

1 **LEVI & KORSINSKY, LLP**
 2 Adam M. Apton (SBN 316506)
 3 Adam C. McCall (SBN 302130)
 4 75 Broadway, Suite 202
 5 San Francisco, CA 94111
 6 Tel.: (415) 373-1671
 7 Email: aapton@zlk.com
 8 amccall@zlk.com

9 *Attorneys for Plaintiff and Counsel for the Class*
 10 [Additional Counsel on Signature Block]

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 IN RE TESLA, INC. SECURITIES
 14 LITIGATION

15 Case No. 3:18-cv-04865-EMC

16 **PLAINTIFF’S NOTICE OF MOTION
 17 AND MOTION FOR PARTIAL
 18 SUMMARY JUDGMENT;
 19 MEMORANDUM OF POINTS AND
 20 AUTHORITIES IN SUPPORT**

21 **ORAL ARGUMENT REQUESTED**

22 Date: March 10, 2022
 23 Time: 1:30 p.m.
 24 Location: Courtroom 5, 17th Floor
 25 Judge: Hon. Edward Chen

26 ***REDACTED VERSION***
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 G. Musk Announces the Withdrawal of the Going-Private Transaction. 15

LEGAL STANDARD 16

ARGUMENT 17

 A. Plaintiff Is Entitled to Summary Judgment as to the Elements of Falsity and
 Scienter..... 17

 1. “Am considering taking Tesla private at \$420. Funding secured.”..... 17

 2. “Investor support is confirmed.” 21

 3. “Only reason why this is not certain is that it’s contingent on a shareholder
 vote.” 22

 4. “I have continued to communicate with the Managing Director of the Saudi
 fund. He has expressed support for proceeding subject to financial and other
 due diligence and their internal review process for obtaining approvals. He
 has also asked for additional details on how the company would be taken
 private, including any required percentages and any regulatory
 requirements.” 23

 B. Plaintiff Is Entitled to Summary Judgment as to the Element of Reliance. 24

CONCLUSION 25

TABLE OF AUTHORITIES

Cases

1		
2	<i>In re Apple Sec. Litig.</i> ,	
3	No. 19-cv-02033-YGR, 2020 U.S. Dist. LEXIS 206298 (N.D. Cal. Nov. 4, 2020).....	22
4	<i>Amgen Inc. v. Conn. Ret. Plans & Tr. Funds</i> ,	
5	568 U.S. 455 (2013).....	23
6	<i>Anderson v. Liberty Lobby, Inc.</i> ,	
7	477 U.S. 242 (1986).....	16
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9	527 F.3d 982 (9th Cir. 2008).....	17
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11	No. 07 Civ. 0312 (GBD), 2014 U.S. Dist. LEXIS 116562 (S.D.N.Y. Aug. 20, 2014)	24
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13	563 U.S. 804 (2011).....	23
14	<i>Halliburton Co. v. Erica P. John Fund, Inc.</i> ,	
15	573 U.S. 258 (2014).....	23
16	<i>In re Infineon Techs. AG Sec. Litig.</i> ,	
17	266 F.R.D. 386 (N.D. Cal. 2009).....	24
18	<i>Kaplan v. Rose</i> ,	
19	49 F.3d 1363 (9th Cir. 1994).....	23
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22	<i>McCrary v. Elations Co. LLC</i> ,	
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26	<i>S.E.C. v. Sourlis</i> ,	
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28	<i>In re Tesla, Inc. Securities Litig.</i> ,	
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1 **NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT**

2 PLEASE TAKE NOTICE that on March 10, 2022 at 1:30 p.m., or as soon thereafter as
3 this matter may be heard, in Courtroom 5 – 17th Floor of the United States Courthouse located at
4 450 Golden Gate Avenue, San Francisco, CA 94102, the Honorable Edward M. Chen presiding,
5 Plaintiff Glen Littleton, by his counsel, will move, and hereby does move, to enter partial
6 summary judgment in favor of Plaintiff and against Defendants Tesla, Inc., Elon Musk, Brad W.
7 Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and
8 Linda Johnson Rice (“Defendants”) pursuant to Federal Rule of Civil Procedure 56.

