EFiled: May 19 2025 03:13PM EDT
Filing ID 76300215
Case Number Multi-Case

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE TESLA, INC. DIRECTOR COMPENSATION STOCKHOLDER LITIGATION	) CONSOLIDATED) No. 52, 2025 & No. 53, 2025)) On Appeal from the Court of) Chancery of the State of Delaware,) C.A. 2020-0477-KSJM

REDACTED – PUBLIC VERSION
FILED MAY 19, 2025

APPELLEE'S OMNIBUS ANSWERING BRIEF

Of Counsel:

FIELDS KUPKA & SHUKUROV LLP
William J. Fields
Christopher J. Kupka
Samir Shukurov
141 Tompkins Ave, Suite 404
Pleasantville, New York 10570
(212) 231-1500

BLEICHMAR FONTI & AULD LLP
Javier Bleichmar
Joseph A. Fonti
Nancy A. Kulesa
George N. Bauer
Thayne Stoddard
300 Park Avenue, Suite 1301
New York, New York 10022
(212) 789-1340

AKERMAN LLP
Andrew S. Dupre (No. 4621)
222 Delaware Avenue, Suite 1710
Wilmington, Delaware 19801
(302) 596-9200

BLEICHMAR FONTI & AULD LLP
Derrick Farrell (No. 5747)
3411 Silverside Road, Baynard Bldg.
Wilmington, Delaware 19810
(302) 499-2112

Attorneys for Plaintiff-Below/Appellee The Police and Fire Retirement System of the City of Detroit

Dated: May 2, 2025

TABLE OF CONTENTS

Exhibits

TABLE OF CITATIONS

Page(s)

Cases

T

Rules

NATURE OF PROCEEDINGS

The Police and Fire Retirement System of the City of Detroit ("Detroit") challenged excessive compensation that non-employee directors (the "Director Defendants") of Tesla, Inc. ("Tesla" or the "Company") awarded themselves. After litigating for over three years, with only expert depositions remaining to conclude discovery, the parties agreed to the second-largest settlement in the Court of Chancery's history (the "Settlement"). The Settlement required Defendants to:

(i) return "to Tesla the ***value*** of 3,130,406 options," which Tesla agreed "is equal to $735,266,505," including $458,649,785 in Returned Options (defined below). The Returned Options were valued using the methodology that Tesla agreed to as part of the Settlement. That agreed methodology valued the options based on their intrinsic value at the time the parties agreed to the Settlement consistent with Delaware law (*i.e.*, "the difference between the Settlement Stock Price and the actual strike price of each Returned Option");[1]

[1] Capitalized terms shall have the same meanings as set forth in the Stipulation or as defined herein. Unless otherwise noted, all emphasis is added and citations and quotation marks are omitted. References to "A##" refer to the pages of the Appendix to Appellant, Tesla, Inc.'s Opening Brief. References to "B##" refer to the pages of the Appendix to Appellee's Omnibus Answering Brief, submitted herewith.

(ii) forgo director compensation for 2021-2023 worth $184,160,026 in intrinsic value ("the Forgone Compensation") using the same valuation methodology; and

(iii) implement five years of governance reforms, including a new requirement that disinterested stockholders approve non-employee director compensation.

The express terms of the Settlement, thus, explicitly foreclosed any dispute that the dollar value to Tesla of the 3,130,406 options was $735,266,505, as well as any dispute about the methodology to value the Returned Options, which Tesla agreed were worth $458,649,785. Indeed, the intrinsic valuation as of the time of settlement is the only methodology that appears in the Stipulation and is consistent with Delaware law.

On January 8, 2025, the Court of Chancery approved the Settlement and, applying Delaware's well-established stage-of-case method for calculating fee awards in common-fund cases, awarded an all-in fee and expense award of $176,160,000 (the "Fee Award").[2] The Court of Chancery exercised its discretion to substantially reduce the award by more than $53 million (or 23%) from the

[2] *See* Tesla Br. Ex. B, the "Transcript," which sets forth the "Ruling."

requested fee of $229,600,687. Specifically, the Court of Chancery excluded the value of the Forgone Compensation to avoid windfall concerns and applied a 24% stage-of-case percentage instead of the 25% requested. The Chancellor further awarded no fees for the substantial governance reforms attained and made the fee award inclusive of $1,023,779 in expenses that Detroit's counsel incurred and the $50,000 incentive award to Detroit. The Court of Chancery memorialized this ruling in the Order and Final Judgment entered on January 13, 2025.[3]

Objector-below Michael Levin ("Levin") and Tesla appealed from the judgment on February 10, 2025. Levin seeks reversal of settlement approval and remand. Tesla seeks a further reduction of the Fee Award. Levin and Tesla filed their opening briefs on March 31, 2025, and April 1, 2025, respectively.[4]

[3] *See* Tesla Br. Ex. A, the "Judgment."

[4] *See* Appellant's Opening Brief (75965959, "Levin Br.") and Opening Brief of Appellant Tesla, Inc. (Corrected) (76054151, "Tesla Br.").

SUMMARY OF ARGUMENT

As to Levin:

1. **Denied**. The Court of Chancery did not abuse its discretion when approving the Settlement. The Chancellor correctly rejected Levin's arguments that the Settlement must expressly "allocate the settlement amount ratably among defendants" and lacks "enforceability of a shareholder vote on director compensation." Those arguments contradict the plain terms of the Stipulation and Agreement of Compromise and Settlement Between Plaintiff and Settling Defendants filed on July 14, 2023 (the "Stipulation"), as well as representations to the Chancellor by the Director Defendants and their counsel. Levin identifies no factor that the Court of Chancery disregarded, no factor that the court improperly considered, and no clear error of judgment.[5]

As to Tesla:

1. **Denied**. The Court of Chancery did not abuse its discretion by valuing the Settlement's benefit to Tesla at $734 million. The Court of Chancery correctly valued the options that the Director Defendants returned (the "Returned Options") at their intrinsic value at the time of the Settlement of approximately $458 million.

[5] *Homestore, Inc. v. Tafeen*, 886 A.2d 502, 506 (Del. 2005).

That valuation was based on the Stipulation's express terms, by which Tesla agreed that the Director Defendants would "***deliver to Tesla the value*** of the Settlement Options, ***which is equal to $735,266,505***" including "$458,649,785 in Returned Options" and "$276,616,720 in Returned Cash and/or Returned Stock." Tesla even expressly agreed that "any Fee and Expense Award in connection with the Settlement ***shall be paid by Tesla out of the Settlement Option Amount***," which the Stipulation defined as $735,266,505. As the Court of Chancery correctly observed, the "Stipulation speaks for itself."

Now, Tesla attempts to avoid actually paying the Fee Award out of the Settlement Option Amount. Tesla ignores the controlling terms of the Stipulation, telling this Court that the Stipulation requires the Director Defendants "to return to Tesla the number of Tesla options,"[6] when in reality the Stipulation plainly requires them to "***deliver to Tesla the value***" of the options. In short, Tesla's arguments are contradicted by (i) the plain terms of the Stipulation (as noted above), (ii) Tesla's own attestations to the Court of Chancery, in which its Chief Accounting Officer confirmed that "***the value that Tesla received***" from the Returned Options was "a total of $458,649,994," and (iii) controlling Delaware law, which values returned

[6] Tesla Br. at 10.

options at the time of settlement. The Chancellor's decision was thus a sound exercise of discretion.

Tesla's argument, meanwhile, is a repudiation of the Stipulation. Tesla argues for valuing the Returned Options based on a $19.9 million "accounting value" corresponding to their grant date fair value ("GDFV"), *i.e.*, the estimated cost Tesla booked when the compensation was granted. This *post-hoc* valuation methodology contradicts both the Stipulation and Delaware law. GDFV is mentioned nowhere in the Stipulation, which explicitly states that the value of the options shall be calculated "using the valuation methods set forth in this Stipulation," *i.e.*, the intrinsic value at the time of the Settlement. Tellingly, the only case Tesla cites where a Delaware court valued options using GDFV confirmed that GDFV was "a bad candidate for a default rule," and appropriate only "in the exceptional case."[7] That is for good reason: as even Tesla has admitted, GDFV is "not a real economic number" and "flawed as a measure of value." Moreover, Tesla benefits from the Returned Options at values far greater than their GDFV value, as it can use the stock underlying the Returned Options to compensate employees or raise capital through sales at market prices.

[7] *Tornetta v. Musk*, 326 A.3d 1203, 1261 (Del. Ch. 2024).

2. **Denied**. The Court of Chancery did not abuse its discretion by awarding attorneys' fees at 24% of the monetary benefit, which it determined was $734 million, pursuant to the stage-of-case method. This percentage aligns squarely with the posture of the litigation, where all that remained before the 25% "guidepost" were the conclusion of expert depositions and filing of the pretrial order. Tesla's argument for an award of 15% of the common fund thus contradicts the stage-of-case framework that this Court has endorsed since at least 2012 in *Americas Mining Corporation v. Theriault*, 51 A.3d 1213 (Del. 2012).

Tesla's argument that "the court did not adjust the fee percentage downward based on the size of the recovery to prevent a windfall" contradicts the Ruling. The Chancellor expressly considered the risk of windfalls in "mega-fund" cases when she declined to award any fees for the $184,160,026 in Forgone Compensation that the Settlement secured. This decision alone represented a downward adjustment of $44,198,406 out of the total reduction of $53,440,687. The Chancellor also declined to award fees for the substantial corporate governance reforms that she acknowledged were a "valuable source of benefit to Tesla."[8] The Court of

[8] Ruling at 28:3-9.

Chancery's reductions to the Fee Award were meaningful in size and thoughtfully applied; they do not constitute abuse of discretion.

Tesla's remaining "windfall" arguments fail to demonstrate abuse of discretion. Numerous decisions by this Court expressly foreclose Tesla's argument that the Chancellor abused her discretion by declining to reduce the percentage further based on the so-called "declining percentage" methodology. As this Court most recently confirmed in *Dell*, the "[u]se of declining percentage, in applying the *Sugarland* factors in common fund cases, is a matter ***of discretion*** and is not required per se."[9]

Tesla is likewise wrong that this Court imposed a *per se* 7x multiplier cap on attorneys' fee awards in *Dell*. In truth, *Dell* rejected the notion that courts are to apply "any per se rule, whether declining percentage or any other rule," acknowledging that the fee award "process is necessarily fact-specific and case-specific."[10] And while Tesla tries to portray the Fee Award as out of line with precedent, it does so with an incomplete list of cases that omits the most analogous mega-fund cases, such as *In re Activision Blizzard, Inc. Stockholder Litigation*,

---

[9] *In re Dell Techs. Inc. Class V S'holders Litig.*, 326 A.3d 686, 700 (Del. 2024) (quoting *Ams. Mining,* 51 A.3d at 1258).

