



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

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

**STIPULATION AND AGREEMENT OF COMPROMISE  
AND SETTLEMENT BETWEEN PLAINTIFFS  
AND THE SETTLING DEFENDANTS**

This Stipulation and Agreement of Compromise and Settlement Between Plaintiffs, Tesla and the Settling Defendants (the “Stipulation”) is entered into this 3rd day of June, 2020, by and among: (i) co-lead plaintiffs Arkansas Teachers Retirement System (“ATRS”), Roofers Local 149 Pension Fund (“Roofers Local 149”), Oklahoma Firefighters Pension and Retirement System (“OFP”), KBC Asset Management NV (“KBC”), Erste Asset Management GmbH (“Erste”), and Stichting Blue Sky Active Large Cap Equity Fund USA (“Blue Sky,” and together with ATRS, Roofers Local 149, OFP, KBC, and Erste, “Plaintiffs”), on behalf of themselves and the Class, and derivatively on behalf of Tesla, Inc. (f/k/a Tesla Motors, Inc.) (“Tesla”); and (ii) defendants Kimbal Musk, Antonio J. Gracias (“Gracias), Stephen T. Jurvetson (“Jurvetson”), Brad W. Buss (“Buss”), Ira Ehrenpreis (“Ehrenpreis”), and Robyn Denholm (“Denholm,” and together with Kimbal Musk, Gracias, Jurvetson, Buss, and Ehrenpreis, the “Settling Defendants” and together with Plaintiffs and Tesla the “Settling Parties”).

This Stipulation states the terms for the settlement and resolution of this matter as between the Settling Parties and is intended to fully and finally release, resolve, compromise, settle, and discharge the Released Claims, in connection with the action styled *In re Tesla Motors, Inc. Stockholder Litigation*, Consol. C.A. No. 12711-VCS (Del. Ch.), subject to the approval of the Court of Chancery of the State of Delaware (the “Court”). This Stipulation does not release, resolve, compromise, settle, or discharge any claims brought by Plaintiffs against non-settling defendant Elon Musk (“Musk”, the “Non-Settling Defendant”, together with the Settling Defendants, the “Individual Defendants”).

**WHEREAS**, on June 21, 2016, Tesla announced that it had made an offer to acquire SolarCity Corporation (“SolarCity”) for a range of 0.122 to 0.131 shares of Tesla common stock in exchange for each share of SolarCity common stock, conditioned on a majority vote by certain Tesla stockholders, as specified in the Definitive Joint Proxy Statement/Prospectus (“Proxy”) filed by Tesla and SolarCity on October 12, 2016.

**WHEREAS**, on August 1, 2016, Tesla announced that it had entered into an Agreement and Plan of Merger dated July 31, 2016 (the “Merger Agreement”) pursuant to which Tesla would acquire SolarCity by issuing to SolarCity stockholders 0.110 shares of Tesla common stock in exchange for each share of SolarCity common stock they owned at the time of closing (the “Acquisition”).

**WHEREAS**, on August 31, 2016, Tesla and SolarCity filed a Preliminary Joint Proxy Statement/Prospectus on Form S-4 with the United States Securities and Exchange Commission (the “SEC”) regarding the Acquisition.

**WHEREAS**, between September 1, 2016 and October 5, 2016, Tesla stockholders filed seven separate actions (together, the “Individual Actions”) that brought claims in connection with the Acquisition: (1) *City of Riviera Beach Police Pension Fund v. Elon Musk, et al.*, C.A. No. 12711-VCS (Del. Ch.); (2) *Ellen Prasinov v. Elon Musk, et al.*, C.A. No. 12723-VCS (Del. Ch.); (3) *Arkansas Teacher Retirement System, et al. v. Elon Musk, et al.*, C.A. No. 12740-VCS (Del. Ch.); (4) *P Evan Stephens v. Elon Musk, et al.*, Case No. 12745-VCS (Del. Ch.); (5) *Pyare Diwana v. Elon Musk, et al.*, C.A. No. 12796-VCS (Del. Ch.); (6) *Nam T. Nguyen v. Elon Musk, et al.*, C.A. No. 12804-VCS (Del. Ch.); and (7) *Thomas J. Wolf v. Elon Musk, et al.*, C.A. No. 12805-VCS (Del. Ch.).

**WHEREAS**, on September 29, 2016, plaintiffs in *Arkansas Teacher Retirement System, et al. v. Elon Musk, et al.*, Case No. 12740-VCS (Del. Ch.) filed a motion for leave (the “Motion for Leave”) to file a Verified Amended Class Action and Derivative Complaint (the “Amended Complaint”). On September 30, 2016, the Court granted the Motion for Leave, and the Amended Complaint was filed that same day. The Amended Complaint included ATRS, Roofers Local 149, Boston

Retirement System, OFP, KBC, Erste, Blue Sky, Felix Rovelli, and Aaron Roche as Plaintiffs, and brought claims against the Individual Defendants.

**WHEREAS**, on October 10, 2016, the Court entered an order consolidating the Individual Actions.

**WHEREAS**, on October 12, 2016, Tesla and SolarCity filed the Proxy on Form DEF14A with the SEC. The Proxy invited Tesla stockholders to attend a special meeting on November 17, 2016 for the purpose of considering and voting on the proposal to adopt the Merger Agreement.

**WHEREAS**, on October 19, 2016, following briefing and oral argument, the Court appointed ATRS, Roofers Local 149, OFP, KBC, Erste, and Blue Sky as lead plaintiffs in the consolidated action (the “Action”). The Court also appointed Boston Retirement System as a co-lead plaintiff; however, Boston was subsequently granted leave to withdraw. In the same order, the Court appointed the law firms of Grant & Eisenhofer, P.A., Kessler Topaz Meltzer & Check, LLP, and Robbins Geller Rudman & Dowd, LLP as co-lead counsel (“Co-Lead Counsel”).

**WHEREAS**, on November 17, 2016, the Acquisition was approved by a majority vote of certain Tesla stockholders, as specified in the Proxy.

**WHEREAS**, the Acquisition closed on November 21, 2016.

**WHEREAS**, on December 28, 2016, Plaintiffs served a first set of interrogatories on Tesla. Tesla partially responded to the interrogatories on January 25, 2019 and followed-up with further responses on February 8, 2019.

**WHEREAS**, on January 27, 2017, Individual Defendants and nominal defendant Tesla (collectively, “Defendants”) filed a motion to dismiss Plaintiffs’ Amended Complaint.

**WHEREAS**, on March 9, 2017, the Court entered a stipulated order that provided Plaintiffs with leave to file a Second Amended Verified Class and Derivative Complaint (the “Second Amended Complaint”). On March 9, 2017, Plaintiffs filed the Second Amended Complaint. The Second Amended Complaint asserted derivative and class claims against (1) Musk for breach of fiduciary duty in his capacity as Tesla’s controlling stockholder, (2) the Individual Defendants for waste, breach of the duty of disclosure, and breach of the fiduciary duty of loyalty by causing Tesla to acquire SolarCity, and (3) Musk, Kimbal Musk, Gracias, Buss, and Jurvetson for unjust enrichment.

**WHEREAS**, on June 12, 2017, the Defendants filed a motion to dismiss (the “Motion to Dismiss”) the Second Amended Complaint. Plaintiffs filed their answering brief on July 20, 2017, the Defendants filed their reply memorandum on August 10, 2017, and the Court held a hearing on the Motion to Dismiss on

December 13, 2017. The Court issued a memorandum opinion denying the Motion to Dismiss (the “Motion to Dismiss Opinion”) on March 28, 2018.

**WHEREAS**, on April 9, 2018, the Defendants filed an Application for Certification of Interlocutory Appeal (the “Application”) with respect to the Court’s Motion to Dismiss Opinion. Following briefing, the Court denied the Application through an order entered on April 27, 2018.

**WHEREAS**, on April 27, 2018, the Defendants filed a Notice of Appeal from Interlocutory Order with the Delaware Supreme Court. On May 3, 2018, the Delaware Supreme Court entered an order denying interlocutory appeal with respect to the Motion to Dismiss Opinion.

**WHEREAS**, on May 18, 2018, the Individual Defendants served their Answer to the Second Amended Complaint.

**WHEREAS**, on June 5, 2018, Tesla, as nominal defendant, served its answer to the Second Amended Complaint.

**WHEREAS**, on January 18, 2019, Plaintiffs served a first set of interrogatories on the Settling Defendants. The Settling Defendants responded with collective objections on February 22, 2019 and each Settling Defendant followed up with individual responses on March 18, 2019.

**WHEREAS**, on February 4, 2019, Plaintiffs served a second set of interrogatories on Tesla. Tesla responded to the second set of interrogatories on March 6, 2019.

**WHEREAS**, on March 18, 2019, Plaintiffs filed a motion for class certification.

**WHEREAS**, on April 10, 2019, Plaintiffs served interrogatories on Musk. Musk responded to the interrogatories on May 17, 2019.

