



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

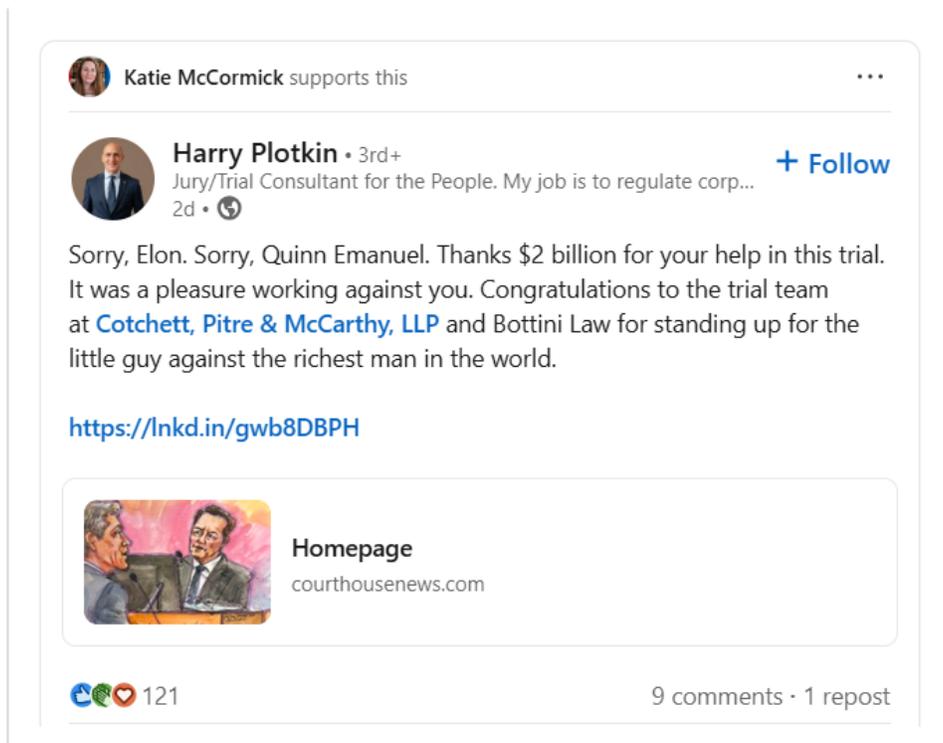
IN RE TESLA, INC. DERIVATIVE)	
LITIGATION)	Consolidated & Coordinated
)	C.A. No. 2024-0631-KSJM
<hr/>		
THE POLICE AND FIRE RETIREMENT)	
SYSTEM OF THE CITY OF DETROIT,)	
)	
Plaintiff,)	C.A. No. 2020-0477-KSJM
)	
v.)	
)	
ELON MUSK, BRAD BUSS, ROBYN M.)	
DENHOLM, IRA EHRENPREIS, LAWRENCE)	
J. ELLISON, ANTONIO J. GRACIAS,)	
STEPHEN T. JURVETSON, LINDA JOHNSON)	
RICE, JAMES MURDOCH, KIMBAL MUSK,)	
KATHLEEN WILSON-THOMPSON, and)	
HIROMICHI MIZUNO,)	
)	
Defendants,)	
)	
-and-)	
)	
TESLA, INC.,)	
)	
Nominal Defendant.)	

**DEFENDANTS’ MOTION FOR RECUSAL
AND RANDOM RE-ASSIGNMENT**

Defendant Elon Musk and Nominal Defendant (collectively, “Defendants”) in the above-captioned action, through their undersigned counsel, move for the Court’s recusal and random re-assignment of these cases, to avoid an appearance of bias, for the reasons set forth below.

INTRODUCTION

1. Defendants do not bring this motion lightly. But Defendants cannot ignore the recent reaction by this Court to LinkedIn posts attacking Mr. Musk and his chosen counsel, regarding a case with overlapping factual allegations in the consolidated matter, and that bears directly on the appearance of impartiality in these actions.



2. This post to which the Court reacted and another to which a Court staff member reacted are not simply negative criticism of Mr. Musk and his attorneys, they are inflammatory: instructing Mr. Musk and his attorneys at Quinn Emanuel to be “deeply ashamed,” sneering at Mr. Musk and his attorneys for an adverse multi-

billion-dollar jury verdict, and cheering a facile non-judicial notion of justice: “the little guy” prevailing over “the richest man in the world.”

