IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

REPLY BRIEF OF APPELLANT TESLA, INC.

OF COUNSEL:

Brian T. Frawley
Matthew A. Schwartz
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000

- and -

Jeffrey B. Wall
Morgan L. Ratner
SULLIVAN & CROMWELL LLP
1700 New York Ave. NW
Washington, DC 20006
(202) 956-7500

DATED: May 23, 2025

John L. Reed (#3023)
Ronald N. Brown, III (#4831)
DLA PIPER LLP (US)
1201 North Market Street, Suite 2100
Wilmington, DE 19801
(302) 468-5700

- and -

Jason C. Jowers (#4721)
Brett M. McCartney (#5208)
Sarah T. Andrade (#6157)
BAYARD, P.A.
600 N. King St., Suite 400
Wilmington, DE 19801
(302) 655-5000

Counsel for Appellant/Nominal Defendant-Below, Tesla, Inc.

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS ii

PRELIMINARY STATEMENT 1

ARGUMENT 3

I. TESLA DID NOT BENEFIT $458.6 MILLION FROM THE DIRECTORS' RETURNED OPTIONS 3

A. The Stipulation Does Not Prove A $458.6 Million Benefit to Tesla From the Returned Options 3

B. Under Delaware law, the Returned Options Benefitted Tesla No More Than Their $19.9 Million Grant-Date Fair Value 8

C. Detroit Cannot Prove Any Quantifiable Benefit to Tesla From the Returned Options 13

II. THE COURT OF CHANCERY ERRED IN AWARDING COUNSEL 11.6 TIMES THEIR LODESTAR 16

A. The Size of the Recovery Warrants a Downward Adjustment 16

B. The Time and Effort of Counsel Should Constrain Any Fee Award 19

CONCLUSION 23

TABLE OF CITATIONS

CASES **PAGE(S)**

In re Activision Blizzard, Inc. S'holder Litig.,
124 A.3d 1025 (Del. Ch. 2015) 20, 21, 22, 23

Alpha Venture Cap. Partners LP v. *Pourhassan*,
C.A. No. 2020-0307-PAF (Del. Ch. June 4, 2021)
(TRANSCRIPT) 11

Americas Mining Corp. v. *Theriault*,
51 A.3d 1213 (Del. 2012)....................21, 23

Brookfield Asset Mgmt., Inc. v. *Rosson*,
261 A.3d 1251 (Del. 2021)....................13

Chrysler Corp. v. *Dann*,
223 A.2d 384 (Del. 1966)....................6, 7

Dann v. *Chrysler Corp.*,
215 A.2d 709 (Del. Ch. 1965) 7, 8, 9, 10

In re Dell Techs. Inc. Class V S'holders Litig.,
300 A.3d 679 (Del. Ch. 2023) 21

In re Dell Techs. Inc. Class V S'holders Litig.,
326 A.3d 686 (Del. 2024)....................*passim*

In re Diamond Shamrock Corp.,
1988 WL 94752 (Del. Ch. Sept. 14, 1988)....................7, 8

Krinsky v. *Helfand*,
156 A.2d 90 (Del. 1959)....................8, 10

HLSP Holdings Corp. v. *Fortune Mgmt., Inc.*,
2010 WL 528470 (Del. Feb. 15, 2010) 14

Hollywood Firefighters' Pension Fund v. *Malone*,
2021 WL 5179219 (Del. Ch. Nov. 8, 2021) 20, 21

La. State Emps.' Ret. Sys. v. *Citrix*,
2001 WL 1131364 (Del. Ch. Sept. 19, 2001)..13

Moses v. *Pickens*,
1982 WL 17825 (Del. Ch. Nov. 10, 1982)...11

North River Ins. Co. v. *Mine Safety Appliances Co.*,
105 A.3d 369 (Del. 2014)...17

In re PAETEC Holding Corp. S'holders Litig.,
2013 WL 1110811 (Del. Ch. Mar. 19, 2013) 7

Rovner v. *Health-Chem Corp.*,
1998 WL 227908 (Del. Ch. Apr. 27, 1998)...8, 9, 10, 11

Ryan v. *Gifford*,
2009 WL 18143 (Del. Ch. Jan. 2, 2009) 8, 10, 11

Salama v. *Simon*,
328 A.3d 356 (Del. Ch. 2024) 14

In re Sauer-Danfoss Inc. S'holders Litig.,
65 A.3d 1116 (Del. Ch. 2011) 19

Sciabacucchi v. *Howley*,
2023 WL 4345406 (Del. Ch. July 3, 2023) 13, 15

Seinfeld v. *Coker*,
847 A.2d 330 (Del. Ch. 2000) 23

Sugarland Indus., Inc. v. *Thomas*,
420 A.2d 142 (Del. 1980)...16, 19, 20, 23

Tornetta v. *Musk*,
326 A.3d 1203 (Del. Ch. 2024) 12, 13

Treves v. *Servel, Inc.*,
154 A.2d 188 (Del. 1959)..7

Wietschner v. *Rapid-American Corp.*,
1977 WL 918 (Del. Ch. Feb. 10, 1977)....11

Willcox v. *Dolan*,
C.A. No. 2019-0245-SG (Del. Ch. Sept. 8, 2020) (TRANSCRIPT)....12

