EFiled: Apr 17 2025 11:49AM EDT
Filing ID 76090223
Case Number Multi-Case

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-KSJM

AMICUS CURIAE BRIEF OF SEQUOIA CAPITAL IN SUPPORT OF DEFENDANT-APPELLANTS AND REVERSAL

OF COUNSEL:

Stephen Blake
SIMPSON THACHER & BARTLETT LLP
2475 Hanover Street
Palo Alto, California 94302
(650) 251-5000

Dated: April 17, 2025

Michael L. Vild (No. 3042)
CROSS & SIMON, LLC
1105 N. Market Street, Suite 901
Wilmington, Delaware 19801
Telephone: (302) 777-4200
mvild@crosslaw.com

Counsel for Amicus Curiae *Sequoia Capital Operations, LLC*

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Pages

Cases

Other Authorities

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Sequoia Capital Operations, LLC (*Amicus* or "Sequoia") "help[s] the daring build legendary companies" by "partner[ing] with founders across every step of their journey."[1] "Superstar CEO[s]" and "visionary leader[s]" are not only an interest—they are Sequoia's business model.

Sequoia is an SEC registered investment advisor and American venture capital firm headquartered in Menlo Park, California. Sequoia invests in transformational technology companies and actively partners with founders early in a company's life to help fuel innovation. Among others, these founder-partnerships include Brian Chesky,[2] Steve Jobs,[3] Tony Xu,[4] Larry Page,[5] Jensen Huang,[6] Jan

---

[1] *See* Sequoia Cap., https://www.sequoiacap.com (last visited Mar. 17, 2025); Sequoia Cap. – FAQ, https://www.sequoiacap.com/faq/ (last visited Mar. 17, 2025).

[2] *See Brian Chesky*, Sequoia Cap., https://www.sequoiacap.com/founder/brian-chesky/ (last visited Mar. 17, 2025).

[3] *See Steve Jobs*, Sequoia Cap., https://www.sequoiacap.com/founder/steve-jobs/ (last visited Mar. 17, 2025).

[4] *See Tony Xu*, Sequoia Cap., https://www.sequoiacap.com/founder/tony-xu/ (last visited Mar. 17, 2025).

[5] *See Larry Page*, Sequoia Cap., https://www.sequoiacap.com/founder/larry-page/ (last visited Mar. 17, 2025).

[6] *See Jensen Huang*, Sequoia Cap., https://www.sequoiacap.com/founder/jensen-huang/ (last visited Mar. 17, 2025).

Koum,[7] and Steve Chen.[8] Without these and other extraordinary individuals, there would be no AirBnB, Apple, DoorDash, Google, Nvidia, WhatsApp, or YouTube. Since Sequoia's founding in 1972, its approach to investing has led to an outsized impact, with Sequoia-backed companies now accounting for over 30% of the total market value of the NASDAQ.

Amicus is uniquely positioned to bring to the attention of the Court the crucial role of founders in growing technology companies and driving extraordinary investor returns. Founder-driven leadership is a vital company asset that should be encouraged in corporate law, not a basis for legal skepticism or heightened scrutiny. The numbers speak for themselves. For example, a Bain & Co. and Harvard Business Review study analyzed an index of S&P 500 companies in which the founder was still deeply involved and found they performed 3.1 times better than the rest of the market from 1999–2014.[9] Indeed, during the milestone period of Mr. Musk's challenged stock grant, $600 billion in value was created for Tesla

---

[7] *See Jan Koum*, Sequoia Cap., https://www.sequoiacap.com/founder/jan-koum/ (last visited Mar. 17, 2025).

[8] *See Steve Chen*, Sequoia Cap., https://www.sequoiacap.com/founder/steve-chen/ (last visited Mar. 17, 2025).

[9] *See* Chris Zook, *Founder-Led Companies Outperform the Rest—Here's Why*, Har. B. Rev. (Mar. 24, 2016), https://hbr.org/2016/03/founder-led-companies-outperform-the-rest-heres-why.

stockholders.[10]

As a frequent investor in seed, venture, growth and global growth companies, many incorporated in Delaware, *Amicus* has a vested interest in the outcome of this appeal. Venture capital firms such as *Amicus* are key players in allocating capital and fostering American innovation. They value a predictable legal landscape that allows for consistent, accurate evaluation of the risks and opportunities their portfolio companies and potential investments face. Delaware law has long sought to provide such a stable, balanced legal landscape. The judgment below has, however, created meaningful uncertainties regarding both process and outcomes for founder compensation, a key board decision for Sequoia's director nominees and essential to optimizing the incentives necessary to propel founder-led companies to the heights Sequoia aspires to for all its investees.

