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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE TESLA, INC. SECURITIES LITIGATION	Case No. 3:18-cv-04865-EMC **DEFENDANTS' TRIAL BRIEF**

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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

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