<u>OTHER AUTHORITIES</u>

Joseph A. Grundfest & Gal Dor, *Lodestar Multipliers in Delaware and Federal Attorney Fee Awards* (Rock Center, Working Paper No. 263, 2025), https://ssrn.com/abstract=5237545....22

Tesla, Inc. Common Stock (TSLA) Charts, NASDAQ, https://www.nasdaq.com/market-activity/stocks/tsla/advanced-charting (last visited May 21, 2025)....22

PRELIMINARY STATEMENT

Detroit's Answering Brief ("AB") fails to address the fundamental issue on appeal: whether the Court of Chancery's $176.2 million fee award is an improper windfall. It is, by every conceivable metric.

First, Detroit does not dispute that, in this derivative case, the only benefits that matter for determining attorney's fees are the benefits conferred on Tesla. Yet it fails to provide a plausible explanation for how Tesla could have derived $458.6 million in benefit from the return of options that were required to be promptly canceled, could not be sold or re-issued, and could at most be added to a vast reserve of available equity. Detroit instead stakes its defense of the fee on the Stipulation, contending that its terms "explicitly foreclose" any assertion that the Returned Options had any value other than $458.6 million. AB 2. The Stipulation, however, does not support this claim—and even if it did, that would be insufficient to meet Detroit's burden under Delaware law. The happenstance of Tesla's stock price at any given moment is irrelevant to the corporate benefit derived from the return and cancellation of a historical option award. In reality, the Returned Options were basically worthless to Tesla, resulting in only a reversed $19.9 million expense.

Second, Detroit cannot defend the reasonableness of the fee award, regardless of the size of the benefit. It argues that the Court of Chancery properly applied *Dell*'s guidance to adjust the fee percentage to avoid a windfall, largely because the court awarded a lesser fee than Detroit requested. But Detroit is not entitled to an astronomical award merely because it asked for an even larger amount without justification. The granted fee award, which represents a lodestar multiplier of 11.6x, is both unwarranted and unprecedented, exceeding the average multiplier in large common-fund settlement cases by more than four times and nearly doubling the "high end" for multipliers set out in *Dell*. Detroit quibbles with Tesla's methodology in calculating average multipliers across comparable cases, but even using Detroit's self-serving and inaccurate adjustments, the fee award would still be exceptionally high. Tesla's proposed fee award of 4.5x counsel's lodestar—or $68.4 million—for three years of modest litigation would amply compensate and incentivize counsel.

Respectfully, the fee award here is unreasonable and should be reversed.

ARGUMENT

I. TESLA DID NOT BENEFIT $458.6 MILLION FROM THE DIRECTORS' RETURNED OPTIONS

Detroit cannot prove that Tesla received a $458.6 million benefit from Returned Options that Tesla had to immediately "cancel[]." A269, A276. Nor can Detroit explain away a long line of Delaware precedent recognizing that the value of returned options is, at best, unquantifiable when it comes to awarding fees. Detroit is therefore forced to rely almost entirely on the language of the Stipulation. But Tesla did not "agree[]" (AB 1, 38) in the Stipulation between Detroit and the Directors on the benefit *to Tesla*, much less agree that Tesla received hundreds of millions of dollars more in value from the litigation than it actually did. Besides, Detroit still had the burden of *proving* the benefit conferred by the litigation on the company to be awarded fees. Detroit has put forth no such proof, nor any basis for assigning any value to the returned, canceled options beyond the $19.9 million reversal of the grant-date accounting charge.

A. The Stipulation Does Not Prove a $458.6 Million Benefit to Tesla From the Returned Options

Detroit's central argument is that the Stipulation establishes the value of the Returned Options to Tesla at $458.6 million. AB 33-41. That is incorrect. The Stipulation's plain terms do not support this assertion, and cannot substitute for proof of this supposed nearly half-billion-dollar benefit to Telsa.

Detroit misinterprets the Stipulation's requirement that the Directors return the value of 3,130,406 options, using the methods set forth in the Stipulation. The Stipulation indeed states that the Directors must "deliver to Tesla the value of the Settlement Options," which included "$276,616,720 in Returned Cash and/or Returned Stock," and "$458,649,785 in Returned Options." A275, 277. But the Stipulation's formula measures the value to the Directors of the stock options as of June 16, 2023, over 19 months before Tesla even received the Returned Options. It does not purport to measure any benefit to the company for the purpose of calculating fees. In other words, Detroit mistakenly equates the "value of the Settlement Options" to the returning *Directors*, with a concrete value to Tesla.

