

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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IN RE TESLA MOTORS, INC. )  
STOCKHOLDER LITIGATION ) Consol. C.A. No.: 12711-VCS

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**ORDER AND PARTIAL FINAL JUDGMENT**

On this 17<sup>th</sup> day of August, 2020, a hearing having been held before this Court to determine whether Plaintiffs and Co-Lead Counsel have adequately represented the interests of Tesla and the Class; whether the proposed settlement of the Action, as reflected in the Stipulation and Agreement of Compromise and Settlement Between Plaintiffs and the Settling Defendants (the “Stipulation”), including Exhibits A-C thereto, which are incorporated therein by reference,<sup>1</sup> are fair, reasonable, adequate and in the best interests of Tesla and the Class; whether the above-captioned action (the “Action”) should be dismissed with prejudice as against the Settling Defendants and all of the Released Claims against the Released Persons should be fully, finally, and forever released, settled, and discharged; whether and in what amount any Fee and Expense Award should be paid to Co-Led Counsel out of the Settlement Amount and whether Judgment approving the Settlement of the Action should be entered in accordance with the terms of the

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<sup>1</sup> Capitalized terms not defined in this Judgment have the meaning set forth in the Stipulation (certain of which are repeated here for ease of reference only).

Stipulation; and the Court having considered all matters submitted to it at the hearing and otherwise;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over the Settling Parties and Class Members.

2. The dissemination of the Notice of Pendency and Proposed Settlement of Class and Derivative Action (the “Notice”) pursuant to and in the manner prescribed in the Scheduling Order entered on June 4, 2020 (the “Scheduling Order”), which was mailed by first-class mail on June 16, 2020, is hereby determined to be the best notice reasonably practicable under the circumstances, to constitute due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement, and to have met the requirements of Court of Chancery Rules 23 and 23.1, due process, and applicable law. It is further determined that Tesla and all Released Persons are bound by this Judgment.

3. The Court hereby finds that the requirements of the Court of Chancery Rules and due process have been satisfied in connection with the Notice.

4. The Settlement is found to be fair, reasonable, and adequate, and in the best interests of the Class and Tesla, and is hereby approved in all respects pursuant to Court of Chancery Rules 23 and 23.1.

5. The Settling Parties are hereby authorized and directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation, and the Register in Chancery is directed to enter and docket this Judgment.

6. The Settling Defendants are hereby dismissed with prejudice from the Action pursuant to Court of Chancery Rule 54(b). The foregoing dismissal is without fees or costs, except as expressly provided in the Stipulation.

7. Upon the Effective Date and the Settling Parties' compliance with all terms set forth in the Settlement Stipulation, Plaintiffs, all Class Members, and Tesla and their respective legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns shall thereupon be deemed to have fully, finally and forever, released, settled, and discharged the Released Defendant Parties from and with respect to every one of the Released Plaintiffs' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Plaintiffs' Claims against any of the Released Defendant Parties. No claims are being released by Plaintiffs against Non-Settling Defendant Elon Musk.

8. Upon the Effective Date and the Settling Parties' compliance with all terms set forth in the Settlement Stipulation, the Settling Defendants and their respective legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns shall thereupon be deemed to have fully, finally, and forever released, settled, and discharged the Released Plaintiff Parties from and with respect to every one of the Released Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Defendants' Claims against any of the Released Plaintiff Parties.

- a. "Released Claims" means Released Defendants' Claims and Released Plaintiffs' Claims, collectively.
- b. "Released Defendants' Claims" means all Claims, whether known or unknown, that could have been asserted by the Settling Defendants against any of the Released Plaintiff Parties that arise out of, are based upon, or relate to in any way the Acquisition or the institution, prosecution, settlement or dismissal of the Action.
- c. "Released Defendant Parties" means (i) the Settling Defendants, and (ii) their legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-

interest and assigns of any of the foregoing. For the avoidance of doubt, Non-Settling Defendant Musk is not a Released Person.

