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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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| GIUSEPPE PAMPENA, on behalf of himself and all others similarly situated,<br><br>Plaintiff,<br><br>vs.<br><br>ELON R. MUSK,<br><br>Defendant. | CASE NO. 3:22-CV-05937-CRB<br><br>**LEAD PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF CLASS NOTICE OF VERDICT AND CLAIMS ADMINISTRATION PROCEDURE; MEMORANDUM OF POINTS AND AUTHORITIES**<br><br>Date: June 11, 2026<br>Time: 10:00 am<br>Ctrm: 6, $17^{th}$ Floor<br>Judge: Hon. Charles R. Breyer |

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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 11, 2026, at 10:00 a.m., or soon thereafter as the matter maybe heard, in the Courtroom of the Honorable Charles R. Breyer, Courtroom 6, 17th Floor, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, Lead Plaintiffs Nancy Price, John Garrett and Brian Belgrave, on behalf of the Class, will and hereby do move this Court for an order approving their proposed plan to notify Class members of the jury's verdict, and approving their proposed claims administration process. Lead Plaintiffs' Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of law, the Declaration of Mark C. Molumphy, the Declaration of Cameron R. Azari, the Declaration of Dr. David Tabak, and all exhibits and other papers on file in this matter.

## STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should approve Lead Plaintiffs' proposed plan of notice to Class members of the jury's verdict and procedures for the filing and approval of claims, including (1) retention of a claims administrator; (2) a notice and claims schedule; (3) the forms of the notice of verdict and proof of claim and the process for their dissemination to Class members; (4) the formula for calculating the total damages suffered by each claimant; and (5) the process by which claims will be received, evaluated, and approved.

2. Whether the Court should require Defendant Elon Musk to pay the anticipated expenses for the proposed Class notice and claims process.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

On March 20, 2026, following a two-week trial and almost four days of deliberations, the jury returned a verdict for Lead Plaintiffs and the Class. ECF No. 538. Specifically, the jury determined that Class members suffered damages as a result of Defendant Elon Musk's violations of the federal securities laws. *Id*.

Consistent with Federal Rule of Civil Procedure ("Rule") 23, Lead Plaintiffs propose a schedule and process to notify Class members of the jury's verdict and the procedures to file claims. To effectuate the claims procedures, Lead Plaintiffs ask the Court to approve: (1) a notice and claims schedule; (2) retention of a claims administrator; (3) the forms of the notice of verdict and proof of claim and the process for their dissemination to Class members; (4) the formula for calculating the total damages suffered by each claimant; and (5) the process by which claims will be received, evaluated, approved or disputed.

### II. THE COURT SHOULD APPROVE THE PROPOSED NOTICE AND CLAIMS PROCEDURES

#### A. The Schedule

Lead Plaintiffs propose the following schedule for notice of the verdict, claims administration, and any briefing on fees and expenses:

| Date | Action |
|---|---|
| 21 days following the Order. | Claims administrator to publish and initiate mailing of the notice. |
| 60 days following publication of the notice. | Claims administrator to provide parties with a summary update on received claims. Updated summaries to be provided thereafter every 30 days. |
| 120 days following publication of the notice. | Deadline to submit a claim.[1] |
| 180 days following the deadline to submit a claim. | Claims administrator to provide parties and file with the Court a claims report listing all claims determined to be valid. |

[1] Lead Plaintiffs request that Lead Counsel and the Claims Administrator have the right to propose modifications to the claims deadline or any Class notices and claims procedures, if necessary (*e.g.,* to extend deadlines or issue additional notices regarding new deadlines), subject to Court approval.

| | |
|---|---|
| 30 days after filing of the claims report. | Deadline for Defendant, following meet and confer with Lead Plaintiffs, to file with the Court any issues concerning claims and basis. |
| 30 days after any claims related filings by Defendant. | Deadline for Lead Plaintiffs and/or claimants to file a response to any filings by Defendant. |
| 21 days after any responses to any filings related to any claims. | Deadline for Lead Plaintiffs to move for distribution of funds, attorney fees and expenses, and service award. |
| 21 days before hearing on motion for distribution of funds, claim issues, attorney fees, expenses, and service awards. | Deadline for objections to attorney fees, expenses, or service award. |
| 14 days before hearing on motion for distribution of funds, claim challenges, attorneys' fees, expenses, and service award. | Deadline for replies in support of motion for distribution of funds, attorney fees, expenses, and service award. |