Detroit next argues that the Stipulation treats the options as equivalent to stock and cash, and therefore so should the Court in analyzing the fee award. As Tesla explained in its Opening Brief ("TOB"), the opposite is true: the Stipulation treats stock and cash as interchangeable, but it does not treat the options the same way.[1] TOB 19. For instance, the Stipulation did not permit the Directors to replace the number of Returned Options with cash or stock unless they "inform[ed] the Court of any such adjustments" five business days before the settlement hearing. A277; *see*

[1] Detroit admitted in the Court of Chancery that the Stipulation treated options differently than cash and stock. *See* A791 ("[T]he company directly benefits by receiving money. As the options go, the return of options frees the underlying equity so that the company may use its stock for any corporate purpose.").

TOB 19. Detroit has no response on that point. Moreover, if the Stipulation were indifferent to the form of assets returned, it could have provided for the Directors to return the value of the options in any form they desired, rather than creating separate buckets for cash, stock, and options.

Detroit also notes that the Stipulation values both stock and options based on Tesla's $260.54 stock price "at the time of settlement." AB 36. But again, the formulaic values the Stipulation provides are relevant to the returning Directors, not Tesla.[2] In fact, Tesla's stock price fluctuated significantly between the date the Stipulation was entered and the date it was approved, ranging between $142.05 and $479.86, which underscores that any value as of the valuation date in the Stipulation is not a value that Tesla would ultimately receive. Tesla, Inc. Common Stock (TSLA) Charts, NASDAQ, https://www.nasdaq.com/market-activity/stocks/tsla/advanced-charting (last visited May 21, 2025).

Finally, Detroit turns to the Stipulation's fee provision, but its interpretation renders that provision nonsensical. The Stipulation provides that "any Fee and Expense Award" be "paid out of the Settlement Option Amount . . . , and shall reduce

---

[2] Going outside the Stipulation, Detroit argues that Tesla "attested" that the Returned Options were worth $458.6 million to Tesla, pointing to a footnote in a certification submitted by Tesla pursuant to the Stipulation. AB 52. That certification merely parroted the Stipulation using the June 16, 2023 stock price, as it was required to do. *See* A288 § 7.2. It in no way attested to the value of those options to Tesla, whether in June 2023 or when actually received in February 2025.

the settlement consideration *paid to Tesla*." A286-287 (emphasis added). Detroit argues that this fee provision means that Tesla received the $735 million "intrinsic valuation" that the Stipulation ascribes to the Settlement Option Amount. AB 38-39. To the contrary, this provision confirms that the fee award must be tethered to the benefits that Tesla actually received, not to what the returning Directors gave up. Tesla actually received $276,616,721 in returned cash and 1,957,861 options that it was required to cancel. A868-869. The pot of available "consideration paid to Tesla" that Tesla could turn around and pay to Detroit's counsel was thus $276,616,721 plus the value of the canceled options, which was at most equal to the $19.9 million accounting-charge reversal. Detroit's counsel are remarkably demanding nearly 60% of that consideration.

Even if the Stipulation somehow mistreated the Returned Options as benefitting the company more than they did, Detroit is wrong that the Court of Chancery could start and end its inquiry with the text of the Stipulation. AB 36, 39-41. As this Court held in *Chrysler II*, the plaintiff bears the burden of establishing the value of the claimed benefit, and the court has a corresponding duty to scrutinize the reasonableness of the fee, regardless of any stipulated settlement amount. *Chrysler Corp.* v. *Dann*, 223 A.2d 384, 387-389 (Del. 1966). Detroit attempts to distinguish *Chrysler II* by noting that did not involve a "negotiated valuation methodology," AB 40, but *Chrysler II* is not so limited. The Court in *Chrysler II* explicitly rejected the notion that a "stipulation of settlement" constituted a "concession that plaintiffs have conferred any benefit" through litigation for fee purposes. 223 A.2d at 387; *accord Dann* v. *Chrysler Corp.*, 215 A.2d 709, 714 (Del. Ch. 1965) (*Chrysler I*). Detroit also fails to contend anywhere that Tesla negotiated the valuation methodology here.

