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IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE TESLA, INC. DERIVATIVE LITIGATION	§ No. 534, 2024 § No. 10, 2025 § No. 11, 2025 § No. 12, 2025 § § Court Below: Court of Chancery § of the State of Delaware § § C.A. No. 2018-0408

INDIVIDUAL DIRECTOR-APPELLANTS' OPENING BRIEF

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NATURE OF PROCEEDINGS

The Court of Chancery began its post-trial opinion with the question: "Was the richest person in the world overpaid?" Tesla's stockholders have given their answer—a resounding *no*. In 2018, Tesla's Directors adopted and its stockholders approved an all-incentive compensation plan for visionary CEO Elon Musk valued at $2.3 billion over 10 years. Under Musk's motivated and exceptional leadership, Tesla stockholders have since received a return of more than $700 billion on that investment, catapulting Tesla into the ranks of the world's most valuable companies.

The compensation plan exemplified alignment between executive and stockholder interests. It was negotiated by an independent compensation committee. It featured ambitious performance triggers, robust stockholder protections, and rewards tied solely to genuine, sustainable growth. And it worked. Against all odds and with many betting against him, Musk grew Tesla's value by roughly 1400%, with stockholders keeping more than 90% of that explosive growth.

That result should have made the compensation plan a case study in success for companies and stockholders alike. But there was a twist: a single dissenting stockholder sued Tesla's Directors ("Defendants"), claiming that the plan was too generous to Musk. Of course, once Tesla's wild success no longer seemed like a pipe dream, it was easy to argue that Musk's leadership could have been bought for less. Six years after the plan was adopted, the Court of Chancery rescinded it, adopting an unprecedented analysis that equated Musk's "Superstar CEO" status with control of the transaction, found the stockholder vote uninformed even though the plan's terms were fully disclosed, and questioned why Tesla had to "'give' anything" for Musk's leadership. Post-Trial Opinion (Ex. A, "Op.") 1, 2, 178. Tesla stockholders overwhelmingly ratified the plan again, but the court set that aside too, dismissing the vote as a litigation maneuver incapable of affecting its rescission remedy. Ratification Opinion (Ex. B, "Rat. Op.") 1-2.

The bottom line of the Court of Chancery's decisions is that a compensation plan resulting in spectacular growth should be revoked because it was somehow unfair to the very stockholders who benefited from that growth and overwhelmingly approved the plan—twice. That counterintuitive result defies settled principles of Delaware law, sound corporate governance, and common sense. Defendants accordingly appeal.

SUMMARY OF ARGUMENT

I. The compensation plan adopted by Tesla's Directors and approved by a supermajority of its disinterested stockholders is subject to business judgment review. The Court of Chancery instead applied the onerous entire fairness standard because it concluded that Musk controlled the Board during the transaction. That was legal error. Musk owned less than a quarter of Tesla's stock, had no power to dictate terms to the Board, and did nothing to dominate or coerce the Directors during the transaction. Musk therefore does not qualify as a controlling stockholder. The Court of Chancery's contrary determination rests on subjective factors that at most gave Musk the *potential* to control. But as this Court recently confirmed, a minority stockholder's participation in a transaction triggers entire fairness review only if the stockholder *actually exercises* control. *In re Oracle Corp. Deriv. Litig.*, 2025 WL 249066, at *13 & n.107 (Del. Jan. 21, 2025).

The Court of Chancery's control analysis contradicts this Court's precedent and core principles of Delaware corporate law. The concept of control has long been rooted in majority voting power or its equivalent, on the theory that a stockholder with such power can impose its will on the Board and minority stockholders. By finding control based on Musk's limited minority stock ownership and participation in a single transaction regarding his own compensation, the Court of Chancery detached the definition of control from its doctrinal moorings. Fundamentally, the court conflated Musk's *influence*—which arose from his successful performance and value to the company—with *control* justifying heightened judicial scrutiny of informed business decisions. Such an indeterminate inquiry effectively requires an evidentiary hearing and potentially a trial before control (or its absence) can be determined, leaving transaction planners guessing about which circumstances trigger entire fairness review and providing the "license to sue" on every compensation transaction involving an alleged Superstar CEO that this Court in *Oracle* rightly denied. *Id.* at *13.

The Court of Chancery also wrongly concluded that Tesla's Directors lacked independence and the 2018 stockholder vote was not fully informed. The court relied on ordinary business and social relationships that would not (and did not) compromise the Board's judgment—a decision at odds with this Court's recognition that a virtually identical Tesla Board was not "dominated" or "controlled" by Musk and acted to "effectively neutralize[ ]" any control Musk "may have attempted to wield." *In re Tesla Motors, Inc. S'holders Litig.*, 298 A.3d 667, 704, 712 (Del. 2023) ("*SolarCity*") (citations omitted). And the court erroneously faulted Tesla's disclosures ahead of the 2018 stockholder vote, even though they disclosed all the plan's economic terms and enabled stockholders to make an informed decision.

II. After adopting the wrong standard, the Court of Chancery misapplied it. The court wrongly interpreted entire fairness as requiring Defendants to prove that Musk would not have worked for a lesser amount, despite the lack of record evidence that he would have done so or what an alternative plan might have cost. Rather than assess whether the plan was fair to Tesla and its stockholders, the court speculated that Musk might have agreed to perform the same services for less—or nothing—if the Board had negotiated harder. Meanwhile, the court disregarded key indicia of fairness, including the all-incentive structure of the plan, its significant limitations on Musk, its many stockholder safeguards, the monumental growth that it inspired, and stockholders' overwhelming support for it. That was reversible error.

III. The Court of Chancery committed another legal error in rescinding the plan. The court reasoned that rescission would restore the status quo ante, but neither Musk nor Tesla could be returned to their positions in 2018—before Musk grew the company by nearly 1400% on the expectation that he would be compensated under the plan. In ordering rescission, the court further erred by not requiring Plaintiff to prove damages suffered because of the plan and instead incorrectly placing on Defendants the burden to prove what fair compensation would be.

IV. Finally, the Court of Chancery erred by rejecting the stockholders' 2024 ratification of the plan. For the reasons detailed in Tesla's opening brief—which Defendants incorporate in full—ratification provides an independent basis for vacating the rescission remedy and entering judgment for Defendants.

STATEMENT OF FACTS

A. Tesla And Musk

Tesla is a young company, founded in 2003. Musk invested in Tesla in 2004, became chairman of its Board, and became CEO in 2008. Op. 9. At the time, "the market for electric vehicles was unproven," and "no new domestic car company since … the 1920s had achieved financial success." Op. 10. Musk's "bold" vision was to change that by building a company that could mass-produce affordable electric vehicles and move "toward a sustainable energy economy." Op. 9-10.

Tesla never paid Musk a standard salary. In 2009 and 2012, Musk and Tesla agreed to performance-based compensation plans awarding him options to purchase Tesla shares if the company met specified metrics. Op. 16-17. Both times, Musk led Tesla to meet all the milestones. Within five years of the 2012 plan, for example, Tesla's market capitalization had grown to roughly $50 billion (about the same as General Motors or Ford) and its annual vehicle production rose to 250,000. Op. 18-19. In return, Musk earned options under the two plans amounting to about 9% of Tesla's stock, bringing his ownership stake to 21.9%. Op. 19.

Despite its dramatic growth, Tesla in 2017 had yet to turn an annual profit and faced a crossroads. A723. Until then, Tesla had produced high-end electric cars for a niche, emerging market. Op. 9-12. In 2016, the company unveiled a plan for its first mass-produced electric car—the Model 3. Op. 12. "No one" believed Tesla could achieve that objective; at the time, its stock was among the most shorted on Wall Street. Op. 12-13. Musk, meanwhile, had "significant time commitments" at other companies that he had founded, including SpaceX, OpenAI, Neuralink, and The Boring Company. Op. 13-14, 139.

B. The Award

Against that backdrop, Tesla and Musk negotiated a new compensation plan. Tesla's Board comprised Musk, his brother Kimbal, Brad Buss, Robyn Denholm, Ira Ehrenpreis, Antonio Gracias, Linda Johnson-Rice, Steve Jurvetson, and James Murdoch. Op. 20. Ehrenpreis chaired the Compensation Committee, a group of independent directors (Ehrenpreis, Buss, Denholm, and Gracias) responsible for, among other things, recommending CEO compensation. Op. 20; A4131.

In April 2017, Ehrenpreis initiated compensation discussions with Musk—a nine-month process that would span ten Board and Special Committee meetings and include consultations with outside compensation advisors and Tesla's largest stockholders. Op. 5, 30, 42, 51-52. Musk suggested a performance-based plan modeled on the 2012 plan but with even more challenging performance targets. Op. 31. He initially proposed 15 milestones, each requiring $50 billion of market-capitalization growth, to unlock options allowing him to buy up to 15% of Tesla's total outstanding shares over ten years. Op. 31. He later adjusted that proposal to ten $50 billion tranches for 10% of Tesla's fully diluted shares. Op. 63.