[10] *Id.* at 701, 703.

124 A.3d 1025 (Del. Ch. 2015) and *Americas Mining*. In reality, the lodestar multiplier and implied hourly rate of the Fee Award are well within the range of relevant precedent, consistent with the extraordinary result achieved. The Chancellor's acceptance of these figures was thus a proper exercise of her discretion.

COUNTERSTATEMENT OF FACTS

A. The Challenged Equity Awards

In January 2010—prior to Tesla's initial public offering—the Board adopted Tesla's Outside Director Compensation Policy (the "Policy"), which provided for a fixed number of stock options and *de minimis* cash retainer.[11] The Policy's option award provisions also appeared in Tesla's 2010 Equity Incentive Plan (the "2010 Plan").[12] In June 2012 the Board amended the Policy and 2010 Plan to, among other things, change the frequency of certain awards and provide additional option awards for serving in various capacities on the Board and its committees.[13] Discovery demonstrated that the Board never again sought external input on, or conducted any review of, director compensation.

When, in 2014, the Board solicited approval of ministerial amendments to the 2010 Plan, a majority of unaffiliated Tesla stockholders rejected those amendments, which only carried due to the votes of Tesla's chief executive officer, Elon Musk

[11] A312.

[12] A324.

[13] A324-25.

("Musk").[14] Likewise, a majority of unaffiliated stockholders rejected Tesla's 2019 Equity Incentive Plan in 2019, which (again) only carried due to Musk's votes.[15]

As Tesla's stock price rapidly increased prior to 2017, the value of the directors' equity awards at the time of grant likewise skyrocketed. Nonetheless, the Director Defendants did nothing to evaluate the reasonableness of their compensation or consider whether to adjust the amounts awarded, content to continue receiving the same number of options year after year. Whereas the Board's average annual compensation from 2010 through 2014 ranged from $148,000 to $455,000 at the time of grant,[16] this value soared to $1.53 million in 2017, $8.7 million in 2018, and $2.1 million in 2019.[17] In contrast, average director compensation in 2018 for directors of S&P 500 companies was a mere $298,981 at the time of grant.[18]

---

[14] A348.

[15] A386.

[16] A95-96 ¶67. This average excludes the 2014 award of options to Defendant Denholm, which had a GDFV of $7,181,066. *Id.*

[17] Each measured using the grant date fair value of the options disclosed by Tesla plus the amount of the cash retainers. A70 ¶9, A104-05 ¶¶85-88.

[18] A105-06 ¶91.

B. Detroit Litigates the Action through Fact and Expert Discovery Before Reaching a Settlement.

On June 17, 2020, Detroit filed its Complaint, alleging that the members of the Board breached their fiduciary duties by awarding themselves excessive compensation from 2017 through 2020.[19] In response to this Action, the Director Defendants suspended their equity compensation, the first time since 2010 that they had in any way reduced the annual amount of their awards.[20] In June 2021, the Board decided to "forego any automatic grants of annual stock option awards under the Director Compensation Policy or otherwise previously approved by the Board until July 2022."[21] In May 2022, the Board extended its decision until July 2023.[22]

Detroit pursued extensive discovery, forgoing early resolution of the action to complete fact discovery and serve opening and rebuttal expert reports.[23] Among other things, Detroit propounded 50 requests for production of documents, 84 interrogatories, and 23 third-party subpoenas, and prevailed in part on a motion

---

[19] A66-143.

[20] *See* B31-32 at 135:12-136:3 ("I mean because of this [lawsuit], I didn't receive my stock option for the last two years.").

[21] B40.

[22] *See* B49.

[23] *See* Ruling at 11:12-21.

to compel production of documents withheld on claims of privilege. Altogether, Detroit's counsel secured 13,493 documents spanning 95,298 pages. Detroit also responded to 28 requests for production of documents and produced 1,075 documents spanning 13,203 pages and a privilege log. Detroit deposed 22 fact witnesses, including each of the Director Defendants, Elon Musk, former and current employees of Tesla, and Tesla's third-party compensation consultant.

On April 28, 2023, Detroit served three opening expert reports spanning 145 pages in total. Defendants served a 61-page opening expert report. On June 9, 2023, Detroit served a 51-page rebuttal expert report and Director Defendants served a 55-page rebuttal expert report. Detroit also prepared an amended complaint to conform the pleading to the evidence obtained in discovery, which was ultimately not filed. The parties were preparing for expert depositions at the time of the Settlement.

Concurrent with discovery, the parties engaged in protracted mediation, which began in August 2022 and culminated in a mediator's proposal, which the parties accepted in June 2023. The parties' mediation efforts included the submission of written position statements and multiple full day meetings, as well as frequent *ad-hoc* communications.

C. The Settlement Stipulation

Following acceptance of the mediator's proposal, the Settlement was memorialized in the Stipulation, which Tesla executed along with all other parties and filed on July 14, 2023.[24]

1. Settlement Options

The Stipulation provides for the return to Tesla of the value of 3,130,406 "Settlement Options." Tesla agreed that the Settlement Options would be valued at $735,266,505, including the return of $458,649,785 in "Returned Options" and $276,616,720 in "Returned Cash" or "Returned Stock."[25]

Section 2.1 of the Stipulation provides:[26]

> Director Defendants shall, jointly and severally, provide to Tesla the value of 3,130,406 options ("Settlement Options") using the methods set forth in this Section, which shall have the total value set forth in Section 2.6 of this Stipulation.

---

[24] Section 10.1 of the Stipulation states, among other things, that "[t]his Stipulation and the Exhibits hereto constitute the entire agreement among Settlement Parties with respect to the subject matter hereof." A290-91.

[25] "Returned Options," "Returned Cash," and "Returned Stock" are defined terms in the Stipulation, with Section 2.2 providing: "Director Defendants shall return the Settlement Options in the form of (i) cash ('Returned Cash'), (ii) unrestricted common shares of Tesla stock ('Returned Stock'), and/or (iii) unexercised Tesla options awarded as compensation to the Director Defendants during the Relevant Period ('Returned Options')." A275-76.

[26] A275.

Section 2.6 of the Stipulation provides, in pertinent part:[27]

> Using the valuation methods set forth in this Stipulation, Director Defendants shall deliver to Tesla the value of the Settlement Options, which is equal to $735,266,505 (seven hundred thirty-five million, two hundred sixty-six thousand, five hundred five U.S. Dollars) ("Settlement Option Amount"). The Settlement Option Amount consists of (i) $458,649,785 in Returned Options, using the valuation method for Returned Options set forth in Section 2.3 of this Stipulation, and (ii) $276,616,720 in Returned Cash and/or Returned Stock, combined, using the valuation methods for Returned Cash and Returned Stock set forth in Sections 2.4 and 2.5, respectively, of this Stipulation.

As noted, Tesla attempts to rewrite these provisions to say the Director Defendants must "return to Tesla the number of Tesla options."[28]

Section 2.6 further provides:[29]

> In the event that Director Defendants return a different combination of (i) Returned Options and (ii) Returned Cash and/or Returned Stock than what is reflected in this Section 2.6, such adjustment shall not decrease the Settlement Option Amount, and Director Defendants shall inform the Court of any such adjustments no later than five (5) Business Days prior to the Settlement Hearing.

[27] A277.

[28] Tesla Br. at 10.

[29] A277.

That provision was triggered during the pendency of the approval motion, resulting in Tesla's required disclosure to the Court.[30]

Section 2.3 of the Stipulation provides the value of the Returned Options:[31]

> The value of each Returned Option shall be the difference between the Settlement Stock Price and the actual strike price of each Returned Option. Tesla shall cause the Returned Options to be canceled on the next Business Day after Final Approval, subject to Section 7.3.

This methodology for valuing the Returned Options looks to the $260.54 closing price of Tesla stock on June 16, 2023—defined in Section 1.26 as the "Settlement Stock Price"—the date specified by the Mediator's proposal.[32] Thus, Returned Options were valued using their actual intrinsic value (*i.e.*, $260.54 less each option's actual exercise price). Returned Stock likewise looked to the Settlement Stock Price to determine their value at the time of Settlement.[33]

---

[30] Specifically, while the Settlement was pending below, Director Defendant Robyn Denholm replaced certain Returned Options that were set to expire in August 2024 with an equal number of options of equal or greater value, resulting in an increase to the total value of the Returned Options to $458,649,994. B103-04.

[31] A276.

[32] A274 § 1.26.

[33] A276-77 §§ 2.4-2.5.

The Stipulation also provided that the shares underlying the Returned Options would be returned to Tesla. Specifically, Section 2.3 of the Stipulation provides:[34]

> The number of authorized shares under Tesla's 2019 Equity Incentive Plan ["EIP"] (as described in Tesla's SEC's filings) shall be increased by the total number of Returned Options upon cancelation of the Returned Options.

2. Forgone Compensation

The Stipulation also requires that (i) the Director Defendants permanently forgo equity compensation for 2021 and 2022, (ii) the Director Defendants not receive any other compensation for those years, and (iii) the current Tesla directors not receive any compensation for Board service in 2023.[35] Assuming the Director Defendants had awarded themselves the number of options fixed by the Policy, as they had done in every prior grant period, their 2021, 2022, and 2023 option awards would have been worth $90,672,366, $76,099,510, and $17,388,150, respectively, for a total intrinsic value of $184,160,026,[36] using the same valuation methodology set forth in the Stipulation.[37]

---

[34] A276.

[35] A278 § 2.8.

[36] Because the majority of the Director Defendants' compensation was in the form of stock options, Detroit's calculation of the value of the Forgone Compensation includes only the value of forgone options and not forgone cash.

[37] B51-64.

3. Corporate Governance Reforms

The Stipulation also requires that Tesla implement governance reforms, covering a period of five years from the effective date of the Stipulation, including:[38]

- amendments to the Compensation Committee charter to provide for (i) annual reviews and assessments of non-employee director compensation, (ii) retention of a compensation consultant, and (iii) annual recommendations to the full Board;
- annual full Board review and approval of proposed non-employee director compensation;
- annual stockholder approval votes of the Board's proposed non-employee director compensation, excluding the votes of Defendants and affiliates;
- enhanced proxy disclosures concerning non-employee director compensation; and
- annual review and, where necessary, enhancement of internal controls specific to non-employee director compensation.