Chrysler II does not stand alone. This Court has repeatedly "reject[ed]" the argument that a "stipulation of settlement remove[s] all from the [court's] consideration but the amount" of attorney's fees. *Treves* v. *Servel, Inc.*, 154 A.2d 188, 191 (Del. 1959); *see In re PAETEC Holding Corp. S'holders Litig.*, 2013 WL 1110811, at *5 (Del. Ch. Mar. 19, 2013) ("In both contested and uncontested fee applications, the Court has an independent duty to award a fair and reasonable fee.") (citation omitted). In fact, a plaintiff must prove the benefit conferred even when a settlement provides for a determinate cash payment. In *In re Diamond Shamrock Corp.*, for example, the parties entered into a settlement requiring the company to redeem and replace a stockholder-rights plan by immediately paying $4.48 million to the stockholders, and the plaintiffs sought a fee award as a percentage of the redemption payment. 1988 WL 94752, at *2 (Del. Ch. Sept. 14, 1988). The Court of Chancery rejected the fee application, holding that the plaintiffs had not carried their "burden [to] establish[] the value of the claimed benefit" because they failed to prove that the benefit of the redemption payment "would not be offset by a corresponding reduction in the market value of Diamond's stock." *Id.* at *4.

Detroit has identified no case where statements in a settlement were found to be sufficient to prove a contested conferred benefit. This case illustrates why: even if the Directors who negotiated the Stipulation saw the stock and options as fungible, Tesla itself faced a different set of restrictions that made the return of options less valuable to the company. The Court of Chancery legally erred by failing to hold Detroit to its burden of proving the actual benefit on the improper ground that the "Stipulation speaks for itself"—which in any event the Stipulation does not do.

B. Under Delaware Law, the Returned Options Benefitted Tesla No More Than Their $19.9 Million Grant-Date Fair Value

When it comes to meeting its burden of proving the value of this litigation, Detroit offers little. As Tesla has explained, because canceling options does not generate new cash inflows to Tesla, the company's current benefit from the Returned Options is limited to reversing its previous accounting charge of $19.9 million. *See* TOB 17-18. This fundamental principle of corporate finance has been consistently confirmed by Delaware courts, which have found that the value of returned options is typically unquantifiable when it comes to awarding fees. *See, e.g.*, *Chrysler I*, 215 A.2d at 713; *Krinsky* v. *Helfand*, 156 A.2d 90, 94 (Del. 1959); *Ryan* v. *Gifford*, 2009 WL 18143, at *13 (Del. Ch. Jan. 2, 2009); *Rovner* v. *Health-Chem Corp.*, 1998 WL

227908, at *5 & n.19 (Del. Ch. April 27, 1998). Detroit attempts to distinguish this consistent authority and offers competing decisions, but neither approach succeeds.

Detroit first observes that most of Tesla's authorities did not rely on the options' grant-date fair value when awarding fees and instead treated the options as unquantifiable, AB 45-49, but that argument is self-defeating. That may be a reason to attribute *no* corporate benefit to Tesla from the Returned Options, not even $19.9 million. But it is certainly not a justification for attributing a $458 million benefit to Tesla. The $19.9 million value that Tesla offers as the *most* it could be said to have recovered does not come from the options themselves, but accounts for the prior compensation expense that Tesla can now reverse.[3]

Detroit's attempt to limit each decision to its facts fares no better. For instance, Detroit emphasizes that the court in *Chrysler I* found that the value of the returned options there was unquantifiable in part because the options were likely going to be used in a replacement compensation package. AB 46. In this case, however, the options are even less valuable, as they cannot be repurposed and instead were "canceled." A276. Moreover, the options' potential role in a replacement

---

[3] This measure of value is also the way Detroit framed its complaint. It contended that the Directors had received excess compensation compared to their peers, and referenced the allegedly outsized "grant date fair value" of the option grants dozens of times. *See, e.g.*, A69 ("In 2017, four directors received compensation with a grant date fair value ranging from $1,933,914 to $4,921,810."); A70 ("[T]he Board members . . . in 2019 received compensation with a grant date fair value of, on average, $2,161,063 per director.") (emphasis omitted).

compensation package was just one factor in the *Chrysler I* calculus; the decision is otherwise on all fours with this case, including because there, as here, the underlying shares had fluctuated greatly in value. 215 A.2d at 713; TOB 20-21.

Detroit also cites *Krinsky* as a case where the lower court "valued canceled options based on their intrinsic value of approximately $200,000." AB 43-44. But this Court expressed its disagreement with the intrinsic valuation, explaining that "the difference between the option and market prices was approximately $200,000," but that the "measure of value of the cancellation of [the] stock options" was up for "dispute." *See Krinsky*, 156 A.2d at 94. Indeed, the Court observed that the value of the canceled options "may not be measurable in dollars and cents." *Id.* Although this Court ultimately upheld the Court of Chancery's fee award in *Krinsky*, it notably refused to endorse the lower court's assignment of quantifiable value to the stock options. *Id.* at 95.

Detroit likewise tries to avoid *Rovner* and *Ryan*—two cases that found the value of returned options to be unquantifiable—on the ground that both cast doubt on the Black-Scholes methodology used by Tesla to calculate the grant-date fair value of the options. AB 46-48. But Tesla agrees that the better default valuation method is to treat rescinded options as unquantifiable. *See* TOB 20-23. The fact that Tesla has attempted to come up with some quantifiable benefit beyond what cases like *Rovner* and *Ryan* require underscores how far Detroit has departed from Delaware precedents.

