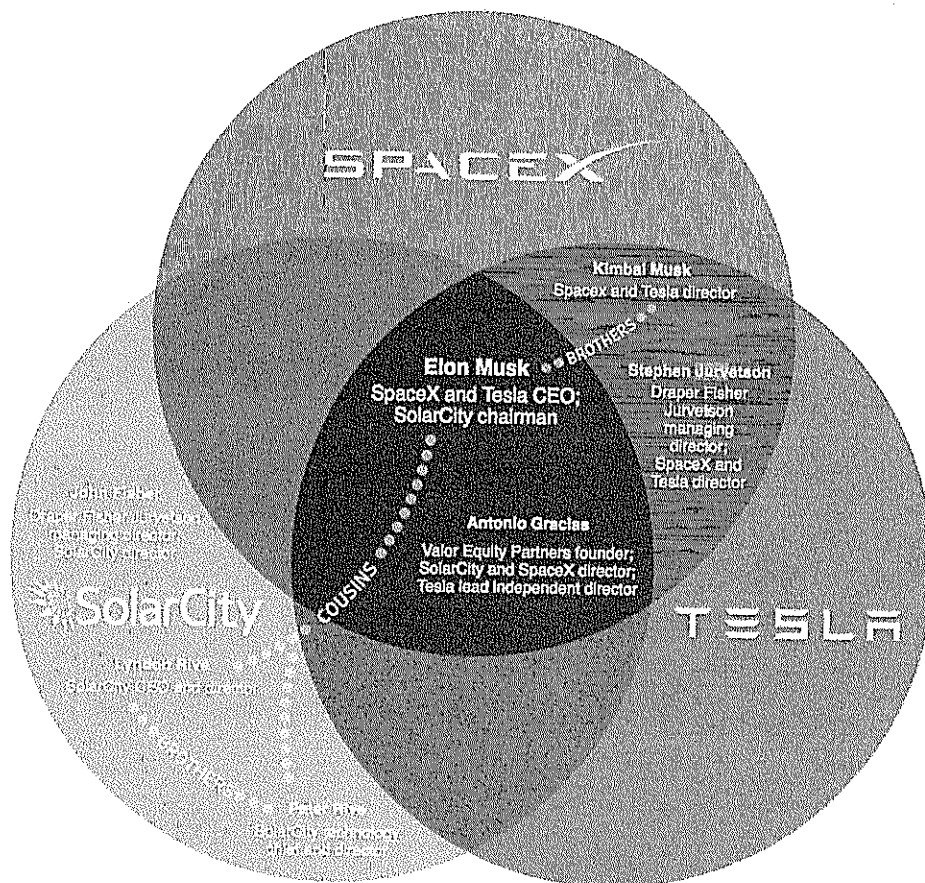
28. These overlapping relationships create a web of conflicts that The Wall Street Journal depicted as follows:¹⁶

¹⁵ Aman Jain, “Is Tesla’s Motors’ Board of Directors An Elon Musk ‘Echo Chamber’?”, LearnBonds, Oct. 10, 2016, <https://learnbonds.com/131596/tesla-motors-elon-musk-board-directors/> (last accessed June 3, 2018).

¹⁶ Susan Pulliam, Mike Ramsey and Brody Mullins, “Elon Musk Supports His Business Empire With Unusual Financial Moves,” THE WALL STREET JOURNAL, Apr. 27, 2016, <https://www.wsj.com/articles/elon-musk-supports-his-business-empire-with-unusual-financial-moves-1461781962> (last accessed June 3, 2018).

Elon Musk's Connections

Billionaire entrepreneur Elon Musk is the largest shareholder of SolarCity, SpaceX and Tesla. The three companies also have directors, other investors and relatives of Musk in common.



Note: Elon Musk Revocable Trust is a limited partner in investment funds at Valor Equity Partners and Draper Fisher Jurvetson. Valor owns shares in SolarCity and SpaceX. Draper Fisher Jurvetson owns shares in SolarCity, SpaceX and Tesla. Jurvetson Trust owns shares in Tesla.

Source: the companies

29. *Eighth*, E. Musk has historically caused the Company to enter into unfair transactions to advance his own personal interests. For example, in 2016, E. Musk caused Tesla to acquire—and therefore save—his and his cousins' struggling solar company SolarCity for a bloated price of \$2.6 billion.

30. The constellation of facts evidencing E. Musk's control over Tesla caused the Chancery Court to find that it was reasonably conceivable that E. Musk

was the Company's controlling stockholder as recently as March 2018. *See In re Tesla Motors Stockholder Litig.*, 2018 Del. Ch. LEXIS 102 (Del. Ch. Mar. 28, 2018) (hereinafter referred to as the "Tesla/SolarCity Opinion").

B. The Tesla Board Approves The New E. Musk Compensation Plan

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

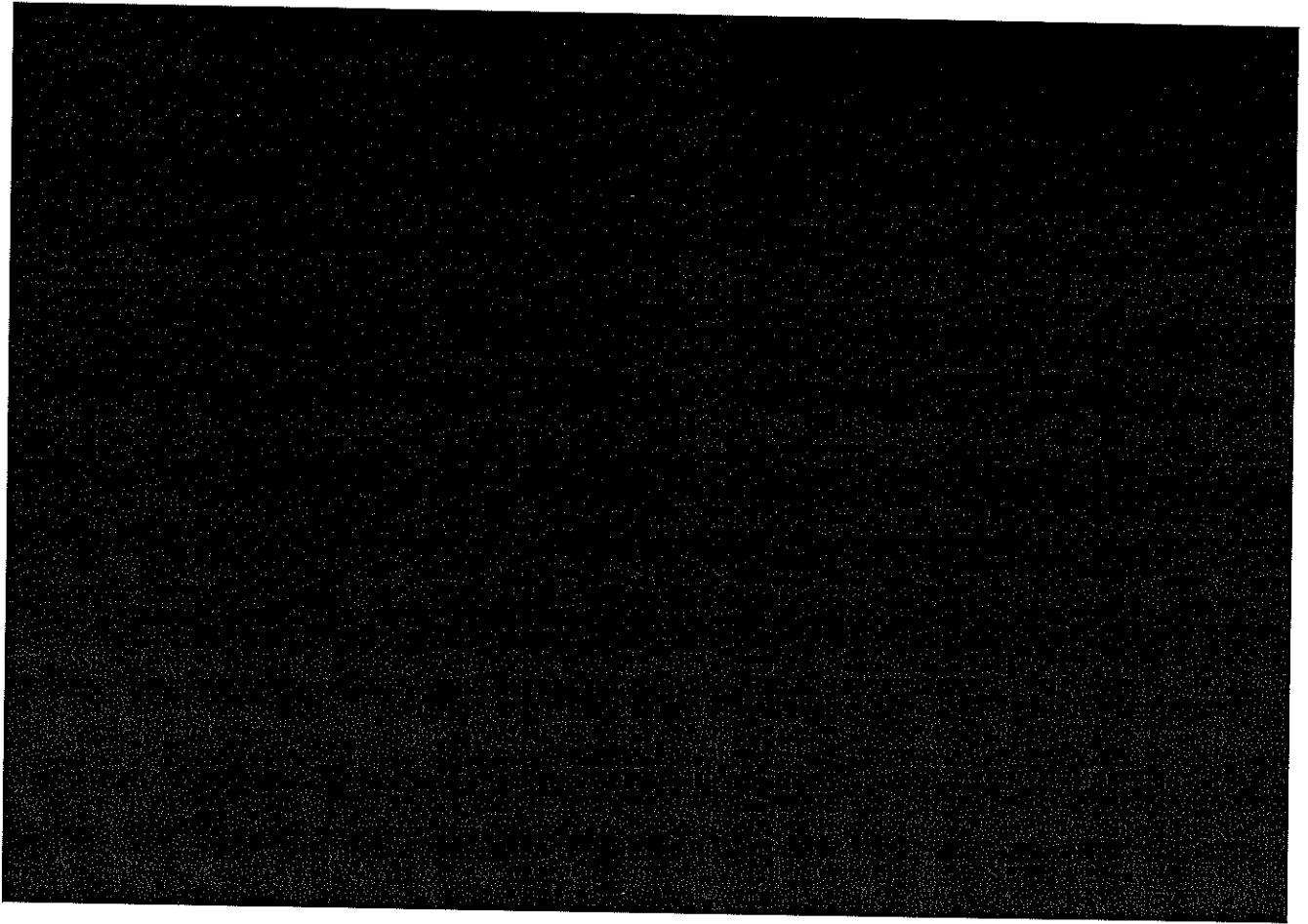
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁷ As explained herein, each member of the Conflicts Committee (Ehrenpreis, Gracias, Denholm and Buss) has disabling ties with or otherwise lacks independence from E. Musk.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