4. Attorneys' Fees

Finally, Section 6.1 of the Stipulation provides that Detroit's counsel would submit a "Fee and Expense Application" for a fee to be paid from the "Settlement Option Amount," which Tesla agreed equaled $735,266,505:[39]

> Plaintiff's Counsel will submit a Fee and Expense Application to the Court. Settling Parties acknowledge and agree that any Fee and

[38] A278-80 §§ 2.10-14.

[39] A286-87 § 6.1.

> Expense Award in connection with the Settlement shall be paid by Tesla out of the Settlement Option Amount, as set forth in Section 7 of this Stipulation, and shall reduce the settlement consideration paid to Tesla accordingly.

D. The Court of Chancery Approves the Settlement and Awards Attorneys' Fees and Expenses.

The Court of Chancery issued its Ruling approving the Settlement on January 8, 2025. The Chancellor analyzed the Settlement under Court of Chancery Rule 23.1, finding that Detroit and its counsel adequately represented Tesla, adequate notice was provided, and the Settlement was negotiated at arm's length.[40]

Next, the Court of Chancery evaluated stockholder objections, including Levin's objections that the Stipulation (i) did not specify the ratable obligations of each Director Defendant, or (ii) provide an enforcement mechanism for stockholder approval votes on future director compensation. The Chancellor rejected both of Levin's objections.

First, the Court of Chancery relied on the Director Defendants' representations concerning the allocation of payment between the Director Defendants, ruling:[41]

> This representation was contained in a submission to the Court, and I have relied on it in reaching the conclusion that the settlement is fair

[40] Ruling at 14-18; Judgment ¶¶3-4.

[41] Ruling at 23:6-13.

T

> and reasonable in its current form. Because I have relied on it, judicial estoppel adds an extra layer of enforceability to the representation and the term of settlement. Given the representation, Levin's first concern is allayed.

Second, regarding the objection that that "approval vote" was unenforceable, the Chancellor ruled:[42]

> Levin argues that the stockholder approval contemplated by the settlement "lacks an enforcement mechanism." I don't see it that way. As I read the stipulation, the company is committing to condition director compensation on approval by the minority stockholders. That agreement and that term is as enforceable as any corporate agreement.

The Court then analyzed the fee request under the five factors identified in the Supreme Court's decision in *Sugarland Industries, Inc. v. Thomas*, 420 A.2d 142 (1980), and the stage-of-case method explained in *Americas Mining* and recently expounded upon in *Dell*.[43]

In analyzing the results achieved—*i.e.*, the primary *Sugarland* factor afforded the greatest weight—the Court of Chancery first addressed the value of the Settlement Options. It uncontroversially acknowledged the parties' agreement on

[42] *Id.* at 23:14-21.

[43] *Id.* at 25:8-27:2.

the approximate $276 million value of the Settlement Options to be returned in the form of Returned Stock or Returned Cash.[44]

The Court of Chancery then valued the Returned Options at their intrinsic value of approximately $458 million, which "conforms with the language of the stipulation" and the approach "adopted by this Court in cases" calling for valuing options at the time of settlement.[45]

The Chancellor rejected Tesla's argument that the parties agreed to this valuation only to determine how many options to return, declaring instead that the "Stipulation speaks for itself" and that it would be incongruous for Defendants to "agree to use an intrinsic value formula for the returned stock but not the returned options" as "the theoretical problems with that approach are largely the same for both when the options are vested."[46] Likewise, the Court of Chancery rejected Tesla's argument that the benefit in derivative cases is always limited to value going

[44] *Id.* at 27-28.

[45] *Id.* at 29.

[46] *Id.* at 30:11-17.

directly to the corporation—explaining that "investor-level benefits are a proper basis for compensating plaintiff's counsel."[47]

The Chancellor further rejected Tesla's alternative argument that GDFV was the proper way to value the Returned Options. The Court explained that it had used that methodology in *Tornetta* "to avoid awarding a windfall in fees," and that "GDFV should be used as a value metric in exceptional cases" like *Tornetta* where basing fees on the intrinsic value of options "would have resulted in a multibillion dollar fee award."[48] The Court of Chancery found no such windfall here, as the "proposed fee award based on intrinsic value falls within what our court has held to be a reasonable range and therefore, does not warrant deviating from the approach that the parties stipulated to."[49]

The Court of Chancery declined to value the $184,160,026 in Forgone Compensation for purposes of determining the fee, despite acknowledging that it was a "clear benefit" and that "ignoring the value of that benefit here will

---

[47] *Id.* at 30:19-24. As set forth below, Tesla's argument that Detroit forfeited any argument that a fee can be based on something other than the value conferred on Tesla is at odds with the briefing below. *See* p. 54, *infra*.

[48] Ruling at 31:1-12.

[49] *Id.* at 31:12-17.

disincentivize its use as a settlement term in future derivative lawsuits."[50] Nevertheless, the Court discounted this value due to the "risk that including it here will create a windfall," and valued the benefits to Tesla for purposes of determining the fee at $734 million, a discount of more than 20% from the full value of approximately $919 million.[51]

The Chancellor then analyzed the parties' positions on the appropriate stage-of-case percentage. Detroit contended that a "25 percent award is appropriate" while "Tesla sa[id] that 22.5 percent is the right number." The Chancellor concluded that 24% was an appropriate percentage where the only remaining aspect of discovery was expert depositions,[52] and was "reasonable when compared to other fee awards of this Court in cases of similar magnitude."[53]

Turning to the remaining *Sugarland* factors, the Court of Chancery found that the complexity of the litigation, its contingent nature, and the standing and ability of

---

[50] *Id.* at 31:21-32:12.

[51] *Id.* at 32:13-22. The Court also did not ascribe a specific value to the Settlement's governance reforms, notwithstanding its acknowledgement that they too are "a valuable source of benefit to Tesla." Ruling at 28:3-9.

[52] *Id.* at 33-34 (citation omitted).

[53] Ruling at 34.

counsel each supported a 24% fee award.[54] The Court of Chancery also acknowledged the "significant" time and effort of Detroit's counsel, and rejected Tesla's argument that it warranted a downward adjustment.[55] The Chancellor recognized that its award represented an 11.6x lodestar multiplier, and concluded it was "not outside the range of reasonable fee awards for this Court," citing the 66x multiplier affirmed in *Americas Mining*.[56] The Chancellor also rejected Tesla's argument for a one percent (1%) downward adjustment because Detroit's counsel expended less time than counsel in *Dell*, cautioning that such an approach "would effectively back-door in a lodestar method" and "import all the bad incentives that Delaware courts seek to avoid that are inherent in the lodestar method."[57]

E. Tesla Certifies the Value Received from the Returned Options.

On February 26, 2025, Tesla's Chief Accounting Officer, Vaibhav Taneja, certified that certain Director Defendants had returned 1,957,861 Settlement Options in the form of Returned Options and that a minor adjustment in Defendant Denholm's Returned Options "had the practical effect of increasing ***the value that***

[54] *Id.* at 35:14-37:8.

[55] *Id.* at 35:15-18.

[56] *Id.* at 35:15-23.

[57] *Id*. at 34:15-35:11.

Tesla received by $209, resulting in a total of $458,649,994."[58] The Chief Accounting Officer also certified that other Director Defendants returned the value of the remaining 1,172,545 Settlement Options in the form of Returned Cash (*i.e.*, $276,616,721).[59]

[58] A868 ¶5 & n.2 (emphasis added).

[59] *Id.* ¶6.

ARGUMENT

I. THE COURT OF CHANCERY DID NOT ABUSE ITS DISCRETION IN OVERRULING LEVIN'S OBJECTIONS TO APPROVE THE SETTLEMENT.

A. Question Presented

Whether the Court of Chancery erred in overruling Levin's objections, concerning the precise allocation of the Settlement consideration and whether stockholder votes on director compensation would be advisory, where the Stipulation expressly provides that only the Director Defendants would pay the Settlement Options and nowhere provides that stockholder votes on director compensation will be non-binding. A747-50.

B. Scope of Review

This Court reviews for abuse of discretion a finding of the Court of Chancery that a derivative settlement is fair and reasonable.[60] "It is generally recognized that an abuse of discretion can occur in three principal ways: when a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; and when all proper

[60] *Griffith v. Stein*, 283 A.3d 1124, 1131-32 (Del. 2022); *Rome v. Archer*, 197 A.2d 49, 54 (Del. 1964).

factors, and no improper ones, are considered, but the court, in weighing those factors, commits a clear error of judgment."[61]

C. Merits of the Argument

The Court of Chancery properly rejected both of Levin's substantive objections because they lack any basis in evidence or law.

1. Levin's Speculation That the Director Defendants Are Not Ratably Paying the Settlement Consideration Contradicts the Stipulation and Counsel's Representation.

Section 2.2 of the Stipulation expressly provides that the "***Director Defendants shall return*** the Settlement Options in the form of (i) [Returned Cash], (ii) [Returned Stock], and/or (iii) [Returned Options]."[62] The Stipulation defines "Director Defendants" as "non-employee former and current Tesla directors Brad Buss, Robyn M. Denholm, Ira Ehrenpreis, Lawrence J. Ellison, Antonio J. Gracias, Stephen T. Jurvetson, Kimbal Musk, James Murdoch, Linda Johnson Rice, Kathleen Wilson-Thompson, and Hiromichi Mizuno," while "fellow Tesla director and Tesla's Chief Executive Officer, Elon Musk," is separately defined as "Musk."[63]

---

[61] *Homestore*, 886 A.2d at 506.

[62] A275 § 2.2.

[63] A261.

At the settlement hearing, the Court of Chancery, speaking to Levin, quoted from Defendants' Response to Settlement Objections, stating: "And I'll quote: 'Aside from those directors who received little to no compensation for their Board service during the Relevant Period, each Director Defendant will fund the Settlement Option Amount in direct proportion to the compensation that he or she received during the Relevant Period.'"[64] The Chancellor then asked Levin: "[I]t's a sworn statement to the Court. Assuming it's true, does that allay your concerns?"[65] Levin responded: "If that can be completely relied on and enforceable, then, yes . . . ."[66] The Court of Chancery also asked the Director Defendants' counsel: "So I take it you are in a position to represent that Mr. [Elon] Musk isn't paying any portion of the directors' contribution to the settlement?"[67] Counsel responded, "I can make that representation, Your Honor."[68]

Levin nonetheless objects on appeal that the allocation of the Settlement Options among the Director Defendants was not specified.[69] The Court of Chancery

---

[64] A800 at 28:15-21.