- d. “Released Persons” means Released Defendant Parties and Released Plaintiff Parties.
  - e. “Released Plaintiffs’ Claims” means any and all Claims, whether known or unknown, that were or could have been asserted against the Settling Defendants by the Released Plaintiff Parties or Tesla that arise out of, are based upon, or relate to in any way the Acquisition or the institution, prosecution, settlement or dismissal of the Action. For the avoidance of doubt, the Released Plaintiffs’ Claims include Plaintiffs’ direct claims against the Settling Defendants. For the further avoidance of doubt, Released Plaintiffs’ Claims shall not include Claims against Non-Settling Defendant Musk.
  - f. “Released Plaintiff Parties” means (i) Plaintiffs, all other Class Members, and Co-Lead Counsel, and (ii) their legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns of any of the foregoing.
9. The releases given by the Settling Parties in the Stipulation extend to Released Claims that the Settling Parties did not know or suspect to exist at the time

of the release, which if known, might have affected the decision to enter into this Settlement.

- a. With respect to the Released Claims, the Settling Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of the United States, any law of any state, or principle of common law which governs or limits a person's release of unknown claims to the fullest extent permitted by law, and to have relinquished, to the full extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code (or any similar, comparable or equivalent provision of any law of any state or territory of the United States, federal law, or principle of common law), which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY**

The Settling Parties and each Class Member shall be deemed by operation of law to have acknowledged that the foregoing waiver was separately bargained for and is a key element of the Settlement.

b. The Settling Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the Released Claims, but the Settling Parties fully, finally, and forever settle any and all such Released Claims, known or unknown, suspected or unsuspected, without regard to the subsequent discovery or existence of such additional or different facts, to the fullest extent permitted by law.

10. The obligations incurred pursuant to the Stipulation are in full and final disposition of the Action and the Released Claims as against the Settling Defendants. It is the intention of the Settling Parties that the Settlement eliminate all further risk and liability relating to the Released Claims as against the Settling Defendants, and that the Settlement shall be a final and complete resolution of all disputes asserted or which could be or could have been asserted with respect to the Released Claims as against the Settling Defendants.

11. Settling Defendants shall cause the Settlement Amount to be paid into Escrow by the Insurance Carriers (who have committed to fund the Settlement Amount), as follows: (i) within ten (10) Business Days after entry of the Scheduling Order, the Settling Defendants shall cause the Estimated Notice and Escrow Costs to be paid into Escrow; and (ii) within fifteen (15) Business Days after entry of the

Judgment, the Settling Defendants shall cause the Settlement Amount, less the Estimated Notice and Escrow Costs, to be paid into Escrow.

12. Any claims against the Released Defendant Parties, in which the injury claimed is the claimant's actual or threatened liability to Plaintiffs or any Class Member, arising out of or relating to the claims asserted in, or arising out of or relating to the subject matter of, the Action, including without limitation any third party claims for contribution in accordance with 10 *Del. C.* § 6304(b) and any similar laws and statutes, are hereby barred.

13. Plaintiffs and the Class agree, pursuant to 10 *Del. C.* § 6304, that the damages recoverable against any other alleged tortfeasor, including the Non-Settling Defendant, will be reduced by the greater of (1) the Settlement Amount, and (2) the *pro rata* shares of liability or responsibility for such damages, if any, of the Released Defendant Parties, should it be determined that any of the Released Defendant Parties are joint tortfeasors.

14. Co-Lead Counsel are hereby awarded a Fee and Expense Award in the amount of \$16,803,417.09, which amount the Court finds to be fair and reasonable. The Fee and Expense Award shall be paid pursuant to Sections 7.7 and 7.8 of the Stipulation and shall be paid from the Settlement Amount, reducing the settlement consideration paid to Tesla accordingly.

15. Co-Lead Counsel, in their sole discretion, shall be responsible for distributing the Fee and Expense Award. Any fees or expenses associated with Co-Lead Counsel's distribution of the Fee and Expense Award shall be borne solely by Co-Lead Counsel.

16. Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over the Settling Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement.

/s/ **Joseph R. Slights III**

Vice Chancellor

Dated: August 17, 2020