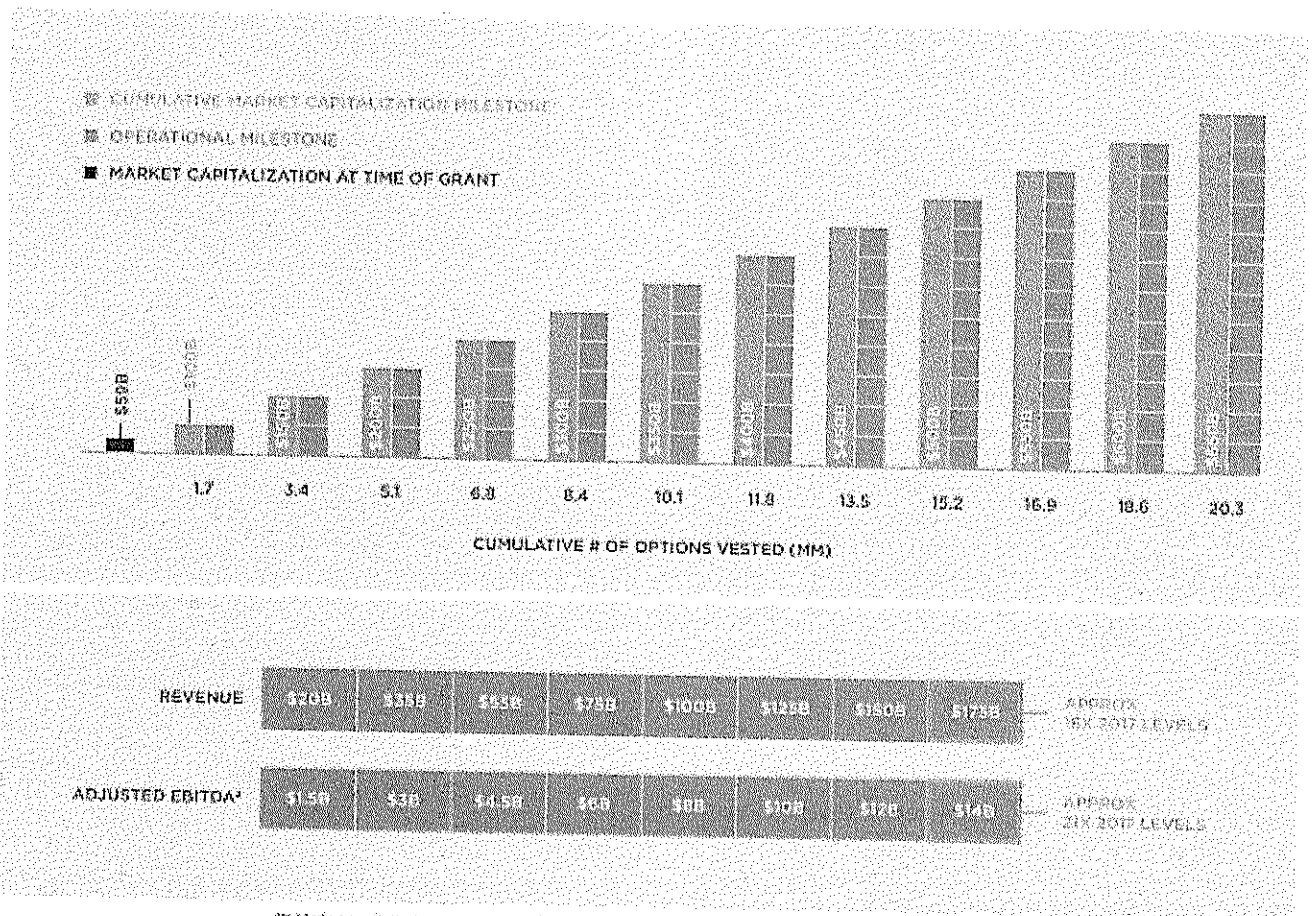
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



(*) Market capitalization, 6 month trading average AND 30-day trailing average to ensure value is sustained.
 (**) Earnings Before Interest, Taxes, Depreciation and Amortization excluding stock based compensation

36. As explained in the Proxy filed with the SEC on February 8, 2018, if E. Musk earns all twelve tranches under the New E. Musk Compensation Plan, he will realize **\$55.8 billion** in value.

Total Tranches Earned	
0 Tranches	\$ 0.0
2 Tranches	\$ 1.4
4 Tranches	\$ 6.3
8 Tranches	\$25.3
12 Tranches	\$55.8

C. The New E. Musk Compensation Package Is Unfair

37. The sheer size of the New E. Musk Compensation Plan is staggering. As revealed by the Proxy, the aggregate fair value estimate of the New E. Musk Compensation Plan at the time of its grant was more than **\$2.6 billion**:

Name and Principal Position	Year	Salary ('000\$)	Bonus (\$)	Option Awards Preliminary Aggregate Fair Value Estimate ('000)(\$)(1)
Elon Musk <i>Chief Executive Officer and Chairman</i>	2018	56	—	2,613,190(2)(3)(4)

38. And yet, that \$2.6 billion estimate of the New Compensation Plan's grant date value may be substantially too low. If Tesla's market capitalization grows at annual rates in excess of 10%, the windfall to E. Musk grows exponentially.

