



EXHIBIT A

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RICHARD J. TORNETTA, Individually)	
and on Behalf of All Others Similarly)	
Situated and Derivatively on Behalf of)	
Nominal Defendant TESLA, INC.,)	C.A. No. 2018-0408-KSJM
)	
Plaintiff,)	
)	
v.)	
)	
ELON MUSK, ROBYN M. DENHOLM,)	
ANTONIO J. GRACIAS, JAMES)	
MURDOCH, LINDA JOHNSON RICE,)	
BRAD W. BUSS, and IRA EHRENPREIS,)	
)	
Defendants,)	
)	
-and-)	
)	
TESLA, INC., a Delaware Corporation,)	
)	
Nominal Defendant.)	
)	

**DECLARATION AND REPORT OF
STEVE POMERANTZ, PH.D.
JUNE 7, 2024**

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A. Overview, Nature of Engagement, and Summary of Opinions

This report is authored by Dr. Steven Pomerantz, President of Steve Pomerantz LLC, an economic and financial consulting firm located in New York, New York. My CV and a list of court appearances and publications are attached to this report as Appendix 1.

a. Qualifications

I received a Bachelor of Arts in Mathematics in 1981 from Queens College of the City University of New York and a Ph.D. in Mathematics in 1986 from the University of California at Berkeley. My Ph.D. thesis was in the area of Non-Linear Partial Differential Equations. My academic experience includes teaching courses at several institutions on the subjects of Finance, Operations Research, Mathematics, Statistics, and Probability.

I have worked in the investment community since 1986. I have held positions in research and management for fixed income, equities, derivatives and alternative investments at several major firms including Weiss Peck and Greer, New York Life Investment Management, Citibank, and Morgan Stanley. As part of my work at these investment management firms, I have provided portfolio management services to both mutual funds and institutional accounts, and I have offered investment and asset allocation advice to a wide range of clients, including both high net worth individuals and very large institutional clients including

defined benefit and defined contribution plans. I have been a portfolio manager at several firms for both fixed income and equity institutional accounts. Those firms also offered comparable investments in mutual funds, and I participated in the management of those mutual fund accounts. While at Weiss Peck and Greer, I served on Investment Policy Committees for both Fixed Income and Equity products and served on the firm-wide Product Review and Executive Committees. I was also the chair of the Asset Allocation Committee. These Committees supported both institutional and mutual fund accounts.

In these capacities, I have been involved in providing investment management services to mutual funds both as an investment advisor to a fund and as a sub-advisor. I also have been involved, as the primary advisor to a fund, in selecting and overseeing outside money managers to manage a fund's assets on a day-to-day basis. As the fund's primary advisor, our responsibility was the selection and oversight of the subadvisors and the negotiation of fees.

As a consultant, I have assisted investment managers, hedge funds, fund of funds, insurance companies, and defined benefit and contribution plans on a wide variety of investment related issues including manager selection and monitoring. In addition, I have provided expert testimony in a variety of cases, including cases involving claims relating to the investment options in defined contribution plans.

I have spoken at investment seminars, presenting on various areas of portfolio management, risk management, asset allocation, hedge fund products, and securities pricing. I have also authored or co-authored several publications on the topics of investments and financial analysis, among other things.

b. Nature of Engagement

I have been engaged by counsel for the Florida Objectors in this matter to opine on certain matters pertaining to the performance of Tesla, Inc. (symbol “TSLA”) common stock leading up to and on January 31, 2024, the market reaction to the publication of the Court’s Post-Trial Opinion rendered January 30, 2024 (the “Opinion”), and related compensation and stock performance analyses. My analysis is ongoing, and I reserve the right to supplement, revise, or amend these opinions. I am being compensated for my work in this matter at the rate of \$800 per hour. My compensation is not dependent on my opinions or on the outcome in this matter.

c. Summary of Opinions

- i. In response to the Opinion, Tesla common stock declined in overnight trading, rather than increasing as would be expected if a benefit had been obtained for the company;
- ii. The market capitalization of Tesla common stock increased significantly during the term of the 2018 Grant (the six years

preceding the publication of the Opinion (January 30, 2024)), far in excess of market averages and the automotive competitors identified in the Opinion; and

- iii. Performance fees comparable to those set forth in the 2018 Grant to Elon Musk would have been earned by other capital allocators (including hedge fund portfolio managers) if they had allocated funds equivalent to Tesla's market capitalization in 2017, while significantly lower fees would have resulted from comparable allocation of funds into Ford or General Motors or, indeed, the broad market as measured by the S&P 500.