### B. The Claims Administrator

Lead Plaintiffs respectfully request that the Court appoint Epiq Class Action and Claims Solutions ("Epiq") as Claims Administrator. Epiq was previously appointed by the Court as Notice Administrator and administered the class notice plan. ECF No. 186. In that capacity, Epiq has already distributed 171,580 notices to potential Class members, including through direct mail, email, and publication. ECF No. 226. As a result, Epiq has been in contact with brokerages, nominees, and custodial banks that represent potential Class members. *Id.* At the Court's prior direction, Epiq also established and continues to maintain a dedicated website, www.TwitterAcquisitionLitigation.com, that was used for Class notice and which has, to date, received more than 2,184 visits. *See* Declaration of Cameron R. Azari Regarding Twitter Securities Litigation Notice and Claims Process ("Azari Decl."), ¶ 43. In addition to its familiarity with this matter, Epiq has extensive experience serving as a claims administrator. It has served as an administrator in more than 700 cases, has distributed approximately $160 billion in assets through claims processes, and has been retained by the Department of Justice, the Securities and Exchange Commission ("SEC"), and other government agencies to provide claims and administration services. *Id.*, ¶¶ 5-10. Based on these qualifications and the work it has already performed as Notice Administrator, Epiq is well qualified to be appointed as Claims Administrator. *Id.*, *see also Azari Decl.,* Ex. 1.

### C. The Notice and Proof of Claim Forms

Pursuant to Rule 23, and similar to the procedures used in the settlement of a class action, Lead Plaintiffs propose that Class members should be notified of the verdict and provided an opportunity to submit a claim form to receive their portion of the verdict.

**Notice of Verdict:** The proposed notice of verdict ("Notice") is attached as Exhibit 2 to the Azari Declaration. The Notice alerts Class members of the verdict, their right to file a claim, how to file a claim, the deadline for filing a claim, how damages will be calculated, and where to go for more information about the litigation and the claims process. The Notice also includes the fact that Class Counsel will seek a fee award as a percentage of the aggregate damages plus interest, reimbursement of expenses incurred in litigating the case (not including any reimbursement of costs related to the notice and claim psrocess), and that the Lead Plaintiffs will seek service awards pursuant to 15 U.S.C. §78u-4(a)(4), as well as Class members' right to object to the fees, expenses, and service awards once the claims process is complete. As set forth in the proposed schedule, these motions to seek fees, expenses, and service awards will be filed after the completion of the claim process and posted on the case website. In sum, the proposed Notice contains all the information necessary for Class members to determine whether they have been damaged by Musk's violations of the securities laws and, if so, how to file a claim for the damages awarded by the jury in its verdict.[2]

**Proof of Claim Form:** The proposed Proof of Claim form is attached as Exhibit 3 to the Azari Declaration ("Proof of Claim"). Consistent with what would be done in a settlement context,

[2] The proposed Notice does ***not*** include certain items that would typically appear in the notice of settlement of a securities fraud case, including the right to opt out. Class members previously had the opportunity to opt out following the Class Notice and were informed at that time that they may not have another opportunity to do so. ECF Nos. 186, 226. The Case was tried as a class action and the verdict and eventual judgment are binding on all Class members, even though a Class member is not required to file a claim. The proposed Notice also does not describe the potential outcome of the case. In accordance with the PSLRA, this statement is only required in a notice of a settlement where, presumably, the case is resolved for something less than the full amount of damages. *See* 15 U.S.C § 78u-4(a)(7). Here, the statement is not necessary because this is not a notice of settlement and Class members are able to recover for their full damages (plus interest and less fees, non-taxable expenses, and any service awards).

the Proof of Claim form requests information regarding the claimants' identification, relevant holdings and transactions in Twitter stock or options, and supporting documentation where available, and requires that the form be executed under penalty of perjury. The stock and option holdings and trading information requested in the claim form represents the information that the Claims Administrator and Plaintiffs' damages expert has determined is necessary to validate the claims and calculate each claimant's damages and is consistent with what is requested in similarly situated claims processes. Azari Decl., ¶ 46. Through the case-specific website, Class members will also be able to complete and submit the Proof of Claim form online.