[REDACTED]

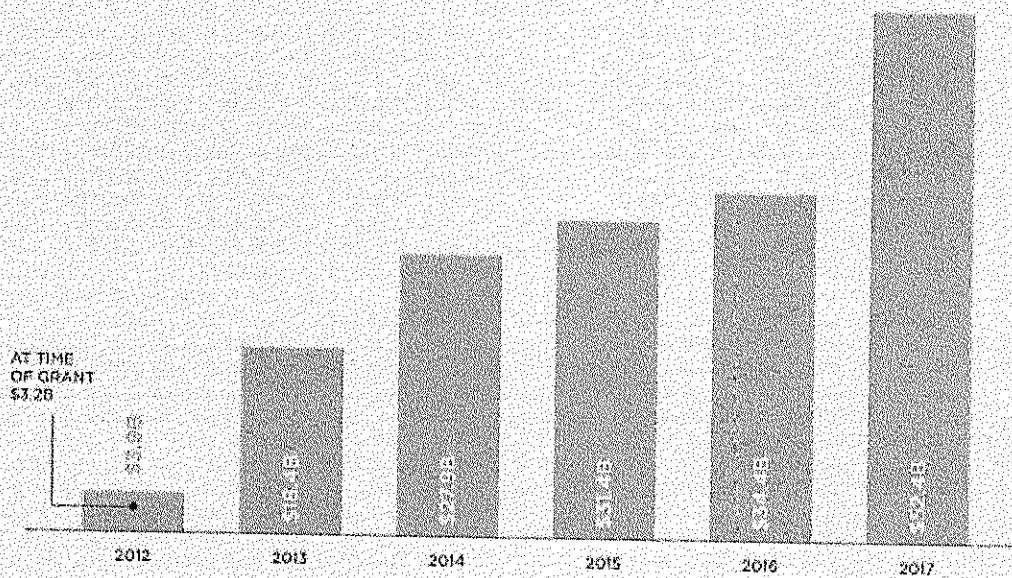
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

TESLA MARKET CAPITALIZATION GROWTH
2012 - 2017⁽¹⁾



(1) Market capitalization figures based on information from S&P Capital IQ as of the end of each year

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

45. Additionally, the New E. Musk Compensation Plan is (and was) wholly unnecessary to properly incentivize E. Musk. In light of his outsized equity stake at the Company, E. Musk already had a substantial financial incentive to continue to devote substantial time, energy and effort into growing and cultivating the success of Tesla.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²¹ In 2011, Cook received a restricted stock grant of one million Apple shares, then-valued at approximately \$384 million. Cook's restricted stock grant was conditioned on his agreement to remain an Apple employee for a decade. Despite its extravagance, Cook's stock grant appears modest in comparison to the New E. Musk Compensation Plan.

D. A Majority Of Tesla’s Outstanding Disinterested Shares Did Not Vote In Favor Of The New E. Musk Compensation Plan

47. In advance of the Company’s special meeting of stockholders (the “Special Meeting”) to vote on whether to approve the New E. Musk Compensation Plan, proxy advisory firms Institutional Shareholder Services (“ISS”) and Glass Lewis both recommended that Tesla stockholders reject the New E. Musk Compensation Plan.

48. ISS calculated that the New E. Musk Compensation Plan was worth \$3.7 billion on the grant date, substantially higher than the \$2.6 billion valuation ascribed in the Proxy. ISS explained that the New E. Musk Compensation Plan “locks in unprecedented high pay opportunities for the next decade, and seemingly limits the board’s ability to meaningfully adjust future pay levels in the event of unforeseen events or changes in either performance or strategic focus.” ISS also added that:

Musk’s financial interests are already strongly aligned with Tesla; it is questionable whether an additional \$2.6 billion grant is necessary or appropriate to further align his interests when he already owns a 22 percent stake in the company.

49. Additionally, ISS flagged that E. Musk could secure a large part of the New E. Musk Compensation Plan even if Tesla does not sustainably generate profits in the future.

50. Glass Lewis was similarly critical of the New E. Musk Compensation Plan. Among other things, Glass Lewis noted that “[t]he cost of the grant is staggering relative to executive compensation levels among public companies worldwide” and “[a]ny comparison of the grant’s size would be akin to stacking nickels against dollars.”

51. On March 21, 2018, Tesla convened the Special Meeting.

52. Among other things, the New E. Musk Compensation Plan was conditioned upon receiving a majority of the total votes of shares of Tesla common stock not owned, directly or indirectly, by E. Musk or K. Musk *actually cast* at the Special Meeting (the “Disinterested Voting Condition”). Although the New E. Musk Compensation Plan received a sufficient number of votes to satisfy the Disinterested Voting Condition, it did *not* garner the support of a majority of *all* Tesla’s disinterested shares outstanding, whether or not voted at the Special Meeting.

53. Specifically, as of the February 7, 2018 record date for the Special Meeting, Tesla had 168,878,154 shares of common stock outstanding. According to the Proxy, as of December 31, 2017, E. Musk beneficially owned 33,632,421 shares of Tesla common stock. Thus, Tesla had 135,245,733 disinterested shares outstanding with respect to the vote on the New E. Musk Compensation Plan.

54. According to the Company’s Form 8-K filed with the SEC on March

21, 2018, just 63,014,339 disinterested Tesla shares voted in favor of the New E. Musk Compensation Plan.

Pursuant to the Disinterested Standard, the votes were as follows:

For	Against	Broker Non-Votes
63,014,339	23,497,632	0

55. Thus, the New E. Musk Compensation Plan was only supported by 46.6% of the total number of outstanding disinterested Tesla shares.²²

IV. CLASS ACTION ALLEGATIONS

56. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Tesla common stock (except any Defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and/or their successors in interest) who were injured because of Defendants' wrongful actions, as more fully described herein (the "Class").

57. This action is properly maintainable as a class action.

58. The Class is so numerous that joinder of all members is impracticable. According to the Proxy, as of the February 7, 2018 record date, there were 168,878,154 shares of Tesla stock issued and outstanding. Thus, upon information and belief, there were hundreds – if not thousands – of Tesla stockholders scattered throughout the United States.

²² $63,014,339 / 135,245,733 = 46.6\%$

59. There are questions of law and fact common to the Class, including, *inter alia*, whether:

- a. E. Musk breached his fiduciary duties as the controlling stockholder of Tesla;
- b. The Tesla Board breached their fiduciary duties and/or committed waste;
- c. E. Musk was unjustly enriched; and
- d. Plaintiff and the other members of the Class were injured by the wrongful conduct alleged herein and, if so, what is the proper measure of damages.

60. Plaintiff is committed to prosecuting the action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

61. Further, the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of the Class that would as a practical matter be disjunctive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests.

V. DERIVATIVE ALLEGATIONS

62. Plaintiff also brings this action derivatively to redress injuries suffered by the Company as a direct result of breaches of fiduciary duty and other misconduct by the Director Defendants and E. Musk.