B. Opinions and Analysis

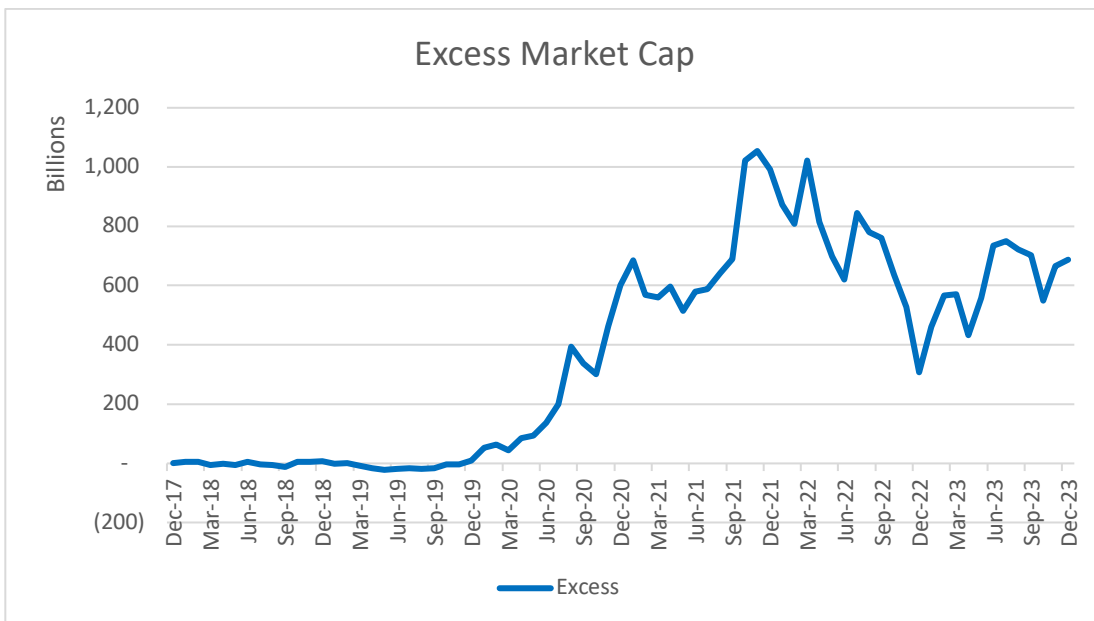
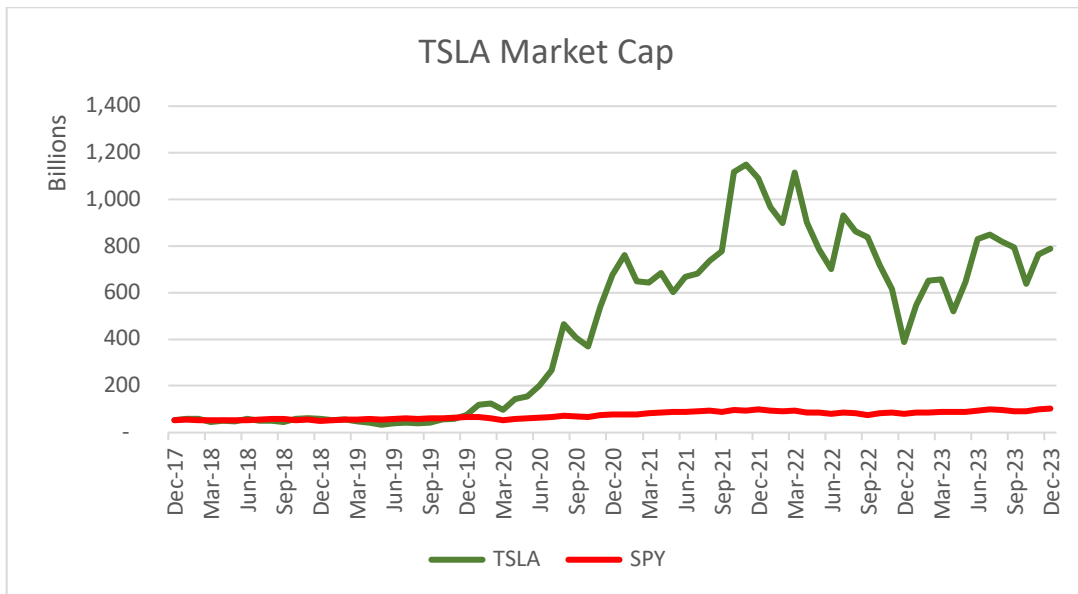
1. Market Reaction to the Publication of the Opinion Implies a Detriment, not a Benefit, to Tesla and its Shareholders.

The period analyzed within this report is from January 2018 through January 2024. January 21, 2018 was the beginning of the equity-based performance plan at issue and the 2018 Grant was voided by this Court on January 30, 2024.