**WHEREAS**, on April 18, 2019, the Court entered a Stipulated Order of Class Certification, which certified Counts IV (Claim Against the Individual Defendants for Breach of Fiduciary Duty), V (Individual and Class Claim Against Elon Musk for Breach of Fiduciary Duty as Controlling Stockholder) and VII (Individual and Class Claim Against the Individual Defendants for Breach of the Duty of Disclosure) of the Second Amended Complaint as class claims.

**WHEREAS**, between April 18, 2019 and January 31, 2020, Plaintiffs deposed 18 fact witnesses, including each of the Individual Defendants, current and former members of SolarCity and Tesla management, the financial advisors to each of Tesla and the Special Committee of the SolarCity Board of Directors, and Defendants' four expert witnesses. Defendants deposed Plaintiffs' three expert witnesses.

**WHEREAS**, on May 6, 2019, Plaintiffs served a third set of interrogatories on Tesla. Tesla responded to the interrogatories on June 5, 2019.

**WHEREAS**, on August 26, 2019, Plaintiffs served three expert reports, authored by Juergen Moessner, Murray M. Beach, and Ronald G. Quintero, respectively. On the same day, Defendants served three expert reports, authored by Dan Reicher, Daniel R. Fischel, and Jonathan F. Foster, respectively.

**WHEREAS**, on August 26, 2019, Plaintiffs and the Individual Defendants filed cross-motions for summary judgment. Answering briefs were filed on September 25, 2019, reply memorandums were filed on October 17, 2019 and the Court heard oral argument on the cross-motions for summary judgment on November 4, 2019.

**WHEREAS**, on September 26, 2019, Plaintiffs served three expert rebuttal reports, authored by Juergen Moessner, Murray M. Beach, and Ronald G. Quintero, respectively. On the same day Defendants served expert rebuttal reports authored by Daniel R. Fischel and Frederick Van Zijl.

**WHEREAS**, on December 4, 2019, Plaintiffs filed a motion to compel the production of documents from the custodial files of certain trial witnesses, which motion was resolved after briefing without Court involvement.

**WHEREAS**, beginning in November 2018, Plaintiffs and the Settling Defendants from time to time engaged in arm's-length negotiations in efforts to

settle Plaintiffs' claims without involvement of the Court. These efforts included participation in two days of in-person mediation before former United States District Court Judge Layn Phillips on June 10, 2019 and October 3, 2019, after which Plaintiffs and the Settling Defendants continued to discuss potential resolution of the claims with Judge Phillips' assistance.

**WHEREAS**, on January 22, 2020, Plaintiffs reached an agreement in principle with the Settling Defendants to resolve all Claims asserted against them for \$60 million (the "Settlement Amount"), which the Insurance Carriers have committed to fund, as reflected in an email communication on that date from Judge Phillips to counsel for the Settling Parties and the Insurance Carriers. Co-Lead Counsel informed the Court of the agreement in principle via teleconference on January 23, 2020.

**WHEREAS**, on February 4, 2020, the Court denied the parties' cross-motions for summary judgment, with the exception of granting Individual Defendants' motion for summary judgment with respect to disclosures regarding Evercore's valuation analysis and the financial impact of the Acquisition on Tesla.

**WHEREAS**, on February 21, 2020, Plaintiffs and the Settling Defendants filed a Stipulation and Proposed Order Severing Claims Against Certain Defendants, which the Court entered on February 24, 2020.

**WHEREAS**, this Stipulation is intended fully, finally and forever to release, resolve, compromise, settle, and discharge the Released Claims and terminate the Action as against the Settling Defendants with prejudice.

**WHEREAS**, the entry by the Settling Parties into this Stipulation is not, and shall not be construed as or deemed to be evidence of, an admission as to the merit or lack of merit of any Claims or defenses asserted in the Action.

**WHEREAS**, Plaintiffs and Co-Lead Counsel have conducted an investigation and pursued discovery relating to the claims and the underlying events and transactions alleged in the Action. Plaintiffs and Co-Lead Counsel have analyzed the evidence adduced during their investigation and through discovery, and have researched the applicable law with respect to Plaintiffs and the Class. In negotiating and evaluating the terms of this Stipulation, Plaintiffs and Co-Lead Counsel considered the legal and factual defenses to Plaintiffs' Claims. Plaintiffs and Co-Lead Counsel have received sufficient information to evaluate the merits of this Settlement. Based upon their evaluation, Plaintiffs and Co-Lead Counsel have determined that the Settlement set forth in this Stipulation is fair, reasonable and adequate and in the best interests of all Class Members, and that it confers substantial benefits upon Tesla and the Class Members.

**WHEREAS**, the Settling Defendants deny any and all allegations of wrongdoing, fault, liability or damage whatsoever. Specifically, the Settling

Defendants deny that they acted contrary to the best interests of Tesla and its stockholders or breached any duties. Settling Defendants maintain that they have meritorious defenses to all claims alleged in the Action. Nothing in this Stipulation shall be construed as any admission by the Settling Defendants of wrongdoing, fault, liability, or damages whatsoever. Nothing in this Stipulation shall be construed as an allocation of fault or liability between or among the Individual Defendants.

**WHEREAS**, the Settling Parties recognize that the Action has been filed and prosecuted by Plaintiffs in good faith and defended by Individual Defendants in good faith and further that the terms of the Settlement as set forth herein, were negotiated at arm's-length, in good faith, and reflect an agreement that was reached voluntarily after consultation with experienced legal counsel.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and among Plaintiffs, for themselves and on behalf of the Class, Tesla, and the Settling Defendants, through their undersigned attorneys, subject to the approval of the Court under Court of Chancery Rules 23 and 23.1, for the good and valuable consideration set forth herein and conferred on Plaintiffs and the Class, the sufficiency of which is hereby acknowledged, that the Action against the Settling Defendants shall be finally and fully settled, compromised, and dismissed, with prejudice, and the Released Claims shall be finally and fully released, resolved,

compromised, settled, discharged and dismissed with prejudice as against the Released Persons in the manner set forth herein.

## **1. DEFINITIONS**

In addition to the terms defined elsewhere in this Stipulation, the following capitalized terms, used in this Stipulation, shall have the meanings specified below:

1.1 “Business Day” means any day other than a day on which banks in Delaware are required or permitted to close.

1.2 “Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, diminutions in value, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys’ fees, expert or consulting fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, which now exist, or heretofore or previously existed, or may hereafter exist, including known claims and unknown claims, whether direct, derivative, individual, class, representative, legal, equitable or of any other type, or in any other capacity, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule (including but not limited to any claims under federal or state securities law, federal or state

antitrust law, or under state disclosure law or any claims that could be asserted derivatively on behalf of Tesla); provided, however, that Claims shall not include claims to enforce this Stipulation.

1.3 “Class” means the class certified by the Court in its April 18, 2019 Stipulated Order of Class Certification and defined as all record holders and beneficial owners of common stock of Tesla as of August 1, 2016, along with their successors and assigns, excluding the Individual Defendants and their associates, affiliates, legal representatives, heirs, successors in interest, transferees, and assigns.

1.4 “Class Member” means a member of the Class.

1.5 “Effective Date” means the first Business Day following the date of the Final Approval.

1.6 “Escrow” means the bank account maintained by the Escrow Agent into which the Settlement Amount will be deposited.

1.7 “Escrow Agent” means the escrow agent or agents who shall be chosen by mutual agreement of Co-Lead Counsel and Tesla.

1.8 “Estimated Notice and Escrow Costs” means the costs and expenses associated with providing Notice and administering the Escrow, as those costs and expenses are described in Section 7.7(a) and Section 7.7(b) of this Stipulation.

1.9 “Fee and Expense Award” means an award to Co-Lead Counsel of fees and expenses to be paid from the Settlement Fund, approved by the Court and in full satisfaction of any and all claims for attorneys’ fees that have been, could be or could have been asserted by Co-Lead Counsel or any other counsel or any Class Member with respect to the Settlement or against the Settling Defendants. For the avoidance of doubt, the Fee and Expense Award contemplated herein is not intended to satisfy in whole or in part any fee and expense award that may be sought in connection with Plaintiffs’ Claims against Non-Settling Defendant Elon Musk, which are not a part of this Settlement.

1.10 “Final Approval” with respect to the Judgment approving the Settlement of the Action means: (a) if no appeal from the Judgment is timely filed, the expiration date of the time provided for filing or noticing any appeal under Delaware Supreme Court Rule 6; or (b) if any appeal is taken, the date on which all appeals, including petitions for rehearing or reargument, have been finally disposed of (whether through expiration of time to file, through denial of any request for review, by affirmance on the merits, or otherwise).

1.11 “Insurance Carriers” means certain insurance carriers who issued Side A directors and officers liability insurance policies to Tesla for the June 23, 2016 to June 23, 2017 policy period.