63. Plaintiff currently is a beneficial owner of Tesla common stock and has owned Tesla common stock continuously during the relevant time period.

64. Plaintiff will adequately and fairly represent the interests of Tesla and its stockholders in enforcing and prosecuting their rights and has retained counsel competent and experienced in stockholder derivative litigation.

VI. THE TESLA BOARD CANNOT DISINTERESTEDLY AND INDEPENDENTLY CONSIDER A DEMAND

65. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

66. Plaintiff has not made a demand on the Tesla Board to investigate or initiate the derivative claims asserted herein because demand is excused as futile.

67. Such demand would be futile and useless, and is thereby excused, for at least two independent reasons: (a) a majority of the Board is either interested or lacks independence from E. Musk and (b) approval of the New E. Musk Compensation Plan was not the product of a valid exercise of business judgment.

A. A Majority Of The Board Is Interested In The New Musk Compensation Plan Or Lacks Independence From E. Musk

68. **Defendant E. Musk** cannot disinterestedly and independently consider a demand because he is the direct beneficiary of the unprecedented multi-billion dollar New E. Musk Compensation Plan.

69. **Defendant K. Musk** cannot disinterestedly and independently consider a demand because he is the brother of E. Musk. Indeed, Tesla's public filings concede K. Musk's lack of independence.²³

70. K. Musk is also not independent of E. Musk because, as a benefit to being E. Musk's brother, he (a) sits on the board of directors of SpaceX, a company under the control of E. Musk and (b) was provided the opportunity to invest in Defendant Gracias' investment firm—*i.e.*, Valor. Additionally, as a director of Tesla, K. Musk has also collected lucrative director fees.

71. **Defendant Gracias** cannot independently consider a demand because he is "one of [E.] Musk's closest friends."²⁴ As this Court held in the Tesla/SolarCity

²³ See Tesla, Inc. Definitive Proxy Statement Schedule 14A, filed with the SEC on April 26, 2018 at 18.

²⁴ Ashlee Vance, "Elon Musk's Space Dream Almost Killed Tesla," Bloomberg, May 14, 2015, <https://www.bloomberg.com/graphics/2015-elon-musk-spacex/> (last accessed Jun 3, 2018); Tsavo Neal, Public Mentors, "Elon Musk," <https://publicmentors.com/elon-musk/>

(last accessed Jun. 3, 2018) (quoting Ashlee Vance's biography of Elon Musk titled "Elon Musk: Tesla, SpaceX, And The Quest For A Fantastic Future Summary":

Opinion, “Musk and Gracías are close friends; indeed, Musk gave Gracías the second Tesla Roadster²⁵ ever made.”^{26,27}

72. Gracías is also a key director in E. Musk’s “pyramid” of companies, including Tesla, SpaceX and Solar City. In addition to being a Tesla director, Gracías also serves as a director on the board of SpaceX, which is controlled by E. Musk and is considered the one of the “world’s most valuable private companies.”²⁸

“In the first half of 2008, Antonio Gracías, the founder and CEO of Valor Equity, met Musk for dinner. Gracías 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. ‘Things were starting to be difficult with Justine, but they were still together,’ Gracías said. ‘During that dinner, Elon said, ‘I will spend my last dollar on these companies. If we have to move into Justine’s parents’ basement, we’ll do it.’””

²⁵ According to Tesla, once released, the Tesla Roadster will be “the quickest car in the world, with record setting acceleration, range and performance.” The Company claims the Tesla Roadster will have a top speed of 250 mph with 620 mile-battery life and goes 0-60 in just 1.9 seconds. <https://www.tesla.com/roadster>

²⁶ *Tesla*, 2018 Del. Ch. LEXIS 102 at *8.

²⁷ Ann Saphir, “Chicago Private Equity Manager Quietly Pulls In Pension Money With Solid Returns,” *PENSIONS & INVESTMENTS*, Oct. 13, 2009, <http://www.pionline.com/article/20091013/ONLINE/910139998/chicago-private-equity-manager-quietly-pulls-in-pension-money-with-solid-returns> (last accessed Jun. 3, 2018) (“Even his car, a Tesla Roadster, puts him in rarified company: Other owners of the electric super car include actor George Clooney and Google Inc. founders Larry Page and Sergey Brin.”).

²⁸ Katie Benner & Kenneth Chang, “SpaceX is now one of the world’s most valuable privately held companies,” *CNBC.com*, July 27, 2017, <https://www.cnbc.com/2017/07/27/spacex-is-now-one-of-the-worlds-most-valuable-privately-held-companies.html> (last accessed June 2, 2018).

73. Gracias' relationship with E. Musk dates back to at least 2001. Gracias is the founder, managing partner, CEO, Chief Investment Officer, director and sole owner of private equity firm VMC, d/b/a Valor Equity Partners. In 2001, Gracias and Valor invested in then-startup PayPal, Inc. ("PayPal"), a company co-founded by E. Musk. Gracias' PayPal investment subsequently led E. Musk to present Gracias and his firm Valor with the opportunity to invest in "Tesla Motors," Tesla's predecessor. E. Musk also gave Gracias the opportunity to participate in several pre-IPO venture funding rounds for SolarCity and SpaceX where he was appointed to the boards of both companies.²⁹

74. Gracias and E. Musk are more than just friends and investors. E. Musk also relies on and values Gracias' opinion as a special consultant to Tesla. Recently, Valor (*i.e.*, Gracias) spent more than 100 days at Tesla's battery factory near Reno, Nevada late last year to help increase Model 3 sedan production. As the Company recently disclosed, Gracias and Valor contributed to "numerous improvements that

²⁹ Through his Valor funds, Gracias participated in four of Tesla's venture funding rounds: Series B (closed February 1, 2005), Series C (May 1, 2006), Series D (May 11, 2007), and Series E (closed February 8, 2008); as well as a pre-IPO venture debt raise conducted by Tesla in March 2009. Valor owned nearly five million shares immediately prior to Tesla's IPO. Similarly, Valor funds participated in SpaceX's \$50 million Series C round (closed November 8, 2010) and its \$1 billion Series E round (January 20, 2015). Gracias and his Valor funds also participated in SolarCity's pre-IPO Series G preferred stock financing round (February and March 2012), contributing nearly \$25 million.

led to increased Model 3 production rates.”³⁰ In exchange for its consulting services, Tesla paid Valor \$34,347 in reimbursement for travel, equipment and “budget lodging” near the Nevada factory.

75. E. Musk and his brother K. Musk have personally invested in various Valor funds. As a manager and/or owner of these funds, Gracias serves as a fiduciary to E. Musk and K. Musk.