**D. The Timing and Dissemination of Notice**

Similar to the Class Notice phase, notice of the verdict will be accomplished through a combination of direct mailing, publication of the notice, and an online outreach campaign, designed to provide the best notice practicable. Azari Decl., ¶¶ 24-45. Specifically, the Notice and Proof of Claim form will be directly mailed to the 171,578 individuals and entities that were previously sent the Class Notice. *Id.*, ¶ 25. In addition, copies of the Notice and Proof of Claim form will be sent to the approximately 1,000 nominee holders (entities that hold shares on behalf of an actual or beneficial owner) that have been identified by Epiq or the SEC. *Id.* These nominee holders will be directed to forward copies of the Notice and Proof of Claim form to their customers and clients to the extent that was not done in connection with the Class Notice. *Id.*

In addition to mailing the Notice and Proof of Claim forms, the Claims Administrator will post a press release on *PR Newswire* and publish notice two to four times in *The Wall Street Journal*, the first time approximately one week after the initial mailing to Class members. *Id.*, ¶¶ 38, 40-41. The press release will include the relevant information regarding the verdict, the deadline to file a claim, and will direct potential Class members to the case-specific website and the case-specific, toll-free phone number that the Claims Administrator has established for the claims process. A second press release will be issued approximately two weeks before the deadline for filing a Proof of Claim as an additional reminder to potential Class members about the deadline. *Id.*, ¶ 42.

In addition to the above, the Claims Administrator will utilize an ongoing online campaign including targeted digital advertising on selected advertising networks. *See* Azari Decl., ¶¶ 28-37. Digital notices will also be placed on various leading social media platforms, including *Facebook*, *Instagram, X (Twitter),* and *Reddit*. *Id.* The website previously established by the Claims Administrator (www.TwitterAcquisitionLitigation.com), will be updated to include: the Notice; the Proof of Claim form (in a format that can be downloaded, printed and/or completed and submitted electronically); the deadline for filing a Proof of Claim; instructions on how to complete the Proof of Claim form; answers to frequently asked questions; instructions on how to object to attorney fees, expense reimbursements, or service awards to the Lead Plaintiffs; and contact information for the Claims Administrator and Class Counsel. *Id.*, ¶ 43. The website will also include an updated description of the case, and links to relevant court filings, including the operative complaint, dispositive motions and orders, the verdict, and relevant pre-and-post trial motions and orders. *Id.* As was done with the Class Notice, the Claims Administrator will conduct an online campaign that can be tailored and adjusted to optimize driving traffic to the website. *Id.*, ¶ 39. This online campaign will include Google AdWords, X Sponsored posts, and Facebook promotions. *Id.*, ¶¶ 28-39. In short, Lead Plaintiffs and the Claims Administrator intend to send notices as explained herein and in the Azari Declaration, with an ongoing media campaign, consistent with the notices approved by the Court, being provided throughout the claims period to increase awareness and encourage the filing of valid claims.

**E. Late-filed Claims**

It is typical in securities cases to receive significant numbers of otherwise valid claims after the submission deadline. *See* Azari Decl., ¶ 65. Class members living abroad or serving overseas may be delayed in their receipt of the Notice and Proof of Claim form, nominee holders may not promptly forward the Notice and Proof of Claim form or they may be delayed in providing contact information to the Claims Administrator, or Class members may have moved and there is a delay in getting the documents forwarded to a new address. In a settlement context, Class Counsel and the claims administrator typically have the discretion to accept late-filed, but otherwise valid claims, and they are generally accepted so long as they do not interfere with or delay the distribution of settlement funds. *See id.*, ¶ 65. Here, Lead Plaintiffs propose that, in conjunction with the filing of the final claims report, the Claims Administrator will identify all valid claims that were filed after the claims deadline and treat those claims as accepted.[3]