Detroit also manufactures a purportedly "long line" of opposing authority finding that, when calculating fees, the net benefit of returned options is equal to the options' "intrinsic" face value. AB 42-43 & n.105. None of the four cases Detroit invokes involved comparable restrictions on reissuing or reselling returned options to those Tesla faces here. *See* pp. 13-15, *infra*. A review of their specifics further underscores their irrelevance.

As to the first three cases Detroit cites, there is good reason why the Court of Chancery did not rely on them in support of its benefit calculation. The value of the options was not in dispute in one case, *Moses* v. *Pickens*, 1982 WL 17825, at *1 (Del. Ch. Nov. 10, 1982), and the court in another agreed with the plaintiff's "unrebutted valuation" only because "the special litigation committee ha[d] not submitted any analysis quantifying the value of the rescinded . . . awards, including by offering a Black-Scholes analysis," *Alpha Venture Cap. Partners LP* v. *Pourhassan*, C.A. No. 2020-0307-PAF, at 54, 62 (Del. Ch. June 4, 2021) (TRANSCRIPT). The third case, *Wietschner* v. *Rapid-American Corp.*, did not even value the options according to their intrinsic value: the shares there were "under water," so the court assigned them the nominal value of $1 each. 1977 WL 918, at *12 (Del. Ch. Feb. 10, 1977).

Detroit is left with the only case the Court of Chancery relied on below, *Willcox* v. *Dolan*, C.A. No. 2019-0245-SG (Del. Ch. Sept. 8, 2020) (TRANSCRIPT). AB 43. But that decision does not adopt a purported "intrinsic value" rule. The *Willcox* court endorsed a valuation near the "present value of around $31 million," which was *less* than the original $40 million grant-date value of the options. TOB 22-23. The court seized upon this lowest figure advanced by the parties, and held that number—or "[s]omething over" it—justified the fee awarded. *Willcox*, C.A. No. 2019-0245-SG, at 13. Detroit's suggestion that the "something over" language might have referred to a rounding error is implausible. AB 43 n.108. Regardless, Detroit fails to address the critical fact that the $31 million value ascribed in *Willcox* was *less than* the reversed compensation expense.

Even Detroit recognizes that courts should not rely on the intrinsic value of options when that calculation would confer a windfall. AB 41, 50. For instance, Detroit does not dispute that valuing Tesla's stock based on its intrinsic value would have conferred a windfall in *Tornetta* v. *Musk*, 326 A.3d 1203 (Del. Ch. 2024).[4] There is simply no basis for distinguishing the *Tornetta* windfall from this one. Both

[4] To be clear, the Court of Chancery erred in finding here and in *Tornetta* that the grant-date fair-value measurement should be deployed only in "exceptional cases" to avoid "awarding a windfall." TOB 26 (quoting Bench Ruling 31). Although Delaware courts have often found that the value of returned options is unquantifiable when assessing fees, the grant-date fair-value metric provides the only conceivable quantifiable benefit to Tesla of the Returned Options in this case.

arose because, unrelated to counsel's efforts, Tesla's stock value grew by leaps and bounds over a short window, except here Detroit seeks a fee half the size of that at issue in *Tornetta*, for a judgment Detroit says is 100 times smaller.

C. Detroit Cannot Prove Any Quantifiable Benefit to Tesla From the Returned Options

Most telling of all, Detroit never responds to—much less refutes—Tesla's central point that the "net benefits" that matter for setting fees in this derivative action are the benefits *to the company*. *See* TOB 28-31; *Brookfield Asset Mgmt., Inc.* v. *Rosson,* 261 A.3d 1251, 1266 (Del. 2021). Instead, Detroit searches in vain for some remuneration that Tesla might receive from the return of options. It offers just two "complicated and highly speculative intellectual exercises," both of which are too attenuated to prove a quantifiable benefit and are flawed on their own terms. *Sciabacucchi* v. *Howley*, 2023 WL 4345406, at *4 n.50 (Del. Ch. July 3, 2023) (quoting *La. State Emps.' Ret. Sys.* v. *Citrix*, 2001 WL 1131364, at *9-10 (Del. Ch. Sept. 19, 2001)).

Detroit's main theory, which it did not raise below or support with evidence, is that the Returned Options are presently valuable to Tesla because the hypothetical freeing up of shares incident to the Returned Options on the date specified by the "mediator's proposal" of June 16, 2023 would have offset dilution to stockholders. AB 54-55. That is not what happened here, in part because the options were not returned for over 19 months *after* the mediator's settlement terms. *See* A867-869.