[65] A801 at 29:2-4.

[66] *Id.* at 29:5-8.

[67] A810 at 38:17-19.

[68] *Id.* at 38:20-21.

[69] Levin Br. at 8, 12.

recognized that this would be a concern for director independence if certain directors were covering the liability of other directors.[70] It rightly relied, however, on the Director Defendants' representation in their Response to Settlement Objections submission that "each Director Defendant will fund the Settlement [Option] Amount in direct proportion to the compensation that he or she received during the Relevant Period."[71] This representation was confirmed by a partner of Cravath, Swaine & Moore LLP—counsel for Musk and the Director Defendants—at the Settlement approval hearing.[72] The Court of Chancery noted that "[b]ecause I have relied on it, judicial estoppel adds an extra layer of enforceability to the representation and the term of settlement."[73] And on February 26, 2025, Tesla's Chief Accounting Officer certified that it was the Director Defendants, and not Musk, who returned the Returned Options and Returned Cash.

Levin's speculation that Musk paid the Settlement for the Director Defendants, or that one Director Defendant paid for another, enjoys no evidentiary support and is not a valid basis to reject the Settlement.

---

[70] Ruling at 22.

[71] *Id.* at 22-23; B68.

[72] A810-11.

[73] Ruling at 23:9-12.

2. The Director Compensation Approval Votes Are Binding.

Section 2.12 of the Stipulation provides that, "[o]n an annual basis, Tesla shall submit the proposed annual compensation to be paid to Non-Employee Directors to an approval vote of the majority of Unaffiliated Tesla Stockholders present in person or represented by proxy and entitled to vote on such decision."[74] Levin objects that "the undefined 'approval vote' lacks an enforcement mechanism that sets forth clear consequences of failing to achieve the needed majority."[75] While advisory votes obviously exist, there is no basis to read the words "advisory" or "non-binding" into the unambiguous terms of the Stipulation simply because stockholders may otherwise periodically vote on different advisory proposals.[76] When asked by the Court of Chancery at the settlement hearing whether the Director Defendants' counsel interpreted the "approval" language to mean "approval, not advisory," counsel confirmed that it was the "[c]orrect" interpretation.[77] Likewise, the Director

---

[74] A279 § 2.12.

[75] Levin Br. at 12.

[76] *Cf. Murfey v. WHC Ventures, LLC*, 236 A.3d 337, 356 (Del. 2020) ("Although drafters of [contracts] may adopt concepts from the laws of other entities, any similarity in language used in those contracts to the corresponding statutory scheme does not suggest that courts should add new terms and conditions to the contract that simply do not exist within the four corners of the agreement, particularly where the parties could have easily drafted such terms and conditions.").

[77] A812 at 40:3-6.

Defendants represented that the vote was "far from 'window dressing' or an 'advisory' vote."[78]

In short, the Stipulation does not say that the disinterested stockholder vote is advisory, counsel for the Board expressly disclaimed that interpretation in open court, and the Stipulation itself contains a retention of jurisdiction clause to permit enforcement of the voting obligation were it ever breached.[79] The Court of Chancery did not abuse its discretion by rejecting Levin's objection regarding a speculative future breach of the Stipulation when approving the Settlement.

---

[78] Levin Br. at 5.

[79] A291 § 11.1 ("The Court retains exclusive jurisdiction to consider all further applications arising out of or connected with the proposed Settlement, including any claim of breach of this Stipulation. This Stipulation shall be deemed made and entered into in the State of Delaware, regardless of where it may be executed, and shall in all respects be interpreted, enforced, and governed exclusively under the internal laws of Delaware (without regard to the state's conflict of law provisions), and in the courts of the State of Delaware."). Unaffiliated stockholders will be free to enforce the Stipulation in Delaware—either in a derivative contract action on the Company's behalf, or in a breach of fiduciary duty suit. And demand futility would be baked into any self-interested director compensation decision contrary to the stockholder vote. *See, e.g.*, *In re Inv'rs Bancorp, Inc. S'holder Litig.*, 177 A.3d 1208, 1217 (Del. 2017) ("when the board fixes its compensation, it is self-interested in the decision because the directors are deciding how much they should reward themselves for board service[and] . . . the entire fairness standard of review will apply.").

II. THE COURT OF CHANCERY DID NOT ABUSE ITS DISCRETION IN APPROVING THE FEE AWARD.

A. Question Presented

Whether the Court of Chancery abused its discretion in awarding the $176,160,000 Fee Award, calculated as 24% of the $734 million benefit to Tesla. A453-66; A750-69.

B. Scope of Review

"The standard of review of an award of attorney fees in Chancery is well settled under Delaware case law: the test is abuse of discretion."[80] "On appeal, this Court will not usually disturb the Court of Chancery's ruling if the court adequately explains its reasons and properly exercises its discretion when it applies the *Sugarland* factors."[81] This Court does "not substitute [its] own notions of what is right for those of the trial judge if that judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness," nor will it "set aside or overturn the Court of Chancery's factual findings unless they are clearly wrong and

[80] *Sugarland*, 420 A.2d at 149.

[81] *Dell*, 326 A.3d at 701-02.

justice requires it, or they are not the product of an orderly and logical deductive process."[82]

C. Merits of the Argument

In exercising its discretion, the Court of Chancery considered each of the *Sugarland* factors: "1) the results achieved; 2) the time and effort of counsel; 3) the relative complexities of the litigation; 4) any contingency factor; and 5) the standing and ability of counsel involved."[83] Tesla disputes only the Court of Chancery's valuation of the results achieved and assessment of the time and effort of counsel. Its arguments fail.

1. The Court of Chancery Did Not Abuse Its Discretion in Determining the Benefit the Settlement Conferred on Tesla Was at Least $734 Million.

Detroit argued below that the benefit conferred on Tesla by the Returned and Forgone Compensation was more than $919 million, plus five years of significant governance reforms. The Court of Chancery conservatively valued the benefit of the Settlement Options to Tesla at $734 million, consisting of (i) $276 million in Returned Cash and Returned Stock (which is rounded down from the $276,616,720 intrinsic value actually returned to Tesla and set forth in the Stipulation) and

[82] *EMAK Worldwide, Inc. v. Kurz*, 50 A.3d 429, 432 (Del. 2012).

[83] *Ams. Mining*, 51 A.3d at 1254 (citing *Sugarland*, 420 A.2d at 149-50).

(ii) $458 million in Returned Options (which is rounded down from the $458,649,785 intrinsic value actually returned to Tesla and set forth in the Stipulation). The trial court excluded altogether the value of the $184,160,026 in Forgone Compensation specifically to resolve Tesla's windfall arguments.[84]

Tesla challenges the $458 million intrinsic valuation of the Returned Options. It argues that the Court of Chancery should have valued the options using their purported GDFV of $19.9 million, instead of the intrinsic value at the time of the Settlement that the Parties agreed to in the Stipulation and that Delaware law supports.[85] Tesla did not, and cannot, offer any valid support for its contention that the alternative GDFV accounting value should control. The Court of Chancery therefore did not abuse its discretion.

a. The Stipulation Requires the Intrinsic Valuation of the Returned Options at the Time of Settlement.

As the Court of Chancery properly concluded, the Stipulation requires that the Defendants return to Tesla the intrinsic value of the Returned Options computed as of the time of Settlement. Tesla's argument not only ignores the controlling language of the Stipulation — Tesla mischaracterizes the language, telling this Court

[84] Ruling at 28:1-2, 31:5-20.

[85] Tesla Br. at 19-20.

incorrectly that the Director Defendants "were required to return to Tesla the number of Tesla options that collectively were in the money."[86]

In reality, Tesla agreed in Section 2.1 of the Stipulation that the Director Defendants would "***provide to Tesla the value*** of 3,130,406 options ('Settlement Options') using the methods set forth in this Section, which shall have the total value set forth in Section 2.6 of this Stipulation."[87] Section 2.6 provides that "Director Defendants shall ***deliver to Tesla the value*** of the Settlement Options, ***which is equal to $735,266,505***," consisting of "$458,649,785 in Returned Options" and "$276,616,720 in Returned Cash and/or Returned Stock."[88] Those values represent (i) the intrinsic value of 1,172,545 Settlement Options returned in the form of Returned Cash and Returned Stock, which applies the Settlement Stock Price of $260.54 per share, and (ii) the intrinsic value of 1,957,861 Settlement Options returned in the form of the Returned Options, which were valued by applying the same Settlement Stock Price of $260.54 per share less their exercise prices.[89] The point of the Settlement was to require the Director Defendants to return to Tesla

[86] *Id.* at 10.

[87] A275 § 2.1.

[88] A277 § 2.6.

[89] A274 § 1.26; A276-77 §§ 2.3-2.6.

3,130,406 options worth $735,266,505. Returned Cash, Returned Stock, and/or Returned Options were the means for them to pay that amount to Tesla.

The Court of Chancery correctly applied the plain text of the Stipulation to hold that the benefit of the Returned Options is equal to their intrinsic value at the time of Settlement. The Court noted that "the Settlement Stipulation speaks for itself"[90] and questioned Tesla's apparent about-face, asking "why Defendants would agree to use an intrinsic value formula for the returned stock [which they do not dispute] but not the returned options."[91]

Tesla's argument on appeal—that the Stipulation "expressly treats cash and stock differently from options" and provides a valuation method for Returned Options "only to measure the number of options to be returned"—is wrong.[92] As the Court of Chancery properly concluded, the Returned Cash and Returned Stock are not treated differently than the Returned Options; they are all valued using their values at the time of settlement, as set forth in Section 2.3 of the Stipulation, where Tesla agreed that the value of the Returned Options is $458 million.

---

[90] Ruling at 30.

[91] *Id.* at 30:11-18.

[92] Tesla Br. at 18-20.