The Compensation Committee countered with 12 tranches of $50 billion in growth for 12% of Tesla's total outstanding shares—a proposal that added $100 billion in stockholder value but no more pay for Musk, as the 2% share addition was offset by known future dilution. Op. 67-70. The Committee also proposed coupling the market-capitalization milestones with increasingly demanding revenue- and profit-based operational milestones to ensure the growth triggering the payments reflected genuine financial success. Op. 36, 52-56; A4064; A718-721. And the Committee proposed a series of constraints on Musk's receipt of any payments:

- *Leadership Requirement*: Musk had to remain CEO or Chief Product Officer and Executive Chairman throughout the vesting period. Op. 74.
- *Clawback Provision*: Musk would forfeit any options he was no longer due following a financial restatement. Op. 49.
- *M&A Provision*: Musk could not hit market-capitalization milestones through acquisitions. Op. 75-77.
- *Hold Period*: Musk could not sell any shares earned under the plan for five years post-exercise. Op. 77-78.
- *Sustained-Growth Requirements*: Musk's options would not vest without growth sustained for a defined period (four consecutive quarters for operational milestones, with 30-day and six-month trailing-average requirements for market-capitalization milestones). Op. 184.

Musk agreed to all of those provisions. Op. 80.

In January 2018, the Board—with Musk, Kimbal, and Jurvetson abstaining—unanimously approved the plan ("Award"), subject to approval by a majority of disinterested stockholders. Op. 80-82. In sum, the Award provided that if Tesla's

$50 billion market capitalization did not at least double (creating the equivalent of another Tesla, General Motors, or Ford) within ten years, Musk would earn nothing. If Musk led Tesla to grow by $600 billion (more than the entire U.S. auto industry at the time) and met 12 separate operational milestones within a decade, he would earn options worth $55.8 billion. Op. 189. The fair value of the Award was estimated at about $2.3 billion. Op. 190; *see* A860-861.

Tesla presented the Award to stockholders through proxy statements in January and February 2018. Op. 82. The proxies disclosed all economic terms of the Award, the process and negotiations that produced it, and its purpose: "to incentivize and motivate" Musk to "lead Tesla over the long-term" and "devote his time and energy" there rather than to "his other business interests." A4121. The proxy also included a chart outlining precisely how Tesla's growth would be divided between stockholders and Musk. A4122.

Commentators described the Award's milestones as "jaw-dropping" and "laughably impossible." A4097. Partly for that reason, they recognized the Award as overwhelmingly favorable to Tesla stockholders. As one *New York Times* article put it, the Award was "about as friendly to shareholders as they come. … [I]f Mr. Musk does not perform, shareholders pay nothing." A4097.

In March 2018, Tesla stockholders approved the Award, with approximately 73% of present and disinterested shares voting in favor. Op. 88. Musk received no compensation under the Award for the first two years. The tranches began vesting in 2020, and Tesla hit the milestones required to unlock all 12 tranches by the end of 2022, with its market capitalization topping $1 trillion. Op. 8-9, 92.

C. This Suit

In June 2018, a single Tesla stockholder—Plaintiff Tornetta—filed this action, asserting (as relevant here) derivative claims for breach of fiduciary duty. Op. 97.

Motion To Dismiss Order. The Court of Chancery (Slights, V.C.) declined to dismiss the fiduciary-duty claims. A117-158. The court assumed for purposes of the motion that Musk was a controlling stockholder, applied entire fairness review, found that a majority of disinterested stockholders had approved the Award (shifting the burden to Plaintiff), and ruled that Plaintiff had alleged—"albeit just barely"—that the Award was not entirely fair. A139, A153-155.

Trial. The Court of Chancery (McCormick, C.) denied cross-motions for summary judgment and conducted a five-day trial in November 2022. Op. 101.

Post-Trial Opinion. In a 200-page post-trial opinion issued in January 2024, the Court of Chancery ruled that Defendants breached their fiduciary duties by adopting the Award. The court then rescinded the Award in full.

The court first concluded that entire fairness review applied because the Award was purportedly a "conflicted-controller transaction." Op. 104. The court recognized that Musk "controlled only 21.9% of Tesla's voting power" in 2018 and thus lacked "mathematical voting control." Op. 106. The court also declined to find that Musk controlled Tesla generally. Op. 108, 110. The court instead concluded that Musk had "transaction-specific control" over the Award based on an *ad hoc* combination of factors, including his ownership of a "significant block" of Tesla's stock, his purported "Superstar CEO" status, his "varying degrees of ties" to Board members, and the Board's supposedly "controlled mindset" during the negotiation and approval process. Op. 114, 120, 123, 127-128; *see* Op. 110-146.

The court next concluded that Defendants bore the burden to prove that the Award was fair because it was approved by neither a "well-functioning committee of independent directors" nor "an informed vote of a majority of the minority shareholders"—even though the proxy undisputedly disclosed all the Award's economic terms. Op. 147. The court ruled that Defendants had not met their entire fairness burden, suggesting the highly ambitious growth targets were unfairly generous to Musk because the Board could have required him to "forgo[] compensation entirely," allowing the stockholders to reap the extraordinary financial rewards of Musk's leadership without "hav[ing] to 'give' anything." Op. 177-178.

Finally, the court rescinded the Award entirely. The court recognized that leaving "Musk uncompensated" was a "harsh consequence," but suggested that "Musk's preexisting equity stake"—unrelated to and earned before the Award—"provided him tens of billions of dollars for his efforts." Op. 198. The court also held that the Award "is not 'too complex to unscramble,'" even though Musk had worked for six years to achieve its milestones and Tesla's stockholders had reaped a nearly 1400% increase in stock value as a result. Op. 198 (citation omitted).

D. 2024 Stockholder Ratification

After the post-trial opinion, Tesla's Board—with Musk and Kimbal recused—formed an independent Special Committee to assess Tesla's future. A2075-2076. After an eight-week evaluation, the Special Committee recommended a stockholder vote on whether to ratify the Award notwithstanding the purported unfairness identified by the Court of Chancery, which Tesla disclosed by attaching the full 200-page opinion to a proxy statement. A1907; A2080; A2173.

At a June 2024 stockholder meeting, 72% of present and disinterested shares voted for ratification. A2744. Defendants then moved to modify the post-trial opinion based on the ratification vote. A2921-3002. The Court of Chancery denied that motion, dismissing the stockholder vote as "evidence … created after trial" that it could not consider and would not change the outcome. Rat. Op. 17-43.

ARGUMENT

I. BUSINESS JUDGMENT REVIEW APPLIES TO THE AWARD

A. Question Presented

Did the Court of Chancery err in applying entire fairness rather than business judgment review? This issue was raised (A555) and decided below (Op. 103-146).

B. Scope Of Review

Review of the Court of Chancery's "formulation and application of legal principles" is de novo "and requires no deference." *SolarCity*, 298 A.3d at 699. The Court will generally "accept" factual findings, but it may "review de novo mixed questions of law and fact." *Zirn v. VLI Corp.*, 681 A.2d 1050, 1055 (Del. 1996) (citation omitted).

C. Merits Of Argument

The threshold question is what standard of review applies to the Award. The "default standard of review is the business judgment rule," *In re Match Grp., Inc. Deriv. Litig.*, 315 A.3d 446, 459 (Del. 2024)—"an extension of the fundamental principle 'that the business and affairs of a corporation are managed by and under the direction of its board,'" *Citron v. Fairchild Camera & Instrument Corp.*, 569 A.2d 53, 64 (Del. 1989) (quoting 8 *Del. C.* § 141(a)). Under the business judgment rule, a "court will only interfere" with a board's decision if the decision "lacks any rationally conceivable basis." *Match*, 315 A.3d at 459.

When a board enters into an interested transaction, the business judgment rule applies so long as the transaction is approved by a majority of independent and informed directors *or* a fully informed vote of uncoerced and disinterested stockholders. *See* 8 *Del. C.* § 144; *In re Invs. Bancorp, Inc. S'holders Litig.*, 177 A.3d 1208, 1217 (Del. 2017); *Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304, 308-10 & n.19 (Del. 2015). That approach reflects "the core rationale" of the business judgment rule: "judges are poorly positioned to evaluate the wisdom of business decisions and there is little utility to having them second-guess the determination of impartial decision-makers with more information (in the case of directors) or an actual economic stake in the outcome (in the case of informed, disinterested stockholders)." *Corwin*, 125 A.3d at 313-14.