Even if the timing lined up, reduced dilution would be a benefit to stockholders, not to Tesla. *See* TOB 28, 31. A company's value depends on its expected future cash flows, not its number of outstanding shares. Just as a corporation cannot recover damages for stockholder injuries, *HLSP Holdings Corp.* v. *Fortune Mgmt., Inc.*, 2010 WL 528470, *4 (Del. Feb. 15, 2010) (TABLE), the supposed undoing of some stockholder detriment does not prove the existence or measure of a corporate benefit for which Tesla can be required to compensate Detroit. *See* TOB 28-31.

Detroit offers just one theory of possible corporate benefit, speculating that Tesla might "use the underlying shares for any proper corporate purpose," such as "acquisitions." AB 53-54. Such a benefit would be effectively worthless, since Tesla already has a vast trove of authorized but unissued stock in reserves, to which the Returned Options will add just 1.4%. A520-521. Indeed, Tesla has a limitless supply of even more stock subject to a stockholder vote. *See Salama* v. *Simon*, 328 A.3d 356, 363-364 (Del. Ch. 2024) (stockholders can amend charter to increase authorized shares). Detroit is also ignoring that Tesla faces restrictions on how it can use the underlying shares, as confirmed in three separate documents. First, the Stipulation provides that Tesla must "cancel[]" the options and correspondingly "increase[]" "[t]he number of authorized shares under Tesla's 2019 Equity Incentive Plan" ("EIP"). A276. Second, the affidavit of Tesla's Director of Finance, Kenneth Moore, attests that the canceled options "cannot be sold by Tesla." A520. And third, the EIP instructs that any returned option awards "will become available for future grants under the Plan," rather than for general corporate use. B13. Tesla alone faces these restrictions on how it can redeploy its shares, reinforcing that Tesla options are worth less to the company than to the market.

Detroit's conjecture about hypothetical alternative future uses of canceled options proves no calculable corporate benefit because it "rests on a series of assumptions and unknowns." *Howley*, 2023 WL 4345406, at *4. Because this litigation benefitted Tesla at most $295,492,233, the largest conceivable fee award would be $70,918,136, representing 24% of that still-considerable sum.

II. THE COURT OF CHANCERY ERRED IN AWARDING COUNSEL 11.6 TIMES THEIR LODESTAR

Detroit cannot defend the reasonableness of the fee award even under the enormous benefit calculated by the Court of Chancery. *See In re Dell Techs. Inc. Class V S'holders Litig.*, 326 A.3d 686, 697 (Del. 2024) (the court's central task is "to set a fair and reasonable fee"). Detroit asserts that Tesla waived reliance on *Dell*, but that cannot be: *Dell* issued after Tesla briefed and argued the fee award, the Court of Chancery invoked *Dell*, and *Dell's* guidance further supports the arguments Tesla made below. Nor should Detroit's fee be artificially inflated because of counsel's extraordinary opening salvo. Detroit also cannot excuse the Court of Chancery's failure to scrutinize the reasonableness of the fee award in light of the time and effort expended by counsel. *See Sugarland Indus.* v. *Thomas*, 420 A.2d 142, 149 (Del. 1980). Finally, although Detroit quibbles with Tesla's data comparing the award to those in similar cases, its attacks are incorrect and do not make the award in this case any less of an outlier.

A. The Size of the Recovery Warrants a Downward Adjustment

When it comes to the Court of Chancery's failure to follow *Dell*'s directive to "consider the size of the award in a megafund case when deciding the fee percentage," 326 A.3d at 702, Detroit largely relies on waiver. AB 59-60. Tesla could not have waived arguments premised on this Court's decision in *Dell* because *Dell* was issued after the arguments below. *See* TOB 32 n.5 (collecting cases).

Detroit's assertion that *Dell* did not offer any novel guidance (AB 60) misreads *Dell*, which clarified that it is "*essential*[] for the court to consider the size of the award in a megafund case when deciding the fee percentage." 326 A.3d at 702 (emphasis added).

The Court of Chancery repeatedly relied upon *Dell* in issuing Detroit's award, *see* Bench Ruling 25, 26, 35, and Tesla is well within its rights under Delaware Supreme Court Rule 8 to highlight those aspects of the *Dell* decision the Court of Chancery ignored. Tesla also properly raised *Dell*'s directives here, which align with Tesla's arguments below that Detroit overstated the applicable fee percentage and sought a windfall award. A480, A494-502. Tesla can rely on additional precedent to support that "broader issue." *North River Ins. Co.* v. *Mine Safety Appliances Co.*, 105 A.3d 369, 383 (Del. 2014).

Detroit next mischaracterizes Tesla's position, claiming that Tesla advocates for a "rigid application of a declining percentage methodology." AB 60. Tesla readily conceded that Delaware courts have rejected a *per se* declining-percentage rule. TOB 34. But this Court was clear in *Dell*: in megafund cases such as this one, courts are required to *consider* whether the traditional percentage-of-the-benefit approach will yield a windfall award. *Dell*, 326 A.3d at 702. No such consideration happened in this case—a straightforward error in light of *Dell*. Instead, the Court of

Chancery rigidly applied the stage-of-the-case approach and selected nearly the highest possible fee percentage within that approach. TOB 31-35.