Again, however, the Stipulation does not merely contemplate the return to Tesla of a certain number of options; rather, it contemplates the return to Tesla of ***the value*** of 3,130,406 options worth $735,266,505. In other words, each Director Defendant had to return specific options with specific intrinsic values so that the total number of options would equal 3,130,406, with a total intrinsic value of $735,266,505. The Stipulation provides for the return of $276,616,720 in Returned Cash or Returned Stock because some of the Director Defendants had already exercised all the options at issue in the litigation and could only satisfy their portion of the Settlement Option Amount with cash or stock.[93] For that reason, the Stipulation provides that the Settlement Option Amount could be satisfied by three different currencies: Returned Cash, Returned Stock, and/or Returned Options. But, in all events, the Director Defendants were required to provide to Tesla some combination of those currencies resulting in the return to Tesla of the full Settlement Option Amount. The Stipulation even allows the Director Defendants to return a different combination of Returned Options, Returned Cash, and/or Returned Stock,

[93] A487 n.9 ("The remaining 1,172,545 options were previously exercised and will be returned as Returned Cash or Returned Stock.").

but only where "such adjustment shall not decrease the Settlement Option Amount."[94]

Tesla wrongly cites Section 6.1 of the Stipulation for the proposition that "the Stipulation does not remotely suggest that the market value of the Returned Options is a viable benchmark for valuing the benefits of the litigation for purposes of any attorney's fees."[95] In support, Tesla contends that, by its terms, Section 6.1 "permits payment of a fee award only from the financial benefits Tesla received in the settlement."[96] Quite right, but Section 6.1 is clear that the "financial benefit Tesla received" is $735,266,505:

> [A]ny Fee and Expense Award in connection with the Settlement ***shall be paid by Tesla out of the Settlement Option Amount*** [*i.e.*, $735,266,505], as set forth in Section 7 of this Stipulation, and shall reduce the settlement consideration paid to Tesla accordingly.[97]

Tesla's brief neglects to inform the Court that the "Settlement Option Amount" is agreed to be $735,266,505. Instead, Tesla's argument effectively rewrites Section 6.1 to limit such payment from only the cash and stock elements of

---

[94] A277 § 2.6. In fact, Defendant Denholm did just that, replacing certain Returned Options that were set to expire with other options that increased the value returned to Tesla to $458,649,994. *See supra*, n.30.

[95] Tesla Br. at 19.

[96] *Id.* at 20.

[97] A286-87 § 6.1.

the Settlement. But that is not what Section 6.1 says; it says payment shall be made from the agreed-upon "Settlement Options Amount," a defined term. In short, Section 6.1 supports the Court of Chancery's intrinsic valuation of the Returned Options at the time of settlement, not Tesla's revisionist approach.

Because the benefit to Tesla is clearly set out in the Stipulation, Tesla's demonstrably false narrative that "Plaintiff did not argue in the Court of Chancery—and that court did not find—that Tesla received $458.6 million from the Returned Options" fails.[98] Of course, Detroit ***did*** argue that below and the Court of Chancery agreed; hence the Fee Award.[99]

In a further attempt to back away from the agreed-upon valuation methodology, Tesla distorts this Court's past rulings to suggest that a mere

[98] Tesla Br. at 20.

[99] A456 ("Here, Plaintiff's efforts secured a quantifiable monetary benefit equal to $919,426,531, consisting of a common fund of $735,266,505 in returned Settlement Options and $184,160,026 in Foregone Compensation."); A756 ("What is more, the equity underlying the Returned Options is worth $458,649,785 to the Director Defendants or anyone else, including Tesla."); Ruling at 30 ("[D]efendants argue, the formula represents the value to the Director Defendants, which is not necessarily the same as the benefit of the settlement generally. . . . I don't buy either point. I think the Settlement Stipulation speaks for itself.").

"stipulation of settlement . . . among the parties to end the litigation" does not equate to a "concession that plaintiffs ha[ve] conferred any benefit" to the company.[100]

Tesla's reliance on the 1966 *Chrysler II* case is both telling and misplaced. Unlike here, the appellate opinion in *Chrysler II* concerned a derivative settlement providing for only future compensation plan modifications without a negotiated valuation methodology.[101] The company agreed that the plan modifications constituted valuable consideration during the approval hearings, but changed its tune during the fee applications to argue the plan changes were actually worth zero. The Supreme Court disagreed, concluding that the compensation plan changes conferred benefits and affirming a fee of $450,000 (or approximately $4.5 million in 2025 dollars). In short, *Chrysler II* rejected the company's extreme argument that the Court of Chancery could approve a derivative settlement for no consideration other than ending the litigation. Critically, the decision has no bearing here, where

[100] Tesla Br. at 18 (citing *Chrysler Corp. v. Dann*, 223 A.2d 384, 387 (Del. 1966) ("*Chrysler II*")).

[101] "The consideration for this settlement was the change in the Compensation Plan which the Chancellor found conferred benefit upon Chrysler." *Chrysler II*, 223 A.2d at 387; "The fees to be allowed are solely by reason of the benefit conferred on Chrysler by the change in the Compensation Plan." *Id.* at 390

the parties specifically agreed on the value of a settlement using a negotiated methodology consistent with Delaware law.[102]

b. Delaware Law Supports the Intrinsic Valuation of the Returned Options at the Time of Settlement.

Delaware law consistently values options at the time of settlement or surrender. No Delaware case except for *Tornetta* contextually values options at the date they were initially granted (*i.e.*, GDFV), and *Tornetta* imposed that GDFV methodology only to reduce a more than $5 billion attorneys' fee request. As the Chancellor explained, this case is not like *Tornetta*.[103] It is instead like *Dell*, *Activision*, and other large, but not multi-billion-dollar, recoveries that lack the same windfall concerns.

A long line of Delaware cases supports the Court of Chancery's reliance on the value of the Returned Options at the time of settlement.[104] Delaware courts

[102] Straight application of *Chrysler II* cuts against Tesla's fee arguments. If anything, *Chrysler II* would have required an additional fee award for the approximately $184 million in Forgone Compensation that the Settlement achieved, as was requested below (but not appealed).

[103] Ruling, at 31:9-12.

[104] *See, e.g.*, *Rome*, 197 A.2d at 57 (evaluating present value of settlement benefit); *Stein ex rel. Goldman Sachs Grp., Inc. v. Blankfein*, 2024 WL 799386, at *3 (Del. Ch. Feb. 27, 2024) (same); *Carlton Invs. v. TLC Beatrice Int'l Holdings, Inc.*,1997 WL 305829, at *10 (Del. Ch. May 30, 1997) (same).

routinely apply this mandate to returned or surrendered options, which are valued at the time of the settlement, just as they were in the Stipulation and by the Court of Chancery below.[105] In its Ruling, the Court of Chancery acknowledged the practice of basing fee awards on the value of returned or surrendered options at the time of settlement, specifically noting that it had been "adopted by this Court in cases like

[105] *See, e.g.*, *Willcox v. Dolan*, C.A. No. 2019-0245-SG, at 13, 31 (Del. Ch. Sept. 8, 2020) (TRANSCRIPT) (Tesla Br. Ex. D) ("*Willcox*, Tr.") (when weighing settlement supported by underlying consideration of a "one-time signing grant with a grant date fair value of $40 million" and certain performance stock units, the Court looked to the "present value of around $31 million" of that consideration); *Moses v. Pickens*, 1982 WL 17825, at *1 (Del. Ch. Nov. 10, 1982) ("Under the terms of the settlement Mr. Pickens agreed to surrender his option on 1,200,000 shares of Mesa common stock. The options provided for the purchase of the stock at $11.50 per share but the stock is presently trading for $15-$17 per share. Thus it is clear that the value to Mesa by the surrendering of the options is approximately 4 million dollars."); *Wietschner v. Rapid-Am. Corp.*, 1977 WL 918, at *4-12 (Del. Ch. Feb. 10, 1977) ("[T]he options . . . have a [present] relinquishment value to the corporation as well as a possessory value to Riklis and Becker of $1.00 each, or, in total, a value to the corporation for the purpose of this settlement of $300,000."); *Krinsky v. Helfand*, 156 A.2d 90, 94-95 (Del. 1959) (crediting this Court's "fair estimate of value" based on the "difference between the option and market prices" notwithstanding the "dispute between the parties as to the measure of value of the cancellation of [the] stock options"); *see also Alpha Venture Cap. Partners LP v. Pourhassan*, C.A. No. 2020-0307-PAF, at 54-56 (Del. Ch. June 21, 2021) (TRANSCRIPT) (Ex. A) (rejecting defendants' argument that cancelled stock options and warrants were unquantifiable benefits to the company and that plaintiff's fair market valuation represented the benefit surrendered by defendants and not the benefit obtained by the company).

Vice Chancellor Glasscock's decision in [*Willcox v. Dalton*]."[106] The Chancellor's decision was thus not an abuse of discretion.

Tesla largely ignores this long line of authority, even though Detroit cited the cases below. Where Tesla does address the cases, it either mischaracterizes them or omits key findings. For instance, Tesla mistakenly claims that *Willcox* "confirms that the corporate benefit from returned equity could equal only as much as the when-issued compensation expense that is reversed."[107] The *Willcox* Court said no such thing. As the Court of Chancery below rightly concluded, the *Willcox* court determined that the returned options "***ha[d] a present value of around $31 million***."[108] Here, the "present value" of the Returned Options is their intrinsic value at the time of the Settlement, as Tesla agreed in the Stipulation.

Tesla also fails to distinguish *Krinsky*, which affirmed approval of a settlement where the Court of Chancery valued canceled options based on their

---

[106] Ruling at 29.

[107] *Id*. (quoting *Willcox*, Tr. at 31).

[108] *Willcox*, Tr. at 30-31 (emphasis added). Tesla also says *Willcox* "merely posited that the returned options were worth '[s]omething over' their depressed face value." Tesla Br. at 22. But that "something over" was not "something over" the grant-date value, as Tesla suggests; rather, the court was saying the value was actually "something over" the court's rounded $31 million figure (given the present value was $31,612,871).

intrinsic value of approximately $200,000.[109] Tesla ignores this, instead claiming that this Court "conclude[d] that the value of returned options 'may not be measurable in dollars and cents[.]'"[110] That was not a categorial rejection of intrinsic valuation at the time of settlement. Rather, the Court observed in 1959—fourteen years before the Black-Scholes model used to calculate the GDFV of an option award first appeared in the *Journal of Political Economy*—only that it was "possible" that the options valuation was not "demonstrably correct."[111] Ultimately, this Court found the trial court's intrinsic valuation "a fair estimate of value recovered for the corporations despite the attack made upon the estimate by the appellant." This Court further "th[ought] it proper for the Vice-Chancellor to have accepted $500,000 [inclusive of the $200,000 valuation of the options] as the value of the benefit[.]"[112]

[109] *Krinsky*, 156 A.2d at 94.

[110] Tesla Br. at 22.

[111] *Krinsky*, 156 A.2d at 95.