Amicus submits this brief in order to raise several issues of importance to venture capitalists and the founders with whom they partner: (i) "Superstar CEO[s]" are a positive force, and their role in generating outsized stockholder returns should not trigger negative legal scrutiny; (ii) standards for director independence are in need of greater clarity, particularly with respect to professional and personal relationships; and (iii) deference—to boards and unaffiliated stockholder votes—on

---

[10] *See* Post-Trial Opinion (Appellant Tesla, Inc.'s Opening Brief, Ex. C, "PTO") at 92.

compensation, a quintessential exercise of business judgment, is appropriate.

By its accompanying motion, *Amicus* seeks the Court's acceptance of this brief. *Amicus* thanks the Court for its attention to these important issues.

STATEMENT PURSUANT TO SUPREME COURT RULE 28(C)(4)

Pursuant to Supreme Court Rule 28(c)(4), *Amicus* states that (i) no party's counsel authored this brief in whole or in substantial part; (ii) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (iii) no person—other than *Amicus,* its members, or its counsel—contributed money that was intended to fund preparing or submitting this brief.

ARGUMENT

I. THE FINDING THAT "SUPERSTAR CEO" MUSK CONTROLS TESLA WITH ONLY 21.9% STOCK OWNERSHIP DISCOURAGES FOUNDER-LED INNOVATION AND INCREASES LEGAL UNCERTAINTY FOR FOUNDER-LED COMPANIES.

Central to the PTO's determination that Mr. Musk's compensation was subject to heightened legal scrutiny as Tesla's controller—despite owning only 21.9% of Tesla's common stock, *see* PTO at 115[11]—was the Court of Chancery's finding that "Musk was the paradigmatic 'Superstar CEO,'" *id.* at 2, and that "Superstar CEO status creates a 'distortion field' that interferes with board oversight." *Id.* at 121–122.[12] *Amicus* finds this reasoning difficult to square with venture capitalists' widely held views of visionary founder value, as well as

---

[11] Not only does the PTO find that Mr. Musk was Tesla's controller despite owning only 21.9% of Tesla's common stock, *see* PTO at 115, it cites several other opinions holding, at least at a motion to dismiss, that it is reasonably conceivable that entities with voting power in the mid-teens to mid-20s are a controlling stockholder. *See* PTO at 106 n. 556 (citing, *e.g.*, *FrontFour Cap. Gp. LLC v. Taube*, 2019 WL 1313408, at *21–24 (Del. Ch. Mar. 11, 2019) (founders and officers who collectively owned "less than 15%"); *In re Zhongpin Inc. S'holders Litig.*, 2014 WL 6735457, at *7–8 (Del. Ch. Nov. 26, 2014) (CEO controller owning 17.3%), *rev'd on other grounds sub nom; In re Pattern Energy Gp. Inc. S'holders Litig.*, 2021 WL 1812674, at *41–46 (Del. Ch. May 6, 2021) (stockholder controlling "slightly more than 10%")).

[12] The PTO attributes this moniker to a recent scholarly article that defines it as an "individual[] who directors, investors, and markets believe make a unique contribution to company value." Assaf Hamdani & Kobi Kastiel, *Superstar CEOs and Corporate Law*, 100 Wash. U. L. Rev. 1353 (2023). The PTO finds that "CEO superstardom is relevant to controller status" because it "shifts the balance of power between management, the board, and the stockholders." PTO at 121.

traditional Delaware legal standards and public policy considerations.

First, a principal basis of the PTO's control finding is that Mr. Musk's status as a "Superstar CEO" should be viewed as a legal negative requiring his compensation to be subject to heightened judicial scrutiny, rather than default business judgment deference. *Amicus* respectfully disagrees. "Superstar CEO[s]" and "visionary leader[s]" deliver tremendous value to the companies they lead and the investors who back them. Public policy should support such efforts, not discourage founder-led innovation.

