Alex Spiro (appearing pro hac vice) alexspiro@quinnemanuel.com Andrew J. Rossman (appearing pro hac vice) andrew J. Rossman (appearing pro hac vice) andrew J. Rossman (appearing pro hac vice) cllydethompson@quinnemanuel.com Ellyde R. Thompson (appearing pro hac vice) cllydethompson@quinnemanuel.com Jesse Bernstein (pro hac vice forthcoming) jessebernstein@quinnemanuel.com S1 Madison Avenue, 22nd Floor New York, New York 10010 Telephone: (212) 849-7000  Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES UNITED STATES DISTRICT TOURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES UNITED STATES DISTRICT TOURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES UNITED STATES DISTRICT TOURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES UNITED STATES DISTRICT TOURT TOURT OCASE No. 3:18-ev-04865-EMC DEFENDANTS' TRIAL BRIEF  22 23 24 25 26 27 28	1	QUINN EMANUEL URQUHART & SULLIVAN, LLP			
Andrew J. Rossman (appearing pro hac vice) andrewrossman@quinnemanuel.com Ellyde R. Thompson (appearing pro hac vice) ellydethompson@quinnemanuel.com Jesse Bemstein (pro hac vice forthcoming) jessebernstein@quinnemanuel.com 51 Madison Avenue, 22nd Floor New York, New York 10010 Telephone: (212) 849-7000  Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracius, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES  LITIGATION  Case No. 3:18-cv-04865-EMC  DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF		Alex Spiro (appearing pro hac vice)			
andrewrossman@quinnemanuel.com Ellyde R. Thompson (appearing pro hac vice) ellydethompson@quinnemanuel.com Jesse Bernstein@quinnemanuel.com  5	2	alexspiro@quinnemanuel.com			
andrewrossman@quinnemanuel.com Ellyde R. Thompson (appearing pro hac vice) ellydethompson@quinnemanuel.com Jesse Bemstein (pro hac vice forthcoming) jessebernstein@quinnemanuel.com 51 Madison Avenue, 22nd Floor New York, New York 10010 Telephone: (212) 849-7000  Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES  LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF	3				
ellydethompson@quinnemanuel.com Jesse Bernstein (pro hac vice forthcoming) jessebernstein@quinnemanuel.com 51 Madison Avenue, 22nd Floor New York, New York 10010 Telephone: (212) 849-7000  Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-ev-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF	]				
Jesse Bernstein (pro hac vice forthcoming) jessebernstein@quinnemanuel.com 51 Madison Avenue, 22nd Floor New York, New York 10010 Telephone: (212) 849-7000  Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com Sé5 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  IN RE TESLA, INC. SECURITIES LITIGATION  DEFENDANTS' TRIAL BRIEF  20 21 22 23 24 25 26 27	4		)		
jessebernstein@quinnemanuel.com 51 Madison Avenue, 22nd Floor New York, New York 10010 Telephone: (212) 849-7000  Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracius, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  DEFENDANTS' TRIAL BRIEF  122 23 24 25 26 27		ellydethompson@quinnemanuel.com			
51 Madison Avenue, 22nd Floor New York, New York 10010 Telephone: (212) 849-7000  Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  20 21 22 23 24 25 26 27	5	Jesse Bernstein (pro hac vice forthcoming)			
New York, New York 10010 Telephone: (212) 849-7000  Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  DEFENDANTS' TRIAL BRIEF  NORTHERN DISTRICT OF CALIFORNIA  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF		jessebernstein@quinnemanuel.com			
Telephone: (212) 849-7000  Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES IN RE TESLA, INC. SECURITIES LITIGATION  IN RE TESLA, INC. SECURITIES  DEFENDANTS' TRIAL BRIEF  20 21 22 23 24 25 26 27	6	51 Madison Avenue, 22nd Floor			
Telephone: (212) 849-7000  Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF	7	New York, New York 10010			
Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF	<i>'</i>	Telephone: (212) 849-7000			
Michael T. Lifrak (Bar No. 210846) michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  LIN RE TESLA, INC. SECURITIES LITIGATION  DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF	8				
michaellifrak@quinnemanuel.com Kyle Batter (Bar No. 301803) kylebatter(@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  DEFENDANTS' TRIAL BRIEF  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF	Ĭ	Michael T. Lifrak (Bar No. 210846)			
Kyle Batter (Bar No. 301803) kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  IN RE TESLA, INC. SECURITIES LITIGATION  DEFENDANTS' TRIAL BRIEF  22 23 24 25 26 27	9	· · · · · · · · · · · · · · · · · · ·			
kylebatter@quinnemanuel.com 865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF  20 21 22 23 24 25 26 27					
11   865 South Figueroa Street, 10th Floor Los Angeles, California 90017-2543   Telephone: (213) 443-3000   Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice   UNITED STATES DISTRICT COURT   NORTHERN DISTRICT OF CALIFORNIA   IN RE TESLA, INC. SECURITIES   Case No. 3:18-ev-04865-EMC   LITIGATION   DEFENDANTS' TRIAL BRIEF   DEFENDANTS' TRIAL BRIEF   Case No. 3:18-ev-04865-EMC   DEFENDANTS' TRIAL BRIEF   DEFENDANTS' TRIAL BRI	10	, ,			
Los Angeles, California 90017-2543 Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF	11				
Telephone: (213) 443-3000  Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF	11				
Attorneys for Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF	12	1			
Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF  22 23 24 25 26 27	12				
Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF	13				
Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice  UNITED STATES DISTRICT COURT  NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC  DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF					
and Linda Johnson Rice  UNITED STATES DISTRICT COURT  NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF	14	1	sk,		
UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF	15		,		
17 NORTHERN DISTRICT COURT 18 19 IN RE TESLA, INC. SECURITIES LITIGATION 20 DEFENDANTS' TRIAL BRIEF 22 23 24 25 26 27	13				
17 NORTHERN DISTRICT COURT 18 19 IN RE TESLA, INC. SECURITIES LITIGATION 20 DEFENDANTS' TRIAL BRIEF 22 23 24 25 26 27	16				
NORTHERN DISTRICT OF CALIFORNIA  NORTHERN DISTRICT OF CALIFORNIA  IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC  DEFENDANTS' TRIAL BRIEF  DEFENDANTS' TRIAL BRIEF  23 24 25 26 27		UNITED STATES	DISTRICT COURT		
18 19 20 LITIGATION  Case No. 3:18-cv-04865-EMC DEFENDANTS' TRIAL BRIEF  22 23 24 25 26 27	17				
IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC  DEFENDANTS' TRIAL BRIEF  22 23 24 25 26 27		NORTHERN DISTRI	ICT OF CALIFORNIA		
IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC  DEFENDANTS' TRIAL BRIEF  22 23 24 25 26 27	18				
IN RE TESLA, INC. SECURITIES LITIGATION  Case No. 3:18-cv-04865-EMC  DEFENDANTS' TRIAL BRIEF  22 23 24 25 26 27	10				
20 LITIGATION 21 22 23 24 25 26 27	19	IN RE TESLA, INC. SECURITIES	Case No. 3:18-cy-04865-EMC		
DEFENDANTS' TRIAL BRIEF  22 23 24 25 26 27	20				
21 22 23 24 25 26 27			DEFENDANTS' TRIAL BRIEF		
<ul> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ul>	21				
<ul> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ul>	22				
<ul> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ul>	22				
<ul> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ul>	23				
25 26 27	23				
26 27	24				
26 27					
27	25				
27	26				
	20				
	27				
28					
	28				