[112] *Id.*

Tesla cites several other cases that purportedly rejected the application of present valuations.[113] Not so, and, notably, none of the cases involved the return of in-the-money options or agreed-upon valuation methodologies.

Tesla argues that in the 1965 *Dann v. Chrysler Corporation*[114] trial court decision ("*Chrysler I*"), the Court of Chancery declined to "fix a dollar value on the benefit" flowing from the cancellation of stock options.[115] But *Chrysler I* did not reject an intrinsic valuation at the time of settlement. And it certainly did not endorse (or even consider) valuing surrendered options based upon an earlier "accounting value," as Tesla argues here. *Chrysler I* was a fee approval opinion considering numerous forms of alleged corporate benefits, including the return of options by three executives. Chancellor Seitz ruled that two of the returns were unrelated to the litigation. For the third return, the Chancellor ruled:

> [Plaintiff] did obtain the surrender of Minor's stock options and this was a benefit. I say this because these options had a period of years to run and, being calls at a fixed price, clearly were valuable. They had a substantial potential even though, at the surrender date, their value was questionable because of the then market value of the Chrysler stock. However, I determine that the value attributable to this factor is substantially less than that attributed to it by plaintiffs. I rest my conclusion somewhat on the fact that the value placed on them by

[113] Tesla Br. at 21-22.

[114] 215 A.2d 709 (Del. Ch. 1965).

[115] Tesla Br. at 21 (citing *Chrysler I*, 215 A.2d at 714).

> plaintiffs is based on hindsight evidence, i.e., increase in the value of Chrysler stock after the event. But more to the point, I think it reasonable to infer that these or equivalent options were issued to a replacement for Minor. I therefore do not fix a dollar value on the benefit flowing from this claim. Rather, I give this benefit some consideration in placing an ultimate dollar value on the services of plaintiffs' counsel.[116]

In other words, *Chrysler I* found that the returned options "were clearly valuable," but that value was transferred to a different person, ***not*** returned as a benefit to the company.[117] Here, the Returned Options must be returned to Tesla, and no one else.[118] Notably, *Chrysler I* also supports valuing the options at the time of settlement, as it focused on the value "***at the surrender date***," not the grant date.[119]

Similarly, Tesla cites *Rovner v. Health-Chem Corporation* as an example of the Court of Chancery "view[ing] the value of returned options with a 'healthy dose of skepticism' when calculating fees."[120] But the *Rovner* Court's "healthy dose of

---

[116] *Chrysler I*, 215 A.2d at 714.

[117] *Id.*

[118] Additionally, *Chrysler I* implies that the surrendered options were underwater, because "at the surrender date, their value was questionable because of the then market value of the Chrysler stock." *Id.* The *Chrysler I* Court may have had difficulty calculating the present value of underwater options, which is not surprising for a decision issued eight years before the Black-Scholes model was first published in 1973.

[119] *Id.*

[120] Tesla Br. at 22.

skepticism" concerned a Black-Scholes valuation, not an intrinsic valuation at the time of settlement.[121] *Rovner* also dealt with a materially different circumstance from the return to Tesla of fully vested, in-the-money options; namely, the modification of a stock purchase agreement between that company and its largest stockholder to extend the company's option to repurchase that stockholder's restricted shares by three years.[122]

Tesla cites *Ryan v. Gifford*[123] as purported support for its assertion that "[m]ost [courts] have found the benefit conferred by stock options to be too 'speculative' to quantify."[124] The *Ryan* settlement involved: (1) the return of $28 million in cash; (2) the cancellation, re-pricing, and surrender of thousands of stock options; and (3) corporate governance reforms.[125] The options in *Ryan* were significantly underwater, so their present, intrinsic value at the time of the settlement

---

[121] *Rovner v. Health-Chem Corp.*, 1998 WL 227908, at *5 n.19 (Del. Ch. Apr. 27, 1998); *see also Tornetta*, 326 A.3d at 1257 n.340 (observing that in *Rovner* the Court "expressed skepticism with a Black-Scholes pricing method when awarding mootness fees and leapt to a *quantum meruit* approach without meaningful analysis").

[122] *Rovner*, 1998 WL 227908, at *5.

[123] 2009 WL 18143, at *13 (Del. Ch. Jan. 2, 2009).

[124] Tesla Br. at 22.

[125] *Ryan*, 2009 WL 18143, at *13.

was $0.[126] Nevertheless, the plaintiffs presented a Black-Scholes model that valued certain options at $5,497,154.[127] The *Ryan* court referred to the option remediation and the corporate governance reforms as a "non-monetary recovery" that "is properly considered by the Court in determining a fee award and in the past has served as the sole basis for a fee award."[128] But, importantly, the *Ryan* Court noted "that the Black–Scholes valuation of options may not always be an appropriate measure in determining the adequacy of a settlement."[129] It did not conclude that the proffered valuation was wrong because it was calculated at the time of settlement. Without disclosing its analysis, the *Ryan* Court awarded $9.5 million in fees and expenses.[130]

Finally, Tesla quotes *Sciabacucchi v. Howley* to contend that the benefit to Tesla of the Returned Options is entirely "dissimilar to a . . . certain cash fund" and treating them as cash-equivalent generates a "windfall award[]."[131]

---

[126] *See* B1-3; B4-9.

[127] *Ryan*, 2009 WL 18143, at *4 n.9.

[128] *Id.* at *13.

[129] *Id.* at *4 n.9.

[130] *See id.* at *13-14.

[131] Tesla Br. at 27 (citing *Sciabacucchi v. Howley*, 2023 WL 4345406, at *4 (Del. Ch. July 3, 2023)).

But *Sciabacucchi* did not involve the valuation of in-the-money options actually being returned to the company; rather, it involved the valuation of an adjustment to how the company would calculate certain dividend-equivalent payments to directors in the future. The Court of Chancery ultimately rejected the valuation there because of the hypothetical nature of the benefit, which "rests on a series of assumptions and unknowns."[132] Here, by contrast, the valuation applies to the concrete, non-hypothetical return of in-the-money options and is based on an objective, stipulated formula consistent with Delaware law.

In sum, the case law supports valuation of the benefit Tesla received as of the time of settlement, and Tesla cites nothing to the contrary.

---

[132] *Sciabacucchi*, 2023 WL 4345406, at *4 ("The Company's realization of a $28.3 million benefit from the change to DEPs rests on a series of assumptions and unknowns. I do not know, for example, whether the Company will issue dividends to stockholders or grant options to directors as anticipated, whether a 15% stock growth rate will occur, or how the Company might reinvest any cash it saves. As such, the benefit is dissimilar to a self-pricing and certain cash fund, where a percentage of the benefit approach is typically used to guard against windfall awards."). Revealingly, while quoting *Sciabacucchi*, Tesla inserts an ellipsis in place of "self-pricing and," obscuring the obvious parallels to the self-pricing imposed by the intrinsic valuation of fully vested, in-the-money options at the time of settlement, as set forth in the Stipulation.

c. Tesla's Proposed GDFV Valuation Is Unsupported and Makes No Sense.

Tesla provides no valid support for its primary contention that, despite the terms of the Stipulation and prevailing authority, the Returned Options "result in no . . . recognizable accounting value" other than their GDFV of $19.9 million.[133] The only case Tesla cites to support valuing returned options based on GDFV is the Chancellor's recent ruling in *Tornetta*. But the Chancellor only reluctantly looked to GDFV there "to avoid awarding a windfall in fees."[134] In fact, the court in *Tornetta* specifically said that GDFV was "***a bad candidate for a default rule***" and would only be appropriate "in the exceptional case," as where intrinsic valuation would result in a fee award of more than $5 billion.[135] Here, the Chancellor expressly rejected GDFV because this was not an "exceptional case" where valuing options at the time of settlement would result in a multi-billion-dollar fee award.[136]

Courts do not use GDFV to value returned options for good reasons. As explained in *Tornetta*, "accounting rules [like those that govern GDFV] are not necessarily designed to track changes in economic value, and reasonable minds have

[133] Tesla Br. at 24 (quotations omitted).

[134] Ruling at 31.

[135] *Tornetta*, 326 A.3d at 1261 (emphasis added).

[136] Ruling at 31:1-17.

expressed doubt as to whether GDFV accounting charges reflect economic reality."[137] The Court further cautioned that using GDFV "runs the risk of promoting bad incentives," explaining that:

> If GDFV were the exclusive measure, then stockholder representatives would have little incentive to challenge compensation awards where the GDFV is of little or no value, even where the intrinsic value of the vested options became significant. Similarly, where a GDFV has considerable value, a stockholder representative has significant incentive to challenge the compensation award even where the intrinsic value of the vested options is nil.[138]

Even Tesla has admitted that GDFV has limited value. As Tesla's own expert testified in *Tornetta*, GDFV is just "an accounting number [that]'s not a real economic number."[139] Likewise, Tesla's directors acknowledged in *Tornetta* that GDFV is "flawed as a measure of value."[140] Here, the Director Defendants similarly testified that GDFV "means nothing" and "doesn't make any sense."[141]

---

[137] *Tornetta*, 326 A.3d at 1260-61.

[138] *Id*. at 1261.

[139] B100 at 118:5-16.

[140] *Tornetta v. Musk*, 2022 WL 16550356, Argument § I.A.6 (Del. Ch. Oct. 25, 2022).

[141] *See* B88 at 319:2-15 (Tesla director testifying regarding Black-Scholes model valuation, "[I]t's an accounting exercise you have to do, but it means nothing."); B93-94 at 149:24-150:2 (Tesla director testifying "You don't use Black-Scholes because it doesn't make any sense."); *see also* B81-82 at 169:14-170:16 (Chair of Tesla's compensation committee testifying "[T]here's always a Black-Scholes

Tesla's current GDFV position contradicts the terms Tesla agreed to in the Stipulation, and was repeatedly and contemporaneously disclaimed by Tesla's Board, executives, and experts throughout this case and *Tornetta*. The Chancellor did not abuse her discretion by ruling consistently with those prior representations when considering the fee application. As noted, this Court in *Chrysler II* rejected a similar self-serving about-face between the time of settlement and the determination of a fee award phases concerning the value of settlement consideration.[142]

Tesla's remaining arguments are equally unavailing. Tesla argues that, while "[t]he value of the Returned Options . . . reflects Tesla's enormous run-up in value *to the directors*[,]" the "value to Tesla of those Returned Options, which must be canceled immediately upon receipt, does not depend at all on the happenstance of Tesla's stock price at any point in time."[143] This argument is meritless. The Returned Options have demonstrable value to Tesla, as Tesla has now attested. In a certification submitted to the Court of Chancery from Tesla's Chief Accounting Officer pursuant to the Stipulation, Tesla certified that "[c]ertain

---

accounting treatment, but that doesn't mean that the intrinsic value of what they're getting has any bearing to that. . . . So there's a massive difference between intrinsic value and accounting value.").

