



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.)

C.A. No. 2020-0477-KSJM

ELON MUSK, BRAD BUSS, ROBYN M.)
DENHOLM, IRA ENRENPREIS,)
LAWRENCE J. ELLISON, ANTONIO J.)
GRACIAS, STEPHEN T. JURVETSON,)
LINDA JOHNSON RICE, JAMES)
MURDOCH, KIMBAL MUSK,)
KATHLEEN WILSONTHOMPSON,)
and HIROMICHI MIZUNO,)
Defendants,)

-and-)

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

STATEMENT OF OBJECTIONS TO PROPOSED SETTLEMENT

I, Michael R. Levin, hereby state objections to the proposed settlement in this case, pursuant to the Notice of Pendency and Proposed Settlement of Derivative Action (“Notice”) sent by the parties in this case brought in the Court of Chancery in the State of Delaware (“Court”) to record holders and beneficial owners of Tesla, Inc. (“Tesla”) as of July 14, 2023.

The Notice indicates the Court will determine, among other things, whether the proposed settlement of the Action should be approved by the Court as fair, reasonable, adequate, and in the

best interests of Tesla and its stockholders. As set forth below, I object to the proposed settlement as not fair, reasonable or adequate and not in the best interests of Tesla stockholders.

Pursuant to the Notice, I hereby state:

- (a) I intend to appear myself to present my objections. My address is 1863 Kiest Avenue, Northbrook, IL 60062 and my phone number is 847.830.1479 . I will serve this Statement of Objections on all counsel for all parties through electronic filing.
- (b) I own at least one share of Tesla common stock, as beneficial owner, as shown on the attached extract of my brokerage account statement labeled Exhibit A to Objection, owned these shares on the date of the Stipulation, and intend to hold my shares through the date of the settlement hearing on this matter.
- (c) I have two objections to the proposed settlement.
 - a. The Settlement Consideration fails to designate for each individual Director Defendant a specific amount that each individual Director Defendant will return to Tesla as their share or portion of the Settlement Option Amount, as defined in the Settlement Agreement (Section 2.6).
 - b. The “approval vote” (Section 2.12) lacks an enforcement mechanism, such that if the stockholder vote on proposed annual compensation fails to gain the vote of a majority of Unaffiliated Tesla Stockholders, then the Settlement Agreement does not set forth specific consequences for such failure.
- (d) I have these grounds for my objections.

- a. The failure to designate a specific amount for each individual Director Defendant defeats the purpose of the Settlement Consideration, and is not fair, reasonable, or appropriate and is not in the best interests of Tesla stockholders.
 - i. The parties designed the Settlement Option Amount to adjust compensation for Director Defendants to a fair level. That is, after the settlement, Director Defendants will receive compensation comparable to that at peer companies, adjusted for various differences among peer companies, such as growth and risk factors. Yet, the settlement does not in fact reduce each Director Defendant's compensation. The Settlement Agreement imposes the Settlement Option Amount "jointly and severally" (Section 2.1). This allows one or more Director Defendants to pay the entire Settlement Option Amount, and one or more Director Defendants to pay none of the Settlement Option Amount.
 - ii. In a settlement, the parties establish what each will "give" and "get" from a settlement agreement (Plaintiff's Corrected Opening Brief, p. 36). A reasonable settlement balances these two attributes. We object to the "get" of the Settlement Option Amount as imposing no specific cost on any one Defendant Director. The joint and several nature of the Settlement Option Amount can allow one or more individual Defendant Directors to pay nothing, while one or more other Defendant Directors pay some or all of the Settlement Consideration. While Plaintiffs will "get" the entire Settlement Option Amount, the Settlement Agreement unreasonably fails to require each Defendant Director to pay a specific amount.