When a board transacts with a "controlling stockholder" who receives a "non-ratable benefit," the "presumptive standard of review is entire fairness." *Match*, 315 A.3d at 460. Business judgment review can be restored if the transaction is conditioned on approval by (1) a fully empowered, independent special committee that meets its duty of care and (2) a majority of fully informed, uncoerced minority stockholders. *Id.* at 462-63 (citing *Kahn v. M&F Worldwide Corp.*, 88 A.3d 635, 639 (Del. 2014) ("*MFW*")). If only one of those conditions is met, the entire fairness standard may still apply, but the burden of meeting it shifts to the plaintiff. *Id.* (citing *Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110, 1116 (Del. 1994)).

The Court of Chancery misapplied those principles in subjecting the Award to entire fairness review. *First*, the court erroneously deemed Musk a controlling stockholder. *Second*, the court erroneously held that a majority of Tesla's directors lacked independence. *Third*, the court erroneously concluded that the 2018 stockholder approval of the Award was uninformed. This Court should accordingly apply the business judgment rule and reverse. *See, e.g.*, *Maffei v. Palkon*, 2025 WL 384054, at *30 (Del. Feb. 4, 2025).

1. Musk Is Not A Controlling Stockholder

The Court of Chancery erred at the threshold by deeming Musk a controlling stockholder. Op. 112. The court based its conclusion on Musk's purported "transaction-specific control" over the Award. Op. 108-110, 147. But controlling stockholder status cannot arise from a minority stockholder's control over a specific transaction alone. And even if it could, the minority stockholder must *actually exercise* control; the mere "*potential* ability to exercise control" is not enough. *Oracle*, 2025 WL 249066, at *13 n.107. Because the court identified at most Musk's *potential* to exercise control—through, *e.g.*, his stature and influence—rather than an *actual* exercise of control over the Board in connection with the Award, its controlling stockholder determination was legal error.

(a) Control Over A Specific Transaction Alone Does Not Trigger Controlling Stockholder Status

"As a general rule, stockholders do not owe fiduciary duties to the corporation or its stockholders and are free to act in their self-interest." *Oracle*, 2025 WL 249066, at *11. The controlling stockholder doctrine is an exception to that rule. *Id.* It recognizes that heightened scrutiny of a board's transaction with a stockholder can be warranted in certain narrow situations. *Id.* The paradigmatic example is a transaction with "a stockholder who owns or controls over 50% of a" corporation's voting power. *Id.* Because such a "majority stockholder controls the levers of power within the corporation," including the power to elect directors and make "fundamental corporate changes" by stockholder vote, the board's approval alone does not provide enough protection for minority stockholders. *Id.*

"Conversely, a stockholder who owns or controls less than 50% of a corporation's voting power is not presumed to be a controlling stockholder," because such a stockholder lacks power to control the board or stockholder votes. *Id.* at *12. A minority stockholder assumes controlling stockholder status only if it "*exercises control* over the business affairs of the corporation"—that is, engages in "domination … through actual control of corporation conduct," such that the directors' decisions do not reflect "exercise of their own business judgment." *Lynch*, 638 A.2d at 1113-15 (citations omitted); *see Corwin*, 125 A.3d at 307-08 (concluding that a minority stockholder lacked the "effective control of the board" required for controlling stockholder status when it could not prevent the board "from freely exercising its independent judgment") (citation omitted).

The Court of Chancery recognized that Musk owned "only 21.9% of Tesla's voting power" in 2018 and thus "lacked mathematical voting control." Op. 106. The court also expressly declined to conclude that Musk "exercised general control over the business and affairs of the corporation." Op. 107-108; *see* Op. 110. The court instead based its conclusion that Musk was a controlling stockholder solely on a determination that he exercised "transaction-specific control." Op. 147.

That was legal error. "Foundational principles of Delaware law provide no support" for the premise that a minority stockholder can be a controlling stockholder based on purported control over "a single transaction." Elizabeth Pollman & Lori W. Will, *The Lost History of Transaction-Specific Control*, __ J. Corp. L. __ (forthcoming 2025) (p. 15).[1] Although some Court of Chancery decisions starting in the early 2000s have relied on such a theory, that is a "chain of case law without a foundation." *Id.* at 17. Under this Court's canonical cases, a minority stockholder can assume controlling stockholder status "*only*" by exercising "control over the business affairs of the corporation"—that is, by exercising *general* control, not transaction-specific control. *Lynch*, 638 A.2d at 1113 (emphasis added).

[1] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5138377.

In *Lynch*, this Court affirmed controlling stockholder status when a minority stockholder "exercise[d] actual control over [the company] by dominating its corporate affairs." *Id.* at 1115. The Court applied entire fairness review out of concern that a controlling stockholder could "influence, however subtly … minority stockholders," who would fear "retaliation of some kind by the controlling stockholder" beyond the transaction in question. *Id.* at 1116 (citation omitted). "For example, the controlling stockholder might decide to stop dividend payments or to effect a subsequent cash out merger at a less favorable price." *Id.*; *see Kahn v. Tremont Corp.*, 694 A.2d 422, 428 (Del. 1997) (explaining concern that "the controlling shareholder *will continue to dominate the company* regardless of the outcome of the transaction") (emphasis added). That reasoning reinforces that transaction-specific control alone cannot create controlling stockholder status. A minority stockholder who controls only one transaction cannot retaliate or dominate the company by exercising corporate power beyond that transaction because such a stockholder by definition lacks capacity to exercise corporate power generally.

Although this Court has acknowledged the concept of transaction-specific control, *see Oracle*, 2025 WL 249066, at *12, it has never held expressly that transaction-specific control results in controlling stockholder status. Reversing the decision below based on its erroneous reliance on transaction-specific control therefore would be consistent with this Court's precedent. Such a holding would diverge from some suspect Court of Chancery decisions, *see id.* at *12 n.92, but "excising the concept of transactional control" would be a well-warranted exercise of this Court's ability "to correct and recalibrate the law" by "return[ing] to the traditional, principled approach to control," Pollman & Will, *supra*, at 16-17.

(b) Musk Did Not Actually Exercise Control Over The Award Transaction

Alternatively, the Court need not resolve the validity of transaction-specific control under the controlling stockholder doctrine because the Court of Chancery's control ruling rests on another legal error independently warranting reversal: even if a minority stockholder's relationship to a specific transaction alone could create controlling stockholder status, the stockholder must at least "*exercise* actual control over the … transaction." *Oracle*, 2025 WL 249066, at *13 n.107 (emphasis added). A minority stockholder's mere "*potential* ability to exercise control" is not enough. *Id.* (citation omitted); *see, e.g.*, *Basho Techs. Holdco B v. Georgetown Basho Invs., LLC*, 2018 WL 3326693, at *26 (Del. Ch. July 6, 2018) (same), *aff'd sub nom. Davenport v. Basho Techs. Holdco B, LLC*, 221 A.3d 100 (Del. 2019).

That understanding follows from this Court's decisions requiring an "actual exercise of control over the corporation's conduct" by a minority stockholder to impose controlling stockholder status on a theory of *general* control. *Olenik v. Lodzinski*, 208 A.3d 704, 718 n.70 (Del. 2019) (citation omitted); *see, e.g.*, *Lynch*, 638 A.2d at 1113-14; *Citron*, 569 A.2d at 70. As this Court has explained, "actual control of corporation conduct"—*i.e.*, "domination" of the board—is necessary for a minority stockholder to become a controlling stockholder because a minority stockholder could not exercise control based on voting power alone. *Lynch*, 638 A.2d at 1114 (quoting *Citron*, 569 A.2d at 70). If imposing controlling stockholder status based on a theory of *general* control requires an actual exercise of control—rather than a mere potential to exercise control—then imposing controlling stockholder status based on a theory of *transaction-specific* control must require the same. *See Oracle*, 2025 WL 249066, at *12. After all, it would make little sense to conclude that potential to control *the corporation* does not suffice to trigger controlling stockholder status but that potential to control *a single transaction* does.

The Court of Chancery ultimately adopted that flawed view. The court grouped its purported indicia of control into four categories: Musk's stock ownership, managerial influence, relationships with Directors, and involvement in negotiations over the Award. Op. 112-146. But the first three categories do not concern the Award; indeed, a number of the court's findings involve events postdating adoption of the Award. *See* Op. 116-120. And the fourth category lacks any determination that Musk actually exercised control over the Award. The court thus concluded at most that Musk had the "potential to control transactions," but even under the broadest concept of transaction-specific control that this Court has arguably suggested, that falls short. *Oracle*, 2025 WL 249066, at *13 n.107.