76. To help raise money for his Valor funds (and presumably increase his management fees), Gracias consistently uses testimonials from E. Musk and K. Musk on the Valor website, including the following:

I’d like to thank Valor for being a key investor. And not just an investor, but a strategic partner. I don’t think we would’ve made it without their help, so thank you. - Elon Musk³¹

77. Gracias also uses testimonials from E. Musk’s family to help solicit capital. Peter Rive, E. Musk’s cousin and former Chief Operating Officer (“COO”) and Chief Technical Officer (“CTO”) of SolarCity, is quoted on Valor’s website:

Valor is simply the best investor I’ve ever worked with. Their initial diligence is thoughtful and detailed, but their help in improving the company after the investment is invaluable. They have an awesome team who implement lean process methodologies to improve

³⁰ Dana Hull, “Tesla Opens Up About Mysterious Payment To A Board Member’s Firm,” BLOOMBERG, May 29, 2018, <https://www.bloomberg.com/news/articles/2018-05-29/tesla-opens-up-about-mysterious-payment-to-a-board-member-s-firm> (last accessed June 3, 2018).

³¹ <http://www.valorep.com/about> (last visited on June 3, 2018)

throughput without an increase in operating expenses. I want to emphasize the word “implement” which is key to the Valor guys. They’re not consultants who create a set of power point presentations – they actually do the work! The end result is that when Valor invested in our company they simultaneously lowered the execution risk of the business. - Peter Rive, former COO & CTO of SolarCity³²

78. **Defendant Jurvetson** cannot independently consider a demand to initiate the claims alleged herein because, similar to Gracias, he too is a “close friend”³³ of E. Musk. Given the extent of Jurvetson’s relationship with E. Musk, this Court already has concluded that “[Jurvetson] is beholden to Musk”³⁴

79. The Silicon Valley Business Journal has described Jurvetson as “too close to Tesla founder Elon Musk”³⁵ to be considered an independent Board member. E. Musk gave Jurvetson the first Tesla Model S ever made³⁶ and gave him

³² *Id.*

³³ Ellen Huet, “Tesla Director Jurvetson Investigated By His VC Firm For Misconduct,” BLOOMBERG, Oct. 24, 2017, <https://www.bloomberg.com/news/articles/2017-10-25/tesla-director-jurvetson-investigated-by-his-vc-firm-for-misconduct> (last accessed June 3, 2018) (“Jurvetson sits on the board of both Tesla Inc. and Space Exploration Technologies Corp., and *is a close friend of Musk.*”).

³⁴ Tesla/SolarCity Opinion, 2018 Del. Ch. LEXIS 102 at *41-42.

³⁵ According to the Silicon Valley Business Journal, “some say he is too close to Tesla founder Elon Musk to serve as the independent board member.” Cromwell Schubarth, “Musk Friend Jurvetson's Long Tesla Board Hiatus Bothers Some Shareholder Advisors,” SILICON VALLEY BUSINESS JOURNAL, May 16, 2018, <https://www.bizjournals.com/sanjose/news/2018/05/16/steve-jurvetson-tesla-board-absence-tsla.html> (last accessed Jun. 3, 2018).

³⁶ Andy Boxall, “It’s Not What You Know . . . World’s First Model S Delivered To Tesla Board Member,” DIGITAL TRENDS, Jun. 8, 2012,

the second Model X ever made (the first Model X went to E. Musk himself).³⁷

Jurvetson also frequently lavishes E. Musk with praise. According to The Wall Street Journal, Jurvetson stated that: “Mr. Musk’s ‘passion is breathtaking.’”³⁸ In Ashlee Vance’s biography on E. Musk, Jurvetson described E. Musk as follows:

Steve Jurvetson, an investor with Musk’s companies, suggested that Musk is like a combination of Bill Gates and Steve Jobs, with Gates’ ability to hire the right people and Jobs’ eye for what consumers really want. Jurvetson stated that, without diminishing Jobs’ achievements, he believes Musk has already accomplished more than Gates.

80. During his near decade-long tenure on the Tesla Board, Jurvetson and his former venture capital firm DFJ have invested in E. Musk’s “pyramid” of Tesla, SpaceX and SolarCity. Jurvetson and/or his former co-managing director John H.N. Fisher (“Fisher”), serve on the boards of SpaceX and also served on the board of SolarCity until its acquisition by Tesla.

81. Musk has also invested in Jurvetson’s former firm—DFJ. E. Musk is an investor and limited partner in Draper Fisher Jurvetson Fund X, L.P., an affiliate fund of DFJ. As such, Jurvetson and DFJ serve as fiduciaries of E. Musk.

<https://www.digitaltrends.com/cars/its-not-what-you-know-worlds-first-model-s-delivered-to-tesla-board-member/> (last accessed June 3, 2018)

³⁷ Stephen Edelstein, “Google founder might receive the fourth Tesla Model,” BUSINESS INSIDER, Nov. 5, 2015, <http://www.businessinsider.com/tesla-model-x-for-sergey-brin-2015-11> (last accessed June 3, 2018).

³⁸ See *supra* note 16.

82. In November 2017, following an internal investigation, Jurvetson was ousted from DFJ for alleged sexual harassment.³⁹ In January 2018, DFJ issued an apology when it was reported that Jurvetson allegedly held what has been described as a “sex party” at his home following a DFJ firm event.⁴⁰ Although E. Musk denied this characterization of the party, E. Musk confirmed he was invited and attended the event at Jurvetson’s home.

83. Despite Jurvetson’s unceremonious removal from the venture capital firm he helped found, Jurvetson has not been removed from the Tesla Board, which corporate governance experts have called “quite unusual.”⁴¹

84. While on a temporary leave of absence since his ouster at DFJ, Jurvetson has still “been marketing himself as a current member of the three company boards . . . He has attended SpaceX and Tesla events as a VIP.”⁴² Jurvetson

³⁹ Theodore Schleifer, “Steve Jurvetson Is Out At His Own Venture Capital Firm After Allegations Of Sexual Harassment,” RECODE, Nov. 13, 2017, <https://www.recode.net/2017/11/13/16645274/steve-jurvetson-out-draper-fisher-jurvetson-sexual-harassment> (last accessed June 3, 2018).

⁴⁰ Theodore Schleifer, “DFJ Has Apologized For The Reported ‘Sex Party’ Event At Steve Jurvetson’s Home,” RECODE, Jan. 11, 2018, <https://www.recode.net/2018/1/11/16880806/dfj-steve-jurvetson-sex-party-apology> (last accessed June 2, 2018).

⁴¹ *Id.*; (“But the relationship between SpaceX and DFJ, sources say, is ***very much a relationship between Musk and Jurvetson specifically***.”) (emphasis added).

⁴² Theodore Schleifer, “Elon Musk Still Hasn’t Decided What To Do With Board Member Steve Jurvetson After Allegations Of Misconduct,” RECODE, Apr. 19, 2018, <https://www.recode.net/2018/4/19/17248350/elon-musk-steve-jurvetson-spacex->

is still listed as a director on Tesla's website.

85. **Defendant Ehrenpreis** cannot disinterestedly and independently consider a demand because, like Gracias and Jurvetson, he has a close personal and professional relationship with E. Musk and his family.