Detroit finally argues that the Court of Chancery did shift downward to avoid a windfall because it rejected some of counsel's arguments in the initial fee petition. AB 57-59. Awarding the moon to counsel that requested the stars is still a windfall. The fact that the requested fee was so excessive that the trial court had to reduce it by over $50 million to arrive at what is still one of the largest fee awards in Delaware history does not render the fee award reasonable. To the contrary, evaluating the reasonableness of a fee award based on the original request would create perverse incentives, rewarding counsel for baselessly ratcheting up their fee requests. This Court should instead prioritize a fee-setting approach that aligns the interests of counsel with those of the company, thus ensuring that derivative litigation promotes corporate accountability and fairness rather than unjustly enriching attorneys at the company's expense.

The Court of Chancery's application of the traditional stage-of-the-case approach led to an award representing an 11.6x lodestar multiplier—nearly *four times* larger than the average lodestar multiplier in the other largest common-fund settlements in Delaware history. This award compensates counsel at over $8,200 per hour, almost 12 times their normal hourly rate. TOB 1. Clearly, the fee award has "exceed[ed] [its] value as an incentive to take representative cases and turn[ed] into a windfall." *Dell*, 326 A.3d at 702. This Court should at minimum reduce the fee award to 15% of the (overinflated) benefit, yielding a presumptive award of $110 million (representing a considerable 7.25x lodestar multiplier), subject to the remaining *Sugarland* factors.

B. The Time and Effort of Counsel Should Constrain Any Fee Award

Finally, Detroit cannot escape a meaningful examination of the time and effort it actually expended in this case. This Court's recent decision in *Dell* provides a relevant benchmark, where a 7x lodestar multiplier was deemed "at the high end" of reasonableness. 326 A.3d at 705. And across nearly 80 common-fund settlements, Delaware courts have awarded an average lodestar multiplier of 2.58x, less than 25% of the multiplier awarded here. *See* TOB Ex. C. Unable to rebut this Court's guidance or challenge the empirical data, Detroit wrongly suggests that the Court abandon any meaningful "cross-check" altogether. *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1138 (Del. Ch. 2011).

Detroit first tries and fails to align its windfall award with that awarded in *Dell.* Detroit asserts that *Dell* and this case were settled at similar stages, with *Dell* merely also including "pretrial briefs." AB 64. As Tesla explained, that is wrong. TOB 35, 41. In *Dell*, the parties engaged in multiple rounds of motions practice, conducted far more expansive discovery, and made it all the way to the trial court steps. TOB 41. In contrast, the parties here did not litigate any significant motions, produced 97% fewer documents, and had not even completed expert discovery. *Id*. Despite these significant differences, the Court of Chancery awarded counsel a lodestar multiplier nearly *double* the multiplier in *Dell*.

Detroit also relies on an inflated $919 million valuation of the Settlement—explicitly rejected by the Court of Chancery (*see* Bench Ruling 32)—to argue that the fee here is 7.5% less of the recovery than the award in *Dell*. AB 64. But again, the Court of Chancery's award does not become reasonable simply because Detroit has made an even more extraordinary request. And even if Detroit were right, the relevant comparison under *Sugarland* is between the fee awards relative to time and effort of counsel (*i.e.*, the lodestar multiplier), not between the percentages awarded. The fact that counsel here received nearly twice the lodestar premium of that awarded in *Dell*, despite working less than half the hours, highlights the degree to which the award is a windfall. *See* TOB 41.

Detroit next devotes its attention to misplaced criticism of lodestar data Tesla compiled from Delaware common-fund settlements. Detroit highlights Tesla's exhibit's omission of *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025 (Del. Ch. 2015); exclusion of a separate fee awarded for corporate governance remedies in *Hollywood Firefighters' Pension Fund* v. *Malone*, 2021 WL 5179219 (Del. Ch. Nov. 8, 2021); and omission of certain post-trial awards. AB 62-63; *see* TOB Ex. C. Those critiques are unwarranted and irrelevant. Tesla's exhibit is intentionally focused on fees awarded as a percentage of common-fund settlements, to allow for a meaningful comparison of metrics across cases without the distortion caused by variables like awards for non-monetary benefits—which would skew the "Fee as % of Settlement" figures—or premiums to counsel in cases like *Americas Mining* v. *Theriault*, 51 A.3d 1213 (Del. 2012), for "go[ing] the distance to a post-trial adjudication." *In re Dell Techs. Inc. Class V S'holders Litig.*, 300 A.3d 679, 694 (Del. Ch. 2023).