Stock Ownership. The Court of Chancery began its control analysis with Musk's 21.9% ownership stake in Tesla. Op. 112-115. But the court recognized that Musk "recused" himself from the Board vote on the Award, which was separately contingent on approval by a majority of disinterested stockholders. Op. 20, 80, 82. Musk's ownership stake thus provided no mechanism for an actual exercise of control over the Board in connection with the Award. *See Oracle*, 2025 WL 249066, at *13 n.107 ("Ellison recused himself and therefore did not exercise actual control over the … transaction.").

Managerial Influence. The Court of Chancery next relied on Musk's managerial influence, in particular his supposed "Superstar CEO" status. Op. 2, 115-122. But Musk's status and value to the company generally does not suggest that he exercised control over this specific transaction. Even if Musk had "unusually expansive managerial authority," Op. 120, that would at most suggest that he had the "*potential* to control" the transaction—not that he actually did so. *Oracle*, 2025 WL 249066, at *13 n.107 (citation omitted).

As this Court recently warned, determining transaction-specific control based on Musk's "managerial supremacy"—despite his lack of "voting power to elect directors" or "approve transactions"—would "greatly affect the direction of [Delaware] law." *SolarCity*, 298 A.3d at 699 n.117. "[E]xpanding the definition of a 'controller'" to include influential executives who cannot exercise control based on stock ownership or voting power, and who do not actually exercise control over a particular transaction, would detach the controlling stockholder doctrine from its foundation in stockholding. *Id.*; *see, e.g.*, *Oracle*, 2025 WL 249066, at *12 (citing *Corwin*, 125 A.2d at 307). Simply put, the Court of Chancery's conclusion "that Musk was so talented and visionary that the company could not succeed without him … does not rationally imply that [he] is a controlling stockholder." Lawrence Hamermesh, Jack B. Jacobs & Leo E. Strine, Jr., *Optimizing the World's Leading Corporate Law*, 77 Bus. Law. 321, 346 (2022); *see* Stephen M. Bainbridge, *A Course Correction for Controlling Shareholder Transactions*, __ Del. J. Corp. L. __ (forthcoming 2025) (pp. 23-24).[2] The court's reliance on Musk's managerial stature "conflates controlling stockholder status" with influence over the Board—which informs the separate independence inquiry, not the controlling stockholder inquiry. Note, *Controller Confusion: Realigning Controlling Stockholders and Controlled Boards*, 133 Harv. L. Rev. 1706, 1713 (2020).

Indeed, under the Court of Chancery's reasoning, a highly influential CEO could be deemed a controlling stockholder even if he owns *no* stock. *See id.* at 1715. Deeming such a *non*-stockholder a *controlling* stockholder would be a contradiction in logic and terms, which exposes the flaws in the court's analysis. Delaware courts

[2] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5022685.

regularly analyze transactions by corporations led by "visionary" executives who would seem to qualify as Superstar CEOs under any definition, yet those courts have never found that those executives' status alone renders them controlling stockholders. *Oracle*, 2025 WL 249066, at *13 (discussing Larry Ellison); *see, e.g.*, *Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd.*, 177 A.3d 1, 25 (Del. 2017) (discussing Michael Dell). That restraint is justified. Subjecting the most *effective* executives to the most *skeptical* judicial review would punish success while rewarding mediocrity, contrary to Delaware precedent, sound principles of corporate governance, and common business sense.

A rule equating purported Superstar CEO status with control would also be practically impossible to administer and frustrate the careful transaction planning that Delaware law encourages. Even the law review article that the Court of Chancery cited for its Superstar CEO concept acknowledges the lack of any "clear test for identifying these CEOs" and "the difficulty of identifying superstar CEOs in real time (and not in hindsight)." Assaf Hamdani & Kobi Kastiel, *Superstar CEOs and Corporate Law*, 100 Wash. U. L. Rev. 1353, 1358, 1367 (2023). Tying control to such an unpredictable and amorphous determination would leave transaction planners to guess whether a court—years into the future, likely following discovery and an evidentiary hearing—will view their "visionary" CEO as more like Ellison or Musk. This Court has stressed the need to give "businesspersons predictable guidance by which to order their relations." *Maffei*, 2025 WL 384054, at *28 (brackets omitted). The Court of Chancery's approach fails to do so.

Relationships with Directors. The Court of Chancery's control analysis also relied on Musk's business and social relationships with some Directors, which it suggested caused them to lose their independence from Musk. Op. 123-127. That analysis conflates the controlling stockholder inquiry with the separate board independence inquiry, a significant error because the consequences of controlling stockholder status (presumptive application of entire fairness review) are more severe than the consequences of a conflicted board (business judgment review after "*Corwin* cleansing"). *SolarCity*, 298 A.3d at 699 n.117. Regardless, the court's reliance on Musk's relationships with Directors does not support the conclusion that he exercised control over *this* transaction. At best, it suggests he had the "potential to control" the transaction, which does not establish transaction-specific control. *Oracle*, 2025 WL 249066, at *13 n.107.

Negotiation of the Award. The Court of Chancery's final category of factors, Op. 127-146, was the only one that addressed the transaction at issue. But the court never concluded that Musk engaged in anything approaching the "domination" of the Board required to establish "actual control of corporation conduct." *Lynch*, 638 A.2d at 1114 (citation omitted); *see Corwin*, 125 A.3d at 307-08. Indeed, the court expressly noted the *absence* of "evidence that Musk set the table for the negotiations by acting in a manipulative or duplicitous manner." Op. 161.

The only actions by Musk that the court identified as evidence of transaction-specific control were his proposal of a compensation structure and requests to adjust the negotiation schedule. Op. 57, 128-133. But Musk's proposed structure was modeled on prior compensation plans that the Tesla Board had approved, Op. 31—hardly evidence of attempted domination by Musk. And Musk's scheduling requests were explicitly made "to make sure Tesla interests come first." A4056. Regardless, the Compensation Committee continued its work, holding numerous meetings in the weeks after Musk purportedly "hit the brakes." Op. 56; *see* A717-721.

Ultimately, the court concluded that Musk *controlled* the transaction because he *participated* in it. But that position drains the control inquiry of meaning. Under the court's approach, every compensation transaction with an executive who sits on the board would trigger entire fairness review because executives (like everyone else) typically participate in the negotiation of their own compensation. Yet even fiduciaries can "insist[ ] on being paid an amount due to them." *Firefighters' Pension Sys. of Kan. City v. Found. Bldg. Materials, Inc.*, 318 A.3d 1105, 1148 (Del. Ch. 2024). And "the size and structure of executive compensation are inherently matters of judgment." *Brehm v. Eisner*, 746 A.2d 244, 263 (Del. 2000); *see Lewis* *v. Vogelstein*, 699 A.2d 327, 338 (Del. Ch. 1997) (similar). The Court of Chancery's control holding flouts those foundational principles.

2. Business Judgment Review Applies Based On The Board's Independence And The 2018 Stockholder Vote

Because Musk was not a controlling stockholder, the Award is subject to business judgment review so long as *either* the Board was independent *or* the stockholder vote approving the transaction was fully informed. *See* pp. 14-15, *supra*. Although only one of those conditions is necessary, both were satisfied here.

Even if Musk were a controller, the disinterested stockholders' approval of the Award should still trigger business judgment review. This Court affords "great deference" to a board's compensation decisions, *Brehm*, 746 A.2d at 263, unlike transformational transactions like mergers and acquisitions that require stockholder votes, *see* 8 *Del. C.* §§ 242, 251. Indeed, this Court has held that a board's decision on its own members' compensation is entitled to business judgment review if approved by an informed stockholder vote. *Invs. Bancorp*, 177 A.3d at 1211. The same rule should govern a board's decision on executive compensation; there is no reason to have greater suspicion of a board deciding the compensation of a controlling *executive* than a board deciding *its own* compensation.

That position is consistent with this Court's decisions in *Match* and *Maffei*. Although *Match* extended the *MFW* framework beyond the freezeout-merger context, the Court's holding did not involve executive compensation. *See Match*, 315 A.3d at 470 n.157 (noting that Delaware courts have "applied business judgment review to executive compensation decisions involving controlling stockholders" in at least some contexts). *Match* explained that entire fairness review applies only when a controlling stockholder receives a "non-ratable benefit," *id.* at 460, out of concern that the controlling stockholder will benefit at the expense of minority stockholders. That concern does not apply to most executive-compensation arrangements—including this one—because the executive generally receives neither a benefit in his capacity as a stockholder nor any benefit otherwise available to minority stockholders. *Maffei* confirms as much, cautioning that "the mere fact that a controller may be better positioned after a transaction does not necessarily mean that the controller received a non-ratable benefit." 2025 WL 384054, at *19. The approval of Musk's compensation by "the real parties in interest—the disinterested equity owners"—thus supports business judgment review of the Award regardless of the Court of Chancery's other conclusions. *Corwin*, 125 A.3d at 313.