86. Ehrenpreis was an early investor in all things E. Musk, including E. Musk's "pyramid" of companies (*e.g.*, Tesla, SpaceX and SolarCity). Ehrenpreis has stuck with E. Musk during some of the entrepreneur's darkest days.⁴³

87. Since 2014, Ehrenpreis has been a Managing Partner and co-owner of venture capital firm DBL Partners, which he co-founded with fellow managing partner and co-owner Pfund. Pfund was a member of SolarCity's board of directors and was an observer of Tesla's Board from 2006 to 2010.

88. Ehrenpreis is also a manager of DBL III, an affiliate fund of DBL Partners. Both Ehrenpreis (personally) and DBL III are investors in privately-held SpaceX which is controlled by E. Musk. Prior to Tesla's acquisition of SolarCity, DBL Investors, an affiliate of DBL Partners, participated in SolarCity's Series D

tesla-dfj-board-seats (last accessed June 3, 2018).

⁴³ Katie Fehrenbacher, "Early Tesla Investors Close \$400 Million Fund For Startups With A Social Cause," *Fortune*, Jun. 23, 2015, <http://fortune.com/2015/06/23/dbl-third-fund/> (last accessed Jun. 3, 2018) ("Ehrenpreis, like Pfund, was an early investor in Tesla. In addition to Tesla and SolarCity, DBL also invested in SpaceX. The *duo have been successful backing entrepreneur Elon Musk in his early (and difficult) days.*") (emphasis added).

venture funding round (closed November 1, 2008); a Series E-1 preferred stock financing round (June 2010), contributing \$1 million in capital; and a Series F preferred stock financing round (June and July 2011), contributing more than \$1.6 million. At the time of the Acquisition, Pfund beneficially owned (personally and through DBL Investors investment funds) 1,554,114 shares of SolarCity common stock.⁴⁴ In addition to DBL and DBL III, Ehrenpreis' other investment company, Technology Partners, invested over \$13 million in Tesla's early financing rounds.

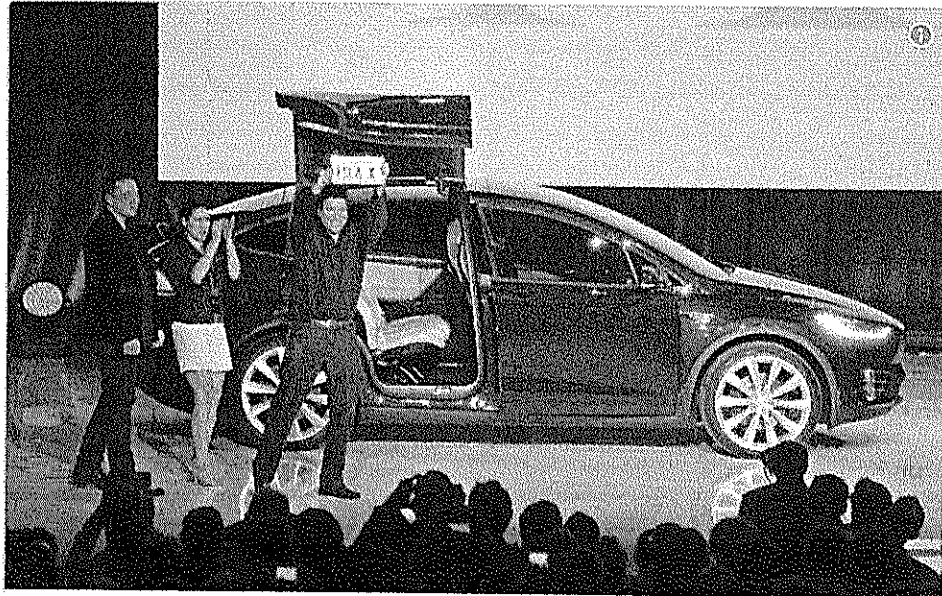
89. Ehrenpreis is also an investor and member of the board of directors of Mapbox, Inc., a provider of custom online maps. In December 2015, Tesla and Mapbox entered into an agreement pursuant to which Tesla expects to pay Mapbox certain ongoing fees, including \$5 million over the first 12 months of the agreement. Recently, Mapbox announced that it was hiring former Tesla autopilot designer Brennan Boblett to help create digital maps for passengers in driverless cars.

90. Ehrenpreis' relationship with E. Musk extends beyond common

⁴⁴ This includes: (a) 449,279 shares held of record by Bay Area Equity Fund I, L.P. (of which DBL Investors is the managing member of the general partner), which represents approximately 15–20% of this fund's total assets under management – valued at \$52,648,556 according to DBL Investors' most recent Form ADV filed with the SEC on March 29, 2016; (b) 928,977 shares held of record by DBL Equity Fund- BAEF II, L.P.; (c) 119,208 shares held of record by Pfund as co-trustee of The Pfund Polakoff Family Trust dated February 18, 1993; (d) 38,000 shares held of record by The Pfund Polakoff 2014 CRUT u/a/d 11/07/14; and (e) 18,650 shares issuable upon exercise of options exercisable within 60 days from September 23, 2016.

investments and business dealings. In September 2015, Musk gave each member of a select group of five people a brand new Model X, Tesla's first SUV.⁴⁵ Ehrenpreis, along with his colleague Jurvetson (and E. Musk himself), were among the select few to receive the first Model X vehicles ever produced. At the presentation, E. Musk chose to announce Ehrenpreis first among the five honorees. Ehrenpreis shared his gratitude with E. Musk on Twitter, shortly thereafter:

⁴⁵ Nicolle Gibillini, "The First 5 Joining Elon Musk In The Tesla Model X Owners' Club," Oct. 6, 2015, CTVNews, <https://www.ctvnews.ca/5things/the-first-5-joining-elon-musk-in-the-tesla-model-x-owners-club-1.2596850> (last accessed June 3, 2018).



Ira Ehrenpreis

@IraEhrenpreis



It's X time!!! A total honor to be the first one last night to congratulate Elon and get my new keys!

3:55 PM - Sep 30, 2015









28



See Ira Ehrenpreis's other Tweets

91. Two years later, Musk showed his appreciation of Ehrenpreis' friendship (yet again) by giving Ehrenpreis the rights to the first Tesla Model 3. Tellingly, however, after Ehrenpreis paid for the Model 3 (in full), Ehrenpreis gifted the car back to E. Musk as part of his 46th birthday present. E. Musk shared Ehrenpreis' gesture on social media:

 **Brad Sams**  @bdsams · 8 Jul 2017
who is the lucky owner?
 3  6  176

 **Elon Musk**  @elonmusk Follow

Replying to @bdsams

Ira Ehrenpreis had rights to 1st car as he was 1st to place a full deposit, but gave those rights to me as my 46th bday present. Tks Ira!

