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Transaction ID 67038311
Case No. 12711-VCS



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

**STIPULATION AND [PROPOSED] ORDER OF DECERTIFICATION OF
CLASS AND DISMISSAL WITH PREJUDICE OF DIRECT CLAIMS**

WHEREAS, on March 9, 2017, Co-lead plaintiffs Arkansas Teacher Retirement System (“ATRS”), Boston Retirement System (“Boston”), Roofers Local 149 Pension Fund (“Roofers Local 149”), Oklahoma Firefighters Pension and Retirement System (“OFPRS”), KBC Asset Management NV (“KBC”), ERSTE-SPARINVEST Kapitalanlagegesellschaft m.b.H. (“ESK”), and Stichting Blue Sky Active Large Cap Equity Fund USA (“Blue Sky”) and additional plaintiff Aaron Roche (“Roche,” and together with ATRS, Boston, Roofers Local 149, OFPRS, KBC, ESK and Blue Sky, “Plaintiffs”) filed their Second Amended Verified Class Action and Derivative Complaint (Dkt. 102) (the “Second Amended Complaint”);

WHEREAS, on April 18, 2019, the Court entered a Stipulated Order of Class Certification (the “Class Certification Order”), 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 (Dkt. 234);

WHEREAS, Paragraph 7 of the Class Certification Order states as follows:

This Stipulation and Order is without prejudice to (i) the right of any party to bring an appropriate motion, without leave of the Court, at a later time to decertify, limit, extend, or otherwise modify or redefine the Class, or its division into sub-classes, or to challenge, substitute, or modify its representative, and/or (ii) the right of the Court to alter or amend this Order at any time prior to entry of a final judgment on the merits or to make such other orders as may be appropriate.

WHEREAS, on July 12-16, 2021, July 19-23, 2021 and August 16, 2021, Trial was held in the above-captioned action (the “Action”);

WHEREAS, on September 20, 2021, the Supreme Court of the State of Delaware issued its opinion in *Brookfield Asset Management, Inc. v. Rosson*, No. 406, 2020 (Slip Op.) (Del. Sept. 20, 2021) expressly overruling its earlier opinion in *Gentile v. Rossette*, 906 A.2d 91 (Del. 2006);

WHEREAS, the Supreme Court’s decision in *Rosson*, held that “corporation overpayment/dilution *Gentile* claims, like those present here, are exclusively derivative under *Tooley* and that *Gentile*, for all of the reasons identified above, should be overruled.”

IT IS HEREBY STIPULATED AND AGREED, by the parties hereto, through their undersigned counsel, pursuant to Court of Chancery Rule 41(a)(1)(ii), that:

1. Pursuant to Paragraph 7 of the Class Certification Order, the Class (as defined therein) is hereby decertified. This Action is no longer certified as a class

action pursuant to Court of Chancery Rule 23 and shall continue exclusively as a derivative action under Court of Chancery Rule 23.1.

2. Counts IV, V, and VII against Elon Musk are hereby dismissed with prejudice.

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Dated: October 21, 2021

SO ORDERED this _____ day of _____, 2021.

Vice Chancellor Joseph R. Slight III

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Joseph Slights

File & Serve

Transaction ID: 67034747

Current Date: Oct 22, 2021

Case Number: 12711-VCS

Case Name: CONF ORDER - CONS w/CA#: 12723, 12740, 12745, 12796, 12804 & 12805-VCS - IN
RE TESLA MOTORS, INC. STOCKHOLDER LITIGATION

Court Authorizer: Joseph Slights

/s/ Judge Joseph Slights