3. Worse, the very facts underlying the litigation celebrated in the posts are squarely at issue in the consolidated and coordinated actions. In fact, the pending motion to dismiss in these consolidated and coordinated cases is opposed by Plaintiffs *explicitly* on the basis that allegations survived a motion to dismiss in the parallel securities class action and that outcome purportedly supports the allegations here.

4. The apparent deactivation of the Court’s LinkedIn account on or about the same day as supporting the post only furthers the appearance of bias—a recognition that the Court’s LinkedIn activity ran afoul of the Code of Judicial Conduct, and required remediation.

5. Delaware courts have built a careful reputation for integrity and impartial justice. Judges are required to protect that integrity—in the first instance by refraining from public statements; in all instances by recusing to avoid any perception of bias.

6. In light of the Court’s recent public support of LinkedIn posts that create a perception of bias against Mr. Musk in these cases, recusal is necessary and warranted. These cases should be re-assigned to another random-drawn judicial officer of this Court, as discussed below.

BACKGROUND

7. Over the past few years, Tesla and its directors have faced numerous (and expensive) litigations in this Court. As is their right, they have not made a secret of their disagreement with this Court's rulings.

8. This Court handled the litigation that ended with Mr. Musk closing on the subject Twitter deal under threat of specific performance if he proceeded through trial. *See generally Twitter v. Musk*, C.A. No. 2022-0613-KSJM (Del. Ch.).

9. These consolidated and coordinated actions include allegations concerning Musk's acquisition of Twitter—primarily arising from supposed falsity of public statements by Musk during the pendency of that deal, including statements on May 13 and 17, 2022 that the deal was “temporarily on hold” and could “[]not move forward” until Twitter provided certain requested information. *See* Consol. Action Dkt. 1, Compl. ¶¶ 151, 153, & 368.

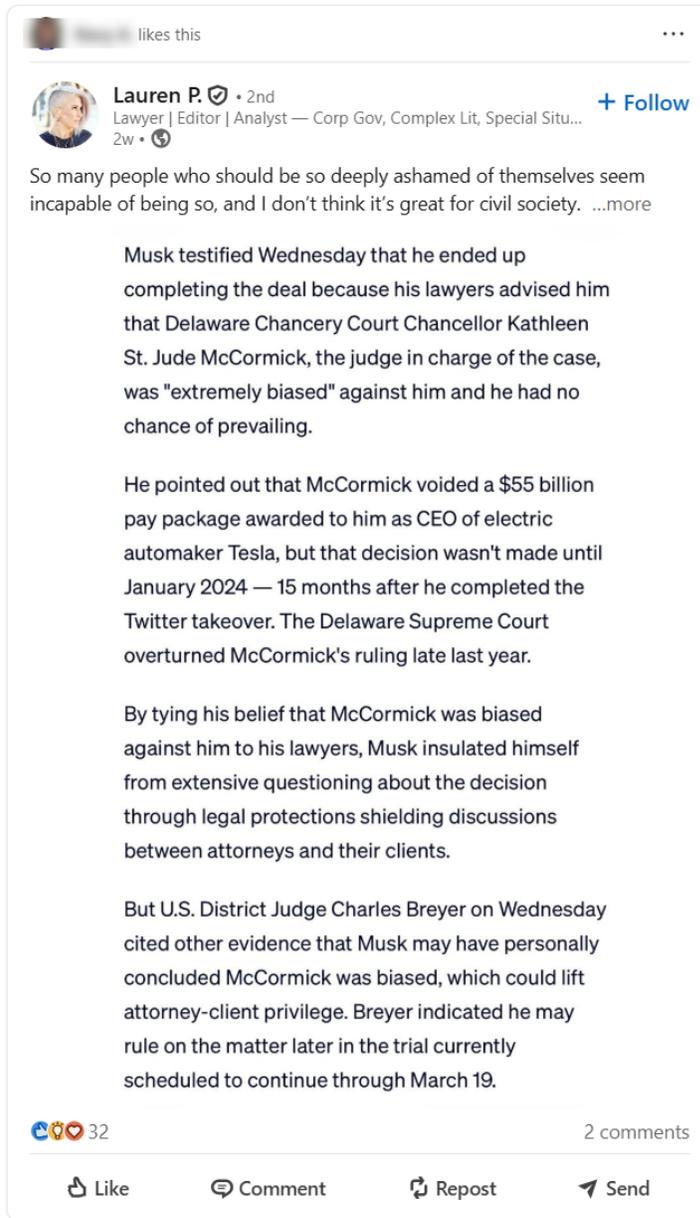
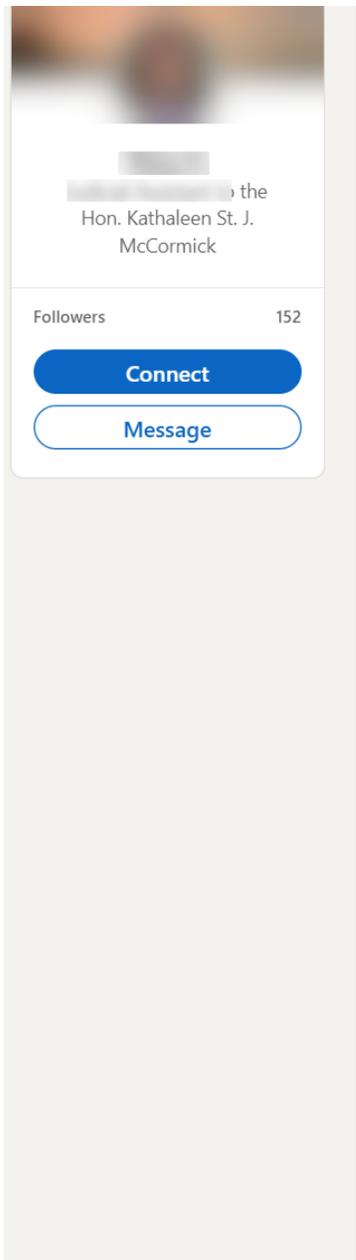
10. The *Detroit* case alleged that Musk and his co-directors at Tesla granted themselves excessive compensation and involves an ongoing dispute over the award of attorneys' fees to the plaintiffs' lawyers in that case. *See In re Tesla, Inc. Dir. Comp. Stockholder Litig.*, 2026 WL 251831, at *11 (Del. Jan. 30, 2026); C.A. No. 2020-0477-KSJM Trans. ID 78708923.

