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Re: *Richard J. Tornetta v. Elon Musk, et al.,*
C.A. No. 2018-0408-KSJM

Dear Counsel:

This letter decision addresses the filings of Tesla stockholders: Amy Steffens, joined by California Public Employees' Retirement System ("CALPERS"); and David Israel and Kurt Panouses, joined by ARK Investment Management LLC ("ARK").[1] All of the submissions expressed concerns with the Fee Petition. They also made points pertinent to the Ratification Argument. And the stockholders' counsel moved for attorneys' fees and expenses.[2] Each of these stockholders styled their submissions as "objections."

I have serious concerns about granting stockholders standing to object in these circumstances. This is not a class action brought on behalf of Tesla's minority stockholders. And the fee petition did not arise in the settlement context. These are

[1] *See* No. 2018-0408-KSJM, Docket ("Dkt.") 296 (Fee Petition); Dkts. 354 (Steffens submissions); Dkts. 374 (CALPERS Joinder); Dkts. 380 (Israel & Panouses submissions), 402 (ARK's Joinder), 419 (Israel, Panouses & ARK's Supplemental Br.). I use the defined terms set out in my Opinion, published today, addressing the Fee Petition and Ratification Arguments (the "December 2 Opinion").

[2] Dkts. 437–38.

post-trial proceedings in a derivative action concerning a Fee Petition that Defendants and their army of lawyers opposed. None of the stockholders identify any case where this court has permitted a stockholder to object in these circumstances. Permitting any stockholder to appear and object where the parties have every incentive to zealously represent their clients' interests would lead to deeply inefficient proceedings that potentially undermine the parties' ability to control the litigation. For that reason, I decline to extend standing to the stockholders here.

That said, as I noted in today's decision, rescinding the Grant inured to the direct benefit of Tesla stockholders. Thus, despite their lack of formal standing, I carefully considered each of the stockholders' arguments. I permitted their counsel to present during the July 7 and August 2, 2024 hearings on the Fee Petition and Ratification Argument, respectively. I appreciate the thought and care that they put into their written and oral presentations. And I recognize that they appeared in court in good faith and at their own expense. In the end, however, none of the points made

by the stockholders altered the outcome of the December 2 Opinion.[3] The stockholders' requests for fees are denied.[4]

Sincerely,

/s/ Kathaleen St. Jude McCormick

Chancellor

cc: All counsel of record (by *File & ServeXpress*)

[3] Each of the stockholders also attack Plaintiff's adequacy as a representative plaintiff. *See* Steffens Br. at 8, 23, n.17; Israel, Panouses & ARK's Br. at 11; Dkt. 407 (7/8/2024 H'rg Tr.) at 268:16–269:15. But they did not do so timely nor pursuant to the procedure set forth by Court of Chancery Rules. *See* Ct. Ch. R. 23.1(c) (permitting the court to resolve appointment disputes or dismiss an action with inadequate derivative counsel); Ct. Ch. R. 24(a), (b) (permitting intervention pursuant to a timely motion); *see also ITG Brands, LLC v. Reynolds Am. Inc.*, 2024 WL 1366198, at *2–3 (Del. Ch. Apr. 1, 2024) (noting timeliness "is fact specific and discretionary" and that courts refuse intervention that prejudices parties by "delay[ing] the termination of the litigation"). Moreover, Plaintiff has proven himself quite capable as a representative plaintiff.

[4] *See Maurer v. Int'l Re-Insurance Corp.*, 95 A.2d 827, 830 (Del. 1953) ("[A]part from statute or contract, a litigant must pay his counsel fees. . . subject to but a few exceptions[.]'").