1.12 “Judgment” means the Order and Partial Final Judgment to be entered approving the Settlement of the Action pursuant to Court of Chancery Rule 54(b) in all material respects, substantially in the form attached as **Exhibit C** hereto.

1.13 “Notice” means the Notice of Pendency and Proposed Settlement of Class and Derivative Action, substantially in the form attached hereto as **Exhibit B**.

1.14 “Person” means an individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, syndicate, person, trust, estate, association, organization, or other entity, including any governmental authority, and including any successor, by merger or otherwise, of any of the foregoing.

1.15 “Released Claims” means Released Defendants’ Claims and Released Plaintiffs’ Claims, collectively.

1.16 “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.

1.17 “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.

1.18 “Released Persons” means Released Defendant Parties and Released Plaintiff Parties.

1.19 “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.

1.20 “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.

1.21 “Section 468B Administrator” means Co-Lead Counsel, who shall be the administrator of the Settlement Fund for the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

1.22 “Settlement” means the settlement contemplated by this Stipulation and its exhibits.

1.23 “Settlement Fund” means the Settlement Amount, plus any interest, held in Escrow.

1.24 “Settlement Hearing” means the hearing to be held by the Court to determine whether: (i) Plaintiffs and Co-Lead Counsel have adequately represented the interests of Tesla and the Class; (ii) the proposed settlement of the Action should be approved by the Court as fair, reasonable, adequate and in the best interests of Tesla and the Class; (iii) 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; (iv) whether and in what amount any Fee and Expense Award should be paid to Co-Lead Counsel out of the Settlement Amount and (v) Judgment approving the Settlement of the Action should be entered in accordance with the terms of this Stipulation.

1.25 “Scheduling Order” means the scheduling order to be entered pursuant to Rule 23.1 of the Rules of the Court of Chancery, substantially in the form attached hereto as **Exhibit A**.

1.26 “Taxes” means any taxes (including any estimated taxes, interest, penalties or additional amounts) arising with respect to income earned by the Settlement Fund, including any taxes or tax detriments to which Settling Defendants, any other Released Person or Tesla may be subject with respect to (i) any income earned by the Settlement Fund for any period during which the Settlement Fund is

not treated, or does not qualify, as a “qualified settlement fund” for federal or state income tax purposes, and (ii) the payment or reimbursement by the Settlement Fund of any amounts described in clause (i).

1.27 “Tax Expenses” means expenses and costs incurred in connection with the operation and implementation of Paragraphs 7.5 and 7.6 herein (including expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) any tax returns).

## **2. SETTLEMENT CONSIDERATION**

In consideration for the full and final release, settlement, and discharge of any and all Released Claims against the Released Persons upon Final Approval, the Settling Parties have agreed to the following consideration:

2.1 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 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 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.

2.2 The Settlement Fund shall be disbursed in the manner set forth in Section 7.7, subject to Section 7.8. As reflected in Section 7.7, none of the

Settlement Fund is allocated to Plaintiffs' direct claims against the Settling Defendants.

### **3. SCOPE OF THE SETTLEMENT**

3.1 Upon the entry of the Judgment, the Action against the Settling Defendants shall be dismissed with prejudice pursuant to Court of Chancery Rule 54(b). The foregoing dismissal is without fees or costs, except as expressly provided in this Stipulation.

3.2 Upon the Effective Date and the Settling Parties' compliance with all terms set forth herein, 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.

3.3 Upon the Effective Date and the Settling Parties' compliance with all terms set forth herein, 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.

3.4 The contemplated releases given by the Settling Parties in this 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.

3.5 With respect to any and all 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 WHICH 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.

3.6 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 that it is their intention to 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.

3.7 The obligations incurred pursuant to this Stipulation shall be 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.

3.8 The foregoing releases are executed in accordance with the provisions of 10 *Del. C.* § 6301, *et seq.*, of the Uniform Contribution Among Tortfeasors Act.

Accordingly, Plaintiffs and all Class Members agree, pursuant to 10 *Del. C.* § 6304, that the damages recoverable against any other alleged tortfeasor, including the Non-Settling Defendant, for any Released Claim will be reduced by the greater of (1) the Settlement Amount, and (2) the *pro rata* shares of the Released Defendant Parties' liability or responsibility for such damages, should it be determined that any of the Released Defendant Parties are joint tortfeasors. The foregoing paragraph is intended to comply with 10 *Del. C.* § 6304(b) so as to preclude any liability of the Released Defendant Parties to any other alleged tortfeasors for contribution or any other claim in which the alleged injury arises out of or relates to the claims asserted in, or arises out of or relates to the subject matter of, the Action.

#### **4. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR APPROVAL**

4.1 As soon as practicable after this Stipulation has been executed, the Settling Parties shall submit this Stipulation, together with its exhibits, and shall jointly apply to the Court for entry of the Scheduling Order establishing the procedure for: (a) the provision of Notice and (b) the Court's consideration of the Settlement and the application of Co-Lead Counsel for reasonable attorneys' fees and expenses incurred in connection with the Action (the "Fee Application").

4.2 As soon as practicable after the date of entry of the Scheduling Order, and in no event fewer than sixty (60) calendar days before the Settlement Hearing, Tesla shall cause the Notice to be mailed to each Class Member. All stockholders

of record who held Tesla common stock on behalf of beneficial owners and who receive the Notice shall be requested to forward the Notice promptly to such beneficial owners. Tesla shall use reasonable efforts to provide notice to such beneficial owners by making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners. Any and all costs with respect to the mailing of the Notice shall be paid from the Settlement Fund, such that none of Tesla, the Released Persons or the Escrow Agent shall have any liability or responsibility for the expenses associated with providing the Notice.

4.3 The Settling Parties further agree to use their best efforts to obtain Court approval of the Settlement and a dismissal with prejudice of the Action as against the Settling Defendants.

4.4 If the Court approves the Settlement (including any modification thereto made with the consent of the parties as provided for herein) as fair, reasonable, adequate, and in the best interests of Plaintiffs, the Class, and Tesla, the Settling Parties shall jointly request that the Court enter the Judgment substantially in the form attached hereto as Exhibit C.

## **5. CONDITIONS OF SETTLEMENT**

5.1 This Settlement shall be subject to the following conditions, which the Settling Parties shall use their best efforts to achieve:

(a) the Court enters the Scheduling Order in all material respects in the form attached hereto as Exhibit A;

(b) the Court enters in all material respects the Judgment in the form attached hereto as Exhibit C;

(c) dismissal with prejudice of the Action as to the Settling Defendants pursuant to Court of Chancery Rule 54(b) without the award of any damages, costs, or fees, except as provided for in this Stipulation;

5.2 the Effective Date shall have occurred; and

5.3 the Settling Parties have complied with their obligations set forth herein.

## **6. ATTORNEYS' FEES AND EXPENSES**

6.1 Co-Lead Counsel will submit a Fee Application to the Court not to exceed 27 percent of the Settlement Amount, plus expenses incurred. The Settling Parties acknowledge and agree that any Fee and Expense Award in connection with the Settlement shall be paid from the Settlement Fund and shall reduce the settlement consideration paid to Tesla accordingly.

6.2 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.

6.3 The disposition of the Fee Application is not a material term of this Stipulation, and it is not a condition of this Stipulation that such application be granted. The Fee Application may be considered separately from the proposed Settlement. Any disapproval or modification of the Fee Application by the Court or on appeal shall not affect or delay the enforceability of this Settlement, provide any of the Settling Parties with the right to terminate the Settlement, or affect or delay the binding effect or finality of the Judgment and the release of the Released Claims.

6.4 The Settling Defendants shall bear no expenses, costs, damages, or fees alleged or incurred by Released Plaintiff Parties. For the avoidance of doubt, the Settling Defendants shall bear any fees or costs associated with causing the Settlement Amount to be paid into the Escrow Account by the Insurance Carriers. In the event the Settlement does not become final, nothing herein shall preclude Plaintiffs or Co-Lead Counsel from seeking an award of attorneys' fees and expenses in connection with Plaintiffs' Claims against the Settling Defendants.

## **7. THE SETTLEMENT FUND**

7.1 The Settlement Fund shall be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court until such time as it is distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court.

7.2 The Escrow Agent shall invest the Settlement Amount in United States Agency or Treasury Securities or other instruments backed by the Full Faith & Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund, and Tesla and any Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent. Provided the Escrow Agent invests the Settlement Fund as set forth herein, the Escrow Agent shall have no liability whatsoever with respect to any investment decision made in connection with the Settlement Fund.

7.3 The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the prior written agreement of Defendants' Counsel and Co-Lead Counsel.