1 2			TABLE OF CONTENTS	<u>Page</u>
3	PRELIMINARY STATEMENT1			1
4	I.			
5		A.	Evidence On Negotiations Concerning The Ability To Take Tesla Private	
6		B.	Evidence Concerning Mr. Musk's Discussion With Tesla's Board Concerning A Take-Private Transaction At \$420 Per Share	3
7 8		C.	Evidence On The August 7 Statements About A Potential Go-Private Transaction	3
9 10		D.	Evidence Concerning Mr. Musk's Discussions With Investors And Advisors Following The August 7 Tweets	4
11		E.	Evidence On Mr. Musk's August Update To Shareholders And Board Meeting	5
12		F.	Evidence Going To The Legal Elements Of Materiality And Scienter	6
13	II.	THEO	EORY OF THE CASE7	
14		A.	Plaintiff Will Not Be Able To Prove His 10(b) And 10b-5 Claim	7
15 16			1. Plaintiff Will Not Prove Any Material Misrepresentations Or Scienter	7
17			2. Plaintiff Will Not Be Able To Prove Loss Causation	10
18		B.	Plaintiff Cannot Prove Damages	11
19		C.	Plaintiff Will Not Be Able To Prove His 20(A) Claim	12
20	III.	CONTROLLING ISSUES OF LAW		13
20		A.	Legal Elements Of Falsity And Scienter	13
22		B.	Reliance On The Fraud-On-The-Market Presumption	14
23		C.	Disaggregation For Purposes Of Loss Causation	14
23 24		D.	Good Faith Defense For Directors Under Section 20(a)	15
24 25		E.	Apportionment Of Liability	15
26				
27				
28				



#### **TABLE OF AUTHORITIES** 1 2 **Page** Cases 3 Amgen Inc. v. Conn. Ret. Plans & Trust Funds, 4 5 Arthur Children's Trust v. Keim, 6 Basic Inc. v. Levinson. 7 Burgess v. Premier Corp., 8 Curry v. Yelp Inc., 9 10 Dura Pharma, Inc. v. Broudo, 11 Erica P. John Fund, Inc. v. Halliburton Co., 12 Gebhart v. S.E.C., 13 GIA-GMI, LLC v. Michener, 14 Halliburton Co. v. Erica P. John Fund Inc., 15 16 Hollinger v. Titan Cap. Corp., 17 Howard v. Everex Sys., Inc., 18 *In re Alphabet, Inc. Sec. Litig.*, 19 In re Energy Recovery Inc. Sec. Litig., 20 21 In re Intrexon Corp. Sec. Litig., 22 In re Omnicom Grp., Inc. Sec. Litig., 23 *In re Quality Sys., Inc. Sec. Litig.,* 24 25 In re REMEC Inc. Sec. Litig., 26