(a) The Board Was Independent

"Independence means that a director's decision is based on the corporate merits of the subject before the board rather than extraneous considerations or influences." *Aronson v. Lewis*, 473 A.2d 805, 816 (Del. 1984), *overruled in part by Brehm*, 746 A.2d 244. Directors are presumed to be independent, and evidence that they "moved in the same social circles, attended the same weddings, developed business relationships before joining the board, and described each other as 'friends,'" without more, cannot rebut that presumption. *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 845 A.2d 1040, 1051 (Del. 2004). "It is a fact of life that business dealings seldom take place between complete strangers and it would be a strained and artificial rule which required a director to be unacquainted or uninvolved with fellow directors in order to be regarded as independent." *Diep v. Trimaran Pollo Partners, L.L.C.*, 280 A.3d 133, 151-52 (Del. 2022) (internal quotation marks and citation omitted). For example, this Court affirmed that Facebook director Peter Thiel was independent of CEO and founder Mark Zuckerberg even though Thiel was "one of the early investors in Facebook" and "its longest-tenured board member besides Zuckerberg," Thiel was "Zuckerberg's close friend and mentor," and Thiel's firm got "good deal flow" from its "high-profile association with Facebook." *United Food & Com. Workers Union v. Zuckerberg*, 262 A.3d 1034, 1062-63 (Del. 2021).

Under this Court's long-settled precedent, the Court of Chancery erred in concluding that Musk's routine social and business ties to directors Gracias, Murdoch, and Ehrenpreis—including "joint family vacations and attendance at family birthday parties"—compromised their independence. Op. 123-127; *see* Op. 104 n.546. Musk and Gracias attended each other's family birthday parties only "sometimes," A936; their vacations with each other's families were only "for a few days," *id.*; and Musk described his vacations with Murdoch as "email with a view," A936. The Directors also testified without contradiction that they faced no pressure or threats from Musk regarding the Award. A726; A819; A951; A975-976; A1187; A4299-4300. And Denholm—"an extraordinarily credible witness" whose "independence was unquestioned" and who "served as an effective buffer" to Musk, *SolarCity*, 298 A.3d at 710-11—testified that Musk lacked power to remove her from the Board or prevent her reelection. A819. To the contrary, the Directors maintained power to remove Musk. A1158.

The court similarly erred in concluding that investments by Gracias and Ehrenpreis in *other* Musk-related entities made them beholden to Musk. Op. 123-125. A "director's investment in another company allegedly controlled by the same individual who is said to be a dominating force in the company under analysis does not suggest, without more, that the investing director lacks independence." *Zimmerman v. Braddock*, 2002 WL 31926608, at *11 (Del. Ch. Dec. 20, 2002). If anything, it was the other way around: Musk would be beholden to *them* if he wanted them to remain invested.

Nor did Denholm's and Buss's compensation as Tesla Directors make them beholden to Musk. Op. 125-126. While director compensation can undermine independence when set by the putative controller, *Tremont*, 694 A.2d at 429-30, it is undisputed that Musk lacked control over Denholm's or Buss's compensation, A819, A1187, A4016. The Directors' compensation in stock, moreover, aligned their interests with those of other Tesla stockholders by giving the Directors a "personal incentive" to generate stockholder value. *In re Dollar Thrifty S'holder Litig.*, 14 A.3d 573, 600 (Del. Ch. 2010). And while the Directors' Tesla stock proved lucrative, the Directors explained that the increases in value occurred almost entirely *after* they approved the 2018 Award. *See* A839 (Denholm); A760-761 (Ehrenpreis).

The Court of Chancery accordingly erred in concluding that Tesla's directors lacked independence. The independence of the Board, combined with the conclusion that Musk is not a controller, warrants reversal. *See* 8 *Del. C.* § 144.

(b) The 2018 Stockholder Vote Was Fully Informed

Reversal is also warranted because of the "fully informed, uncoerced vote of the disinterested stockholders" to approve the Award. *Corwin*, 125 A.3d at 309. Under the "long-standing policy of [Delaware] law," the "uncertainties and costs of judicial second-guessing" can be avoided "when the disinterested stockholders have had the free and informed chance to decide on the economic merits of a transaction." *Id.* at 313. Such stockholders need no additional protection from courts because they "can easily protect themselves at the ballot box by simply voting no." *Id.*

In general, a stockholder vote is fully informed when stockholders have "all material information" about the transaction. *Pfeffer v. Redstone*, 965 A.2d 676, 686 (Del. 2009). "An omitted fact is material" only "if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote." *SolarCity*, 298 A.3d at 712 (citation omitted). In the context of compensation plans, disclosure to stockholders of "specific compensation decisions" enables valid approval. *Invs. Bancorp*, 177 A.3d at 1211; *see id.* at 1217-22 (surveying case law dating back to the 1950s). Simply put, "[w]hen stockholders know precisely what they are approving, ratification will generally apply." *Id.* at 1222.

Tesla met that standard here. The 2018 proxy disclosed the specific terms of the Award in clear written and graphical terms. A4106-4107 (written summary); A4112-4114 (tables); A4115-4119 (detailed description of plan mechanics). The proxy also detailed the Award's purposes and consequences for stockholders. A4119-4121 (purpose); A4122-4123 (consequences). Those disclosures enabled stockholders to assess precisely what they were giving up (the Award's maximum potential value of $55.8 billion and grant-date fair value of $2.3 billion), what they would get in return (the market-capitalization growth and operational milestones that had to be satisfied), and what protections ensured alignment of interests (the Hold Period, Leadership Requirement, M&A Provision, Sustained-Growth Requirements, and Clawback Provision). In short, "the proxy statements disclosed all material terms of the precise equity awards that the stockholders were being asked to approve." *Cambridge Ret. Sys. v. Bosnjak*, 2014 WL 2930869, at *9 (Del. Ch. June 26, 2014). The stockholders' resulting approval was accordingly dispositive.

The Court of Chancery credited Defendants' position that the proxy fully disclosed "the economic terms" of the Award. Op. 156. The court nevertheless concluded that the 2018 vote was not fully informed because Tesla also should have disclosed certain director relationships and negotiation-process details. Op. 148-156. That was error. As matter of law, it is not "substantially likely that the omitted" details identified by the court would have "significantly altered the total mix of information made available" to Tesla stockholders given the proxy's disclosure of the Award's material economic terms. *SolarCity*, 298 A.3d at 712 (citation omitted).

Director Relationships. The Court of Chancery first erred in concluding that the proxy "inaccurately described key directors"—namely Ehrenpreis and Gracias—"as independent." Op. 3, 150. In fact, the proxy statement followed the required NASDAQ definition of an "independent director": one who passes specified bright-line tests for independence and, in the opinion of the Board, has no relationship that "would interfere with the exercise of independent judgment in carrying out the responsibilities of a director." NASDAQ R. 5605(a)(2); *see* A1156. The supposedly undisclosed director relationships involved routine business and social connections that this Court has repeatedly held do not compromise independence. *See* § I.C.2.a, *supra*. And in any event, those relationships were immaterial to "the economic merits of a transaction," which the stockholders could readily assess "for themselves" based on the proxy's full disclosure of the Award's material terms. *Corwin*, 125 A.3d at 313; *see Invs. Bancorp*, 177 A.3d at 1222.

Process Disclosures. The proxy's purported nondisclosure of certain process details is similarly immaterial. "'Fully informed' does not mean infinitely informed." *In re Merge Healthcare Inc. S'holder Litig.*, 2017 WL 395981, at *9 (Del. Ch. Jan. 30, 2017). Delaware law has never required a "play-by-play description of [transaction] negotiations," particularly when (as here) the transaction's terms are thoroughly explained. *Globis Partners, L.P. v. Plumtree Software, Inc.*, 2007 WL 4292024, at *14 (Del. Ch. Nov. 30, 2007). To the contrary, Delaware courts reject the "fallacy that increasingly detailed disclosure is always material and beneficial." *Abrons v. Marée*, 911 A.2d 805, 813 (Del. Ch. 2006) (citation omitted).

The Court of Chancery relied on cases—drawn mostly from the merger context—involving disclosure issues entirely different from those presented here. Op. 156-157. For example, in *Weinberger v. UOP, Inc.*, the company concealed a study showing the merger price was inadequate. 457 A.2d 701, 707-11 (Del. 1983). In *Sample v. Morgan*, the company hid the true purpose and key recipients of a stock plan. 914 A.2d 647, 651-52 (Del. Ch. 2007). In *van der Fluit v. Yates*, "vague language regarding the identities of the negotiators" obscured the participants in the transaction. 2017 WL 5953514, at *8 (Del. Ch. Nov. 30, 2017). Nothing resembling those defects was present here. Tesla's stockholders knew the price, purpose, and participants in the transaction—everything material to assessing whether to accept or reject the Award. *See Invs. Bancorp*, 177 A.3d at 1217-22.

