



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,)

C.A. No. 2020-0477-KSJM

Defendants,)

-and-)

TESLA, INC., a Delaware Corporation,)
Nominal Defendant.)

**AFFIDAVIT OF ROBERT A. MEYER
IN SUPPORT OF SETTLEMENT**

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

Robert Meyer, being duly sworn, deposes and states as follows:

1. I submit this Affidavit in my capacity as the mediator in the above-captioned derivative action (the "Action") and in connection with the proposed

settlement of the Action.¹ I make this Affidavit based on personal knowledge and am competent to testify.²

BACKGROUND AND QUALIFICATIONS

2. I currently serve at JAMS in Los Angeles, California as a mediator in complex business litigation pending throughout the United States, including derivative, stockholder, and securities class actions, professional liability lawsuits against accounting and law firms, litigation involving banking and complex financial instruments, cases arising under ERISA, intellectual property disputes, consumer class actions, high-profile employment matters, and other commercial disputes.

3. Prior to joining JAMS, I was a partner and Chair of Professional Services Litigation and General Counsel at Loeb & Loeb LLP, where I practiced from 1975 to 2017.

4. I am a Fellow of the American College of Trial Lawyers and have represented both plaintiffs and defendants in derivative litigation, securities and class action suits, intellectual property litigation (including copyright, trademark,

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

² While the mediation process is confidential, the parties have authorized me to inform the Court of the matters set forth herein in support of approval of the settlement. My statements and those of the parties during the mediation process are subject to Delaware Rule of Evidence 408 and there is no intention on either my part or the parties’ part to waive the protections of Rule 408.

and right of publicity lawsuits), attorneys' and accountants' professional liability lawsuits, and claims involving breach of contract and commercial fraud.

5. I earned my Bachelor of Arts degree from the American University School of International Service in 1972 and my Juris Doctor degree from Georgetown University Law Center in 1975.

THE ARM'S-LENGTH SETTLEMENT NEGOTIATIONS

1. The November 5, 2022 Mediation

6. On November 5, 2022, the parties and their counsel remotely attended their first of three full-day mediation sessions. The attendees included counsel for Plaintiff (Bleichmar Fonti & Auld LLP, Fields Kupka Shukurov LLP, McCarter & English LLP, and Clark Hill PLC) ("Plaintiff's Counsel") and counsel for Defendants (Cravath, Swaine & Moore LLP) (the "Defendants' Counsel").

7. Prior to that mediation conference, the parties exchanged confidential mediation statements with exhibits, and I had discussions with both sides about their statements and other issues.

8. During the November 5, 2022 mediation conference, the parties separately made presentations to me regarding the strengths and weaknesses of the parties' claims and defenses. I then engaged in separate discussions with Plaintiff's Counsel and Defendants' Counsel.

9. During the November 5, 2022 mediation session, the parties exchanged demands and offers, but the session concluded without the parties reaching any resolution.

2. The November 22, 2022 Mediation

10. On November 22, 2022, the parties attended a second full-day mediation session via video conference. The participants included Plaintiff's Counsel (same as above) and Defendants' Counsel (same as above).

11. During the November 22, 2022 mediation session, I again conferred separately with Plaintiff's Counsel and Defendants' Counsel in an effort to find common ground between the parties' respective positions. In addition to presenting their respective positions, the parties exchanged rounds of settlement demands and offers. At the close of the mediation session, the parties were unable to reach agreement.

3. The March 2, 2023 Mediation

12. The parties engaged in a third full-day mediation session—both in-person in New York City and via videoconference—on March 2, 2023. The participants included Plaintiff's Counsel (Plaintiff's representative from Clark Hill PLC attended via videoconference) and Defendants' Counsel.

13. During the March 2, 2023 mediation session, the parties engaged in a joint session and, under my moderation, debated the strengths and weaknesses of the case, particularly in light of the discovery and depositions completed thus far.

14. I then conferred separately with Plaintiff's Counsel and Defendants' Counsel to discuss various strengths and weaknesses and facilitate the exchange of further offers and demands. From time to time, the parties came together to discuss certain points that arose in the course of the discussions. Again, the parties were not able to reach agreement during the mediation session.

4. Further Negotiations through July 14, 2023

15. Between March 3 and July 14, 2023, I participated in more than a dozen videophonic and telephonic discussions with Plaintiff's Counsel and Defendants' Counsel in an effort to resolve the Action. These discussions addressed the merits of the claims, including liability and damages, option valuation methodologies for purposes of the settlement, and other issues.

16. During the period from March 3 to June 7, 2023, the parties exchanged additional offers and demands but did not reach any resolution.

17. In an effort to resolve the financial terms of this case, on June 19, 2023, I issued a mediator's recommendation whereby the Director Defendants would return the "in-the-money" value of 3,130,406 options, calculated with reference to Tesla's closing stock price on June 16, 2023 (*i.e.*, \$260.54 per share), and forego all

compensation for 2021 through 2023. The recommendation was subject to subsequently reaching agreement on governance reforms regarding non-employee director compensation. On June 20, 2023, I informed the parties that both sides had accepted the recommendation.

18. I presided over subsequent negotiations by the parties regarding governance reforms concerning Tesla's non-employee director compensation. The parties exchanged several demands and offers and reached agreement on certain terms on June 28, 2023.

19. The parties subsequently documented their agreement in the Stipulation that was filed with the Court on July 14, 2023.

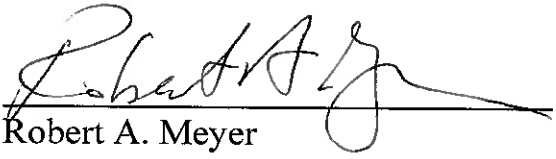
20. The parties did not discuss the terms of any application for attorney's fees and expenses and/or incentive award prior to reaching agreement on the substantive terms of the Stipulation.

21. The mediation process was conducted with a high degree of professionalism from beginning to end and was conducted by experienced and able counsel on both sides. Throughout the mediation process, the negotiations between the parties were vigorous and conducted at arm's-length and in good faith. Because the parties submitted their mediation statements, presentations, and arguments in the context of a confidential mediation process pursuant to Delaware Rule of Evidence 408, I cannot reveal their content. I can say, however, that the arguments and


positions asserted by all involved were the product of substantial work, they were complex and reflected a detailed and in-depth understanding of the strengths and weaknesses of the claims and defenses in this case, and the negotiations were extremely hard-fought.

CONCLUSION

22. Based on my experience as a litigator and a mediator, I believe that the settlement represents a recovery and outcome that is reasonable and fair for all parties involved. I support the Court’s approval of the settlement in all respects, except that I do not take a position on any application for attorney’s fees, incentive award, and/or reimbursement of expenses.


Robert A. Meyer

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

SEE ATTACHED


Notary Public

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Los Angeles

On August 28, 2023 before me, Setareh Azimi, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Robert A. Meyer
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2023, I caused a true and correct copy of the foregoing **Affidavit of Robert A. Meyer in Support of Settlement** to be served via File & Serve*Xpress* on the following counsel of record:

Raymond J. DiCamillo, Esquire
Kevin M. Gallagher, Esquire
Kyle H. Lachmund, Esquire
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/s/ Andrew S. Dupre
Andrew S. Dupre (#4621)