Amicus's perspective on this issue is not born of causal observation. Investing in companies with visionary CEOs is not just important to *Amicus*, it is *Amicus's* business model. Sequoia "strive[s] to be the first true believer[] in the founders of tomorrow's legendary companies—to have conviction in them when the rest of the world does not yet understand their vision."[13] Its investment philosophy actively seeks "outlier founders" with whom to partner.[14] In particular, *Amicus* notes that the value created by visionary founders with whom it has partnered, such as Steve Jobs of Apple and Jensen Huang of Nvidia, cannot be underestimated. It is no accident that these luminary founders are household names, even outside the technology ecosystem. Their visions propelled the creation of vast new categories of

---

[13] Sequoia Cap. – FAQ, *supra* note 1.

[14] *Id.*

technological innovation that, in turn, spawned enormous growth beyond just their adjacent technologies. *Amicus*'s website spotlights founders' journeys, and how their vision and drive have transformed the companies and the world around them. For example, Sequoia spotlights how Eric Yuan's "drive to keep evolving" and daily reflections on improvement are "[c]ore to Yuan's success as a leader" of Zoom.[15] It likewise highlights how Tony Xu grew DoorDash into one of "the decade's biggest startup success stories" and shows that the "lesson[] from DoorDash's story" is to "dream with the entrepreneur."[16]

This Court need not accept Sequoia's *ipse dixit*. The value of a visionary founder is widely accepted.[17] Indeed, there is a "growing mountain of evidence of the superior and more lasting performance of companies where the founder still plays a significant role as CEO." Zook, *supra* note 9. An analysis by Bain & Co. and Harvard Business Review of an index of S&P 500 companies from 1990–2014 found companies in which the founder was still deeply involved performed 3.1 times

---

[15] Kevin Lincoln, *How Eric S. Yuan Connected the World*, Sequoia Cap. (Apr. 13, 2022), https://www.sequoiacap.com/article/eric-yuan-zoom-spotlight/.

[16] *Crucible Moments: EP13*, Sequoia Cap., https://www.sequoiacap.com/podcast/crucible-moments-doordash/#lessons-from-the-journey (last visited Mar. 17, 2025).

[17] This value is recognized by the very article upon which the PTO derives the "Superstar CEO" label. *See* Hamdani & Kastiel, *supra*, at 1372 ("Management scholars and financial economists, in contrast, have developed a rich body of literature on the link between individual CEOs and firm value.").

better than the rest. *See id.* Other studies have underscored the value of founder-led companies. For example:

- Study finding positive causal effect of founder-CEOs on firm performance.[18]

- Study finding that founder-CEO firms invest more in research and development, have higher capital expenditures, and make more focused mergers and acquisitions; investors in such companies also earned excess and abnormal returns.[19]

- Study finding that companies led by U.S. entrepreneurs provide better stock performance than several stock market indices primarily comprised of non-entrepreneur-led U.S. companies.[20]

- Study finding that innovations of founder CEO-managed firms create more financial value than the innovations of professional CEO-managed firms.[21]

Amicus respectfully questions why founder involvement should subject corporate decision making to heightened scrutiny. Having a motivated founder at the helm of a corporation should not be conflated with that founder having control

---

[18] *See* Renée Adams et al., *Understanding the Relationship Between Founder-CEOs and Firm Performance*, 16 J. Empirical Fin. 136, 136–137 (2009).

[19] *See* Rüdiger Fahlenbrach, *Founder-CEOs, Investment Decisions, and Stock Market Performance*, 44 J. Fin. & Quantitative Analysis 439, 439 (2009).

[20] *See* Joel M. Shulman, *Are Entrepreneur-Led Companies Better? Evidence from Publicly Traded U.S. Companies: 1998-2010*, 3 J. Risk Fin. Manag. 118, 118 (2010).