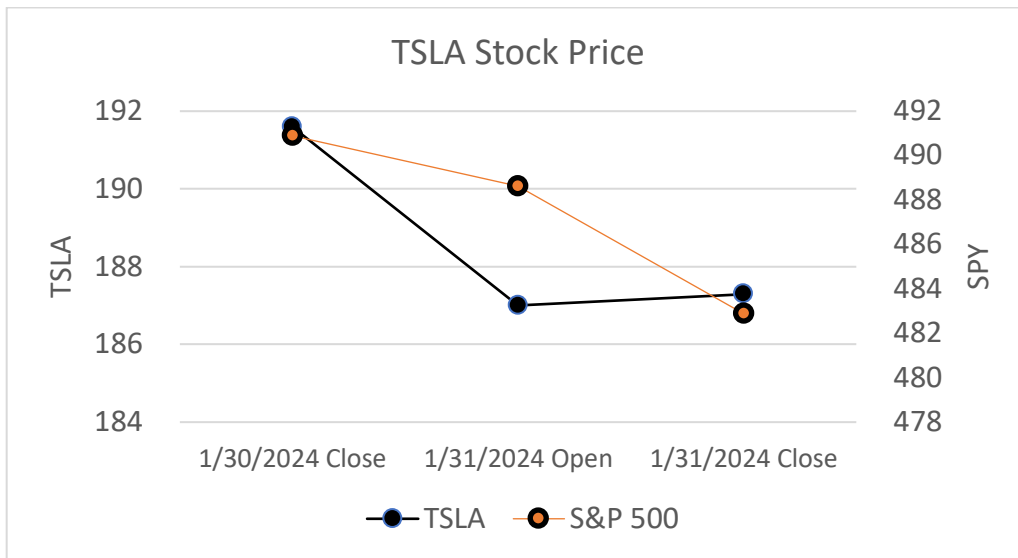
As of December 31, 2017, the market cap for TSLA was slightly over \$52 billion¹. As of the end of December 2023, market cap was approximately \$789

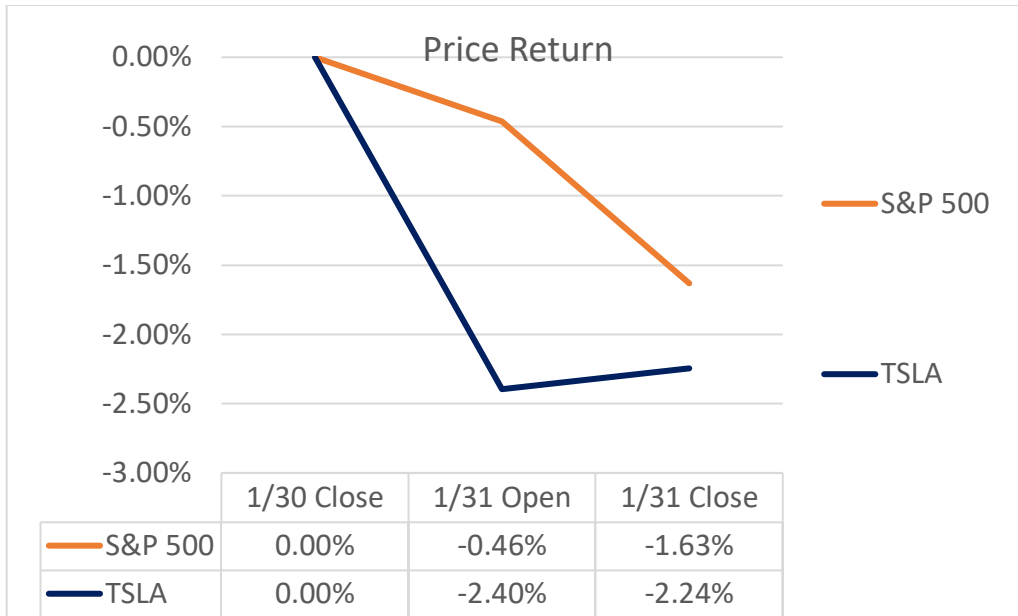
¹ Market data contained in this report has been obtained from FactSet, Yahoo Finance and Morningstar Direct.

billion, an extraordinary increase of over 1,400%. By comparison, a similar investment in the broad diversified equity market, as represented by the S&P 500 (captured in the SPY ETF), would have grown to “only” \$103 billion for a gain of 97%. Thus, by allocating funds to Tesla rather than SPY, excess wealth of nearly \$687 billion would have been created:

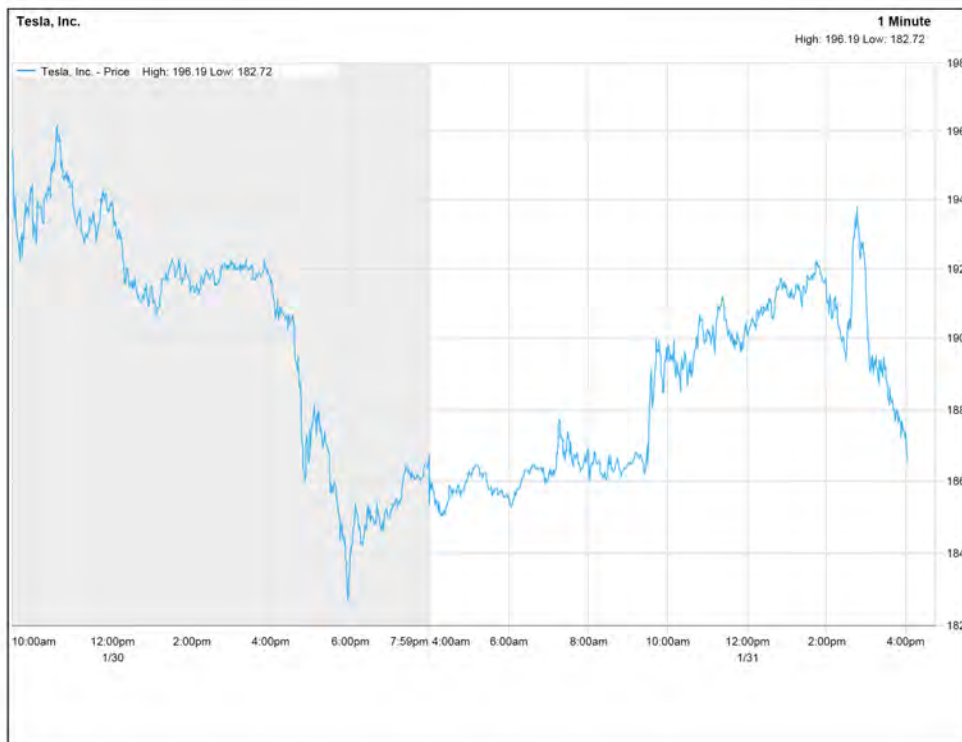


Turning to the market activity on the date of the Opinion, the charts below illustrate the behavior of Tesla stock from the January 30, 2024 market close through the open on the following day (January 31, 2024), and then from the January 31 market open through the close of that day, on a price and percentage basis. While TSLA declined 2.40% overnight (from close to open), the stock traded even lower after the release of the Opinion and before the market opening the following day. Overnight, the stock dropped almost 5% (4.71%) before recovering a portion (but far from all) of its losses. The broad market, as defined by SPY, declined much less, only 0.46%, by the market open. Over the course of the next day to the market close, TSLA remained lower than during the prior day:





The following chart illustrates the activity from the January 30, 2024 open through the January 31, 2024 close, including the overnight behavior, including the overnight low of 182.56.



The chart below illustrates the market capitalization for TSLA at various times during the 24-hour period from the market close on January 30 to the market close on January 31, 2024. Nearly \$29 billion in TSLA market value destruction occurred overnight at the low price of the stock, and when measured through the close on January 31, nearly \$14 billion in market value was eliminated:²

	1/30 Close	Overnight Low	1/31 Open	1/31 Close
Price	191.59	182.56	187.00	187.29
Market Cap	610,174	581,454	595,556	596,479
Return from 1/30 Close		-4.71%	-2.40%	-2.24%
Change in Mkt Cap		(28,759)	(14,618)	(13,695)

² I have separately calculated the drop on a beta adjusted basis, i.e., relative to the market as a whole. A regression of close-to-open price changes for the prior three months produced a beta of 1.73, and a residual decline of -0.89%. Adjusting for this influence still results in Tesla value destruction of over \$5 billion during this timeframe.

This decline in the stock price (or indeed, anything other than a significant *increase* in stock price) is significant given that the rescission of the share grant should have had a positive impact on the stock, and the Plaintiff claims as much in his Fee Application. A consequence of exercising stock options is that existing shareholders typically suffer a dilution of their value. As identified by Plaintiff's experts,³ such a rescission would produce a "decreased dilution effect" that was to have been a claimed benefit, and more specifically, a benefit equal to avoiding a dilution of 7.77%⁴ in market value due to the reduction in ownership by shareholders. In fact, rather than *increasing* by 7.77% (or at all), the market value of Tesla *decreased* by as much as almost 5% during this period.

2. Capital Allocator Peer Compensation Comparison with Hedge Fund Managed Tesla Portfolio Reflects Equivalency.

Treating TSLA as a portfolio holding in a typical hedge fund with significant capital allocated to that stock, I have calculated the hypothetical fees that would have been earned. Assuming a typical hedge fund structure that earns

³ Joint Declaration of Lucian Bebchuk & Robert J. Jackson, March 1, 2024 ¶39

⁴ Ibid ¶51.

20% of new profits generated,⁵ fees of just over \$200 billion would have been earned by such a prescient allocation of capital.⁶

	Performance Fee (\$mm)
2018-2023	\$ 201,892

3. Growth in Market Capitalization and Corresponding Equity Based Compensation Comparison with Tesla and Automotive Peers (General Motors and Ford)(2017-2023).