Excluding the separate governance fee in *Malone*, 2021 WL 5179219, at *8, is similarly consistent with that approach. It ensures that Tesla compares apples to apples—that is, fees awarded in common-fund settlements. In contrast, Detroit seeks to compare apples to any fee awards that support its case, regardless of the underlying facts. The omission of *Activision* is also justified, as an indeterminate $5-10 million of the fee award was based on non-monetary benefits, making it impossible to isolate the portion of the fee tied to the common fund. 124 A.3d at 1075. Further, plaintiff's counsel in *Activision* reported only their hours, not their lodestar, making it impossible to determine the lodestar multiplier in that case. *See* Plaintiff's Settlement Br. at 64 (Consol. C.A. No. 8885-VCL), 2015 WL 751783.

But even if Detroit's objections had merit, they would not disturb the ultimate conclusion to be drawn from the exhibit. Adjusting the lodestar multiplier in *Malone* to 12.78x to account for the mootness fee and estimating a lodestar multiplier of

16.51x in *Activision* would increase the average lodestar multiplier from **2.35x** to **2.58x**—a negligible adjustment when the court here awarded a lodestar of nearly **12x**.[5] Such adjustments also would not disturb Tesla's finding that awards in common-fund settlements since this Court's guidance in *Dell* average just **1.86x**. TOB 39.[6] The data remains clear: the fee award in this case is excessive and warrants reversal.

Detroit is thus forced to argue against a meaningful comparison of fee awards issued in prior cases, claiming that Tesla's "comparative approach is [] contrary to Delaware law." AB 63. Yet Delaware law calls for a comparative approach, as this Court confirmed in *Dell*, because reasonableness is informed by courts' standard practices. *Dell*, 326 A.3d at 705.

Despite its initial reluctance, Detroit ultimately resorts to cherry-picking cases as comparators that support its extravagant award. Detroit argues that the award cannot be considered a windfall because higher hourly rates were awarded in two

---

[5] The *Activision* multiplier of 16.51x is derived from multiplying the hours expended (7,363) by the median imputed hourly rate from the cases in Exhibit C ($596.37), yielding a lodestar of $4,391,072, which would ignore that at least $5 million of the award was for governance benefits.

[6] Recent empirical analysis reveals that several of the Court of Chancery's awards are themselves outliers within the broader American legal system. *See* Joseph A. Grundfest & Gal Dor, *Lodestar Multipliers in Delaware and Federal Attorney Fee Awards* 1 (Rock Center, Working Paper No. 263, 2025), https://ssrn.com/abstract=5237545.

cases, *Activision* and *Americas Mining*. AB 66. But this selective approach fails to consider "what Plaintiffs' counsel actually did." *Americas Mining*, 51 A.3d at 1258 (citation omitted). It cannot be sufficient for a court to simply note that *Americas Mining* had a higher multiplier of 66x, as the Court of Chancery did here. Bench Ruling 34. Such an approach would render any conceivable award "reasonable," and is incompatible with the careful balancing of factors that *Sugarland* requires. *See Seinfeld* v. *Coker*, 847 A.2d 330, 336 (Del. Ch. 2000).

Instead, the court must apply an accurate cross-check, considering the specific circumstances of each case. *See* TOB 37-43. In this instance, a fee equivalent to at most 4.5x Detroit's counsel's lodestar, or $68.4 million, is warranted. That amount, which well exceeds the 2.35x average for Delaware common-fund settlements, is more than enough to compensate counsel for their effort, their risk, and the outcome they achieved. "The public would [n]ever believe" Detroit's suggestion that an implied hourly rate of $3,185 would not "motivate them to pursue" similar litigation. *Dell*, 326 A.3d at 702.

CONCLUSION

For the foregoing reasons, this Court should vacate the Court of Chancery's decision and award Detroit's counsel a fee of $68.4 million to $70.9 million.

DATED: May 23, 2025

DLA PIPER LLP (US)

/s/ John L. Reed
John L. Reed (#3023)
Ronald N. Brown, III (#4831)
DLA PIPER LLP (US)
1201 North Market Street, Suite 2100
Wilmington, DE 19801
(302) 468-5700

- and -

Jason C. Jowers (#4721)
Brett M. McCartney (#5208)
Sarah T. Andrade (#6157)
BAYARD, P.A.
600 N. King St., Suite 400
Wilmington, DE 19801
(302) 655-5000

Counsel for Appellant/Nominal Defendant-Below, Tesla, Inc.

OF COUNSEL:

Brian T. Frawley
Matthew A. Schwartz
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000

Jeffrey B. Wall
Morgan L. Ratner
SULLIVAN & CROMWELL LLP
1700 New York Ave. NW
Washington, DC 20006
(202) 956-7500

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: Reply Brief

Transaction ID: 76335647

Document Title: Reply Brief of Appellant Tesla, Inc. (eserved) (jkh)

Submitted Date & Time: May 23 2025 2:47PM

Case Details

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