7.4 Subject to further order(s) and/or directions as may be made by the Court, or as provided in this Stipulation, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Stipulation and shall incur no liability whatsoever for doing so. Neither Tesla nor the Released Persons shall

have any responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

7.5 The Settlement Fund is intended to be a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, and the parties shall so treat it. The Section 468B Administrator or its agents shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund, including, without limitation, the tax returns described in Treas. Reg. § 1.468B-2(k), and to the extent applicable, Treas. Reg. § 1.468B-2(l). All tax returns shall be consistent with the terms herein and in all events shall reflect that all Taxes shall be paid out of the Settlement Fund. The Section 468B Administrator or its agents shall also timely pay any required Taxes and Tax Expenses out of the Settlement Fund, and are authorized to withdraw, without prior consent of the Defendants or order of the Court, from the Escrow amounts necessary to pay Taxes and Tax Expenses. In addition, the Section 468B Administrator and its agents, and the Settling Parties, as required, shall do all things that are necessary or advisable to carry out the provisions of Paragraph 7.6 and this Paragraph 7.5.

7.6 All Taxes and Tax Expenses shall be paid out of the Settlement Fund. None of Tesla, Settling Defendants, the Released Persons or the Escrow Agent shall have any liability or responsibility for the Taxes or the Tax Expenses. The Section 468B Administrator shall be obligated to withhold from distributions out of the

Settlement Fund any funds necessary to pay or reimburse any Taxes or Tax Expenses, including the establishment of adequate reserves for any Taxes and Tax Expenses, as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2). Tesla and the Settling Defendants agree to timely provide to the Section 468B Administrator the statement described in Treas. Reg. § 1.468B-3(e).

7.7 The Settlement Fund shall be applied as follows:

- (a) To pay all Notice expenses as they are incurred;
- (b) To pay all costs and expenses associated with administering the Escrow, such as escrow fees, costs and Taxes as they are incurred;
- (c) To pay Co-Lead Counsel the Fee and Expense Award, within 20 Business Days of entry of Judgment, notwithstanding the existence of objections thereto, or the potential for appeal therefrom, subject to Section 7.8; and
- (d) To distribute the balance of the Settlement Fund to Tesla, via wire transfer instructions provided by Tesla, within 20 Business Days of entry of Judgment, notwithstanding the existence of objections thereto, or the potential for appeal therefrom, subject to Section 7.8.

7.8 In the event of a reversal or modification of the Judgment on appeal, in whole or in part, Co-Lead Counsel and Tesla shall be obligated to repay into Escrow any amounts necessary to conform to the appellate decision, unless otherwise directed by the Court. The Escrow Agent shall then disburse any remaining balance, consistent with the appellate decision, unless otherwise directed by the Court.

7.9 None of Tesla, the Released Persons or the Escrow Agent shall have any liability or responsibility for the fees or expenses set forth in Section 7.7(a) or Section 7.7(b).

## **8. TERMINATION OF SETTLEMENT**

8.1 If either (a) the Court alters the Judgment in any material respect prior to entry, or (b) the Court enters the Judgment, but on or following appellate review, the Judgment is modified or reversed in any material respect, this Stipulation shall be canceled and terminated unless each of the parties to this Stipulation, within ten (10) Business Days from receipt of such ruling, agrees in writing with the other parties hereto to proceed with the Settlement, including only with such modifications, if any, as to which all Settling Parties agree.

8.2 If this Stipulation is disapproved, canceled or terminated pursuant to its terms, or the Settlement otherwise does not receive approval by the Court, (a) the Settling Parties shall be deemed to have reverted to their respective litigation status as of January 21, 2020, (b) all of the Settling Parties' respective Claims and defenses

shall be preserved without prejudice in any way, (c) the statements made in connection with the negotiations of this Stipulation or the approval of the Settlement shall not be deemed or used to prejudice in any way the positions of any of the Settling Parties with respect to the Action, or to constitute an admission by any party, and (d) this Stipulation, its contents, and any statements made in connection with its negotiation or any settlement communications shall not be admissible in evidence in the Action, or in any other litigation or judicial proceeding by the Settling Parties.

## **9. NO WAIVER**

9.1 Any failure by any party to this Stipulation to insist upon the strict performance by any other party to this Stipulation of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Settling Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Settling Party.

9.2 No waiver, express or implied, by any party to this Stipulation of any breach or default by any other party to this Stipulation in the performance by the other party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

## **10. ENTIRE AGREEMENT**

10.1 This Stipulation and the Exhibits hereto constitute the entire agreement among the Settling Parties with respect to the subject matter hereof and may not be amended nor may any of its provisions be waived except by a writing signed by all of the Settling Parties hereto. All of the exhibits hereto are incorporated by reference as if set forth herein verbatim, and the terms of all exhibits are expressly made part of this Stipulation. No representations, warranties or inducements have been made to or relied upon by any Settling Party concerning this Stipulation or its Exhibits, other than the representations, warranties and covenants expressly set forth in such documents.

## **11. RETENTION OF JURISDICTION & PREVAILING PARTY**

11.1 The Court retains exclusive jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. This Stipulation shall be deemed made and entered into in the State of Delaware, regardless of where it may be executed, and shall in all respects be interpreted, enforced and governed exclusively under the internal laws of Delaware (without regard to the state's conflict of law provisions), and in the courts of the State of Delaware.

11.2 In any action brought to enforce the terms of this Stipulation and the Settlement contemplated by it, the party prevailing on any claim, matter or issue

shall be entitled to recover from the losing party all reasonable fees, expenses and costs, including but not limited to attorneys' fees, incurred in bringing such claim, matter or issue.

## **12. RIGHT TO INJUNCTIVE RELIEF**

12.1 The Settling Parties acknowledge and agree that (i) any breach of this Stipulation may result in immediate and irreparable injury for which there is no adequate remedy available at law; and (ii) in addition to any other remedies available, specific performance and injunctive relief are appropriate remedies to compel performance of this Stipulation.

## **13. COUNTERPARTS**

13.1 This Stipulation may be executed in one or more counterparts and transmitted by facsimile, via e-mail as a PDF file, or as an original signature by any of the signatories hereto, and as so executed shall constitute one agreement.

## **14. EXECUTION AUTHORITY**

14.1 Each of the attorneys executing this Stipulation has been duly empowered and authorized by his/her respective client(s) to do so.

## **15. SUCCESSORS AND ASSIGNS**

15.1 This Stipulation is and shall be binding upon, and shall inure to the benefit of, the Settling Parties (and, in the case of the releases, all Released Persons as third-party beneficiaries) and their respective legal representatives, heirs,

executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns of any of the foregoing, including without limitation any corporation or other entity with which any party hereto may merge, reorganize or otherwise consolidate.

## **16. REASONABLE BEST EFFORTS**

16.1 The Settling Parties and their respective counsel further agree to cooperate fully with one another and to use their reasonable best efforts to obtain the Court's approval of this Stipulation and the Settlement and a dismissal with prejudice of the Action (including, but not limited to, resolving any objections raised to the Settlement), and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the settlement of the Action.

## **17. MISCELLANEOUS**

17.1 All of the Exhibits attached hereto are material and integral parts hereof and shall be incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any Exhibit attached hereto, the terms of the Stipulation shall prevail.

17.2 This Stipulation may not be amended or modified, nor may any of its provisions be waived, except by a written instrument signed by counsel for Plaintiffs and the Settling Defendants or their successors-in-interest (or their counsel).

17.3 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

17.4 Plaintiffs and the Settling Defendants represent and agree that the terms of the Settlement reached between Plaintiffs and the Settling Defendants were negotiated at arm's-length and in good faith by Plaintiffs and the Settling Defendants, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

17.5 Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out the provisions of this Stipulation through written agreement signed by counsel for all Settling Parties.

17.6 To the extent permitted by law, all agreements made and orders entered during the course of or in the Action relating to the confidentiality of documents or information shall survive this Stipulation and any termination thereof.

17.7 This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that the

Stipulation and its Exhibits are the result of arm's-length negotiations between the Settling Parties, and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

Dated: June 3, 2020

GRANT & EISENHOFER P.A.