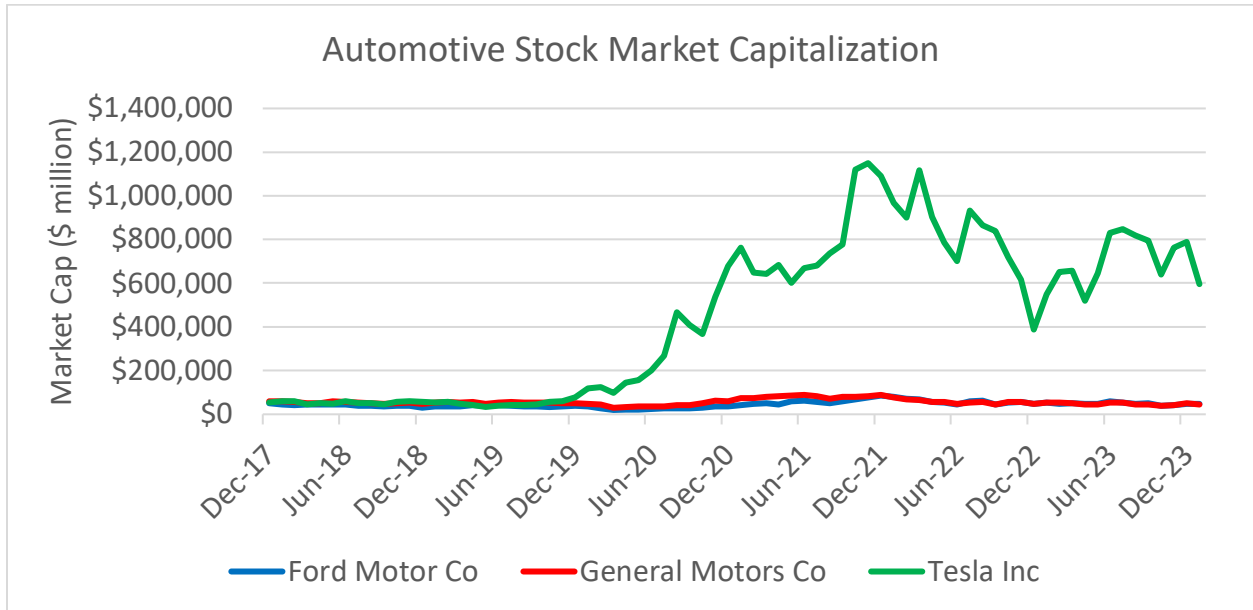
The chart below compares the market cap of TSLA to that of General Motors (GM) and Ford (F). Though they coincidentally and importantly have comparable market capitalization value as of December 2017⁷, by the end of 2023 TSLA has generated substantially more shareholder wealth. In comparison to the then \$789 market cap for TSLA, *General Motors had actually declined* in value to only \$49 billion while *Ford also declined* slightly to \$49 billion as well. Rather

⁵ See, Opinion at *80.

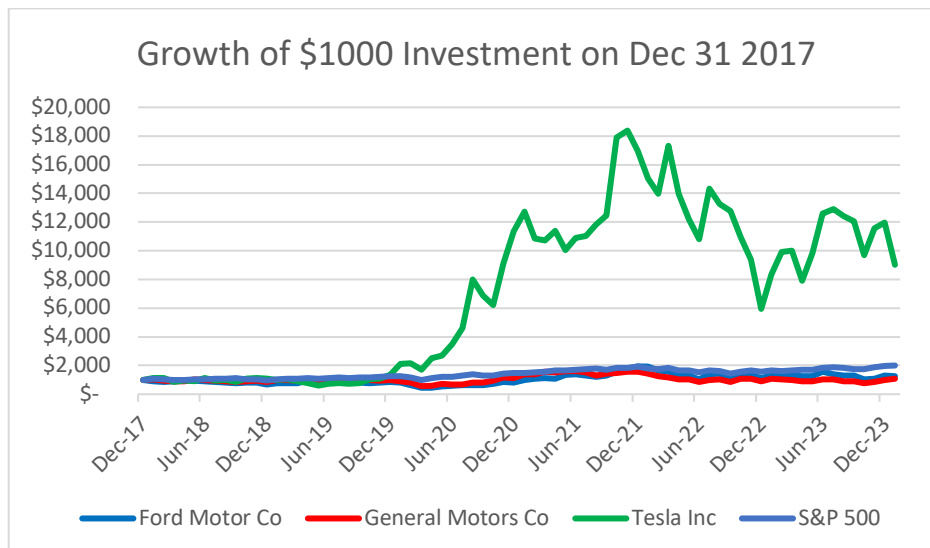
⁶ This calculation is for illustrative purposes as I am not offering an opinion on appropriate compensation for portfolio management labor. The calculation of this performance fee follows a standard fee of 20% of new profits, *ibid.*, subject to a high-water mark. To be conservative, I have assumed a high-water mark and that there would be no base management fee (typically in the range of 1% to 2% per year). In addition, a CEO has additional duties beyond capital allocation, and I have not considered their value in this opinion as it is beyond my scope.