[21] *See* Joon Mahn Lee et al., *Founder CEOs and Innovation: Evidence from S&P 500 Firms* 1 (2016), https://ssrn.com/abstract=2733456.

or the ability to exercise coercive powers such as voting out directors, implementing minority-unfriendly transactions, or blocking minority-friendly transactions. Increasing scrutiny on the basis of founder status is inconsistent with traditional conceptions of *de facto* control as being based on "domination by a minority shareholder through actual control of corporation conduct." *Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110, 1114 (Del. 1994) (citing *Citron v. Fairchild Camera & Instrument Corp.*, 569 A.2d 53, 70 (Del. 1989)).[22]

Stated plainly, Delaware law should not subject founders to heightened scrutiny for being an asset and benefit to all stockholders. This Court has previously resisted finding control based on a founder's importance to their company, and should similarly exercise caution here. *See Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd*, 177 A.3d 1, 25, 30 (Del. 2017) (rejecting argument that Michael Dell should be viewed as Dell's controller given his importance as a founder and successful CEO in light of his minority stockholdings and deference to special committee process).

Second, the PTO's emphasis on the role of a "Superstar CEO" in its control findings is also concerning to *Amicus* given the Court of Chancery acknowledges

---

[22] *See also In re Sea-Land Corp. Shareholders Litig.*, 1988 WL 49126, at *3 (Del. Ch. May 13, 1988) (considering "actual domination and control"); *In re Morton's Rest. Group, Inc. Shareholders Litig.*, 74 A.3d 656, 664–65 (Del. Ch. 2013) (same).

"the Superstar CEO designation lacks definitional precision." PTO at 122 n. 632 (acknowledging scholarly criticism that "definitional imprecision could lead to 'vague standards' that 'create uncertainty and encourage litigation[,]' thus diminishing the utility of the Superstar CEO label"). Regardless of the Court's specific findings regarding Mr. Musk, *Amicus* is concerned that the Court of Chancery's reasoning in applying controlling stockholder doctrine based on imprecise considerations sweeps too broadly and could be expanded to a variety of other companies and situations. *Amicus* takes some comfort in this Court's recent decision affirming dismissal of claims in *In re Oracle Corp. Derivative Litig.*, 2025 WL 249066, at *14 (Del. Jan. 21, 2025), where this Court cautioned that "the controlling stockholder question is not a license to sue on every transaction involving a corporation with a founder/visionary leader." Unfortunately, however, the Court's pronouncement comes after nine years of litigation in which labeling Mr. Ellison as a "visionary leader" played a role at the pleading stage, even if the plaintiff's allegations of control did not stand up to scrutiny after trial. Adoption of positive founder attributes as vague labels like "visionary leader" and "Superstar CEO" that may implicate controlling status should be discouraged, as they fuel litigation without a clear nexus to concerns underlying the entire fairness doctrine.

Finally, the PTO's elevation of a vague "Superstar CEO" standard to find a 21.9% minority stockholder to be a controlling stockholder raises concerns for

Amicus about the broader trend of controller expansion that has been noted by multiple learned commentators.[23]

For a minority stockholder to be a controlling stockholder subject to entire fairness review, it must possess "a combination of potent voting power and management control such that the stockholder could be deemed to have effective control of the board without actually owning a majority of stock." *Corwin v. KKR Fin. Holdings. LLC*, 125 A.3d 304, 307 (Del. 2015); *see also In re Oracle Corp.*, 2025 WL 249066, at *12 (same). Given this focus on "potent voting power," it is unsurprising that "it was historically difficult to establish that a stockholder having less than majority ownership was a controlling stockholder." Lawrence A. Hamermesh, et al., *Optimizing the World's Leading Corporate Law: A Twenty-Year Retrospective and Look Ahead*, 77 Bus. Law. 321, 345 (2022).[24] By contrast, the

---

[23] *See, e.g.*, Stephen M. Bainbridge, *A Course Correction for Controlling Shareholder Transactions*, UCLA L., L. & Econ. Rsch. Paper N. 24-07 (2024); Jill E. Fisch & Steven Davidoff Solomon, *Control and its Discontents*, 173 U. Pa. L. Rev. 641, 674 (2025); Note, *Controller Confusion: Realigning Controlling Stockholders and Controlled Boards*, 133 Har. L. Rev. 1706, 1707 (2020).