*Of Counsel:*

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GRANT & EISENHOFER P.A.  
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/s/ Garrett B. Moritz

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*Attorneys for Defendants Brad W. Buss,  
Robyn M. Denholm, Ira Ehrenpreis,  
Antonio J. Gracias, Stephen T.  
Jurvetson and Kimbal Musk*

POTTER ANDERSON  
& CORROON LLP

/s/ Berton W. Ashman

Kevin R. Shannon (Bar No. 3137)  
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1313 N. Market Street  
Hercules Plaza, 6th Floor  
Wilmington, DE 19801

*Attorneys for Nominal Defendant  
Tesla, Inc.*



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

\_\_\_\_\_  
IN RE TESLA MOTORS, INC.  
STOCKHOLDER LITIGATION  
\_\_\_\_\_

)  
) Consol. C.A. No.: 12711-VCS  
)  
)

**[PROPOSED] SCHEDULING ORDER**

WHEREAS, co-lead plaintiffs Arkansas Teachers Retirement System (“ATRS”), Roofers Local 149 Pension Fund (“Roofers Local 149”), Oklahoma Firefighters Pension and Retirement System (“OFP”), KBC Asset Management NV (“KBC”), Erste Asset Management GmbH (“Erste”), and Stitching Blue Sky Active Large Cap Equity Fund USA (“Blue Sky,” and together with ATRS, Roofers Local 149, OFP, KBC, and Erste, “Plaintiffs”), on behalf of themselves and the Class, and derivatively on behalf of Tesla, Inc. (f/k/a Tesla Motors, Inc.) (“Tesla”); and defendants Kimbal Musk, Antonio J. Gracias (“Gracias”), Stephen T. Jurvetson (“Jurvetson”), Brad W. Buss (“Buss”), Ira Ehrenpreis (“Ehrenpreis”), and Robyn Denholm (“Denholm,” and together with Kimbal Musk, Gracias, Jurvetson, Buss, and Ehrenpreis, the “Settling Defendants” and together with Plaintiffs and Tesla, the “Settling Parties”) entered into a Stipulation and Agreement of Compromise and

**EXHIBIT A**

Settlement Between Plaintiffs and the Settling Defendants on June 3, 2020 (the “Stipulation”);<sup>1</sup>

WHEREAS, the Stipulation sets forth the terms and conditions for the proposed Settlement and dismissal with prejudice of the Action as against Settling Defendants, subject to review and approval by the Court pursuant to Court of Chancery Rules 23 and 23.1 upon notice to the Class; and

WHEREAS, the Court having read and considered the Stipulation and accompanying documents, and the Settling Parties having consented to the entry of this Scheduling Order;

NOW, THEREFORE, this \_\_\_ day of \_\_\_\_\_, 2020, upon application of the Settling Parties, IT IS HEREBY ORDERED that:

1. A hearing (the “Settlement Hearing”) will be held telephonically on August 17, 2020, at 1:30 p.m., to determine whether: (i) Plaintiffs and Co-Lead Counsel have adequately represented the interests of Tesla and the Class; (ii) the proposed settlement of the Action should be approved by the Court as fair, reasonable, adequate and in the best interests of Tesla and the Class; (iii) 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

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

## EXHIBIT A

released, settled, and discharged; (iv) whether and in what amount any Fee and Expense Award should be paid to Co-Lead Counsel out of the Settlement Amount and (v) Judgment approving the Settlement of the Action should be entered in accordance with the terms of the Stipulation.

2. The Court approves, in form and content, the Notice of Pendency and Proposed Settlement of Class and Derivative Action (the “Notice”) substantially in the form attached as Exhibit B to the Stipulation. The date, time and instructions for telephonic participation in the Settlement Hearing shall be included in the Notice before it is mailed.

3. The Court finds that the mailing of the Notice in substantially the manner set forth in paragraph 6 of this Scheduling Order: (i) constitutes the best notice reasonably practicable under the circumstances; (ii) constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (iii) meets the requirements of Court of Chancery Rule 23, due process, and applicable law.

4. The Court may adjourn and reconvene the Settlement Hearing, including the consideration of the Fee Application, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof, or a notation on the docket in the Action.

## EXHIBIT A

5. The Court may approve the Settlement, according to the terms and conditions of the Stipulation, with such modifications as may be consented to by the Settling Parties or as otherwise permitted pursuant to the Stipulation, with or without further notice to the Class. Further, the Court may enter Judgment, and order the payment of the Fee and Expense Award, all without further notice to the Class.

6. As soon as practicable after the date of entry of this Scheduling Order, and in no event fewer than sixty (60) calendar days before the Settlement Hearing, Tesla shall cause the Notice substantially in the form attached as Exhibit B to the Stipulation to be mailed by United States mail, first class, postage prepaid, to each Class Member. All stockholders of record who held Tesla common stock on behalf of beneficial owners and who receive the Notice shall be requested to forward the Notice promptly to such beneficial owners. Tesla shall use reasonable efforts to provide notice to such beneficial owners by making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners. Any and all costs with respect to the mailing of the Notice shall be paid from the Settlement Fund, such that none of Tesla, the Released Persons, or the Escrow Agent shall have any liability or responsibility for the expenses associated with providing the Notice.

7. At least ten (10) Business Days before the Settlement Hearing, Tesla shall cause to be filed with the Court an appropriate affidavit or declaration with

## EXHIBIT A

respect to the preparation and dissemination of the Notice as provided in paragraph 6 of this Scheduling Order.

8. At the telephonic Settlement Hearing, any Class Member who desires to do so may appear personally or by counsel, and show cause, if any, why the Settlement in accordance with and as set forth in the Stipulation should not be approved as fair, reasonable, and adequate and in the best interests of Tesla and/or the Class; why Judgment should not be entered in accordance with and as set forth in the Stipulation; or why the Court should not grant Co-Lead Counsels' Fee Application; provided, however, that unless the Court in its discretion otherwise directs, no Class Member, or any other Person, shall be entitled to contest the approval of the terms and conditions of the Settlement or (if approved) the Judgment to be entered thereon, or the Fee and Expense Award, and no papers, briefs, pleadings, or other documents submitted by any Class Member or any other person (excluding a party to the Stipulation) shall be received or considered, except by order of the Court for good cause shown, unless, no later than ten (10) Business Days prior to the Settlement Hearing, such person files with the Register in Chancery, Delaware Court of Chancery, 500 North King Street, Wilmington, DE, 19801, and serves upon the attorneys listed below: (a) a written notice of intention to appear that includes the name, address, and telephone number of the objector and, if represented by counsel, the name and address of the objector's counsel; (b) proof of membership in

## EXHIBIT A

the Class; (c) a detailed statement of objections to any matter before the Court; and (d) the grounds thereof or the reasons for wanting to appear and be heard, as well as all documents or writings the Court shall be asked to consider. These writings must also be served by File & ServeXpress, by hand, by first-class mail, or by express service upon the following attorneys such that they are received no later than ten

(10) Business Days prior to the Settlement Hearing:

Christine M. Mackintosh  
Grant & Eisenhofer P.A.  
123 Justison Street  
Wilmington, Delaware 19801  
*Counsel for Co-Lead Plaintiffs  
and the Class*

David E. Ross  
Garrett B. Moritz  
Ross Aronstam & Moritz LLP  
100 S. West St., Suite 400  
Wilmington, Delaware 19801  
*Attorneys for Defendants Elon Musk,  
Brad W. Buss, Robyn M. Denholm,  
Ira Ehrenpreis, Antonio J. Gracias,  
Stephen T. Juvetson and Kimbal Musk*

Kevin R. Shannon  
Berton W. Ashman  
Potter Anderson & Corroon LLP  
1313 N. Market St., 6<sup>th</sup> Floor  
Wilmington, DE 19801  
*Attorneys for Nominal Defendant  
Tesla, Inc.*

9. Unless the Court otherwise directs, any Person who fails to object in the manner described above shall be deemed to have waived and forfeited any and all rights such person may otherwise have to object to the Settlement and/or any Fee and Expense Award to Co-Lead Counsel (including any right of appeal) and shall

## EXHIBIT A

be forever barred from raising such objection in the Action or any other action or proceeding. Class Members who do not object need not appear at the Settlement Hearing or take any other action to indicate their approval.

10. At least twenty (20) Business Days prior to the Settlement Hearing, Co-Lead Counsel shall file any opening briefs in support of the proposed Settlement, and Co-Lead Counsel shall file their Fee Application, including any supporting affidavits. Any objections to the Settlement or Fee Application shall be filed and served no later than ten (10) Business Days prior to the Settlement Hearing. Any reply papers in support of the Settlement and any reply in support of Co-Lead Counsels' Fee Application shall be filed at least five (5) Business Days prior to the Settlement Hearing.

11. All proceedings in the Action against the Settling Parties, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final determination of whether the Settlement should be approved, Plaintiffs and the Class Members, and anyone acting or purporting to act on behalf of, in the stead of, or derivatively for Tesla or any Class Member, are barred and enjoined to the maximum extent permitted under law from commencing, pursuing, prosecuting, instigating, maintaining or in any way participating in the commencement, pursuit, continuation, or prosecution of any action asserting any of the Released Claims

## EXHIBIT A

against any of the Released Persons. For the avoidance of doubt, paragraph 11 does not apply to any claims brought by Plaintiffs against Non-Settling Defendant Elon Musk, including trial on Plaintiffs' claims against Musk.

12. If the Settlement is approved by the Court following the Settlement Hearing, the Court shall enter Judgment substantially in the form attached to the Stipulation as Exhibit C. The effectiveness of the Settlement shall not be conditioned upon the approval of the Fee and Expense Award, either at all or in any particular amount, by the Court.