- iii. An appropriate settlement is suitable for its intended purpose. The purpose of the Settlement Agreement is to return to Tesla a portion of Defendant Directors' compensation. The Settlement Agreement fails to achieve this purpose. The terms of the Settlement Agreement do not provide for any specific Director Defendant to return a specific amount of compensation. Instead, the Settlement Agreement sets forth a single Settlement Option Amount, without any detail as to how much of that Settlement Option Amount each Defendant Director will pay. It allows for one or more individual Defendant Directors to pay nothing, while one or more other Defendant Directors can pay some or all of the Settlement Consideration.
- iv. The lack of a mechanism for individual Defendant Directors to pay a portion or share of the Settlement Consideration is directly contrary to the best interest of Tesla stockholders. Under the terms of the Settlement Agreement, as few as a single Defendant Director can pay the entire Settlement Consideration on behalf of all other Defendant Directors. If Tesla CEO Elon Musk so pays the Settlement Consideration, then he will relieve all other Defendant Directors of a significant financial obligation. This will likely create an environment in which current directors among those Defendant Directors will reciprocate such an act, such as in determining Musk's own compensation as CEO. This will at best limit or much worse eliminate any independence from company management that stockholders seek in Tesla directors.

- v. We make clear that we object to the allocation of the Settlement Option Amount among Defendant Directors. Specifically, we object to the absence of any principle, rule, or formula for assigning a portion of the Settlement Option Amount to each Defendant Director. We remain concerned that the Settlement Agreement allows one or more Defendant Directors to pay all or some of the Settlement Option Amount of one or more other Defendant Directors. We do not express a view as to whether the amount or form of the Settlement Option Amount is fair, reasonable, appropriate, or in the best interests of Tesla stockholders.
- b. The failure to specify an enforcement mechanism for a failed approval vote allows Defendant Directors to continue to award themselves excessive compensation and is not appropriate.
 - i. The Settlement Agreement provides, “On an annual basis, Tesla shall submit the proposed annual compensation to be paid to Non-Employee Directors to an approval vote of the majority of Unaffiliated Tesla Stockholders present in person or represented by proxy and entitled to vote on such decision.” (Section 2.12). The Settlement Agreement provides no further detail about the vote. It does not set forth any consequences for Non-Employee Directors should the proposed annual compensation fail to gain such approval.
 - ii. Plaintiffs argue this vote is “designed to prevent excessive future compensation” (Plaintiff’s Corrected Opening Brief, p. 42). Along with other proposed corporate governance changes, this vote seeks to allow

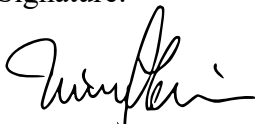
stockholders to review and approve any compensation Non-Employee Directors award themselves. Without such approval, Non-Employee Directors presumably would receive no compensation.

iii. As structured, the vote does not achieve its stated goal, and is not appropriate. Without any consequences for a failed vote, Non-Employee Directors can proceed in any way they choose. Among other choices, they could:

1. decline to pay themselves any amount;
2. propose and disclose to stockholders a different amount subject to a subsequent stockholder vote; or
3. pay themselves what they disclosed pursuant to the director compensation disclosure terms of the Settlement Agreement.

The latter choice transforms the “approval vote” into an advisory one, similar to the current say-on-pay vote that Tesla conducts for executive compensation. These executive compensation say-on-pay votes merely signal stockholder sentiment, and do not impose any direct limits on how directors compensate executives.

Signature:

A handwritten signature in black ink, appearing to read 'Michael R. Levin', written over a horizontal line.

Michael R. Levin

September 20, 2023

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CERTIFICATE OF SERVICE

I, Michael R. Levin, hereby certify that on the below date I served a copy of

Objections to Proposed Settlement by electronic filing to the following persons: all
parties as follows:

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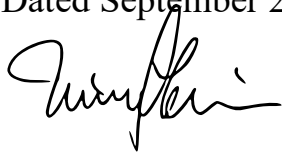
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Attorneys for Nominal Defendant Tesla, Inc.

Dated September 20, 2023

A handwritten signature in black ink, appearing to read "Michael R. Levin", written over the printed name.

Michael R. Levin

Pro Se

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