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.	)	

SUPPLEMENT AND JOINDER TO THE FLORIDA OBJECTORS' OBJECTIONS TO PLAINTIFF'S APPLICATION FOR AN AWARD OF FEES AND EXPENSES

ARK Investment Management LLC ("ARK" or "ARK Invest"), a Registered Investment Advisor, manages in excess of 7,956,495 shares of common stock of Tesla, Inc. ("Tesla"), 5,156,495 of which are in discretionary accounts and over 2.8 million in advisory accounts. On behalf of its clients, ARK Invest objects ("the ARK Objection") to Plaintiff's Application for an Award of Fees and Expenses,

dated March 1, 2024 (the "Fee Application") and joins the Florida Objectors[1] as a party objector in the Florida Objections.

In the Fee Application, Plaintiff's attorneys have asked this Court to award them Tesla stock worth more than $5 billion to be issued by Tesla with Tesla's shareholders to bear that expense. More recently, in response to the filing of the Objections by the Florida Objectors, Plaintiff's attorneys assumed a more humble position and advised the Court that, while they continue to claim entitlement to over $5 billion in Tesla stock, they could still be rewarded with a cash payment of perhaps $2.88 billion. Although ARK acknowledges this admission by Plaintiff's attorneys that their initial demand of $5.6 billion amounted to gross overreach and lacked merit, their reduced demand also lacks merit as set forth in the Florida Objections and would also come at the expense of ARK's clients and other Tesla shareholders. Thus, payment of Plaintiff's attorneys' fees in kind (stock) or in cash will be a direct burden on ARK and its clients, and ARK objects to any such payment.

[1] Defined terms in the Florida Objectors Objections to Plaintiff's Application for an Award of Fees and Costs filed June 17, 2024 (the "Florida Objections"), shall have the same meaning in this ARK Objection. In addition, the use of the term "Florida Objectors" herein and in the Florida Objections now includes ARK Invest.

Moreover, Plaintiff and his attorneys have created no benefit for Tesla; to the contrary, they have harmed the company and created an overhang on Tesla's common stock that caused it to trade at less than fair value. That overhang has recently been clearing, however, and since the filing of the Florida Objections on June 17, 2024 and the shareholder vote ratifying the pay package, the market value of Tesla stock has increased by more than 40%.[2] Once again, the market has confirmed that the Plaintiff conferred no benefit on Tesla, but that Mr. Musk and, under his leadership, the employees of Tesla did and continue to do.

Recognizing the importance of Mr. Musk to Tesla, ARK voted for the 2018 compensation package approved by the Board of Directors of Tesla in 2018. ARK wholeheartedly endorsed the "moonshot" goals the board negotiated with Mr. Musk, however those terms came about. The market consensus at the time, which ARK vocally disagreed with, was that those goals were impossible, but if they could nonetheless be achieved with Elon Musk as the leader of Tesla, he would easily be worth that compensation.

ARK voted again for the 2018 Grant compensation package in June 2024 for the same reasons, except that in 2024, shareholders (only a small percentage of

[2] Source: Yahoo Finance.

whom were shareholders in 2018[3]) were certain of (and had already greatly benefited from) the outcome. Although some opportunistic investors voted against the compensation in 2024 knowing the Elon Musk had already fully performed his end of the agreement by growing Tesla to become much larger than GM and Ford combined, shareholders realized that Tesla's success would not have been possible without the once-in-a-generation leadership of Elon Musk and the 2018 Grant. Moreover, ARK believes that a party to an agreement should keep its promise, something we instill in our children at an early age: your word is your bond.

Indeed, the Plaintiff himself has offered support for a finding by this Court that the benefit Musk conferred on Tesla equals more than the $55.6 billion payable pursuant to the 2018 Grant. When applying the methodology the Plaintiff has asked this Court to apply to his own Fee Application, Mr. Musk would be entitled to approximately $59.9 billion, close to the amount payable under the 2018 Grant itself (maximum value of $55.8 billion[4]).[5] The Plaintiff's methodology[6] recognizes that risk is to be amply rewarded, yet while he is quick to claim such a benefit for himself even as he takes credit for Mr. Musk's success, he has spent

[3] By studying the annual turnover rate of Tesla shares, it is estimated that only about 7% of shareholders in June 2024 were shareholders in January 2018. Source: NASDAQ, Tesla Investor Relations.
[4] Opinion, 310 A.3d at 445.
[5] *See, generally*, Florida Objections at 15-21.
[6] *Sugarland Indus., Inc.*, 420 A.2d at 147; Florida Objections at, *e.g.*, 15-20.

years denying that such a reward is payable to Mr. Musk for actually achieving success.[7] This Court should accept Plaintiff's premise that risk is to be amply rewarded, but here, that reward belongs solely to the leader of the management team and thousands of employees conferring the benefit on Tesla: Mr. Musk.

In line with such a finding, ARK respectfully suggests that the Court consider Plaintiff's fee request as an admission of the fairness of the price payable to Musk and that he caused Tesla's stellar stock price performance during the term of the 2018 Grant. In addition, recognizing the fairness of that price as part of the plenary analysis of entire fairness, and because Plaintiff has not proven that he conferred any benefit on Tesla (and cannot since only Musk can claim such success), ARK respectfully suggests that the Court reconsider the appropriateness of rescission as a remedy for the breach found in its January 30, 2024 Opinion as part of its determination that Plaintiff conferred no benefit on Tesla and that his Fee Application must be denied.

[7] In a classic case of overreach, Plaintiff's attorneys claim to have created a benefit of $56 billion despite the fact that Plaintiff may claim no benefit beyond that allegedly conferred at the time of the filing of his initial complaint. *Allied Artists Pictures Corp.,* 413 A.2d at 878-79; Florida Objections at 40-41. Thus, the Plaintiff's fee request is limited to a claim (unproven) that he conferred a benefit equal to at most $2.6 billion (the present value assigned in 2018 to the Stock Grant as required by GAAP). Opinion, 310 A.3d at 445, 454 n. 80, and 485 (GAAP grant date fair value of approximately $2.6 billion). The Plaintiff's attorneys' fee request currently equals or exceeds that maximum amount.

CONCLUSION

The Plaintiff can claim no part of Tesla's success as his own and has conferred no other benefit on Tesla that would justify forcing shareholders who have twice approved the 2018 Grant to pay his attorneys' fees. In the absence of any benefit, and for the reasons set forth herein and in the Florida Objections, the Plaintiff's Fee Application must be denied.

Dated: July 7, 2024

Respectfully submitted,

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