13. The Court may, for good cause shown, extend any of the deadlines set forth in this Scheduling Order without further notice to the Class, and the Court retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

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Vice Chancellor Slights



**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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**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS  
AND DERIVATIVE ACTION**

**TO: ALL RECORD HOLDERS AND BENEFICIAL OWNERS OF  
COMMON STOCK OF TESLA, INC. (“TESLA”) AS OF  
AUGUST 1, 2016, ALONG WITH THEIR SUCCESSORS AND  
ASSIGNS, EXCLUDING THE INDIVIDUAL DEFENDANTS**

**IF YOU HELD COMMON STOCK FOR THE BENEFIT OF  
ANOTHER, PLEASE PROMPTLY TRANSMIT THIS  
DOCUMENT TO SUCH BENEFICIAL OWNER.**

The purpose of this Notice of Pendency and Proposed Settlement of Class and Derivative Action (the “Notice”) is to inform you of: (i) the pendency of the above-captioned action (the “Action”), which was brought in the Court of Chancery of the State of Delaware (the “Court”) by stockholders of Tesla asserting claims on behalf of and for the benefit of Tesla and a Class of Tesla stockholders; (ii) the proposed settlement of the Action (the “Settlement”) as against all defendants except Elon Musk, subject to Court approval and other conditions of the Settlement being satisfied, as provided for in a Stipulation and Agreement of Compromise and Settlement dated June 3, 2020 (the “Stipulation”), which was filed with the Court and is publicly available for review; and (iii) your right to participate in a hearing to be held telephonically on August 17, 2020, 1:30 p.m., before The Honorable Joseph Slights III (the “Settlement Hearing”).<sup>1</sup> The purpose of the Settlement Hearing to be held by the Court is to determine whether: (i) Plaintiffs and Co-Lead Counsel have adequately represented the interests of Tesla and the Class; (ii) the proposed settlement of the Action should be approved by the Court as fair, reasonable, adequate and in the best interests of Tesla and the Class; (iii) the Action should be dismissed with prejudice as against the Settling Defendants and all of the Released

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<sup>1</sup> Capitalized terms not defined in this Notice have the meaning set forth in the Stipulation, which is publicly available as indicated below.

## EXHIBIT B

Claims against the Released Persons should be fully, finally, and forever released, settled, and discharged; (iv) whether and in what amount any Fee and Expense Award should be paid to Co-Lead Counsel out of the Settlement Amount and (v) Judgment approving the Settlement of the Action should be entered in accordance with the terms of the Stipulation.

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF THE LITIGATION REFERRED TO IN THE CAPTION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. IF THE COURT APPROVES THE SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS OR ADEQUACY OF THE SETTLEMENT, AND FROM PURSUING THE RELEASED PLAINTIFFS' CLAIMS.**

The Stipulation was entered into as of June 3, 2020, by and among (i) co-lead plaintiffs Arkansas Teachers Retirement System (“ATRS”), Roofers Local 149 Pension Fund (“Roofers Local 149”), Oklahoma Firefighters Pension and Retirement System (“OFP”), KBC Asset Management NV (“KBC”), Erste Asset Management GmbH (“Erste”), and Stichting Blue Sky Active Large Cap Equity Fund USA (“Blue Sky,” and together with ATRS, Roofers Local 149, OFP, KBC, and Erste, “Plaintiffs”), on behalf of themselves and the Class, and derivatively on behalf of Tesla; and (ii) defendants Kimbal Musk, Antonio J. Gracias (“Gracias”), Stephen T. Jurvetson (“Jurvetson”), Brad W. Buss (“Buss”), Ira Ehrenpreis (“Ehrenpreis”), and Robyn Denholm (“Denholm,” and together with Kimbal Musk, Gracias, Jurvetson, Buss, and Ehrenpreis, the “Settling Defendants” and together with Plaintiffs and Tesla, the “Settling Parties”).

This Notice describes the rights you may have in the Action and pursuant to the Stipulation and what steps you may take, but are not required to take, in relation to the Settlement. If the Court approves the Settlement, the Settling Parties will ask the Court at the Settlement Hearing to enter Judgment dismissing the Action with prejudice as against the Settling Defendants in accordance with the terms of the Stipulation.

### WHAT IS THE PURPOSE OF THIS NOTICE?

The purpose of this Notice is to explain the Action, the terms of the proposed Settlement, and how the Settlement affects the legal rights of Tesla stockholders and

## EXHIBIT B

Class Members. In a class action, one or more people and/or entities who were stockholders at the time the claim arose sue on behalf of and for the benefit of the individual class members, seeking to enforce the class members' legal rights. In a derivative action, one or more persons or entities who are current stockholders of a corporation sue on behalf of and for the benefit of the corporation, seeking to enforce the corporation's legal rights.

As described more fully below, Class Members have the right to object to the proposed Settlement and the Fee Application by Co-Lead Counsel for an award of reasonable fees and expenses (the "Fee and Expense Award"). Class Members have the right to appear and be heard at the Settlement Hearing, which will be held telephonically before The Honorable Joseph Slights III on August 17, 2020 at 1:30 p.m.

The Court has reserved the right to adjourn and reconvene the Settlement Hearing, including consideration of the Fee Application, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof, or notation on the docket in the Action. The Court has further reserved the right to approve the Settlement, according to the terms and conditions of the Stipulation, with such modifications as may be consented to by the Settling Parties, or as otherwise permitted pursuant to the Stipulation, with or without future notice to the Class. The Court may enter Judgment, and order the payment of the Fee and Expense Award, all without future notice to the Class.

WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

**THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS OR DEFENSES BY ANY OF THE SETTLING PARTIES. IT IS BASED ON STATEMENTS OF THE SETTLING PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THE ACTION AND OF A HEARING ON A PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY OR MAY NOT WISH TO TAKE IN RELATION TO THIS LITIGATION.**

## EXHIBIT B

On June 21, 2016, Tesla announced that it had made an offer to acquire SolarCity Corporation (“SolarCity”) for a range of 0.122 to 0.131 shares of Tesla common stock in exchange for each share of SolarCity common stock, conditioned on a majority vote by certain Tesla stockholders, as specified in the Definitive Joint Proxy Statement/Prospectus (“Proxy”) filed by Tesla and SolarCity on October 12, 2016.

On August 1, 2016, Tesla announced that it had entered into an Agreement and Plan of Merger dated July 31, 2016 (the “Merger Agreement”) pursuant to which Tesla would acquire SolarCity Corporation (“SolarCity”) by issuing to SolarCity stockholders 0.110 shares of Tesla common stock in exchange for each share of SolarCity common stock they owned (the “Merger Consideration”) at the time of closing (the “Acquisition”).

On August 31, 2016, Tesla and SolarCity filed a Preliminary Joint Proxy Statement/Prospectus on Form S-4 with the United States Securities and Exchange Commission (the “SEC”) regarding the Acquisition.

Between September 1, 2016 and October 5, 2016, certain Tesla stockholders filed seven separate actions (together, the “Individual Actions”) that brought claims in connection with the Acquisition: (1) *City of Riviera Beach Police Pension Fund v. Elon Musk, et al.*, C.A. No. 12711-VCS (Del. Ch.); (2) *Ellen Prasinos v. Elon Musk, et al.*, C.A. No. 12723-VCS (Del. Ch.); (3) *Arkansas Teacher Retirement System, et al. v. Elon Musk, et al.*, C.A. No. 12740-VCS (Del. Ch.); (4) *P. Evan Stephens v. Elon Musk, et al.*, Case No. 12745-VCS (Del. Ch.); (5) *Pyare Diwana v. Elon Musk, et al.*, C.A. No. 12796-VCS (Del. Ch.); (6) *Nam T. Nguyen v. Elon Musk, et al.*, C.A. No. 12804-VCS (Del. Ch.); and (7) *Thomas J. Wolf v. Elon Musk, et al.*, C.A. No. 12805-VCS (Del. Ch.).

On September 29, 2016, plaintiffs in *Arkansas Teacher Retirement System, et al. v. Elon Musk, et al.*, Case No. 12740-VCS (Del. Ch.) filed a motion for leave (the “Motion for Leave”) to file a Verified Amended Class Action and Derivative Complaint (the “Amended Complaint”). On September 30, 2016, the Court granted the Motion for Leave, and the Amended Complaint was filed that same day. The Amended Complaint included ATRS, Roofers Local 149, Boston Retirement System, OFP, KBC, and Erste, Blue Sky, Feliz Rovelli, and Aaron Rocke as Plaintiffs, and brought claims against the Individual Defendants.

On October 10, 2016, the Court entered an order consolidating the Individual Actions set forth above.

## EXHIBIT B

On October 12, 2016, Tesla and SolarCity filed the Proxy on Form DEF14A with the SEC. The Proxy invited Tesla shareholders to attend a special meeting on November 17, 2016 for the purpose of considering and voting on the proposal to adopt the Merger Agreement.