9 PLEASE TAKE FURTHER NOTICE that Plaintiff seeks partial summary judgment
10 against Defendants on the following elements of his alleged violations of Securities Exchange
11 Act §10(b), 15 U.S.C. §78j(b), and SEC Rule 10b-5, 17 C.F.R. §240.10b-5: (1) material
12 misrepresentations or omissions; (2) scienter; and (3) reliance upon the misrepresentations or
13 omissions.

14 PLEASE TAKE FURTHER NOTICE that this motion is based on the Memorandum of
15 Points and Authorities below, the Declaration of Adam M. Apton and the exhibits attached
16 thereto, the arguments of counsel, and any other matters properly before this Court. Pursuant to
17 Paragraph 11 of the Court’s Civil Standing Order – General, Plaintiff also submits herewith a
18 proposed order.

19 **ISSUES TO BE DECIDED**

20 1. Should the Court grant partial summary judgment in Plaintiff’s favor against
21 Defendants where the record indisputably shows that Elon Musk falsely represented with scienter
22 “Funding secured,” “Investor support is confirmed,” and “Only reason why this is not certain is
23 that it’s contingent on a shareholder vote” on August 7, 2018 and made materially misleading
24 statements with scienter in his blog post on August 13, 2018?

25 2. Should the Court grant partial summary judgment in Plaintiff’s favor against
26 Defendants on the element of “reliance” where the record indisputably shows that Plaintiff has
27 established the presumption of reliance set forth in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988)

28

1 and this presumption has not, and cannot, be rebutted?

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **INTRODUCTION**

4 On August 7, 2018, at 9:48 a.m. PDT, Elon Musk (“Musk”), Chairman and Chief
5 Executive Officer of Tesla, Inc., shocked its investors and the public by announcing through his
6 Twitter account: “Am considering taking Tesla private at \$420. Funding secured.” No one
7 expected this announcement, [REDACTED]
8 [REDACTED]. Tesla’s stock price immediately
9 rocketed upwards leading to a temporary suspension of its trading by NASDAQ. Musk followed
10 up his earlier tweet by tweeting at 12:36 p.m. PDT: “Investor support is confirmed. Only reason
11 why this is not certain is that its contingent on a shareholder vote.” Tesla’s stock continued its
12 rise, closing on August 7, 2018 at \$379.57 per share, 6.36% higher than its price at 9:47 a.m. PDT
13 immediately before Musk’s tweets. As this Court noted in its opinion denying Defendants’ motion
14 to dismiss the complaint: “The statement could be read by a reasonable investor to mean complete
15 funding for the transaction was unconditionally secured” and “as something more than a
16 speculative amorphous opinion about future possibilities” but instead “implying a more concrete
17 state of affair.” *In re Tesla, Inc. Securities Litig.*, 477 F. Supp. 3d 903, 922-25 (N.D. Cal. 2020).

18 Musk’s tweets created a frenzy of media and investor attention on Tesla and his proposal.
19 In the following ten days, over 2400 articles were published concerning it. After providing a
20 further “update” on August 13, 2018 that continued to omit key information regarding the
21 proposed transaction’s structure, funding, and level of investor support, Musk sat for an interview
22 with the *New York Times*, published on August 16, 2018, which revealed that funding was not
23 secured, investor support was far from confirmed, and the basic feasibility of the transaction was
24 still uncertain. Tesla’s stock price plummeted and analysts quickly discounted completely the
25 likelihood of any going private transaction. On August 23, 2018, Musk informed Tesla’s Board
26 that he was no longer pursuing the transaction, just 16 days after his tweet that the only remaining
27 step to finalizing the transaction was a shareholder vote.

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