**F. Validation and Reporting Claims**

Following the receipt of Proof of Claim forms and holdings and transaction information from Class members, the Claims Administrator will undertake a multi-step process to validate each claim. This process, described in detail in the Azari Decl., ¶¶ 47-64, includes both internal and external audits. It is the same process that the Claims Administrator has used hundreds of times in the distribution of securities-related settlements and that has been approved by courts, the SEC, and other government agencies. *Id.*, ¶ 5.

While the review of submitted claims will begin upon their receipt, the Claims Administrator has identified that it will need at least six months following the claims deadline to complete the review and validation of claims. *Id.*, ¶ 67. This is due, in part, to the fact that historically, the vast majority of claims are received around the time of the deadline, as well as to allow sufficient time for the stringent procedures the Claims Administrator uses to validate claims.

As proposed in the schedule, beginning 60 days after publication of the notice, the Claims Administrator will provide the parties with a summary case profile identifying the name and address of each claimant and the preliminary status of the damages calculation for each claim. *Id.*, ¶ 66. The Claims Administrator will provide an updated summary case profile to the parties on a monthly basis until the claims report is finalized. *Id.*, ¶ 67. The Claims Administrator's claims report, which will be provided to the parties and filed with the Court, will identify each valid claim, including the total damages suffered by the claimant in accordance with the approved formula for calculating damages. *Id.*, ¶ 67. Lead Plaintiffs also request that Lead Counsel and the Claims Administrator have the right and authority to propose modifications to the claims deadline or notices, if necessary,

[3] In addition, since this is a verdict and not a settlement, Lead Plaintiffs believe that Class Members should not be precluded from filing claims, even after the claim filing deadline, for so long as the judgment remains valid and enforceable.

subject to Court approval. Ultimately, at the time the claims report is filed with the Court, the Claims Administrator will establish a file transfer protocol site that will give the parties access to all the Proof of Claim forms and related documentation for every claimant. *Id.*, ¶ 68.

### G. Identifying and Calculating Damages

Damages are measured under the out-of-pocket standard. While the Securities and Exchange Act of 1934 ("Exchange Act") does not identify a specific formula for calculating damages (or require that damages be measured by a plaintiff's out-of-pocket loss on the shares purchased), the Private Securities Litigation Reform Act of 1995 ("PSLRA") provides that where damages are established by reference to the market price of the security, the following formula shall be used:

> The award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.
>
> If the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period period described in paragraph (1), the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.

15 U.S.C. §78u-4-(e)(1)-(2).

Here, the jury determined that Defendant's fraudulent conduct caused Class members to suffer damages based on daily deflation. ECF No. 538. Given the jury's finding that Twitter's stock price was artificially deflated at all times during the Class Period, application of the damages formula is as follows:

**<u>For shares</u>**: Acquisitions and dispositions of Twitter shares will be matched on a FIFO (*i.e.*, first-in-first-out) basis, as discussed below.[4] For Class-Period dispositions that are matched with

[4] This description does not change if LIFO is used instead of FIFO.

an acquisition before the start of the Class Period, the damages per share equal the deflation on the date of disposition; as there was no deflation at the time of acquisition, the deflation upon disposition represents the full damage.[5] For Class-Period dispositions that are matched with a Class-Period acquisition, damages per share equal the deflation on the disposition date less the deflation on the acquisition date. For Class-Period dispositions that are matched with a post-Class-Period acquisition (*e.g.*, short sales with a post-Class-Period covering purchase), damages per share equal the lesser of (1) the deflation on the disposition date, and (2) the average price between the end of the Class Period and the post-Class-Period purchase date, less the disposition price during the Class Period.