⁷ Approximately \$52 B for TSLA, \$58 B for GM and \$50 B for F.

than appreciating by 1410% as had TSLA, GM declined by nearly 16% and Ford declined by 2%:



Thus, investors in TSLA were rewarded significantly more than those in GM or Ford, as the chart below illustrates (the growth in \$1000 in each of these stocks over time). While the Ford and GM investors were barely compensated, if at all; TSLA investors nearly saw a 10-fold return on their investment:



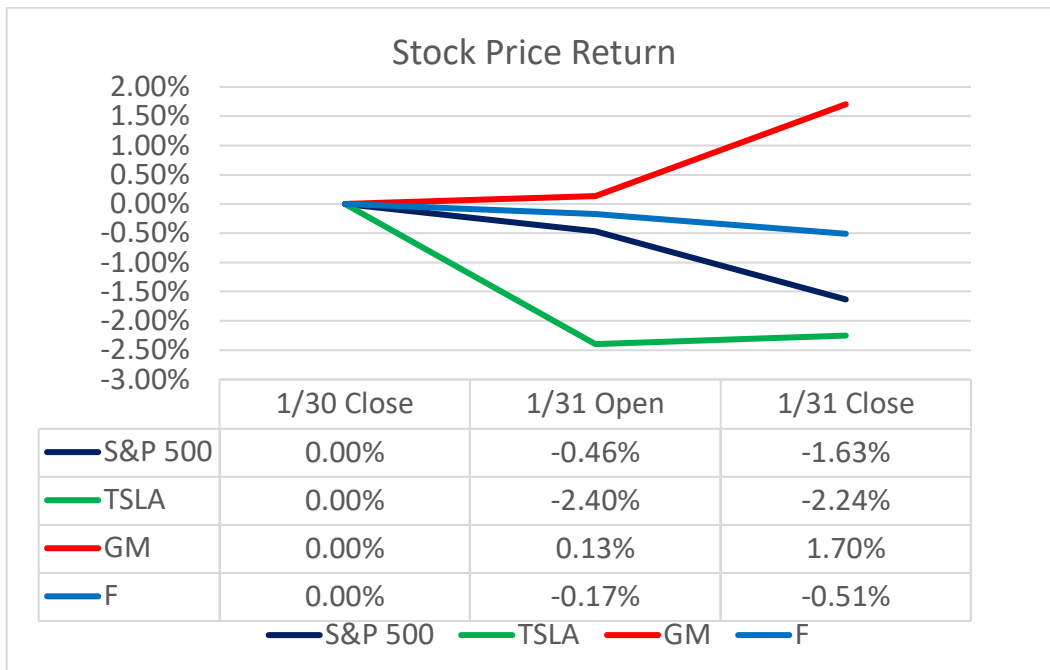
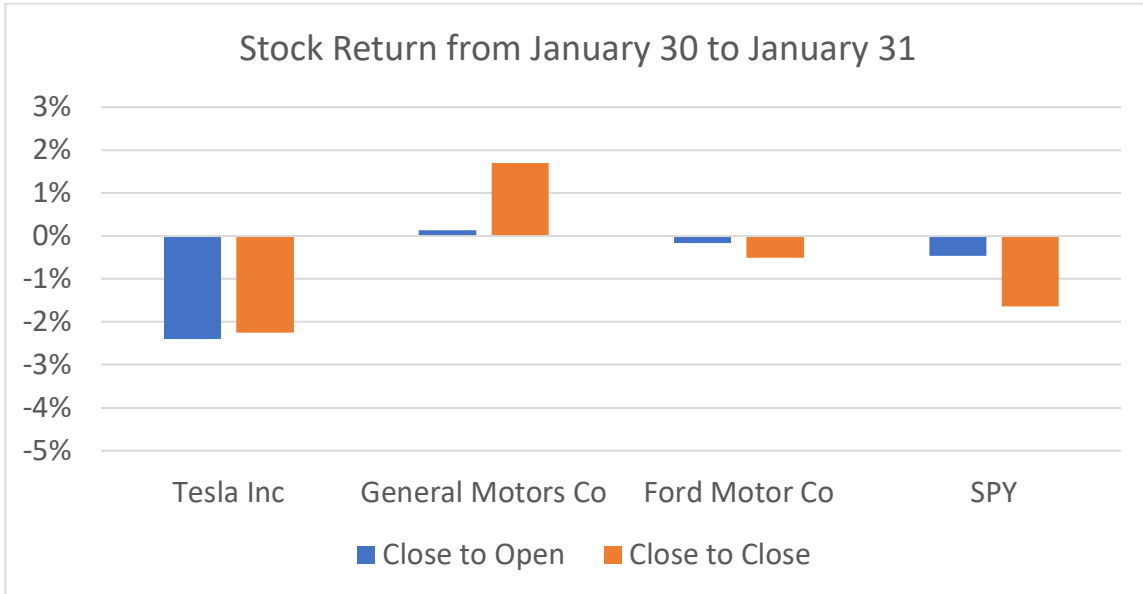
Under similar assumptions as above, namely a 20% performance fee levied on any increase in the market cap of the stock, I have calculated the effect for General Motors (GM) and Ford (F). As shown below, the benefit to TSLA is nearly 32 times larger than for GM and 24 times larger than for Ford:

	Performance Fee (\$mm)	TSLA Improvement
TSLA	\$ 201,892	
GM	\$ 6,115	3202%
F	\$ 7,921	2449%