5:39 PM - 8 Jul 2017

209 Retweets 2,806 Likes 

92. Throughout their 11-year relationship, Ehrenpreis and E. Musk have not been bashful when it comes to sharing their personal feelings for each other on social media as both have made their feelings for each other evident:

 **Ira Ehrenpreis** @IraEhrenpreis · 14 Nov 2016
Love is in the air! Congrats @TeslaMotors @elonmusk!!!

Elon Musk  @elonmusk
Love you too!
[thedrive.com/news/6007/tesl...](http://thedrive.com/news/6007/tesla-motors-celebrates-10-years)
 1   2 

 Ira Ehrenpreis Retweeted
 **Elon Musk**  @elonmusk · Mar 17
Replying to @IraEhrenpreis @Tesla
Thanks for your support over all those years!
 100  161  7.3K 

93. Ehrenpreis and Musk also support each other's causes outside of the Board room. For example, in May 2016, Ehrenpreis invited E. Musk to speak at the World Energy Innovation Forum, which is chaired by Ehrenpreis.⁴⁶

94. Ehrenpreis' affection for E. Musk extends to the rest of his family, recently referring to E. Musk's mother, Maye Musk, as an "inspiration" and a "role model":



95. In an October 2010 blog post, E. Musk's brother, K. Musk wrote a blog article announcing that he invited Ehrenpreis to speak at an awards ceremony of the Colorado Cleantech Industry Association. In making the announcement K. Musk praised Ehrenpreis as being "a close friend and business associate of mine."⁴⁷

96. **Defendant Buss** cannot independently consider a demand because he

⁴⁶ World Energy Innovation Forum Agenda for May 4-5, 2016, <http://worldenergyinnovationforum.com/#home-agenda> (last accessed June 3, 2018).

⁴⁷ Kimbal Musk, "Colorado Cleantech Is Coming Of Age," Huffington Post, May 25, 2011, https://www.huffingtonpost.com/kimbal-musk/colorado-cleantech-is-com_b_754481.html (last accessed June 3, 2018).

is beholden to E. Musk. From August 2014 until his retirement in February 2016, Buss served as the CFO of SolarCity. He is indebted to E. Musk because, among other things, he received \$32 million for just 18 months of work as SolarCity's CFO which allowed him to retire at just the age of 52. According to Buss's LinkedIn profile, he is currently not employed.⁴⁸ [REDACTED]

[REDACTED]

97. **Defendant Denholm** cannot disinterestedly and independently consider a demand because a majority of her income is derived from serving as a member of Tesla's Board. [REDACTED]

[REDACTED] Denholm is currently the COO of Telstra. According to Telstra's public filings, Denholm earned \$890,006 in total compensation in 2017. According to Denholm's LinkedIn Profile, she has no other employment.⁵¹ [REDACTED]

[REDACTED]

[REDACTED]

98. Buss and Denholm are not alone in their outsized compensation for

⁴⁸ LinkedIn Profile of Brad W. Buss, <https://www.linkedin.com/in/brad-w-buss-38434a47/> (last accessed June 3, 2018).

[REDACTED]

[REDACTED]

⁵¹ Robyn Denholm, LinkedIn Profile, <https://www.linkedin.com/in/robyn-denholm-a807795/> (last accessed June 3, 2018).

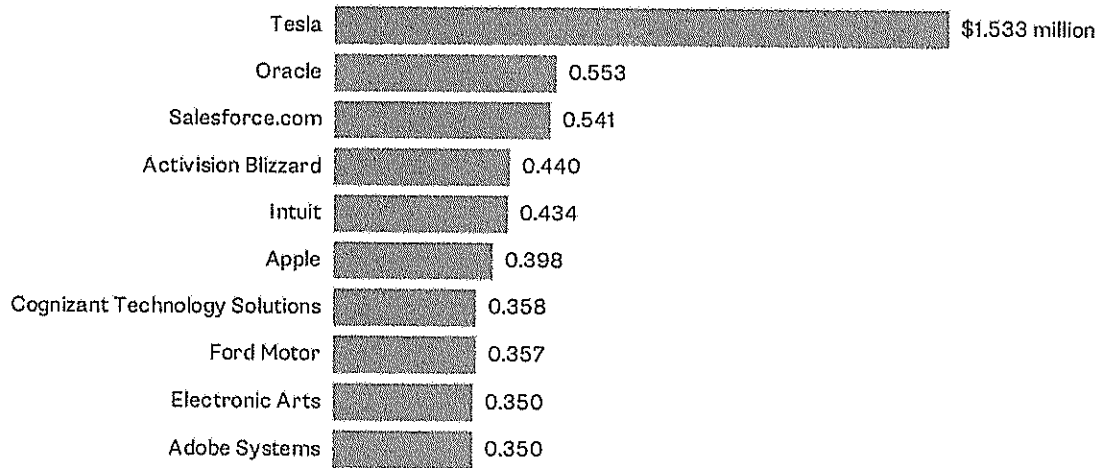
serving on the Tesla Board. All of Tesla's directors have received lavish compensation at the E. Musk-controlled Company, which compromises their ability to independently and disinterestedly assess a demand to initiate litigation adverse to E. Musk's financial interests.

99. A Bloomberg article entitled "Tesla's Board Sounds the Retweet," written by Liam Denning, highlights the Company's lavish director compensation. According to the Bloomberg article, Tesla's directors were awarded an average of \$1.53 million in compensation in 2017. According to Dan Marcec, director of content at compensation-analytics firm Equilar, "[r]arely do we see any director compensation valued at over a million dollars."

100. The chart below compares Tesla's 2017 director compensation with average director compensation at U.S. automotive and technology hardware, software and services companies with a market cap of \$25 billion or more.

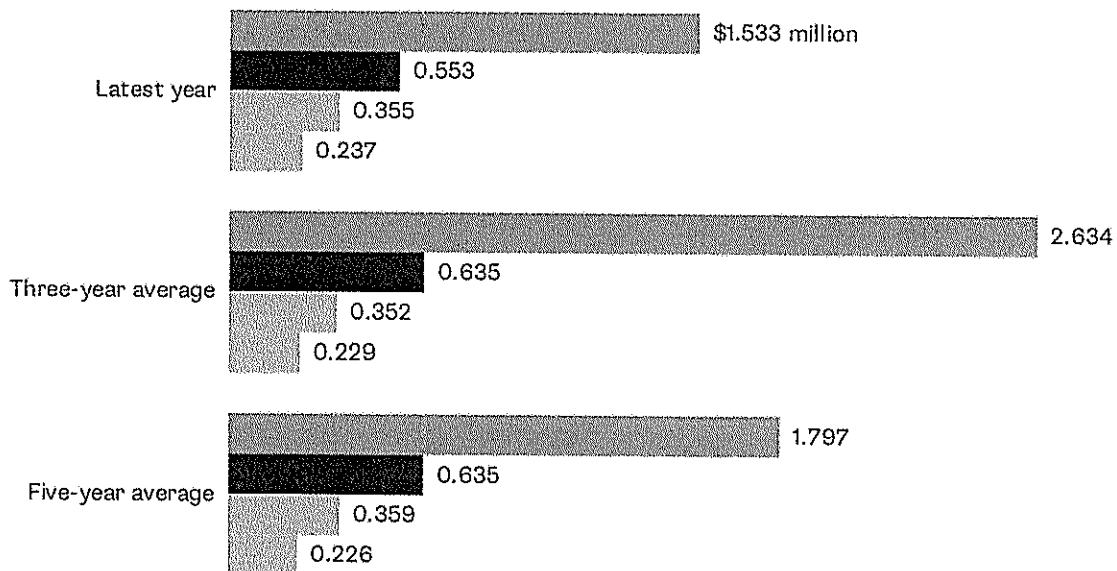
automotive and technology companies

■ Average director compensation, latest year



101. 2017 was not an outlier for Tesla's average director compensation.