**For call options**: Acquisitions and dispositions of Twitter options will be matched on a FIFO basis, and the same formula used for shares will apply to each Twitter option series, though with each option series having its own daily deflation amount and its own post-Class-Period closing prices. In other words, damages per call option equal the deflation in the option price at the time of disposition, less any deflation in the option price at the time of acquisition. For purposes of this calculation, an exercise of a call option owned by a Class member will be treated as a disposition of that option at the exercise price, while the exercise of a call option against a Class member (*i.e.*, the Class member has a short position in the option) will be treated as a covering acquisition of that option at the exercise price. Damages for a short position that was established in the Class Period and not closed out before the end of the Class Period will be limited by the PSLRA in the same manner as described for shares above.

**For put options**: Acquisitions and dispositions of put options will also be matched on a FIFO basis, and the same formula used for shares will apply to each Twitter option series, though with each option series having its own daily deflation amount and its own post-Class-Period closing prices. In other words, damages per put option equal the inflation in the option price at the time of acquisition, less any inflation in the option price at the time of disposition. For purposes of this

[5] As there is no deflation at purchase, the date of the purchase is not necessary and a Class member's holding of Twitter shares at the start of the Class Period, without reference to when those shares were acquired, is sufficient.

calculation, an exercise of a put option owned by a Class member will be treated as a disposition of that option at the exercise price, while the exercise of a put option against a Class member (*i.e.*, the Class member has a short position in the option) will be treated as a covering acquisition of that option at the exercise price. Damages for a short position that was established in the Class Period and not closed out before the end of the Class Period will be limited by the PSLRA in the same manner as described for shares above.

Any damages resulting from the above calculations should be deemed to have been incurred as of October 4, 2022, and pre-judgment interest should be applied from that date to the date of judgment. *See* ECF No. 557. Ultimately, as reflected in the proposed formula for calculating Class members' damages, the statutory measure of damages set forth in the PSLRA, including the PSLRA's 90 day "look back" calculation, is applied as set forth above.

**H. Matching Class Period Transactions (FIFO or LIFO)**

The submitted claim forms and related documentation will be used to identify Class member purchases and sales of Twitter stock and options during the Class Period to determine each claimant's total damages. Identifying Class Period transactions is straightforward and not subject to dispute. For shareholders who bought and sold stock *during* the Class Period, however, it may be necessary to determine the method for matching purchases and sales *within* the Class Period. There are two standard methodologies for matching transactions: the first-in-first-out method ("FIFO") and the last-in-first-out method ("LIFO"). Under FIFO, it is presumed that shares are sold in the order in which they are purchased, and it is presumed that the shares sold are the shares that were purchased earliest in time. *See* BLACK'S LAW DICTIONARY 667 (8th ed. 2004) (the FIFO method "assumes that goods are sold in the order in which they are purchased –that is, the oldest items are sold first"); *see also Jaffe Pension Plan v. Household Intern., Inc.*, 756 F.Supp. 2d 928, 936-37 (N.D. Ill 2010) (explaining LIFO and FIFO methods for matching transactions).

No statute or case law mandates the use of one methodology over the other, and both methodologies have been used in securities claims processes. However, the FIFO method is the appropriate method to use in this case. *See e.g., Plumbers & Pipefitters Local 572 Pension Fund* *v. Cisco Sys., Inc.*, 2004 WL 5326262, at *3 (N.D. Cal. May 27, 2004) ("the first-in-first-out ("FIFO") accounting method . . . has been established as a legitimate method for computing losses or gains from stock purchases or sales"); *Household*, 756 F.Supp 2d at 937 (applying FIFO in part because FIFO "has been established as a reasonable measure for computing losses or gains from stock purchases or sales in the past," and the International Financial Reporting Standards do not permit use of LIFO as an inventory method). The widespread use of the FIFO methodology in damages calculations exists for good reason: it is consistent with how most investors trade in securities. Indeed, for tax reporting purposes the default method for identifying shares sold (for capital gains purposes) is FIFO. 26 C.F.R.§1.1012-1(c) ("stock sold or transferred is charged against the earliest lot the taxpayer purchased or acquired to determine the basis and holding period of the stock"); *see also Helvering v. Campbell*, 313 U.S. 15, 20-21 (1941) ("The general rule is that where shares of stock cannot be identified with any particular lots purchased, they will be charged against the earliest purchases."); *see generally* Declaration of Dr. David Tabak, ¶¶ 1-4.