[24] Central to the control determination was sizeable stockholdings that, when combined with managerial power, approximated the same degree of control held by a majority stockholder. As the Court of Chancery wrote in *Morton's*, "a minority blockholder is not considered to be a controlling stockholder unless it exercises 'such formidable voting and managerial power that [it], as a practical matter, [is] no differently situated than if [it] had majority voting control.'" *In re Morton's Rest Grp., Inc. S'holders Litig.*, 74 A.3d 656, 665 (Del. Ch. 2013). *See also In re Rouse Props, Inc. Fiduciary Litig.*, 2018 WL 1226015, at *11 (Del. Ch. Mar. 9, 2018) (similar); *In re Crimson Expl. Inc. Stockholder Litig.*, 2014 WL

PTO presents a vivid illustration of the dichotomy between traditional concepts of a controlling stockholder and certain recent cases. At 20% ownership, a minority stockholder can neither block nor affirmatively dictate corporate action, nor control director elections. *Amicus* thus finds it difficult to reconcile such ownership with the "formidable voting [power]" needed to ascribe control, and its own experience as a minority stockholder and regular nominator of directors.

Equally problematic is the PTO's use of a "transaction-specific control" analysis to find controller status. *See* PTO at 110, 147. As esteemed commentators have noted, the use of "transaction-specific control" stands on uncertain doctrinal footing and has further served to blur the test for determining controlling stockholder status. *See* Elizabeth Pollman & Lori W. Will, *The Lost History of Transaction-Specific Control*, __ J. Corp. L. __ (forthcoming 2025) (pg. 3), https://ssrn.com/abstract=5138377 (tracing the "uncertain foundation" of "transaction-specific control" and arguing that Delaware should "jettison . . . transactional control as a distinct concept"). For *Amicus*, *post hoc* analysis of "transaction-specific control" makes it exceedingly difficult for board members and their advisors to determine in advance of a decision whether a minority shareholder

---

5449419, at *10-12 (Del. Ch. Oct. 24, 2014); *In re PNB Holding Co. S'holders Litig.*, 2006 WL 2403999, at *9 (Del. Ch. Aug. 18, 2006); *Superior Vision Servs., Inc. v. ReliaStar Life Ins. Co.,* 2006 WL 2521426, at *4 (Del. Ch. Aug. 25, 2006).

will later be found to have been a controller.

Amicus urges this Court to center its controlling stockholder test on objective criteria such a significant stock ownership and eschew vague tests, particularly those that discourage founders from achieving extraordinary outcomes for their companies and all stockholders.

II. THE FINDINGS CONCERNING DIRECTOR INDEPENDENCE FURTHER DOCTRINAL UNCERTAINTY ABOUT WHEN DIRECTOR PROFESSIONAL AND PERSONAL RELATIONSHIPS ARE DISQUALIFYING.

Amicus strongly supports greater clarity and predictability in Delaware corporate law so that concerns about director independence can be addressed *ex ante*, rather than through hindsight-driven litigation. However, the PTO's analysis of the Telsa directors' "varying degrees of ties to Musk" unfortunately does not provide the doctrinal clarity *Amicus* seeks. PTO at 123.

Central to the uncertainty that *Amicus* highlights is Delaware courts' increased focus on director relationships. *See, e.g.*, Randy J. Holland, *Delaware Independent Directors: A Judicial Contextual Evolution,* 24 U. Pa. J. Bus. L. 781, 783–84 (2022).[25] While there is nothing conceptually wrong with analyzing the effect of relationships on director independence, the evolution of Delaware caselaw appears to *Amicus* to have at times veered into a pursuit of an ascetic idealism that fails to recognize the positive nature of relationships in building and growing companies.

Delaware law has traditionally recognized a strong presumption of director independence, as well as an acknowledgement that relationships between directors

---

[25] *See also* Ann Lipton, *The Delaware Contretemps Continues*, Bus. L. Prof. Blog (Apr. 26, 2024), https://www.businesslawprofessors.com/2024/04/the-delaware-contretemps-continues/ (noting this change may "hit Silicon Valley companies particularly hard" given interconnected nature of technology business and importance of relationships).

and/or stockholders and founders are commonplace and do not impair independence. *See In re Martha Stewart Living Omnimedia, Inc. S'holder Litig.*, 2017 WL 3568089, at *20 (Del. Ch. Aug. 18, 2017) ("Our courts have been crystal clear that such bare allegations of a shared interest, or even that the controller and the director travel in the same social circles, are insufficient to rebut the presumption of independence.").[26] Indeed, Delaware jurisprudence continues to articulate the standards for undermining director independence in weighty terms: "a plaintiff 'must demonstrate that the director is beholden to the controlling party or so under [the controller's] influence that [the director's] discretion would be sterilized.'" *Martha Stewart*, 2017 WL 3568089, at *19.[27]