On October 19, 2016, following briefing and oral argument, the Court appointed ATRS, Roofers Local 149, OFP, KBC, Erste, and Blue Sky as lead plaintiffs in the Action. The Court also appointed Boston Retirement System as co-lead plaintiff; however Boston was subsequently granted leave to withdraw. In the same order, the Court appointed the law firms of Grant & Eisenhofer, P.A., Kessler Topaz Meltzer & Check, LLP, and Robbins Geller Rudman & Dowd, LLP as Co-Lead Counsel.

On November 17, 2016, the Acquisition was approved by a majority vote of certain Tesla stockholders, as specified in the Proxy.

The Acquisition closed on November 21, 2016.

On December 28, 2016, Plaintiffs served a first set of interrogatories on Tesla. Tesla partially responded to the interrogatories on January 25, 2019 and followed-up with further responses on February 8, 2019.

On January 27, 2017, Individual Defendants and nominal defendant Tesla (collectively, “Defendants”) filed a motion to dismiss Plaintiffs’ Amended Complaint.

On March 9, 2017, the Court entered a stipulated order that provided Plaintiffs with leave to file a Second Amended Verified Class and Derivative Complaint (the “Second Amended Complaint”). On March 9, 2017, Plaintiffs filed the Second Amended Complaint. The Second Amended Complaint asserted derivative and class claims against (1) Elon Musk for breach of fiduciary duty in his capacity as Tesla’s controlling stockholder, (2) the Individual Defendants for waste, breach of the duty of disclosure, and breach of the fiduciary duty of loyalty by causing Tesla to acquire SolarCity, and (3) Elon Musk, Kimbal Musk, Gracias, Buss and Jurvetson for unjust enrichment.

On June 12, 2017, the Defendants filed a motion to dismiss (the “Motion to Dismiss”) the Second Amended Complaint. Plaintiffs filed their answering brief on July 20, 2017, the Defendants filed their reply memorandum on August 10, 2017, and the Court held a hearing on the Motion to Dismiss on December 13, 2017. On March 28, 2018, the Court issued a memorandum opinion denying the Motion to Dismiss (the “Motion to Dismiss Opinion”).

## EXHIBIT B

On April 9, 2018, the Defendants filed an Application for Certification of Interlocutory Appeal (the “Application”) with respect to the Court’s Motion to Dismiss Opinion. Following briefing, the Court denied the Application through an order entered on April 27, 2018.

On April 27, 2018, the Defendants filed a Notice of Appeal from Interlocutory Order with the Delaware Supreme Court. On May 3, 2018, the Delaware Supreme Court entered an order denying interlocutory appeal with respect to the Motion to Dismiss Opinion.

On May 18, 2018, the Individual Defendants served their Answer to the Second Amended Complaint.

On June 5, 2018, Tesla, as nominal defendant, served its answer to the Second Amended Complaint.

On January 18, 2019, Plaintiffs served a first set of interrogatories on the Settling Defendants. The Settling Defendants responded with collective objections on February 22, 2019 and each Settling Defendant followed up with individual responses on March 18, 2019.

On February 4, 2019, Plaintiffs served a second set of interrogatories on Tesla. Tesla responded to the second set of interrogatories on March 6, 2019.

On March 18, 2019, Plaintiffs filed a motion for class certification.

On April 10, 2019, Plaintiffs served interrogatories on Elon Musk. Elon Musk responded to the interrogatories on May 17, 2019.

On April 18, 2019, the Court entered a Stipulated Order of Class Certification, which certified Counts IV (Claim Against the Individual Defendants for Breach of Fiduciary Duty), V (Individual and Class Claim Against Elon Musk for Breach of Fiduciary Duty as Controlling Stockholder) and VII (Individual and Class Claim Against the Individual Defendants for Breach of the Duty of Disclosure) of the Second Amended Complaint as class claims.

Between April 18, 2019 and January 31, 2020, Plaintiffs deposed 18 fact witnesses, including each of the Individual Defendants, current and former members of SolarCity and Tesla management, the financial advisors to each of Tesla and the Special Committee of the SolarCity Board of Directors, and Defendants’ four expert witnesses. Defendants deposed Plaintiffs’ three expert witnesses.

## EXHIBIT B

On May 6, 2019, Plaintiffs served a third set of interrogatories on Tesla. Tesla responded to the interrogatories on June 5, 2019.

On August 26, 2019, Plaintiffs served three expert reports, authored by Juergen Moessner, Murray M. Beach, and Ronald G. Quintero, respectively. On the same day, Defendants served three expert reports, authored by Dan Reicher, Daniel R. Fischel, and Jonathan F. Foster, respectively.

On August 26, 2019, Plaintiffs and the Individual Defendants filed cross-motions for summary judgment. Answering briefs were filed on September 25, 2019, reply memorandums were filed on October 17, 2019 and the Court heard oral argument on the cross-motions for summary judgment on November 4, 2019.

On September 26, 2019, Plaintiffs served three expert rebuttal reports, authored by Juergen Moessner, Murray M. Beach, and Ronald G. Quintero, respectively. On the same day, Defendants served two expert rebuttal reports, authored by Daniel R. Fischel and Frederick Van Zijl.

On December 4, 2019, Plaintiffs filed a motion to compel the production of documents from the custodial files of certain trial witnesses, which motion was resolved after briefing without Court involvement.

Beginning in November 2018, Plaintiffs and the Settling Defendants from time to time engaged in arm's-length negotiations in efforts to settle Plaintiffs' claims without involvement of the Court. These efforts included participation in two days of in-person mediation before former United States District Judge Layn Phillips on June 10, 2019 and October 3, 2019, after which Plaintiffs and the Settling Defendants continued to discuss potential resolution of the claims with Judge Phillips' assistance.

On January 22, 2020, Plaintiffs reached an agreement in principle with the Settling Defendants to resolve all Claims asserted against them for \$60 million (the "Settlement Amount"), which the Insurance Carriers have committed to fund, as reflected in an email communication on that date from Judge Phillips to counsel for the Settling Parties and the Insurance Carriers. Co-Lead Counsel informed the Court of the agreement in principle via teleconference on January 23, 2020.

On February 4, 2020, the Court denied the parties' cross-motions for summary judgment, with the exception of granting Individual Defendants' motion for summary judgment with respect to disclosures regarding Evercore's valuation analysis and the financial impact of the Acquisition on Tesla.

## EXHIBIT B

On February 24, 2020, the Court entered Plaintiffs' and the Settling Defendants' Stipulation and Proposed Order Severing Claims Against Certain Defendants.

On June 3, 2020, Plaintiffs and the Settling Defendants entered into the Stipulation.

The Stipulation is intended fully, finally and forever to release, resolve, compromise, settle and discharge the Released Claims and terminate the Action as against the Settling Defendants with prejudice. It is the intention of Plaintiffs and the Settling Defendants that the Settlement will release the Released Claims against Released Persons upon Final Approval of the Stipulation.

The entry by the Settling Parties into the Stipulation is not, and shall not be construed as or deemed to be evidence of, an admission as to the merit or lack of merit of any Claims or defenses asserted in the Action.

Plaintiffs and Co-Lead Counsel have conducted an investigation and pursued discovery relating to the claims and the underlying events and transactions alleged in the Action. Plaintiffs and Co-Lead Counsel have analyzed the evidence adduced during their investigation and through discovery, and have researched the applicable law with respect to Plaintiffs and the Class. In negotiating and evaluating the terms of the Stipulation, Plaintiffs and Co-Lead Counsel considered the legal and factual defenses to Plaintiffs' Claims. Plaintiffs and Co-Lead Counsel have received sufficient information to evaluate the merits of this Settlement. Based upon their evaluation, Plaintiffs and Co-Lead Counsel have determined that the Settlement set forth in the Stipulation is fair, reasonable and adequate and in the best interests of Tesla and all Class Members, and that it confers substantial benefits upon Tesla and the Class Members.

The Settling Defendants deny any and all allegations of wrongdoing, fault, liability or damage whatsoever. Specifically, the Settling Defendants deny that they acted contrary to the best interests of Tesla and its stockholders or breached any duties. Settling Defendants maintain that they have meritorious defenses to all claims alleged in the Action. Nothing in the Stipulation shall be construed as any admission by the Settling Defendants of wrongdoing, fault, liability, or damages whatsoever. Nothing in the Stipulation shall be construed as an allocation of fault or liability between or among the Individual Defendants.

The Settling Parties recognize that the Action has been filed and prosecuted by Plaintiffs in good faith and defended by Individual Defendants in good faith and

further that the terms of the Settlement as set forth herein, were negotiated at arm's-length, in good faith, and reflect an agreement that was reached voluntarily after consultation with experienced legal counsel.