In *Household*, the court applied FIFO to the post-verdict class-wide distribution, noting that "FIFO has historically been the accounting method of choice for governmental institutions" and "FIFO also has been the preferred method of calculating losses by the IRS." 756 F.Supp. 2d at 937. Similarly, in the *Apollo* securities fraud case, the court approved FIFO for the damages calculation used in conjunction with the post-verdict settlement of the case. *See In re Apollo Group, Inc. Sec. Litig.,* No. CV 04-2147-PHX-AT, (D. Ariz. Dec. 19, 2011) Court Approved Notice at p. 9 (attached as Exhibit 2 to the Molumphy Decl.). That damages calculation also used the FIFO methodology to match class period purchases with sales. *Id.* at 9. In another recent post-verdict case, *Gruber v. Gilbertson*, the court approved the FIFO methodology, reasoning that "the FIFO approach more accurately matches generally accepted accounting practices, as well as the Government's approach to capital gains taxation, so there is a reasonable argument that it should be viewed as the default option[.]" 647 F.Supp.3d 100, 120 (S.D.N.Y. 2022). FIFO is also predominantly used in securities class action settlement distributions in the Ninth Circuit. *See* Molumphy Decl. at ¶ 4; *see, e.g., Lillien v. Olaplex Holdings, Inc.*, No. 2:22-CV-08395-SVW, 2025 WL 3050229 (C.D. Cal. Aug. 8,

2025) *In re QuantumScape Sec. Litig.*, No. 21-CV-00058-WHO, 2024 WL 3491039 (N.D. Cal. July 18, 2024) *In re Apple Inc. Sec. Litig.*, No. 4:19-CV-02033-YGR, 2024 WL 3297079 (N.D. Cal. June 3, 2024).

Consistent with the vast majority of damages calculations approved by courts in this Circuit and across the country, the FIFO methodology should be used, where relevant, to match any shares purchased by Class members with the relevant sale of the stock during the Class Period.

**I. Process to Finalize Claims**

Within six months of the deadline for Claim Form submission, Epiq will provide a report of claims processing to the parties and the Court. Azari Decl., ¶ 67.[6] The report will identify all Claim Forms that Epiq has determined to be eligible for a recovery, in whole or in part, and the total damages calculation, as well as all Claim Forms that were rejected and the basis for rejection. *Id*. Both Parties will then have the ability to review individual claims, and if necessary, confer on any issues before Lead Plaintiffs move for entry of a revised judgment. *Id*. To the extent there are any remaining unresolved issues, the parties can submit those to the Court for final resolution.

However, the Court should reject any request to use the claims process to renew discovery and conduct thousands of individual mini-trials against Class members. In his recent "Opposition" to judgment, Musk claimed that he somehow retained the "right" to conduct "reliance-related discovery" from any Class members who submitted claims. ECF No. 559 at 14. Musk is mistaken. There is no statutory right to post-trial discovery, and neither the Exchange Act nor the PSLRA provide a basis for allowing defendants to re-open discovery on reliance (or any other issues) after trial. The Supreme Court cases Musk previously cited, *Basic* and *Halliburton II*, merely reiterate that a defendant can rebut the fraud-on-the-market presumption of reliance at trial but say nothing about post-trial discovery. *Basic, Inc. v. Levison*, 485 U.S. 224, 248 (1988); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 276 (2014) ("*Halliburton II*"). And even pretrial, the Ninth Circuit has specifically held that "[a] defendant does not have unlimited rights to discovery against

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[6] The final report will be provided following the final deadline to submit claims, which deadline may be modified by the Claims Administrator, with Court approval.

unnamed class members." *Blackie v. Barrack*, 524 F.2d 891, 907 n. 22 (9th Cir. 1975).