---

[26] *See also Khanna v. McMinn*, 2006 WL 1388744, at *19 (Del. Ch. May 9, 2006) (rejecting independence challenge to "long-time friend" of the controller whose "friendship is 'so close' that they own both homes in the same neighborhood and 'neighboring wineries.'"); *Beam v. Stewart*, 845 A.2d 1040, 1051 (Del. 2004) (finding presumption of independence not rebutted despite allegations that directors "moved in the same social circles, attended the same weddings, developed business relationships before joining the board, and described each other as 'friends'"); E. Norman Veasey, *The Defining Tension in Corporate Governance in America*, 52 Bus. Law. 393, 406 (1997) ("Friendship, golf companionship, and social relationships are not factors that necessarily negate independence. . . . There is nothing to suggest that, on an issue of questioning the loyalty of the CEO, the bridge partner of the CEO cannot act independently as a director. To make a blanket argument otherwise would create a dubious presumption that the director would sell his or her soul for friendship.").

[27] *See also In re Synutra Int'l Inc. S'holder Litig.*, 2018 WL 705702, *3 (Del. Ch. Feb. 2, 2018) (ORDER) ("A director is not independent if his or her decision is

Despite these standards, both this Court and multiple learned commentators have noted great uncertainty in applying independence standards to personal and professional relationships. As former Chief Justice Strine wrote in *Sandys v. Pincus*, 152 A.3d 124, 128 (Del. 2016), the current state of Delaware independence law is "admittedly imprecise." *See also* Gregory H. Shill, *The Independent Board As Shield*, 77 Wash. & Lee L. Rev. 1811, 1833 (2020) ("Delaware decisions regarding independence are characterized by a lack of consistency."); Jeremy McClane & Yaron Nili, *Social Corporate Governance*, 89 Geo. Wash. L. Rev. 932, 958 (2021) ("[D]ecisions in Delaware and elsewhere have taken an inconsistent approach regarding networks; at times, courts have treated far more intimate ties . . . as unproblematic for director independence, while more attenuated ties have raised doubts.").

Amicus contends that a key contributor to this uncertainty is an increasingly advocated view—despite the foundational caselaw cited above—that independent directors must have a monastic existence, *i.e.*, any personal relationships or past business dealings are suspect and potentially disqualifying. However, relationships between directors should be neither surprising nor treated as inherently problematic. Venture capital firms like *Amicus* seek to form strong relationships with founders as

---

based on 'extraneous considerations or influences' rather than 'the corporate merits of the subject before the board.'") (quoting *Beam*, 845 A.2d at 1049).

part of their business model. The transformational companies *Amicus* backs are often pushing the boundaries of what is considered possible. As with all truly transformative innovations, this frequently results in highly stressful environments plagued with uncertainties and high failure rates. In other words, it is by its nature high risk, high reward. Developing trust between venture capital directors and founders is paramount to successfully incubating these fledgling technologies. Indeed, *Amicus*'s high trust relationships with founders such as Brian Chesky, Jack Dorsey,[28] Jan Koum and Tony Xu were instrumental in navigating critical junctures that threaten the core business of these new technological companies. For example, AirBnB had to pivot its business model during the Covid shutdown so that its customers would continue to use its platform and to raise funding to survive the epidemic.[29] These types of crucible moments are impossible to navigate without high trust relationships between the founders and the venture capital firms' director designees.

The PTO also places significant weight on the fact that two directors and their funds had generated significant returns from investments in Musk-controlled

---

[28] *See Jack Dorsey*, Sequoia Cap., https://www.sequoiacap.com/founder/jack-dorsey/ (last visited Mar. 17, 2025).