4. Automotive Peers (General Motors and Ford) Stock Price Performance Comparison with Tesla on January 30-31, 2024.

Next, I illustrate the overnight and close-to-close returns of GM and Ford, similar to above in comparison to TSLA and SPY. Note that both GM and Ford had very little movement overnight as compared to the material loss of up to almost 5% for TSLA. By the close of January 31, GM had actually appreciated in

value, TSLA declined the most, followed by SPY and Ford (Ford was closer to flat while the broad market represented by the S&P declined further, thus implying some positive perception for Ford relative to the overall market, and implying the opposite for Tesla as it declined materially more than the S&P):



5. Amount Payable to Musk under the Compensation Plan Assuming the Same Percentage Fee Requested by Plaintiff's Attorneys (11.0145%)

Finally, in reviewing the Fee Application, I understand that Plaintiff's attorneys have requested a fee award in the amount of 11.0145% of the benefit allegedly created by Plaintiff. As indicated above, Tesla's market capitalization value increased during the term of the 2018 Grant from approximately \$52 billion at the end of 2017 (just before implementation of the plan) to \$596 billion by January 31, 2024, for an increase of nearly \$544 billion. Applying the Plaintiff's requested fee percentage (11.0145%) to this increase in market capitalization during the term of Musk's Compensation Plan equals approximately \$59.9 billion, an amount exceeding the maximum value of \$55.8 billion that the Court found payable to Musk under that plan using the percentage formula agreed to by Musk and Tesla.⁸

C. Conclusion

In summary, the market reaction to the Plaintiff's successful outcome in the Opinion implies a detriment, and not a benefit, for Tesla and its shareholders. In addition, rates of payment for similar capital allocation management services appear to be comparable to the payment agreed to by Tesla and Elon Musk.

⁸ Opinion at *1.

* * *

Pursuant to 10 Del. C. s. 3927, I declare under penalty of perjury under the laws of the state of Delaware the foregoing is true and correct as of this 7th day of June, 2024.



Steve Pomerantz , Ph.D.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RICHARD J. TORNETTA, Individually)
and on Behalf of All Others Similarly)
Situated and Derivatively on Behalf of)
Nominal Defendant TESLA, INC.,) C.A. No. 2018-0408-KSJM
)
Plaintiff,)
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v.)
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ELON MUSK, ROBYN M. DENHOLM,)
ANTONIO J. GRACIAS, JAMES)
MURDOCH, LINDA JOHNSON RICE,)
BRAD W. BUSS, and IRA EHRENPREIS,)
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Defendants,)
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-and-)
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TESLA, INC., a Delaware Corporation,)
)
Nominal Defendant.)

**SUPPLEMENTAL REPORT AND DECLARATION OF
STEVE POMERANTZ, PH.D.
JUNE 14, 2024**

**SUPPLEMENTAL REPORT AND DECLARATION OF
STEVE POMERANTZ, PH.D.
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 - 5. Amount Payable to Musk under the Compensation Plan Assuming the Same Percentage Fee Requested by Plaintiff's Attorneys (11.0145%).
 - 6. Market Reaction to News of Anticipated and Actual Shareholder Approval of June 13, 2024 Ratification Proposal Supporting Payment of all Compensation Owed to Elon Musk of in the 2018 Grant and Compensation Plan.²
- C. Conclusion

¹ Sections A and B.1 through B.5 are not repeated here; reference is made to the initial Declaration and Report of Steve Pomerantz, Ph.D. dated June 7, 2014.

² Section B.6 is added to the Report following the Annual Shareholder meeting held in Austin, Texas, on June 13, 2024.

B. Opinions and Analysis

6. Market Reaction to News of Anticipated and Actual Shareholder Approval of June 13, 2024 Ratification Proposal Supporting Payment of all Compensation Owed to Elon Musk of in the 2018 Grant and Compensation Plan.³

The period analyzed in this report is from June 12, 2024 through June 14, 2024, *i.e.*, the day before, the day of, and the day after the Tesla Shareholder Meeting held June 13, 2024. The chart below illustrates the price activity for the broad market (as represented by SPX), Tesla, Inc. (TSLA), General Motors (GM) and Ford (F):