The court's suggestion that the proxy should have disclosed the Board's "failure to benchmark," Op. 154, is also misplaced. "Omitting a statement that the board *did not* do something is not material, because 'requiring disclosure of every material event that occurred *and* every decision not to pursue another option would make proxy statements so voluminous that they would be practically useless.'" *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1132 (Del. Ch. 2011) (citation omitted). Moreover, the proxy explained that Musk's prior compensation plans were what the Board considered the only meaningful comparisons for the Award—and those were fully disclosed. A4111 (chart comparing prior plans); *see Cambridge*, 2014 WL 2930869, at *9 ("[T]he absence of benchmarking information … was not a material omission … because the proxy statements disclosed all material terms … that the stockholders were being asked to approve.").

Ultimately, Tesla's stockholders knew "exactly what they [were] being asked to approve," and did so by a wide margin. *Invs. Bancorp*, 177 A.3d at 1211. Even if some disclosure deficiency occurred, no "single disclosure violation" could have meaningfully "affect[ed] the total mix provided to stockholders." *SolarCity*, 298 A.3d at 713. The stockholder vote was accordingly fully informed and provides an independent basis for business judgment review. *Corwin*, 125 A.3d at 305-06.

II. THE AWARD WAS ENTIRELY FAIR

A. Question Presented

Did the Court of Chancery err by concluding that the Award was not entirely fair? This issue was raised (A555-585; A1325-1365; A1597-1653) and decided below (Op. 158-192).

B. Scope Of Review

This Court's review of the "application of legal principles," including the entire fairness standard, "is plenary and requires no deference." *SolarCity*, 298 A.3d at 699. A court applying entire fairness legally errs by, among other things, misallocating the burden, improperly formulating the standard, or overlooking key indicia of fairness. *Nixon v. Blackwell*, 626 A.2d 1366, 1377 (Del. 1993).

C. Merits Of Argument

Even if entire fairness review applies—or, as in *SolarCity*, this Court assumes that it does, 298 A.3d at 699—the Court should reverse. "A determination that a transaction must be subjected to an entire fairness analysis is not an implication of liability." *Id.* at 700 (citation omitted). The entire fairness test asks only whether a transaction falls within a "range of fairness"—a flexible standard recognizing that "perfection" is not required. *Id.* at 700, 717 (citations omitted). This Court has accordingly stressed that the entire fairness standard is not "impossible to satisfy." *Maffei*, 2025 WL 384054, at *17 n.159; *see SolarCity*, 298 A.3d at 700 n.125; *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1163 (Del. 1995).

Here, Tesla's Board crafted what may be the most stockholder-protective compensation package ever adopted by a major public company. The Award's innovative structure offered Musk nothing unless he helped deliver unprecedented stockholder value, backed by multiple safeguards that worked in concert to ensure sustainable growth. When approved in 2018, sophisticated observers deemed the milestones "laughably impossible." A4097. That Tesla ultimately achieved these audacious goals—creating over $700 billion in stockholder value while hitting nearly every operational target—validates the Board's approach. *See, e.g.*, Jeffrey L. Coles, et al., *Why Tesla Is Right To Give Musk a $56 Billion Pay Package*, Fortune (Sept. 27, 2024) ("Based on our research as finance professors, our conclusion is that Musk was unlikely to earn anywhere near that much at the time of the grant, and, if he did, it would be well-deserved.").[3]

The Court of Chancery nonetheless concluded that the Award was unfair based on fundamental legal errors. *First*, the court wrongly placed the burden on Defendants to prove entire fairness when the informed stockholder vote should have (at a minimum) shifted the burden to Plaintiff. *Second*, the court improperly formulated the entire fairness standard, failing to assess whether the Award's terms fell within a reasonable range of fairness and instead speculating whether Tesla

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[3] https://fortune.com/2024/09/27/musk-tesla-56-billion-compensation.

theoretically could have motivated identical performance with no new compensation. *Third*, the court overlooked overwhelming indicia of fairness, including the all-upside nature of the Award's structure, its extensive stockholder protections, and the massive $700 billion growth in stockholder value that followed from an investment valued at $2.3 billion. At bottom, concluding that the Award was unfair to Tesla stockholders contradicts Delaware law and common sense. Reversal is accordingly warranted no matter who bears the burden.

1. Plaintiff Bears The Burden To Prove The Award Was Unfair

The Court of Chancery's entire fairness analysis began with a threshold error: misallocating the burden of proof. When either independent directors or fully informed, disinterested stockholders approve a transaction between a controlling stockholder and a controlled corporation, there should at a minimum be a shift in the burden to prove entire fairness. *See Match*, 315 A.3d at 462-63. Because Tesla's independent directors and fully informed, disinterested stockholders approved the Award, *see* § I.C.2, *supra*, the court at least should have required Plaintiff to prove unfairness. Vacatur is warranted on that basis alone.

2. The Price Was Fair

Price is the "paramount consideration" in entire fairness review. *SolarCity*, 298 A.3d at 718. Fair price analysis focuses on the relevant "economic and financial considerations" and compares the value of what a corporation "got" to the value of what it "gave" in the transaction. *Id.* at 700. By any measure, Tesla stockholders got far more than they gave through the Award, making the price fundamentally fair.

The Award embodied what Delaware corporate-governance policy seeks but rarely finds: full alignment between executive pay and stockholder returns. Unlike typical CEO packages that guarantee substantial compensation regardless of results, A1164, Tesla's Board adopted a purely performance-based structure with zero guaranteed compensation. If Tesla performed just adequately, or even reasonably well, Musk would get nothing. A1188. Each tranche of the Award required Tesla to grow by $50 billion in market capitalization—roughly its entire market value in 2018—while meeting an equally ambitious operational target. A1158. The Award also incorporated multiple, interlocking safeguards not typically found in CEO compensation plans, including the Leadership Requirement, Clawback Provision, M&A Provision, and Hold Period detailed above. A4113-4118; *see* p. 8, *supra*. As observers summarized at the time, the Award was "about as friendly to shareholders as they come." A4097.

The Court of Chancery's contrary holding resulted from multiple legal errors. *First*, rather than assess whether the Award's terms fell within a "range of fairness," *SolarCity*, 298 A.3d at 717 (citation omitted), the court asked a counterfactual question: could the company have gotten a better deal? The court suggested that Musk's preexisting 21.9% equity stake diminished the need for additional performance-based compensation, asking whether "the plan [was] even necessary for Tesla to retain Musk and achieve its goals," Op. 6, or at least whether incentives of the "*this* magnitude" were necessary, Op. 182. This framing inverted the entire fairness test. Delaware law asks whether a transaction was fair to the corporation and its stockholders, not whether some hypothetical alternative might have worked better. *See Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1134, 1143 (Del. Ch. 1994) (rejecting analysis focused on what "might have been" because actual deal price was "more than 'fair'"), *aff'd*, 663 A.2d 1156 (Del. 1995).

As a factual matter, there was *no evidence* that Musk would have accepted materially less than the Award. To the contrary, he made clear he wanted a plan "structured like the 2012 Grant" but with even more challenging goals. Op. 31. In focusing on Musk's existing stake, the court ignored Musk's role as a serial entrepreneur with numerous companies competing for his attention. As just one example, Musk's roughly 50% stake in SpaceX was worth approximately the same as his Tesla stake in 2018, meaning every dollar of growth at SpaceX was more than twice as valuable to him personally. A1080. The Board thus confronted a real risk that Musk would redirect his energy to other pursuits absent powerful incentives to drive Tesla's growth, especially because his existing shares were freely tradeable. A775. The Award's demanding performance requirements, five-year holding period, and purely contingent payouts were critical to securing Musk's long-term commitment during Tesla's pivotal transition to mass production. A725.

Statements in which Musk expressed commitment to Tesla, *see* Op. 38, 161, do not show otherwise, as they do not suggest that Musk would remain Tesla's driving force without fair compensation. Indeed, right after Musk expressed desire to remain "actively involved" at Tesla, he indicated he would not be "CEO forever." A4049-4050. The Board had every reason to take both statements seriously given Musk's other business pursuits and ambitions. Op. 14-15; A932. The court properly recognized that "Musk genuinely" believes that "he has a moral obligation to direct his wealth toward" colonizing Mars and "views his compensation from Tesla as a means of bankrolling that mission," Op. 15, yet failed to square those sui generis ambitions with its conclusion that Musk should be treated like other CEOs holding valuable equity stakes who are willing to work without incentives for additional pay, Op. 177-178.

