

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COLBY GOROG, JOSHUA FLINT,
LOUIS ROBINSON, and MICHAEL LERRO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ELON MUSK, and TESLA, INC.,

Defendants.

Civil Action No.: 1:22-cv-05037-AKH

**PLAINTIFFS' OPPOSED MOTION
FOR LEAVE TO FILE THIRD
AMENDED CLASS ACTION
COMPLAINT**

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Plaintiffs Colby Gorog, Joshua Flint, Louis Robinson, and Michael Lerro, (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, respectfully move the Court for leave to file the attached Third Amended Class Action Complaint ("TAC"—see Exhibit A, *appended*).

Rule 15 provides that "a party may amend its pleading [with] the court's leave" and that "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Plaintiffs seek leave to amend in response to Defendants' motion to dismiss filed March 31, 2023. Allowing Plaintiffs to file the Third Amended Complaint would serve justice and promote judicial efficiency. Further, there would be no substantial or undue prejudice, bad faith, undue delay, or futility.

Through the Third Amended Complaint, Plaintiffs seek to accomplish the following objectives:

- Dismiss all claims under RICO and Securities Exchange Act § 17(a).
- Remove Defendant Dogecoin Foundation, Inc. as a Defendant.
- Refine Plaintiffs' class allegations.

- Consolidate Plaintiffs’ three 10b-5 claims into a single count against Defendant Musk only.
- Plead a single count of insider trading per § 20A of the Exchange Act, against Defendants Musk and Tesla, Inc., consistent with facts already alleged in the SAC.
- Plead additional fact allegations—extant at the time the SAC was filed but only recently uncovered by Plaintiffs—showing that certain large Dogecoin “wallets” belong to Defendant Musk and/or to Tesla, Inc.
- Plead additional fact allegations that have occurred since Plaintiffs’ Second Amended Complaint was filed in December 2022, including the continued market manipulation of Dogecoin by Defendant Musk.
- Add fact allegations to better clarify that Dogecoin is a security under the *Howey* test.
- Add fact allegations of domestic transactions in Dogecoin by Plaintiffs and the Class.
- Add fact allegations showing that Defendant Musk took on a fiduciary duty to the Dogecoin enterprise and its investors including Plaintiffs and the Class.
- Add fact allegations that strengthen the inference of scienter, particularly regarding Defendant Musk’s manipulation of the market for the Bitcoin cryptocurrency.

Because a clear preference exists for cases to be adjudicated on the merits, because the interest of justice requires it, and for the reasons stated in the attached brief in support, Plaintiffs respectfully request that the Court grant them leave to file their Third Amended Class Action Complaint. This motion is opposed by Defendants.

Respectfully Submitted,

Dated: May 31, 2023

By: /s/ Evan Spencer
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 31st day of May 2023, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, giving notice to all parties in this action.

/s/Evan Spencer
Evan Spencer