[142] *Chrysler II*, 223 A.2d at 387.

[143] Tesla Br. at 21 (emphasis in original).

Director Defendants returned . . . 1,957,861 Settlement Options in the form of Returned Options, ***the value of which was calculated*** using the valuation method set forth in Section 2.3 of the Stipulation."[144] If that were not clear enough, Tesla went further, explaining as required under the Stipulation that as a result of an adjustment agreed upon by the parties "***the value that Tesla received***" was increased to "a total of $458,649,994."[145]

Tesla is also now free to use the shares that the Returned Options covered at values even greater than the Returned Options' intrinsic value. For example, Tesla can use the shares to compensate employees with restricted stock awards valued at Tesla's market price, in which case the value to Tesla based on the June 16, 2023 closing price underlying the mediator's proposal is $510,101,104.[146]

More than that, Tesla can use the underlying shares for any proper corporate purpose. Though Tesla contends that the underlying shares "cannot be sold by Tesla,"[147] it offers no support for that proposition, citing only a self-serving affidavit

---

[144] A868 ¶5.

[145] *Id.* at n.2.

[146] $260.54 x 1,957,861 Returned Options; *see* A276§ 2.3 ("The number of authorized shares under Tesla's 2019 Equity Incentive Plan ('EIP') (as described in Tesla's SEC's filings) shall be increased by the total number of Returned Options upon cancelation of the Returned Options.").

[147] Tesla Br. at 10.

filed below (which in turn cites nothing in support). Neither the 2019 EIP nor the Stipulation states that such shares must remain in the 2019 EIP pool. Rather, the 2019 EIP only requires Tesla to "reserve and keep available such number of Shares as will be sufficient to satisfy the requirements of the Plan."[148] This suggests that if the returned shares result in a total that exceeds what needs to be reserved to "satisfy the requirements of the Plan," then Tesla could use the returned shares for other corporate purposes, including to make acquisitions.

But even if Tesla were correct that the underlying shares must stay in the EIP pool, the Returned Options nevertheless enable Tesla to conduct at-the-market capital raises with limited dilutive impact because any such raises would be offset by the shares returning to Tesla in the form of Returned Options. Detroit observed in briefing below that "[t]he dilution from such a sale would be equal and opposite to the recapture of Returned Options"[149]—the very argument Tesla wrongly claims that Detroit never raised.[150] Detroit need not have even framed it as reverse dilution because "the reverse-dilution theory gets to the same result" as the intrinsic-value

[148] B13.

[149] A757.

[150] Tesla Br. at 28-29.

theory.[151] Had Tesla conducted such a capital raise on the date specified by the mediator's proposal, it would have netted $ 461,881,729.52 in proceeds without diluting the positions of Tesla's stockholders upon the Director Defendants' return of the Returned Options.[152]

In any case, Tesla's complaint that the Court of Chancery "augment[ed] its fee award by over $100 million based on" the Court's recognition of "investor-level benefits" is false.[153] The Court of Chancery did not award fees on that basis. Rather, based on the terms Tesla agreed to in the Stipulation, long-standing Delaware law, and sound reasoning, the Chancellor valued the Returned Cash, Returned Stock, and Returned Options using Tesla's agreed-upon valuations, excluded the value of the Forgone Compensation (as explained further below), and then multiplied that number by a stage-of-case percentage. Nothing else was factored in.[154]

---

[151] *Tornetta*, 326 A.3d at 1251.

[152] Equal to $260.54 x 1,957,861 Returned Options (*i.e.*, $510,101,104.94), less $48,219,375.42 in offset exercise proceeds (based on the average exercise price of $24.6286) that Tesla would have earned if the Director Defendants had exercised the Returned Options instead of returning them to Tesla.

[153] Tesla Br. at 28-29.

[154] To further demonstrate the intrinsic value of the Returned Options to Tesla, and the fallacy of Tesla's GDFV argument, Detroit argued below that Tesla could instead offer the Returned Options to its counsel as a fee. In other words, Tesla could have reissued the options to counsel under the same terms, and counsel would have paid

2. The Court of Chancery Did Not Abuse Its Discretion in Evaluating the Time and Effort of Counsel or Reducing the Fee Award to Avoid a Windfall.

The Court of Chancery properly exercised its discretion in applying the *Sugarland* factors, including the time and effort of Detroit's counsel, in determining the Fee Award. In briefing below, Detroit requested an award of $1,023,779 in expenses and $229,600,687 in attorneys' fees—*i.e.*, 25% of the full $919,426,531 monetary benefit achieved (net of expenses)—as justified under the stage-of-case method and comparable to awards in other cases.[155] In its discretion, the Court of Chancery cut that request by over $53 million, or 23%, ordering the $176,160,000 Fee Award, including expenses. Specifically, the Chancellor excluded the value of the Forgone Compensation, valuing the benefit to Tesla at $734 million instead of $919,426,531, and also reduced the stage-of-case percentage from 25% to 24%, recognizing that Detroit needed only to complete expert depositions before

---

the strike prices. Assuming Tesla were correct that the value to Tesla of the Returned Options is only $19.9 million (which it is not), then that is all it would have cost Tesla to satisfy attorneys' fees.

[155] Detroit argued below that awarding no fees for the substantial governance reforms (including binding unaffiliated stockholder votes on compensation) would have adequately discounted for the fact that, at the time of Settlement, the parties were a few weeks away from reaching the 25% stage-of-case milestone. A458-60. The Chancellor disagreed and exercised discretion to impose a more robust set of reductions amounting to $53 million; Detroit did not appeal that ruling.

concluding discovery.[156] The Court of Chancery did not abuse its discretion in granting this award, and Tesla's arguments for further reductions are wrong.

a. The Court of Chancery Reduced the Fee Award to Expressly Avoid a Windfall.

Tesla argues that the Court of Chancery abused its discretion by failing to address that the Fee Award is an unjustified windfall.[157] Not so. Far from ignoring a windfall analysis, the Chancellor conducted a nuanced, line-item reduction of the fee application, and reduced the Fee Award expressly to address windfall concerns. That methodology was consistent with the exercise of discretion that this Court recently affirmed in *Dell*, which involved a larger settlement and fee award.[158] The Court of Chancery did not abuse its discretion here for the same reasons that it did not abuse its discretion in *Dell*.

More specifically, the Court of Chancery expressly recognized that "[i]f applied rigidly . . . the stage-of-case method runs the risk of windfalls, as the Delaware Supreme Court recently warned in *Dell*."[159] With this in mind, the

---

[156] Notably, if measured against the full $919 million value of the Settlement's monetary components, the Chancellor's award of $176,160,000 represents only 19.2%—well below the appropriate percentage under the stage-of-case approach.

[157] Tesla Br. at 32-37.

[158] *Dell*, 326 A.3d at 689.

[159] Ruling at 26:19-22.

Chancellor exercised her discretion expressly to protect against a windfall, most significantly, by declining entirely to assign value to the Forgone Compensation. While the Chancellor acknowledged that this was a "clear benefit" to Tesla and that "the Director Defendants' course of conduct in years preceding the litigation suggest that they were undeterred before this lawsuit," she nevertheless excluded their value, noting that "[t]he windfall analysis weighs heavily in my analysis."[160]

This was a material reduction. Assuming the Director Defendants had awarded themselves the number of options fixed by the Policy, which is the number they had granted themselves in every single prior grant period, their 2021, 2022, and 2023 option awards would have had a total intrinsic value of $184,160,026, using the same valuation methodology set forth in the Stipulation.[161] The Chancellor's

[160] *Id.* at 32:5-22. Given that the Court of Chancery's concerns about a windfall "weigh[ed] heavily" in the Court's decision to exclude the value of the Forgone Options, if this Court further reduces the award and alleviates the Court of Chancery's windfall concerns, the fee award should be remanded to the Court of Chancery for further consideration as to whether the "clear benefit" of the Forgone Options should be included in assessing the appropriate fee. *See, e.g.*, *Thorpe by Castleman v. CERBCO, Inc.*, 676 A.2d 436, 445 (Del. 1996) (remanding with instructions to revisit determination of attorneys' fees after reversing Court of Chancery's finding that breach of loyalty did not cause compensable damage).

[161] B51-64. If the Forgone Compensation is valued using alternative methods, such as the Black-Scholes value as of June 16, 2023 ($779,305,400) or the Black-Scholes value on the date the grants would have been issued ($685,815,786), the value would be substantially higher than their intrinsic value on the same date. *See id*.

exclusion of this "clear benefit" resulted in a fee reduction of $44,198,406, or approximately 19% of counsel's request.

The Court of Chancery made additional discretionary adjustments that further reduced the award. Specifically, it made the award inclusive of over $1 million in expenses and Detroit's incentive fee; reduced the requested percentage from 25% to 24%; and applied the 24% to $734 million in value, even though the intrinsic value of the Returned Stock, Cash, and Options totaled $735,266,505.[162]

b. Further Reductions Based on a "Declining Percentage" Approach Are Unwarranted and Contrary to Delaware Law.

Defendants' arguments for further reduction to 15% (*i.e.*, the top of the range for when cases settle early) are without basis. For the first time on appeal, Tesla asks the Court to apply the "declining percentage to fee awards" adopted by certain federal courts.[163] Tesla has waived this argument because, as it concedes, it did not raise it in the Court of Chancery.[164] "Only questions fairly presented to the trial court

[162] Ruling at 28:7-8. Although the Court of Chancery also assigned no monetary value to the governance reforms, it acknowledged they were a "valuable source of benefit to Tesla." *Id.* at 28:3-9.

[163] *Id*. at 33-35.

[164] *See* Tesla Br. at 32 n.5.

may be presented for review."[165] The only exception is when "the interests of justice so require."[166] That is not the case here, and Tesla has not even attempted to make that showing. Instead, Tesla claims that *Dell* represented a supposed "change in the decisional law."[167] *Dell* did not; rather, it reaffirmed Delaware's longstanding stage-of-case approach and the deference given to the Court of Chancery's discretion in applying that approach.[168]

Regardless, a long line of Supreme Court cases forecloses the rigid application of a declining percentage methodology as inconsistent with Delaware law, which gives primacy to the benefit conferred on the corporation.[169] This Court made clear in *Dell* that the "[u]se of a declining percentage, in applying the *Sugarland* factors

---

[165] DEL. SUP. CT. R. 8.