Second, the court's incorrect framing of the standard infected its assessment of the Award's "give" and "get." The court framed the "give" in financial terms, describing it as "an unfathomable sum" that was "more than 30x greater than its nearest comparable plan." Op. 180. In describing the "get," by contrast, the court focused on the non-financial benefits of Musk's "retention, engagement, and alignment." Op. 178. Only through that asymmetrical framing could the court question why Tesla "ha[d] to 'give' anything" to Musk. Op. 178. But the fair price analysis focuses on the "*economic and financial* considerations of the proposed [transaction]." *SolarCity*, 298 A.3d at 700 (emphasis added) (quoting *Weinberger*, 457 A.2d at 711). Remarkably, the court's give/get analysis did not even acknowledge *the $700 billion increase in stockholder value* that the Award helped generate in return for an investment valued at $2.3 billion—a monumental "get" that defined this historic transaction. That was fundamental legal error. *See Nixon*, 626 A.2d at 1377 (reversing finding that directors had not proven entire fairness when Court of Chancery "erred as a matter of law" by "fail[ing] to evaluate and articulate" corporate benefits of challenged transactions).

The court's approach to the Award's stockholder safeguards was similarly misguided. Rather than evaluate how those safeguards worked together as an integrated system to protect stockholders, the court dissected each in isolation and theorized how it could have been enhanced. The court's analysis devolved into a wish list of potential improvements:

- It dismissed the operational milestones because some aligned with Tesla's conservative internal projections, Op. 185-187, ignoring that alignment with reasonable growth targets reflects sound incentive design, and that the projections assumed Musk's continued leadership, A4528.

- It critiqued the Sustained-Growth Requirements for lacking perpetual protections, Op. 184, and the Hold Period for not restricting Musk's existing shares, Op. 185, effectively demanding the best possible outcome for stockholders, not a deal fair for all parties.

- It minimized vital protections by characterizing the M&A Provision as "standard" and criticizing the Leadership Requirement as too flexible, Op. 184-185.

That approach misapprehends the entire fairness standard. The test is whether the negotiated terms, considered holistically, fall within a reasonable range—not whether a court can imagine theoretically perfect terms. *See SolarCity*, 298 A.3d at 717. In reality, the Award's comprehensive safeguards worked exactly as designed: they ensured Tesla's extraordinary growth was organic, sustainable, and overwhelmingly shared with minority stockholders.

Third, the Court of Chancery legally erred by dismissing the overwhelming stockholder approval as evidence of fair price. Op. 190-191. This Court has long emphasized that informed stockholder approval provides "substantial evidence of fairness" even if it does not invoke business judgment review or shift the entire fairness burden. *Cinerama*, 663 A.2d at 1176; *see SolarCity*, 298 A.3d at 727-28. Here, Tesla's stockholders overwhelmingly endorsed the Award—with 73% of present and disinterested shares voting in favor despite full disclosure of its potential $55.8 billion maximum value. *See* § I.C.2.b, *supra*. As in *SolarCity*, that resounding stockholder approval strongly "weigh[s] in favor of fairness." 298 A.3d at 728.

The Court of Chancery suggested that the stockholder vote in *SolarCity* could be distinguished because it involved "significant public information," an efficient market, and "strong independent" oversight. Op. 191. But Tesla stockholders here too had extensive public information about Musk, his competing interests, and the Award's terms. Market efficiency was relevant in *SolarCity* only to valuing the target company's shares, not to gauging the integrity of stockholder choice. 298 A.3d at 728-29 & n.341. And the same independent director praised in *SolarCity*—Denholm—helped craft this Award through her role on the Compensation Committee. Op. 24, 80.

3. The Process Was Fair

In addition to its fair price, the Award resulted from fair dealing. Delaware law evaluates procedural fairness by examining four aspects of the Award: initiation, negotiation, structure, and approval. *Tremont*, 694 A.2d at 430-31. The standard does not demand a "pitch perfect" process at each stage. *SolarCity*, 298 A.3d at 734. Even a "clearly deficient" aspect of the process does "not preclude a finding of entire fairness." *Cinerama*, 663 A.2d at 1175. Indeed, this Court recently affirmed that Tesla's acquisition of SolarCity resulted from fair dealing despite "process flaws," Musk's assumed "managerial supremacy," and assumed "board-level conflicts." *SolarCity*, 298 A.3d at 695. The process here—involving many of the same independent directors, use of outside advisors, and stockholder approval—was fair for many of the same reasons. *Id.* at 695, 703-12. The Court of Chancery concluded otherwise based on several legal errors.

Initiation. The court's own findings illustrate the fairness of the Award's initiation. The court found that "[t]he timing of the first discussion was dictated by Ehrenpreis, not Musk," and there was no "evidence that Musk set the table for negotiations by acting in a manipulative or duplicitous manner." Op. 161. Although the court suggested that Musk's subsequent "red light, green light" approach imposed time pressures, Op. 162-163, the fact remains that Ehrenpreis—not Musk—initiated the process. Regardless, a controlling stockholder's initiation "is not incompatible with the concept of fair dealing so long as the controlling shareholder does not gain financial advantage at the expense of the controlled company." *Tremont*, 694 A.2d at 431; *see Cinerama*, 663 A.2d at 1172. Here, the court expressly found "no evidence" that "starting negotiation in April 2017 gave Musk any significant advantage at the expense of the minority stockholders." Op. 161.

Negotiations. The negotiations further demonstrate fair dealing. The Compensation Committee and the Board deliberated through ten meetings over nine months, retained and consulted outside advisors, and solicited stockholder feedback. Op. 5, 37, 42 & n.303, 51-52. The Board asked "hard questions about the structure, how it worked," and "how shareholders would view it." A1220. And as explained above, the Board secured multiple stockholder protections. *See* p. 8, *supra*. Even Musk's oft-cited comment about "negotiating against [him]self" reinforces the fairness of the process; it referenced his voluntary downward correction of his counterproposal to better reflect his original intent, thus providing evidence of good-faith negotiations—not unfairness. Op. 66, 134.

The Court of Chancery nonetheless faulted the Board for having a "controlled mindset." Op. 127-128, 168 (quotation omitted). But that theory fails for many reasons. For one, the court conflated control with fair dealing—distinct inquiries under Delaware law. *SolarCity*, 298 A.3d at 694-95. Even if Musk's relationships with the Directors contributed to a finding of legal control (*contra* § I.C.1, *supra*), the Directors' involvement still contributed to a fair process. *SolarCity*, 298 A.3d at 710-11. The court also found unfairness arising from the timing of the negotiations. Op. 127-133. But by the court's own account, the Board and Musk agreed to pause announcing his compensation to avoid "releasing controversial news on the heels of controversial news," Op. 64 (citations omitted)—not to provide Musk any "financial advantage" of the kind relevant to entire fairness analysis, *Tremont*, 694 A.2d at 431. Other timing adjustments allowed for more thorough diligence or let the Board focus on critical operational matters. A740; A770; A926; *see Tremont*, 694 A.2d at 431 (concluding timing was fair because board was "afforded sufficient time to consider the proposal"). In short, the court erred in criticizing the timing without tying it to any harm to the company or stockholders.

The court likewise wrongly concluded that "cooperative" negotiations and a "collaborative process" were "antithetical to arm's-length bargaining." Op. 168.

Executive-compensation negotiations are typically "cooperative and collaborative" when "there's a good relationship between the board and the CEO." A770. Here, cooperation proved effective; Musk lowered his ask because negotiations remained constructive. *See* A754. The court legally erred by rigidly applying merger cases—in which fair process attempts to replicate negotiations between independent commercial counterparties—in the context of executive compensation, where the parties have a preexisting and ongoing relationship to protect. Op. 164-165 & nn.795-796; *see Nixon*, 626 A.2d at 1381 (entire fairness eschews "rigid doctrine").

The court further erred in discounting the independent advisors' views for lack of benchmarking. Op. 167. The record shows traditional benchmarking would have been unhelpful because the only meaningful precedent for the Award was Musk's prior compensation plans with Tesla, on which this Award sought to improve. A1161-1162; A1204. To mandate benchmarking would be to preclude innovation in executive compensation, undermining Delaware's well-established policy in favor of "flexibility and private ordering." *Maffei*, 2025 WL 384054, at *30.

Structure and Approval. Finally, the structure of the process and approval of the Award confirm its fairness. As explained, the Award was negotiated by an independent Compensation Committee, approved by independent Directors with Musk recused, and contingent on additional approval by Tesla's disinterested stockholders—"one of the most extolled and powerful protections afforded

Delaware stockholders." *SolarCity*, 298 A.3d at 705 (citation omitted). Those multiple layers of approvals—particularly the lopsided vote in favor of the Award by Tesla's "sophisticat[ed] … stockholder base"—provide a "strong indicator" of fairness. *Id.* at 705, 715. Even if the process fell short of perfection, that is not the standard "in an entire fairness analysis." *Cinerama*, 663 A.2d at 1179; *see Weinberger*, 457 A.2d at 709 n.7. "The question is whether the [Award] was entirely fair." *SolarCity*, 298 A.3d at 734. The Court of Chancery legally erred in failing to recognize that it was.