27

28

*In re Sci. Atlanta, Inc. Sec. Litig.*,

*In re Stac Elecs. Sec. Litig.*,

# Case 3:18-cv-04865-EMC Document 489 Filed 10/04/22 Page 4 of 20

- 1					
1	In re VeriFone Sec. Litig., 11 F.3d 865 (9th Cir. 1993)				
2 3	Lentell v. Merrill Lynch & Co., 396 F.3d 161 (2d Cir. 2005)				
4	Loos v. Immersion Corp., 762 F.3d 880 (9th Cir. 2014)				
5	Nuveen Mun. High Income Opportunity Fund v. City of Alameda, 730 F.3d 1111 (9th Cir. 2013)				
6	Paracor Fin., Inc. v. Gen. Elec. Cap. Corp., 96 F.3d 1151 (9th Cir. 1996)				
7	Phillips v. LCI Int'l, Inc., 190 F.3d 609 (4th Cir. 1999)				
8	Rok v. Identiv, Inc., No. 15-CV-5775-CRB, 2016 WL 4205684 (N.D. Cal. Aug. 10, 2016)				
10	Sgarlata v. PayPal Holdings, Inc., No. 17-CV-06956-EMC, 2018 WL 6592771 (N.D. Cal. Dec. 13, 2018)				
11	Special Situations Fund III QP, LP v. Brar,         No. 14-CV-04717-SC, 2015 WL 1393539 (N.D. Cal. Mar. 26, 2015)				
12	Tarapara v. K12 Inc., No. 16-CV-4069-PJH, 2017 WL 3727112 (N.D. Cal. Aug. 30, 2017)				
13 14	TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438 (1976)				
15	United States v. Goyal, 629 F.3d 912 (9th Cir. 2010)				
16	Zucco Partners, LLC v. Digimarc Corp., 552 F.3d 981 (9th Cir. 2009)				
17					
18	Statutory Authorities				
19	Rule 10(a)-(b)				
	Rule 13(b)2-2				
20	15 U.S.C. § 78t				
21	15 U.S.C. § 78t(a)				
22	15 U.S.C. § 78u-4(f)				
23	15 U.S.C. § 78u-4(f)(3)(A)(iii)				
24 25					
26					
27					
$_{28}$					



1

2

4 5

3

6 7

8

9

10

11 12

13

14 15

16

17 18

19 20

21 22

23

24

25 26

27 28

#### PRELIMINARY STATEMENT

On August 7, 2018, Elon Musk conveyed the truthful message to the public that he was considering taking Tesla private at \$420 per share. He followed this statement with details of the proposed funding for the transaction that the Court considered to be "literal[ly]" false. But those details were not materially false or materially misleading because they did not differ in any material way from the actual state of affairs, as evidenced by the market's own reaction to subsequent disclosures. Yet Plaintiff seeks billions of dollars in this case based on unprecedented theories of market impact and loss causation that are divorced from both the facts and the established case law.

As this Court has confirmed, Plaintiff must prove—and the jury must decide—that the challenged statements about the potential go-private transaction were materially false and misleading. To prove material falsity, Plaintiff must demonstrate that the statements about funding gave the impression of a state of affairs that differed in a material way from the one that actually existed. He cannot meet this burden in light of, among other things, (1) the actual content of Mr. Musk's statements and those of others (which indicated the remaining contingencies of the potential transaction), (2) Mr. Musk's conversations with the Saudi sovereign wealth fund (the "PIF"), and (3) the reports of multiple witnesses and numerous contemporaneous communications that the PIF's Managing Director indicated that it was committed to whatever funding (and structure) was necessary to take Tesla private. Similarly, Plaintiff will be unable to prove that Mr. Musk knew or recklessly disregarded that his statements were materially false, as needed to meet his burden on scienter.

Relatedly, Plaintiff will not be able to establish reliance through the fraud-on-the-market presumption. Plaintiff will be unable to prove that the statements the Court found to be literally false were material, as he is required to do to invoke the presumption. As Defendants will show at trial, any inaccurate statement regarding the status of funding did not move the market, given that Tesla's stock price *increased* after Mr. Musk subsequently gave further details on the steps remaining before any go-private transaction could occur. The increase in response to Mr. Musk's initial tweets was thus a reaction to his indisputably true statement that he was considering taking Tesla private at \$420 per share and demonstrates that Mr. Musk's other statements in the tweets were immaterial to the market.

As to loss causation, the facts and the price movements of Tesla's securities, including those



# DOCKET

# Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## **Real-Time Litigation Alerts**



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## **Advanced Docket Research**



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## **Analytics At Your Fingertips**



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

### API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

#### **LAW FIRMS**

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

#### **FINANCIAL INSTITUTIONS**

Litigation and bankruptcy checks for companies and debtors.

### **E-DISCOVERY AND LEGAL VENDORS**

Sync your system to PACER to automate legal marketing.