Musk also falsely suggested that Lead Plaintiffs somehow conceded that individual reliance discovery would need to be deferred until after trial. ECF No. 559 at 14. But Lead Plaintiffs made no such admission or agreement, nor is there any pretrial order reserving any such right. *See Pierce Cty. Hotel Emps. & Rest Emps. Health Tr. v. Elks Lodge B.P.O.E.*, No. 1450, 827 F.2d 1324, 1328-29 (9th Cir. 1997) ("Issues not preserved in the pretrial order are eliminated from the action."). To the extent Musk believes he has a basis to challenge the reliance of any Class member, he can do so without needing to reopen discovery in an attempt to manufacture a challenge long after discovery was supposed to be completed.

Undoubtedly realizing he has no right to discovery, Musk tries to analogize this case to three other decisions—*Household*, *Vivendi,* and *Puma*—where courts only considered the defendants' requests for post-trial discovery because those rights had been expressly preserved in court orders prior to trial. ECF No. 559 at 10. These cases highlight the completely different posture found here. For example, in *Household*, the defendants sought discovery on the issue of reliance during the pre-trial discovery period and, in response to a motion to quash that discovery, the court specifically ordered that discovery regarding reliance would be bifurcated until after a trial on liability. *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, 2005 WL 3801463, at *4 (N.D. Ill. Apr. 18, 2005); *see also* Molumphy Decl., Ex. 1 (*Household* Final Pretrial Order) at 6-7. In *Vivendi*, the defendants actually took pre-trial discovery of unnamed class members and, while the court then excluded individual reliance evidence at trial, it explicitly held that it could be used in post-trial proceedings. *See In re Vivendi Universal, S.A. Sec. Litig.*, 765 F.Supp. 2d 512, 585 n.63 (S.D.N.Y 2011), *aff'd*, 838 F.3d 223 (2d Cir. 2016). Here, the Court never permitted post-trial discovery. Indeed, in Musk's third cited case, *Puma*, the court denied the defendant's motion to conduct post-trial discovery from individual class members, distinguishing *Household* and *Vivendi* on the basis that pre-trial discovery on individual reliance issues was "expressly stayed until after trial, and the final pretrial orders specifically provided for post-trial discovery." *Hsu v. Puma Biotechnology, Inc.*, 2021 WL 2644100, at *2-4 (C.D. Cal. June 11, 2021) (court also held that

*Basic* and *Halliburton II* did not provide a right to challenge reliance through post-trial discovery.)

Here, of course, the Court's pre-trial orders set firm deadlines to complete discovery. No party requested, and the Court certainly did not order, the right to conduct post-trial discovery. Nor can Musk demonstrate any "good cause" to modify the pretrial conference scheduling orders establishing fact discovery deadlines. ECF No. 189. Musk failed to raise or preserve any right to pursue post-trial discovery during the case. Musk certainly had the ability to identify other Twitter shareholders, who were periodically sent company materials during the Class Period. *See, e.g.* Exchange Act §14(c) (requiring proxy statements to be "transmit[ted] to all holders of record of such security"); 17 CFR §14a-7(a)(2)(ii) (requiring public company to provide a requesting shareholder with "a reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities holding securities"). Moreover, all major investment institutions (which typically hold the vast majority of publicly traded securities) are required to identify their holdings quarterly on publicly available Form 13-F filings. 15 U.S.C. §78m(f). Indeed, in Musk's own expert reports, Atanu Saha and Kenneth Lehn each identified dozens of unique institutions that held shares of Twitter common stock during the Class Period. ECF No. 99-6, 246-2. And there is no dispute that the Claims Administrator in this case was able to identify Class members for the notice of class certification. Musk simply made no effort to assert or preserve discovery rights post-trial despite his access to relevant identifying information, precluding him from showing any good cause to extend the deadline now.