III. RESCISSION IS AN IMPROPER REMEDY

A. Question Presented

Did the Court of Chancery legally err in ordering rescission? The issue was raised (A1743) and decided below (Op. 198).

B. Scope Of Review

Whether "an equitable remedy exists or is applied using the correct standards is an issue of law and reviewed de novo." *Schock v. Nash*, 732 A.2d 217, 232 (Del. 1999). Exercise of equitable power is reviewed for abuse of discretion. *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 817 A.2d 160, 174-75 (Del. 2002).

C. Merits Of Argument

"Rescission of a transaction … years after it was consummated" is "an extraordinary remedy" that can be justified only if it returns all parties to a transaction to their positions before it occurred. *Cobalt Operating v. James Crystal Enters., LLC*, 2007 WL 2142926, at *29 (Del. Ch. July 20, 2007), *aff'd*, 945 A.2d 594 (Del. 2008). The Court of Chancery's rescission remedy resulted from two legal errors: (1) failing to find that rescission could restore Musk, Tesla, and the stockholders to the status quo ante, and (2) improperly placing the burden on Defendants to establish a viable alternative to total rescission of the Award. Thus, even if this Court were to affirm on liability, it should vacate the rescission remedy. Because Plaintiff failed to introduce evidence to support any other remedy, that should be the end of the case. At most, Plaintiff is entitled to nominal damages.

1. The Court Of Chancery Legally Erred In Ruling That Rescission Could Restore The Status Quo Ante

The purpose of the "rare" and "extraordinary equitable remedy of rescission," *Grzybowski v. Tracy*, 2013 WL 4053515, at *7 (Del. Ch. Aug. 9, 2013), is "to return the parties to the status quo" by abrogating or "unmaking" a transaction, *Geronta Funding v. Brighthouse Life Ins.*, 284 A.3d 47, 61 (Del. 2022). For rescission to be proper, it must return all transaction participants to their prior positions. *Id.* Of particular relevance here, "the rescinding party must restore everything of value it has received under the contract from the other party." *Id.* at 63-64. Rescission is improper when it is "impossible for the Court to 'unscramble the eggs'" for at least one party. *Stenta v. Gen. Motors Corp.*, 2009 WL 1509299, at *10 (Del. Super. Ct. May 29, 2009) (citation omitted), *aff'd*, 7 A.3d 485 (Del. 2010); *see In re Sunbelt Beverage Corp. S'holder Litig.*, 2010 WL 26539, at *14 (Del. Ch. Jan. 5, 2010) (declining to order rescission because transaction was "too complex to unscramble" and there were "practical difficulties in crafting rescissory relief").

Rescission of the Award is improper because restoring the status quo ante is impossible for *any* of the participants in the transaction—let alone *all* of them, as required to support a rescission remedy. Musk cannot "unscramble" the years of work he did to grow Tesla's value by more than 1400% in reliance on the Award, reclaim the nights he slept on the factory floor, or unwork the grueling hours of "sheer … pain" he put in to meet the company's audacious goals instead of pursuing other career and financial opportunities. Op. 56. Nor can Tesla's stockholders return the benefits they received from Musk's performance, including the massive increases in value the company's explosive growth produced. And Tesla cannot be returned to a status quo where an incentive structure valued at $2.3 billion was sufficient to compensate Musk for 10 years of future service, no matter how astronomical Tesla's success. Rescission is thus inappropriate and unavailable.

The Court of Chancery reached the opposite conclusion principally because Musk had not yet exercised the stock options provided by the Award. Op. 198. But the court legally erred in failing to recognize all of the ways—just described—in which rescission could not restore the status quo ante. The court suggested that Musk's "preexisting equity stake" suffices to ensure that he benefitted from the growth he led. Op. 198. But Musk's preexisting equity stake is irrelevant to the rescission analysis because it was not part of the "consideration" for the Award. *Ravenswood Inv. Co. v. Est. of Winmill*, 2018 WL 1410860, at *21 n.188 (Del. Ch. Mar. 21, 2018) (citation omitted), *aff'd*, 210 A.3d 705 (Del. 2019). Musk agreed to exchange his labor for the opportunity to acquire *additional* equity *on top of* his preexisting equity stake—which he could have sold at any time, thereby eliminating any benefit to him from the company's growth.

More fundamentally, the court's conclusion that equity supports rescinding the compensation promises Tesla made to Musk is contrary to common sense and human nature. As Musk told the Special Committee, he "like most people, … wants to be treated fairly and with respect," and "he feels that he worked extraordinarily hard, and made many sacrifices, to meet the terms of the deal that had been agreed on." A1930. It is inequitable to revoke that deal in its entirety after the fact.

2. The Court Of Chancery Legally Erred In Requiring Defendants To Identify An Alternative Remedy

The Court of Chancery separately erred in rescinding the Award based on Defendants' supposed "fail[ure] to meet their burden" to identify a "viable alternative" short of complete rescission. Op. 198-199. Even under entire fairness review, Plaintiff bears the burden to establish causally related damages, and it was Plaintiff's burden—not Defendants'—"to establish an entitlement to rescission." *ENI Holdings, LLC v. KBR Grp. Holdings, LLC*, 2013 WL 6186326, at *24 (Del. Ch. Nov. 27, 2013). Plaintiff failed to do that, so rescission was improper. "Equity is not a license to make stuff up." *Ravenswood*, 2018 WL 1410860, at *2.

The court wrongly criticized Defendants for "fail[ing] to identify any logically defensible delta between the unfair [Award] and a fair one." Op. 199. That was not Defendants' responsibility. Defendants maintain the Award *was* fair; requiring them to defend an alternative, lesser compensation package would put them in an impossible position. It was *Plaintiff's* burden to establish the fairness of a rescission remedy, whether partial or total. And Plaintiff's failure to establish a fair value of the Award that could support partial rescission cannot mean that the equitable result is a *total* rescission reducing the value of the Award to zero.

In ruling that Defendants bore the burden to identify a "viable alternative" to rescission, the court relied on *Valeant Pharmaceuticals International v. Jerney*, 921 A.2d 732 (Del. Ch. 2007). But *Valeant* ordered disgorgement, not rescission. *Id.* at 736, 744-45, 752. While rescission focuses on undoing a contract and restoring the status quo ante, disgorgement aims to strip the wrongdoer of any ill-gotten gains. *Valeant*'s assessment of whether the defendant met his burden as to that remedy is thus inapposite here, and the Court should vacate the rescission remedy.

3. At Most, Plaintiff Is Entitled To Nominal Damages

With the rescission remedy vacated, Plaintiff would bear the burden of demonstrating another appropriate form of relief. *Ravenswood*, 2018 WL 1410860, at *2. Plaintiff has not done so. At most, Plaintiff could arguably receive "an assessment of nominal damages," which Delaware courts award when plaintiffs "fail[ ] to present any evidence upon which the [c]ourt could fashion a damages award in some other form." *Id.* In *Ravenswood*, for example, the court granted "nominal damages in the amount of $1" for a fiduciary-duty breach in adopting incentive-based stock-option grants as executive compensation—the same claim that Plaintiff brings here. *Id.* at *25. A similar award is the most Plaintiff should receive if the Court affirms on liability.

IV. RESCISSION IS UNWARRANTED AFTER RATIFICATION

A. Question Presented

Did the Court of Chancery legally err in entering judgment for Plaintiff even after Tesla's disinterested stockholders voted to ratify the Award? This issue was raised (A2980) and decided below (Rat. Op. 1-2).

B. Scope Of Review

Review of the Court of Chancery's "formulation and application of legal principles" is de novo "and requires no deference." *SolarCity*, 298 A.3d at 699.

C. Merits Of Argument

Apart from all of the errors described above, the Court of Chancery should have entered judgment for Defendants because Tesla's disinterested stockholders ratified the Award in 2024 based on full information about the Award's costs and benefits—including the purported flaws identified in the Court of Chancery's 200-page post-trial opinion. A1917. That informed decision, rendered by "the real parties in interest—the disinterested equity owners," eliminates any legal or logical basis for rescinding the Award. *Corwin*, 125 A.3d at 313; *see Kerbs v. Cal. E. Airways, Inc.*, 90 A.2d 652, 660 (Del. 1952). None of the purported procedural or substantive barriers to ratification that the court identified overcome that straightforward proposition. The errors in the court's ratification decision are comprehensively set out in Tesla's brief, which Defendants incorporate by reference.

CONCLUSION

The judgment should be reversed.

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