



**GRANTED**

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Transaction ID 63183922  
Case No. 12711-VCS



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE TESLA MOTORS, INC. ) Consolidated  
STOCKHOLDER LITIGATION ) C.A. No. 12711-VCS

**[PROPOSED] STIPULATED ORDER OF CLASS CERTIFICATION**

WHEREAS, on June 21, 2016, Tesla, Inc. f/k/a Tesla Motors, Inc. (“Tesla” or the “Company”) publicly announced its offer to acquire SolarCity Corporation (“SolarCity”). On July 31, 2016, Tesla and SolarCity executed a merger agreement subject to stockholder approval that provided that SolarCity’s stockholders would receive 0.110 shares of Tesla common stock in exchange for each share of SolarCity common stock they owned at the time. Tesla stockholders voted in favor of the merger at a special meeting held on November 18, 2016;

WHEREAS, beginning September 1, 2016, several individual lawsuits were filed against Tesla’s Board of Directors (Elon Musk, Kimbal Musk, Antonio J. Gracias, Robyn Denholm, Stephen T. Jurvetson, Ira Ehrenpreis and Brad W. Buss (collectively, the “Individual Defendants”)) challenging the acquisition of SolarCity by Tesla and alleging the members of Tesla’s Board of Directors breached their fiduciary duties. The Court consolidated all related actions on October 19, 2016, and appointed as co-lead plaintiffs Arkansas Teacher Retirement System (“ATRS”), Roofers Local 149 Pension Fund (“Roofers Local 149”), Oklahoma Firefighters Pension and Retirement System (“OFP”), KBC Asset Management NV (“KBC”), Erste Asset Management GmbH (“EAMG”) and

Stitching Blue Sky Active Large Cap Equity Fund USA (“Blue Sky”) (collectively, “Lead Plaintiffs”);

WHEREAS, on March 18, 2019, Lead Plaintiffs filed a motion for class certification;

WHEREAS, to avoid unnecessary motion practice, the parties to the consolidated action have reached an agreement to stipulate to the conditional certification of a class (the “Class”) under Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) on the terms set forth below;

WHEREAS, Lead Plaintiffs allege and, based on information currently available to them, Defendants do not contest, the following:

- a. As of September 23, 2016, there were over 149 million shares of Tesla common stock outstanding, such that Class members are so numerous that joinder of all members is impractical;
- b. Questions of law or fact are common to members of the Class;
- c. Lead Plaintiffs’ claims are typical of the claims of the Class because their interests arise from the same alleged course of conduct that gave rise to claims of other class members, and they employ the same legal theory;
- d. Lead Plaintiffs will fairly and adequately represent the interests of the Class because their interests are not antagonistic to those of other Class members

and their attorneys are highly qualified, have significant relevant experience and are capable of conducting the litigation;

e. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications for individual members of the Class;

f. Conflicting adjudications for individual members of the Class might, as a practical matter, be dispositive of the interests of other members of the Class who are not parties to the adjudications, and might substantially impair or impede their ability to protect their interests; and

g. To the extent that any of the claims brought by Plaintiffs in this action are determined to be direct rather than derivative in nature, the Individual Defendants' course of conduct with respect to such claims is generally applicable to the Class, such that any final relief arising from such claims would be appropriate for the Class as a whole.

IT IS HEREBY STIPULATED AND AGREED, by the parties hereto, through their undersigned counsel, subject to the approval of the Court, that:

1. Each of the applicable provisions of Court of Chancery Rule 23(a) has been satisfied. In particular, the Class is so numerous that joinder of all members are impracticable; there are questions of law and fact common to the Class; the claims of Lead Plaintiffs are typical of the claims of the other members of the

Class; and Lead Plaintiffs are members of the Class they seek to represent, have retained counsel experienced in litigation of this type, and have and will continue to fairly and adequately protect and represent the interests of the Class.

2. Each of the applicable provisions of Court of Chancery Rules 23(b)(1) and 23(b)(2) is satisfied. In particular, the litigation of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class; and adjudications with respect to individual members of the Class would as a practical matter be dispositive of the interests of the other members of the Class who are not parties to the adjudications, or substantially impair or impede their ability to protect their interests. In addition, class certification is appropriate because to the extent any of the claims brought by Plaintiffs in this action are determined to be direct rather than derivative in nature, the relief sought by Lead Plaintiffs is appropriate with respect to the Class as a whole.

3. Accordingly, Counts IV (Individual and Class Claim Against the Tesla Defendants for Breach of Fiduciary Duty), V (Individual and Class Claim Against Elon Musk for Breach of Fiduciary Duty as Controlling Stockholder) and VII (Individual and Class Claim Against the Tesla Defendants for Breach of the Duty of Disclosure) of the Second Amended Verified Class Action and Derivative

Complaint of this action are hereby certified as a class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) without opt-out rights.

4. The Class shall consist of all record holders and beneficial owners of common stock of Tesla as of August 1, 2016, along with their successors and assigns, excluding Individual Defendants and their associates, affiliates, legal representatives, heirs, successors in interest, transferees, and assigns.

5. Lead Plaintiffs ATRS, Roofers Local 149, OFP, KBC, EAMG, and Blue Sky are hereby certified as the Class Representatives.

6. The law firms of Grant & Eisenhofer, P.A., Robbins Geller Rudman & Dowd, LLP, and Kessler Topaz Meltzer & Check, LLP are hereby certified as Class Counsel.

7. This Stipulation and Order is without prejudice to (i) the right of any party to bring an appropriate motion, without leave of the Court, at a later time to decertify, limit, extend, or otherwise modify or redefine the Class, or its division into sub-classes, or to challenge, substitute, or modify its representative, and/or (ii) the right of the Court to alter or amend this Order at any time prior to entry of a final judgment on the merits or to make such other orders as may be appropriate.

8. This Stipulation and Order is without prejudice to the right of any party to raise any and all substantive arguments or defenses concerning the claims of the Lead Plaintiffs and/or the Class, including without limitation the right of

Defendants to argue that any claim in this litigation is derivative in nature and therefore not amenable to adjudication on a class basis.

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April 17, 2019

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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Vice Chancellor Joseph R. Slights III



This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** Joseph Slights

**File & Serve**

**Transaction ID:** 63179901

**Current Date:** Apr 18, 2019

**Case Number:** 12711-VCS

**Case Name:** CONF ORDER - CONS w/CA#: 12723, 12740, 12745, 12796, 12804 & 12805-VCS - IN  
RE TESLA MOTORS, INC. STOCKHOLDER LITIGATION

**Court Authorizer:** Slights, Joseph

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/s/ Judge Slights, Joseph