■ Tesla ■ Second-highest payer ■ Average ■ Lowest payer



102. As the chart below demonstrates, over the last seven years (7), members of the Tesla Board have been handsomely rewarded for serving on Tesla's Board:

Directors	2011	2012	2013	2014	2015	2016	2017	Total
K. Musk	294,153	849,836	26,661	35,423	4,964,381	24,535	21,721	\$6,216,710
Gracias	310,134	1,733,506	60,957	37,500	9,790,505	37,500	37,500	\$12,007,602
Jurvetson	292,553	1,051,263	27,500	27,500	6,095,984	27,500	27,500	\$7,549,800
Ehrenpreis	302,553	1,263,129	37,500	37,500	7,239,683	37,500	37,500	\$8,955,365
Buss	310,053	1,523,407	45,000	38,750	4,954,785	20,000	3,357,002	\$10,248,997
Denholm	N/A	N/A	N/A	7,181,066	4,979,785	45,000	4,921,810	\$17,127,661
Murdoch	N/A	N/A	N/A	N/A	N/A	N/A	1,926,972	\$1,926,972
Johnson Rice	N/A	N/A	N/A	N/A	N/A	N/A	1,933,914	\$1,933,914

B. Approval Of The New E. Musk Compensation Plan Was Not The Product Of A Valid Exercise Of Business Judgment

103. As detailed herein, the process leading up to the Board's approval of the New E. Musk Compensation Plan was flawed and did not adequately protect Tesla and the Class from an abuse of power by E. Musk. Among other things, (a) the Compensation Committee was fatally conflicted because of Ehrenpreis, Gracias, Buss and Denholm's ties to E. Musk, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In light of these circumstances and others, the Tesla Board's conduct does not warrant the protections of the business judgment rule.

104. Moreover, the New E. Musk Compensation Plan is so one-sidedly in favor of E. Musk that it is beyond the bounds of reasonable judgment and is inexplicable on any grounds other than bad faith. [REDACTED]

[REDACTED]

105. Thus, demand on the Board is excused as futile for this additional reason.

COUNT I
DIRECT AND DERIVATIVE CLAIM
FOR BREACH OF FIDUCIARY DUTY
AGAINST E. MUSK IN HIS CAPACITY
AS TESLA'S CONTROLLING STOCKHOLDER

106. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

107. As explained herein, E. Musk was and still is Tesla's controlling stockholder. As controlling stockholder, E. Musk owed the Company and the Class the utmost fiduciary duties of due care, good faith and loyalty.

108. For his own personal benefit and in breach of his fiduciary duties, E. Musk caused the Company to enter into the New E. Musk Compensation Plan. E. Musk breached his fiduciary duties owed to the Company by, *inter alia*, engaging in an unfair process which resulted in E. Musk receiving a stock grant with a current estimated fair value of billions of dollars.

109. As a result of E. Musk's breaches of fiduciary duty, the members of the Class have been harmed by the anticipated reduction in their economic and voting power in the Company that will be caused by the New E. Musk Compensation Plan.

110. The Company also has been harmed as a result of the dramatic overpayment to E. Musk.

111. The Company and the Class are therefore entitled to damages for E. Musk's breaches of fiduciary duty.

COUNT II
DIRECT AND DERIVATIVE CLAIM
FOR BREACH OF FIDUCIARY DUTY
AGAINST THE DIRECTOR DEFENDANTS

112. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

113. The Director Defendants, as Tesla directors and/or officers, owe the Company the utmost fiduciary duties of due care, good faith and loyalty. By virtue of their positions as directors of Tesla and/or officers and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Director Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each of the Director Defendants was required to (a) use their ability to control and manage Tesla in a fair, just and equitable manner; and (b) act in furtherance of the best interests of Tesla and its stockholders and not their own.

114. The Director Defendants breached their fiduciary duties owed to the Company by, *inter alia*, overseeing an unfair process and then approving an unprecedented and unfair compensation package for E. Musk.

115. As a result of the Director Defendants' breaches of fiduciary duty, the members of the Class have been harmed by the anticipated reduction in their economic and voting power in the Company that will be caused by the New E. Musk Compensation Plan.

116. The Company has been harmed in the amount of the dramatic overpayment to E. Musk.

117. The Company and the Class are therefore entitled to damages for the Director Defendants' breaches of fiduciary duty.

COUNT III
DERIVATIVE CLAIM
FOR UNJUST ENRICHMENT AGAINST E. MUSK

118. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

119. As detailed herein, the New E. Musk Compensation Plan is unfair to the Company and the Class and is the product of breaches of fiduciary duty by E. Musk and the Director Defendants.

120. It would be unconscionable to permit E. Musk to retain the improper benefits received pursuant to the New E. Musk Compensation Plan.

COUNT IV
DERIVATIVE CLAIM FOR WASTE AGAINST
THE DIRECTOR DEFENDANTS

121. Plaintiff repeats and realleges all of the allegations above as though fully set forth herein.

122. The terms of the New E. Musk Compensation Plan are so one-sided that no person acting in good faith pursuant to Tesla's interests could have approved its terms.

123. As a result of the waste of corporate assets, the Director Defendants are liable to Tesla.

RELIEF REQUESTED

WHEREFORE, Plaintiff, on behalf of himself and on behalf of the Class, prays for judgment as follows:

- A. Declaring that this action is properly maintainable as a class action;
- B. Finding that demand on the Board is excused as futile;
- C. Finding the Director Defendants liable for breaching their fiduciary duties;
- D. Finding that E. Musk breached his fiduciary duties in his capacity as the controlling stockholder of Tesla;
- E. Finding E. Musk liable for unjust enrichment;
- F. Finding the Director Defendants liable for waste;

- G. Directing Tesla to improve its corporate governance practices, including but not limited to (i) changing the composition of the Board to better protect the Company and its stockholders from the undue influence of E. Musk and/or (ii) rescinding or reforming the New E. Musk Compensation Plan to bring the plan in line with comparable CEO pay packages;
- H. Awarding Plaintiff and the other members of the Class damages in an amount which may be proven at trial, together with interest thereon;
- I. Awarding Tesla the amount of damages it sustained as a result of Defendants' breaches of fiduciary duty and other misconduct alleged herein;
- J. Awarding pre-judgment and post-judgment interest, as well as reasonable attorneys' and experts' witness fees and other costs; and
- K. Awarding such other and further relief as this Court may deem just and proper.

Dated: June 7, 2018

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