**WHAT ARE THE TERMS OF THE SETTLEMENT?**

In consideration for the full and final release, settlement and discharge of any and all Released Claims against the Released Persons upon Final Approval, Settling Defendants shall cause the Settlement Amount (\$60,000,000.00 U.S.) to be paid into Escrow by the Insurance Carriers (who have committed to fund the Settlement Amount), as follows: (i) within 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 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. The Settlement Fund shall be disbursed in the manner set forth in Section 7.7 of the Stipulation, subject to Section 7.8 of the Stipulation.

This Action was brought as a class and derivative action on behalf of and for the benefit of the Class and Tesla. Individual Class members will not receive a direct payment of the Settlement Amount but will indirectly benefit from the Settlement Amount being paid to Tesla.

**WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED? WHAT CLAIMS WILL THE SETTLEMENT RELEASE?**

If the Settlement is approved, the Court will enter Judgment, at which time the Action against the Settling Defendants shall be dismissed with prejudice. This dismissal is without fees or costs, except as expressly provided in the Stipulation.

Upon the Effective Date and the Settling Parties' compliance with all terms set forth herein, 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.

## EXHIBIT B

Upon the Effective Date and the Settling Parties' compliance with all terms set forth herein, 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.

The contemplated 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.

With respect to any and all 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.

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 that it is their intention to 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.

**WHAT ARE THE PARTIES' REASONS FOR THE SETTLEMENT?**

The Settlement set forth in the Stipulation reflects the results of the Settling Parties' negotiations and the final terms of their agreement, which was reached only after arm's-length negotiations among the Settling Parties, who were all represented by counsel with extensive experience and expertise in stockholder class action litigation.

This Settlement is not evidence of the validity or invalidity of any claims or defenses in the Action or any other actions or proceedings, or of any wrongdoing by any of the Defendants or of any damages or injury to Tesla, Plaintiffs or any Class Member.

Plaintiffs believe that the Released Plaintiffs' Claims had merit when filed and continue to have merit, and Plaintiffs are settling the Released Plaintiffs' Claims because they believe that the Settlement will provide substantial value to Tesla and Class Members. Plaintiffs have concluded that the Settlement is fair, reasonable, and in the best interests of Tesla and the Class Members, and that it is reasonable to pursue the Settlement based on the terms and procedures outlined herein.

Settling Defendants have denied, and continue to deny, all allegations of wrongdoing, fault, liability or damage with respect to all claims asserted or that could be asserted in the Action or any other action, in any court or tribunal, relating to the Acquisition, including any allegations that Defendants have committed any violations of law, that they have acted improperly in any way, and that they have any liability or owe any damages of any kind to Tesla, Plaintiffs and/or the Class. Settling Defendants maintain that their conduct was at all times proper and in compliance with applicable law, and that if the case proceeded to trial and a decision were issued by the Court, they would have prevailed on all claims asserted against them. Settling Defendants further deny any breach of fiduciary duties to harm Tesla or its stockholders. Each of the Settling Defendants asserts that, at all relevant times, he or she acted in good faith. Settling Defendants are entering into the Settlement in order to, among other things, terminate all claims that were or could have been asserted by Plaintiffs or any other Class Member against Settling Defendants in the Action or in any other action, in any court or tribunal, relating to the Acquisition.

**WHO ARE THE MEMBERS OF THE CLASS?**

The Court has ordered that the Action shall be maintained as a class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) without opt-out rights. The Class consists of all record holders and beneficial owners of common stock of Tesla as of August 1, 2016, along with their successors and assigns. Excluded from the Class are the Individual Defendants and their associates, affiliates, legal representatives, heirs, successors in interest, transferees, and assigns.

**HOW WILL THE ATTORNEYS BE PAID?**

Co-Lead Counsel will submit a Fee Application to the Court not to exceed 27 percent of the Settlement Amount, plus expenses incurred. The Settling Parties acknowledge and agree that any Fee and Expense Award in connection with the Settlement shall be paid from the Settlement Fund and shall reduce the settlement consideration paid to Tesla accordingly.

**WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD? DO I HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT HEARING?**

The Court will consider the Settlement and all matters related to the Settlement, including the Fee Application, at the Settlement Hearing. The Settlement Hearing will be held telephonically before The Honorable Joseph Slights III on August 17, 2020 at 1:30 p.m.

At the telephonic Settlement Hearing, any Class Member who desires to do so may appear personally or by counsel, and show cause, if any, why the Settlement in accordance with and as set forth in the Stipulation should not be approved as fair, reasonable, and adequate and in the best interests of Tesla and/or the Class; why the Judgment should not be entered in accordance with and as set forth in the Stipulation; or why the Court should not grant Co-Lead Counsels' Fee Application; provided, however, that unless the Court in its discretion otherwise directs, no Class Member, or any other Person, shall be entitled to contest the approval of the terms and conditions of the Settlement or (if approved) the Judgment to be entered thereon, or the Fee and Expense Award, and no papers, briefs, pleadings, or other documents submitted by any Class Member or any other person (excluding a party to the Stipulation) shall be received or considered, except by order of the Court for good cause shown, unless, no later than ten (10) Business Days prior to the Settlement

## EXHIBIT B

Hearing, such person files with the Register in Chancery, Delaware Court of Chancery, 500 North King Street, Wilmington, DE, 19801, and serves upon the attorneys listed below: (a) a written notice of intention to appear that includes the name, address, and telephone number of the objector and, if represented by counsel, the name and address of the objector's counsel; (b) proof of membership in the Class; (c) a detailed statement of objections to any matter before the Court; and (d) the grounds thereof or the reasons for wanting to appear and be heard, as well as all documents or writings the Court shall be asked to consider. These writings must also be served by File & Serve*Xpress*, by hand, by first-class mail, or by express service upon the following attorneys such that they are received no later than ten (10) Business Days prior to the Settlement Hearing:

Christine M. Mackintosh  
GRANT & EISENHOFER P.A.  
123 Justison Street  
Wilmington, Delaware 19801  
(302) 622-7000  
*Counsel for Co-Plaintiffs and the Class*

David E. Ross  
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ROSS ARONSTAM & MORITZ  
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Musk, Brad W. Buss, Robyn  
M. Denholm, Ira Ehrenpreis,  
Antonio J. Gracias, Stephen  
T. Jurvetson and Kimbal  
Musk*

Kevin R. Shannon  
Berton W. Ashman  
POTTER ANDERSON  
& CORROON LLP  
1313 N. Market Street  
Hercules Plaza, 6th Floor  
Wilmington, DE 19801

*Attorneys for Nominal Defendant  
Tesla, Inc.*

Unless the Court otherwise directs, any Person who fails to object in the manner described above shall be deemed to have waived and forfeited any and all rights such person may otherwise have to object to the Settlement and/or any Fee and Expense Award to Co-Lead Counsel (including any right of appeal) and shall be forever barred from raising such objection in the Action or any other action or proceeding. Class Members who do not object need not appear at the Settlement Hearing or take any other action to indicate their approval.

Class Members who seek to appear at the Settlement Hearing should contact Co-Lead Counsel for instructions on how to participate telephonically.

**CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

This Notice does not purport to be a comprehensive description of the Action, the allegations related thereto, the terms of the Settlement, or the Settlement Hearing. For a more detailed statement of the matters involved in the Action, you may inspect the pleadings, the Stipulation, the Orders entered by the Court, and other papers filed in the Action at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, during regular business hours of each business day. If you have questions regarding the Settlement, you may write or call Co-Lead Counsel: Christine M. Mackintosh, Grant & Eisenhofer P.A., 123 Justison Street, Wilmington, DE 19801, (302) 622-7000.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE REGISTER IN CHANCERY REGARDING THIS NOTICE**

**NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS**

Brokerage firms, banks, and other persons or entities who held shares of Tesla common stock as record owners, but not as beneficial owners, are directed to either (a) download copies of this Notice from [Settlement Website] and promptly forward the copies of the Notice to all such beneficial owners; or (b) promptly provide a list of the names and addresses of all such beneficial owners to KCC, who will promptly

**EXHIBIT B**

send copies of the Notice to such beneficial owners. KCC may be reached by calling [\_\_\_\_\_].

BY ORDER OF THE COURT  
OF CHANCERY OF THE  
STATE OF DELAWARE:

Dated: \_\_\_\_\_



**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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**[PROPOSED] ORDER AND PARTIAL FINAL JUDGMENT**

On this \_\_\_ day of \_\_\_\_\_, 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 \_\_\_\_\_, 2020 (the “Scheduling Order”), which was mailed by first-class mail on \_\_\_\_\_, 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.

## EXHIBIT C

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.

## EXHIBIT C

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-

## EXHIBIT C

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.

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- 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

## EXHIBIT C

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 \$\_\_\_\_\_, 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.

**EXHIBIT C**

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.

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Vice Chancellor Slights

Dated: \_\_\_\_\_, 2020