[29] *See Crucible Moments: EP2*, https://www.sequoiacap.com/podcast/crucible-moments-airbnb/ (last visited Mar. 17, 2025).

entities. PTO at 123-125. *Amicus* respectfully submits that investing in highly successful technology companies is what successful directors and venture capital funds do. It is thus difficult for *Amicus* to discern where the line is between commonplace relationships that regularly exist in Silicon Valley, particularly amongst experienced directors, and disabling relationships. Indeed, some of the hallmarks of disabling relationships described in the PTO could be found on many, if not most, Silicon Valley boards. Irrespective of the Court's specific findings regarding various Telsa directors' relationships with Mr. Musk, greater clarity from the Delaware Supreme Court on applicable standards would be welcomed.

III. RECISSION OF A COMPENSATION PACKAGE TWICE APPROVED BY UNAFFILIATED STOCKHOLDER VOTES IS CONCERNING TO DIRECTORS AND FOUNDERS.

Amicus finally highlights concerns amongst founders and venture capital directors surrounding the Court of Chancery's choice to rescind and then not reinstate a compensation package that was overwhelmingly approved by unaffiliated stockholder votes (albeit ones that the Court determined were not fully informed). Under these circumstances, the remedy of recission appears extreme to many market participants and has led to concerns from executives and founders that their own incentive stock compensation could be rescinded years after the fact and in circumstances where their milestone targets were in fact met.

The PTO correctly stated that "[a] board of director's decision on how much to pay a company's chief executive officer is the quintessential business determination subject to great judicial deference." PTO at 1. Indeed, this Court has affirmed that "the size and structure of executive compensation are inherently matters of judgment." *Brehm v. Eisner*, 746 A.2d 244, 263 (Del. 2000). This is in part because "[a]ny other rule would deter corporate boards from the optimal rational acceptance of risk," and because "[c]ourts are ill-fitted to attempt to weigh the

'adequacy' of consideration . . . or, *ex post*, to judge appropriate degrees of business risk." *Lewis v. Vogelstein*, 699 A.2d 327, 336 (Del. Ch. 1997).[30]

Here, the Court should also defer to the will of stockholders. Regardless of its conclusion regarding Telsa's disclosure, there can be little debate that Tesla stockholders have now twice voted for Mr. Musk to receive his originally awarded compensation package. The same compensation package cannot now be retroactively granted without a harmful and outsized accounting impact on Telsa. *See* Ratification Opinion (Appellant Tesla Inc.'s Opening Brief, Ex. B) at 13 (citing Proxy Statement as noting that ratification could prevent the company from incurring a potential "accounting charge in excess of $25 billion"). The Court unquestionably can fashion more nuanced relief. *See* Plaintiff's Post-Trial Brief at 105-06, *Tornetta v. Musk*, 310 A.3d 430 (Del. Ch. 2024) (No. 2018-0408-KSJM) (citing *Firefighters' Pension Sys. of City of Kansas City, Mo. Tr. v. Presidio, Inc.*, 251 A.3d 212, 251 (Del. Ch. 2021) for proposition that the Court can fashion "an

---

[30] *See also* Harwell Wells, *"No Man Can Be Worth $1,000,000 A Year": The Fight Over Executive Compensation in 1930s America*, 44 U. Rich. L. Rev. 689, 730 (2010) (describing change in judicial approach due to "judges' growing doubts about their ability to determine what constituted reasonable compensation"); Omari Scott Simmons, *Taking the Blue Pill: The Imponderable Impact of Executive Compensation Reform*, 62 SMU L. Rev. 299, 339–40 (2009) (describing "judicial reluctance to second guess executive compensation despite significant board dysfunction" over Michael Ovitz's Disney compensation).

equitable modification of the transaction's terms," and seeking such a remedy in the alternative).

CONCLUSION

For the foregoing reasons, *Amicus* respectfully urges this Court to consider greater emphasis on potent and formidable voting power in control analysis, clarify standards surrounding when personal or business relationships might disqualify a director, and review the PTO in light of traditional standards of deference to compensation decisions and shareholder ratification and/or consider a remedy here that is more nuanced than recission.