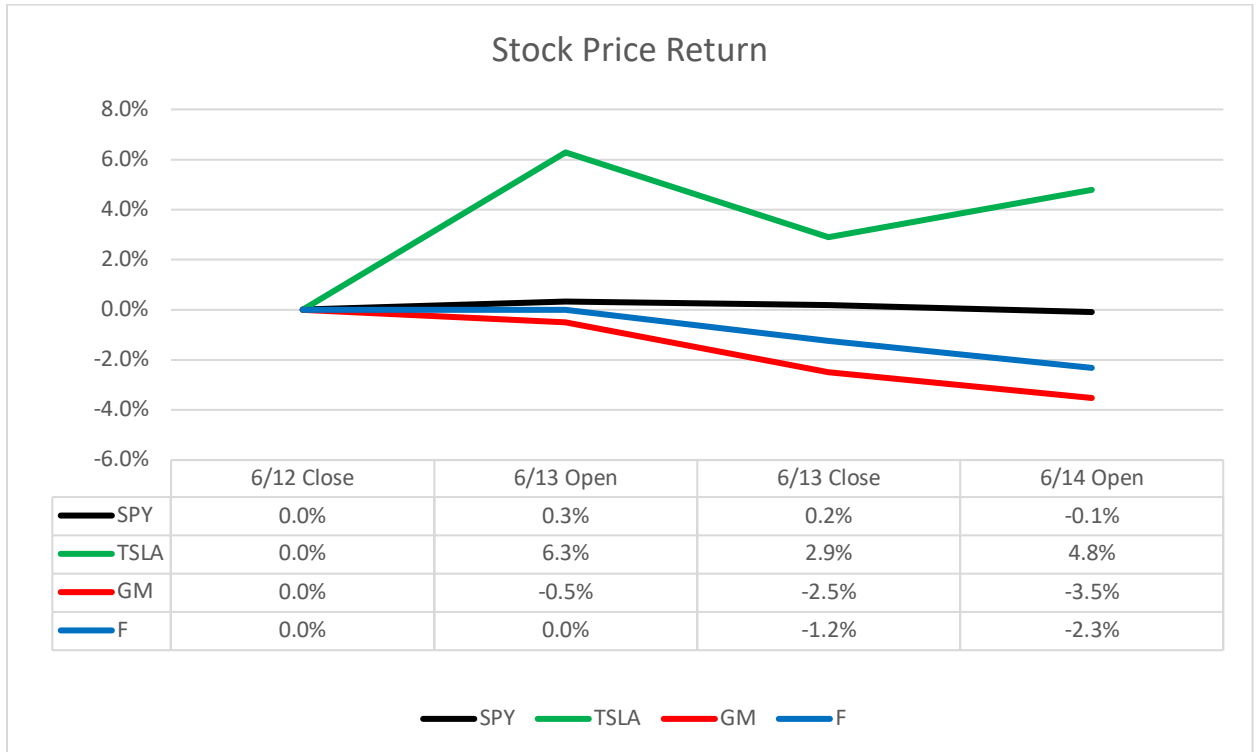
	SPY	TSLA	GM	F
Close 6/12/24	541.36	177.29	48.86	12.08
Open 6/13/24	543.15	188.43	48.62	12.08
Close 6/13/24	542.40	182.42	47.64	11.93
Open 6/14/24	540.88	185.76	47.14	11.80

To place the price activity of the market and these three companies in perspective, I illustrate below the price returns, in percentage form, throughout this period. As reflected in the following chart,⁴ the broad market was relatively unchanged, TSLA experienced significant price appreciation following reports

³ Section B.6 is added to the Report following the Annual Shareholder meeting held in Austin, Texas, on June 13, 2024.

⁴ Source: Yahoo Finance and Morningstar Direct.

prior to the market open on June 13, 2024 that the proposal to pay Elon Musk was likely to pass, and GM and F both declined:



After the June 12, 2024 market close through open on June 14, 2024, the stock price for TSLA ranged between a low of \$177.29 (the market close on June 12, 2024) and a high of \$188.43 (the market open on June 13, 2024) and eventually opened on June 14, 2024 at \$185.76 as reflected on the chart attached as Exhibit

A.⁵ At no opening or closing point did the price of TSLA decline below the closing price on June 12, 2024, the day before the Shareholder Meeting.

During this same period, the total market capitalization of TSLA increased between \$16 to \$35 billion, ending up at \$27 billion at the market open on June 14, 2024, meaning that the total value of Tesla increased, rather than decreased, in anticipation and actual approval of paying Musk up to \$55.6 billion, an expense characterized by the Plaintiff in this case as decreasing the value of Tesla:

Market Cap (\$ Billion)		Change (\$ Billion)	TSLA Price
6/12 Close	\$ 565.4		177.29
6/13 Open	\$ 601.0	\$ 35.5	188.43
6/13 Close	\$ 581.8	\$ 16.4	182.42
6/14 Open	\$ 592.5	\$ 27.0	185.76

C. Conclusion (Additional Item B.6)

In summary, the market reaction to news of the likely outcome of the vote on the proposal to honor the 2018 Grant and Compensation Plan owed to Elon Musk, wherein Tesla would issue TSLA common stock with a value of as much as

⁵ Source: FactSet.

\$55.6 billion, implies that the market interpreted this as a benefit for Tesla and its shareholders, not a detriment as argued by the Plaintiff in this case.

* * *

Pursuant to 10 Del. C. s. 3927, I declare under penalty of perjury under the laws of the state of Delaware the foregoing is true and correct as of this 14th day of June, 2024.



Steve Pomerantz , Ph.D.

Tesla, Inc.

1 Minute

High: 191.50 Low: 177.02 Chg: 5.26%