Post-trial discovery would also be of little value. The Ninth Circuit recognized in *Blackie* that "[w]e doubt the right to disprove causation will substantially reduce a defendant's liability in the open market fraud context, as we doubt that a defendant would be able to prove in many instances to a jury's satisfaction that a plaintiff was indifferent to a material fraud." 524 F.2d at 906-07 n. 22. Or, as Justice Blackmun reiterated in *Basic*, "'it is hard to imagine that there ever is a buyer or seller who does not rely on market integrity. Who would knowingly roll the dice in a crooked crap game?'" 485 U.S. at 246-47. Musk cannot justify any discovery, let alone explain why he should be able to seek discovery from tens of thousands of Class members on the hope that such a fishing expedition will allow him to "pick off the occasional class member here or there through individualized rebuttal." *Halliburton II*, 573 US. at 267. Even in *Vivendi,* where discovery regarding reliance was explicitly reserved until after trial, the court rejected an effort to include interrogatories relating to reliance in the notice and claim form. 284 F.R.D. at 155 (noting that the defendants themselves acknowledged they had "no intention of contesting the individual reliance of each and every Class member").

Musk also fails to explain how answers to any discovery would rebut the presumption of reliance found by the jury. The entire point of the fraud-on-the-market presumption of reliance is that proof of individualized reliance is not required because "[m]isleading statements will … defraud purchasers of stock even if the purchasers do not directly rely on the misstatements." *Basic*, 485 U.S. at 241-42. Further, while Musk wants to shift the burden onto Class members to prove that they relied on the integrity of the market for Twitter stock, the burden was on Musk to rebut the presumption of reliance. *Halliburton II*, 573 U.S. at 276. And everyone who sold Twitter stock at the market price relied on that price. *Id*. at 273-74, 294. To rebut the presumption of reliance, Musk would need to establish that a Class member would have sold Twitter stock or transacted in subject Twitter options, at the same price they did, even if he or she knew Twitter's stock price was artificially deflated by fraud, something Musk failed to do at trial.

In sum, Lead Plaintiffs propose a fair and reasonable process to finalize the determinations by the Claims Administrator, including allowing both Parties the ability to review individual claims, and if necessary, confer on any issues, and to the extent there are any remaining unresolved issues, the parties can submit those to the Court for final resolution. Conversely, there is no relevant precedent for post-trial discovery, and Musk cannot show how discovery would actually rebut the presumption of reliance. Musk's threat to conduct discovery should be seen for what it is—an attempt to significantly increase the burden of filing claims, discourage Class members from collecting damages caused by the fraud, and delay the claim process.

## III. THE COURT SHOULD ORDER MUSK TO PAY FOR THE NOTICE AND CLAIMS PROCESS

Since the jury found Musk violated the federal securities laws, he should be responsible for paying the costs of the notice and claims process. *See, e.g., Hunt v. Imperial Merch. Serv. Inc.*, 560 F.3d 1137, 1144 (9th Cir. 2009) ("District courts may order a class action defendant to pay the cost of class notification after they determine that the defendant is liable on the merits"); *see also Hunt v. Check Recovery Sys., Inc.*, No. C05 04993 MJJ, 2007 WL 2220972, at *4 (N.D. Cal. Aug. 1, 2007), *aff'd sub nom. Hunt v. Imperial Merch. Servs., Inc.*, 560 F.3d 1137 (9th Cir. 2009) ("At the end of the case, of course, the district court can allocate the cost of identifying and giving notice to class members 'as it would any other item of costs.'"); *Sullivan v. Kelly Servs., Inc.*, 2011 WL 31534, at *1 (N.D. Cal. Jan. 5, 2011) (shifting costs of class notice to defendant following liability determination); *Macarz Transworld Sys., Inc.*, 201 F.R.D. 54, 59 (D. Conn. 2001) ("a number of courts have held that where notice is to occur after liability has been determined, the defendant appropriately bears the costs"). Unless paid by Musk, these costs would be borne by the aggrieved, innocent investors.

## IV. CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully request that the Court appoint Epiq as the Claims Administrator, approve the proposed Notice and Proof of Claim forms, and direct that the proposed notice and claim administration process be implemented.

Dated: April 17, 2026

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**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

I, Mark C. Molumphy, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 17th day of April, 2026, at Burlingame, California.

*/s/ Mark C. Molumphy*
Mark C. Molumphy