OF COUNSEL:

Stephen Blake
SIMPSON THACHER & BARTLETT LLP
2475 Hanover Street
Palo Alto, California 94302
(650) 251-5000

CROSS & SIMON, LLC

/s/ Michael L. Vild
Michael L. Vild (No. 3042)
1105 N. Market Street, Suite 901
Wilmington, Delaware 19801
Telephone: (302) 777-4200
mvild@crosslaw.com

Counsel for Amicus Curiae *Sequoia Capital Operations, LLC*

DATED: April 17, 2025

CERTIFICATE OF SERVICE

I, Michael L. Vild, hereby certify that on this 17th day of April, 2025, I caused a true and correct copy of the Amicus Curiae *Brief of Sequoia Capital in Support of Defendant-Appellants and Reversal* to be served on the persons listed below via File & ServeXpress.

Daniel A. Griffith, Esq.
Whiteford Taylor & Preston LLP
600 North King Street, Suite 300
Wilmington, DE 19801

David S. Eagle, Esq.
Sally Veghte, Esq.
Klehr Harrison Harvey Branzburg LLP
919 N. Market Street, Suite 1000
Wilmington, DE 19801-3062

Michael A. Barlow, Esq.
Quinn Emanuel Urquhart
& Sullivan, LLP
500 Delaware Avenue, Suite 220
Wilmington, Delaware 19801

David E. Ross, Esq.
Bradley R. Aronstam, Esq.
Garrett B.Moritz, Esq.
Thomas C. Mandracchia, Esq.
Ross Aronstam & Moritz LLP
1313 North Market Street, Suite 1001
Wilmington, DE 19801

Theodore A. Kittila, Esq.
Halloran Farkas Kittila LLP
5722 Kennett Pike
Wilmington, DE 19807

Christine Mackintosh, Esq.
Grant & Eisenhofer PA
2122 123 Justison Street, 7th Floor
Wilmington, DE 19801

Thomas Grady, Esq.
Grady Law
2033 Walnut St.
Philadelphia, PA 19103

Anthony A. Rickey, Esq.
Margrave Law LLC
3411 Silverside Road
Baynard Building, Suite 104
Wilmington, Delaware 19810

Catherine A. Gaul, Esq.
Ashby & Geddes
500 Delaware Avenue 8th Floor
Wilmington, DE 19801

John D. Hendershot, Esq.
Rudolf Koch, Esq.
Kevin M. Gallagher, Esq.
Andrew L. Milam, Esq.
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

William M. Lafferty, Esq.
Susan Wood Waesco, Esq.
Jacob M. Perrone, Esq.
Morris Nichols Arsht & Tunnell LLP
1201 North Market Street, 16th Floor
PO Box 1347
Wilmington, DE 19899-1347

Ronald N. Brown, Esq.
John L. Reed, Esq.
Daniel Klusman, Esq.
Caleb Johnson, Esq.
DLA Piper (US) LLP
1201 North Market Street, Suite 2100
Wilmington, DE 19801

Peter B. Andrews, Esq.
Craig J. Springer, Esq.
David M. Sborz, Esq.
Jackson E. Warren, Esq.
Andrews & Springer LLC
4001 Kennett Pike, Suite 250
Wilmington, DE 19807

Gregory V. Varallo, Esq.
Daniel Meyer, Esq.
Bernstein Litowitz Berger &
Grossmann LLP
500 Delaware Avenue Suite 901
Wilmington, DE 19801

A. Thompson Bayliss, Esq.
Eliezer Y. Feinstein, Esq.
Adam K. Schulman, Esq.
Abrams & Bayliss LLP
20 Montchanin Road, Suite 200
Wilmington, DE 19807

Kimberly Evans, Esq.
Block & Leviton LLP
222 Delaware Avenue, Suite 1120
Wilmington, DE 19801

/s/ Michael L. Vild
Michael L. Vild (No. 3042)

Multi-Case Filing Detail: The document above has been filed and/or served into multiple cases, see the details below including the case number and name.

Transaction Details

Court: DE Supreme Court

Document Type: Amicus Brief

Transaction ID: 76090223

Document Title: Corrected Amicus Curiae Brief of Sequoia Capital in Support of Defendant-Appellants and Reversal (eserved) (dmd)

Submitted Date & Time: Apr 17 2025 11:49AM

Case Details

Case Number	Case Name
534,2024C	In re Tesla, Inc. Derivative Litigation
11,2025C	In re Tesla, Inc. Derivative Litigation
10,2025C	In re Tesla, Inc. Derivative Litigation
12,2025C	In re Tesla, Inc. Derivative Litigation