[166] *Id*.

[167] Tesla Br. at 32 (citing *Chaverri v. Dole Food Co., Inc*., 245 A.3d 927, 935 (Del. 2021)).

[168] *Dell*, 326 A.3d at 700-01; *see also Ams. Mining*, 51 A.3d at 1259-60.

[169] *See, e.g.*, *Ams. Mining*., 51 A.3d at 1258 ("Therefore, the use of a declining percentage, in applying the *Sugarland* factors in common fund cases, is a matter of discretion and is not required per se."); *Goodrich v. E.F. Hutton Grp., Inc.*, 681 A.2d 1039, 1050 (Del. 1996) ("The adoption of a mandatory methodology or particular mathematical model for determining attorney's fees in common fund cases would be the antithesis of the equitable principles from which the concept of such awards originated.").

in common fund cases, is a matter ***of discretion*** and is not required per se."[170] As noted above, the Court of Chancery already reduced the award to avoid the appearance of a windfall in light of the size of the benefit and did not abuse its discretion in declining to reduce it further. Put differently, "the record reflects that the Court of Chancery did reduce the percentage it awarded due to the large amount of the judgment" and Tesla is "really arguing that the Fee Award percentage did not 'decline' enough."[171]

c. Counsel's Time and Effort Support the Fee Award.

By any measure, Detroit's counsel's time and effort was, as the Court of Chancery acknowledged, "significant."[172] Nonetheless, Tesla contends that the Court of Chancery abused its discretion by failing to further reduce counsel's fee under this *Sugarland* factor. Specifically, Tesla compares counsel's time and effort to that of the plaintiff's counsel in *Dell*. According to Tesla, since counsel worked fewer hours here, it should not be entitled to a multiplier larger than the multiplier awarded in *Dell*. Tesla similarly compares the 11.6x multiplier here to multipliers in other Court of Chancery cases that it purports to summarize in Exhibit C to Tesla's

[170] *Dell*, 326 A.3d at 700 (quoting *Ams. Mining*, 51 A.3d at 1258).

[171] *Ams. Mining*, 51 A.3d at 1258-59.

[172] Ruling at 34:15-16 (recounting efforts); *see* pp.11-13, *supra*.

brief. Tesla argues that the cases "average a lodestar multiplier of 2.35x and have exceeded 5x in only five out of 78 identified cases."[173] These comparisons fail.

Tesla's Exhibit C is misleading. Tesla omits cases that do not fit its narrative, most notably *Activision*, where the Court of Chancery awarded a $9,685 implied hourly rate based on a $72,500,000 fee and $275,000,000 recovery.[174] Prior to this case, *Activision* was Delaware's largest derivative case settlement and thus is the closest precedent applicable to an implied hourly rate analysis under *Sugarland*. *Activision* was extensively argued below;[175] Tesla's decision to omit the most applicable case for this point of law is telling.

Tesla also wrongly fails to account for almost a third of the fee awarded in *Hollywood Firefighters' Pension Fund v. Malone*, which pushes the lodestar multiplier there above 11.6x.[176] Tesla also excluded post-trial mega-fund recoveries

[173] Tesla Br. at 39.

[174] 124 A.3d 1025.

[175] *See* A458-59; A465; A767-69.

[176] *See* 2021 WL 5179219 (Del. Ch. Nov. 8, 2021) (awarding $9.35 million in addition to the $22 million fee award, whereas Tesla only refers to the $22 million).

in its exhibit, most obviously *Americas Mining*, presumably because those numbers also would not have supported its narrative.[177]

Tesla's comparative approach is also contrary to Delaware law. In rejecting this argument below, the Court of Chancery rightly observed:

> [t]here is a danger in moving fees up or down by comparing the time invested by plaintiffs groups in one case to those of plaintiffs groups in another. This approach would effectively back-door in a lodestar method to fee calculation and import all the bad incentives that Delaware courts seek to avoid that are inherent in the lodestar method.[178]

This is why Delaware Courts consistently eschew a rigid lodestar approach.[179]

Nor does the comparison with *Dell* offer any meaningful basis for further reduction. This becomes particularly clear when you consider the full $919,426,531 value of the Settlement prior to the Chancellor's reductions.

---

[177] *See*, *e.g.*, *Ams. Mining*, 51 A.3d 1213 (66x lodestar multiplier and $35,447.55 implied hourly rate based on $304,742,604 fee and $2,031,600,000 recovery).

[178] Ruling at 35:4-11.

[179] *See, e.g.*, *Dell*, 326 A.3d at 698 (explaining that the Supreme Court has "rejected the federal lodestar approach" and "instead of adopting a formulaic approach to fee requests, we committed the fee award to the discretion of the Court of Chancery").

Metric	*Dell*	*Detroit*	Comparison
Recovery	$1,000,000,000	$919,426,531 and governance reforms	91.94% of *Dell*
Fee	$266,700,000	$176,160,000	66.05% of *Dell*
Fee as a % of Recovery	26.67%	19.16%	-7.51%

While Tesla mischaracterizes this case as "settl[ing] well before trial," the Court of Chancery recognized that the parties were "pretty close to trial," having only to complete four expert depositions, the pre-trial order, motions, and briefs.[180] In *Dell*, by comparison, "the parties filed lengthy pretrial briefs" in addition to the pretrial order and conclusion of expert discovery. The -7.51% delta (which equates to $90,540,000 in fees) more than accounts for the difference in posture. The Court of Chancery, thus, did not abuse its discretion.[181]

Tesla argues for a new 7x *per se* multiplier cap based entirely on *dicta* in *Dell* characterizing the multiplier there as "at the high end."[182] *Dell* did not impose any such cap, and specifically rejected the notion that courts are to apply "any per se

[180] *See* Ruling at 33:22-34:1 (characterizing the posture as "pretty close to trial").

[181] Indeed, the substantial difference between the fee awards—notwithstanding the similar posture of the two actions—is attributable to the Court of Chancery's concern that a larger award here might have constituted a windfall. *See* Discussion § II.C.2.a., *supra*; *see also Dell*, 326 A.3d at 702 ("An award can be so large that typical yardsticks, like stage of the case percentages, must yield to the greater policy concern of preventing windfalls to counsel.").

[182] Tesla Br. at 38.

rule, whether declining percentage or any other rule," acknowledging that the fee award "process is necessarily fact-specific and case-specific."[183] The Court of Chancery there also specifically rejected the notion that courts are to "reduce[] the award to a level where the judge feels that the multiplier does not excessively compensate counsel for risk."[184]

Rather, *Dell* affirmed the process the Chancellor applied here: application of the stage-of-case methodology to the common fund, modified as necessary based on careful consideration of the secondary *Sugarland* factors. As a result, the Court of Chancery imposed multiple reductions and arrived at a multiplier that it determined in its discretion was within the range of reasonableness, citing the Supreme Court's ruling in *Americas Mining*, which approved a 66x multiplier.[185]

---

[183] *Dell*, 326 A.3d. at 701, 703.

[184] *In re Dell Techs. Inc. Class V S'holders Litig.*, 300 A.3d 679, 687 (Del. Ch. 2023).

[185] *See* Ruling at 34:15-23. That lodestar rates depend on any given professional's claimed hourly rate further justifies this Court's consistent rejection of a rigid lodestar cap on fee awards. For instance, had the 21,477 hours expended in this litigation by Detroit's counsel been incurred by senior partners at Cravath, Swaine & Moore LLP, counsel for the Director Defendants who bill at a 2024 rate of $2,205 per hour, the resulting lodestar of $47,356,785 would yield a multiplier of 3.72x. *See* B108. Had the hours been billed by senior partners at Sullivan & Cromwell LLP, Tesla's counsel on appeal, who charge hourly rates of $2,375 per hour for senior partners in 2025, the resulting lodestar of $51,007,875 would yield a multiplier of 3.45x. *See* B132.

Finally, the $8,202 hourly rate implied by the Fee Award after the Court of Chancery's reductions is not a windfall. Rather, the implied hourly rate is lower than important similar cases on both real and inflation-adjusted terms. For example, in *Activision*, the implied rate was $9,685/hour, which equates to approximately $13,100/hour after accounting for inflation between 2015 and 2023, the year the parties reached the Settlement.[186] In *Americas Mining*, this Court affirmed a fee award of $304,742,605 where counsel logged 8,597 hours, implying a rate of $35,448/hour, which equates to approximately $53,300/hour after adjusting for inflation between 2011 and 2023.[187] Accordingly, the Court of Chancery's countenance of an implied hourly rate of $8,202 is consistent with applicable precedent and was not an abuse of discretion.

[186] A465.

[187] *Id.* Ordinary inflation accounts for the fact that the nominal value of implied hourly rates in recent cases is higher than that applied in some older cases.

CONCLUSION

For the foregoing reasons, Detroit respectfully requests that this Court affirm the Judgment.

Dated: May 2, 2025

Of Counsel:

FIELDS KUPKA & SHUKUROV LLP
William J. Fields
Christopher J. Kupka
Samir Shukurov
141 Tompkins Ave, Suite 404
Pleasantville, New York 10570
(212) 231-1500

BLEICHMAR FONTI & AULD LLP
Javier Bleichmar
Joseph A. Fonti
Nancy A. Kulesa
George N. Bauer
Thayne Stoddard
300 Park Avenue, Suite 1301
New York, New York 10022
(212) 789-1340

AKERMAN LLP

/s/ *Andrew S. Dupre*
Andrew S. Dupre (No. 4621)
222 Delaware Avenue, Suite 1710
Wilmington, Delaware 19801
(302) 596-9200

BLEICHMAR FONTI & AULD LLP

/s/ *Derrick Farrell*
Derrick Farrell (No. 5747)
3411 Silverside Road, Baynard Bldg.
Wilmington, Delaware 19810
(302) 499-2112

Attorneys for Plaintiff-Below/Appellee The Police and Fire Retirement System of the City of Detroit

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: Answering Brief

Transaction ID: 76300215

Document Title: [PUBLIC VERSION] Appellee's Omnibus Answering Brief (eserved) (jkh)

Submitted Date & Time: May 19 2025 3:13PM

Case Details

Case Number	Case Name
52,2025	In re Tesla, Inc. Director Compensation Stockholder Litigation
53,2025	In re Tesla, Inc. Director Compensation Stockholder Litigation