11. A securities class action pending in the Northern District of California alleges that Mr. Musk’s May 13 and 17, 2022 tweets about pausing his acquisition of Twitter were false. *See generally Pampena v. Musk*, No. 3:22-cv-05937-CRB.

12. During the course of a March 2026 jury trial in the pending *Pampena* class action, Mr. Musk testified that he chose to forgo his right to pause, and ultimately terminate, the Twitter merger because he believed that this Court would order him to close based on prejudice against him. *See Pampena v. Musk*, No. 3:22-cv-05937-CRB (N.D. Cal. March 4, 2026) Trial Tr. 835:10-836:1 (“[W]e were unlikely to win the case in Delaware because the judge was extremely biased against me. This was, in fact, the same judge that struck my Tesla option grant that was subsequently overturned by the Delaware Supreme Court. So it’s accurate to say she was -- that that judge was not favorably inclined to me. Not objective.”).

13. In response to that testimony, a Delaware commentator posted on LinkedIn: “So many people who should be so deeply ashamed of themselves seem incapable of being so, and I don’t think it’s great for civil society.”¹ An account belonging to a staff member for “the Hon. Kathaleen St. J. McCormick,”—with that association disclosed on the staff member’s LinkedIn profile—“liked” that post.

¹ <https://www.linkedin.com/posts/activity-7435299882741174272-kO7L>.



14. On March 20, 2026, the jury in *Pampena v. Musk* issued a verdict (subject to post-trial challenge) that could be interpreted to find (mistakenly) that Musk made false statements in the May 13 and 17, 2022 tweets about the purchase of Twitter being “temporarily on hold” and unable to “move forward.” See *Pampena v. Musk*, No. 3:22-cv-05937-CRB (N.D. Cal.) Dkt. 524 at 17 (jury instructions), Dkt.

538 at 2 (verdict on May 13 tweet) & 4 (verdict on May 17 tweet). Those same tweets are at issue in this litigation. *Compare id.* at 2 & 4 with Consol. Action Dkt. 1, Compl. ¶¶ 151 & 153.

15. In response to that verdict, a jury consultant for the putative class, Harry Plotkin, posted a snide broadside against “Elon” and “Quinn Emanuel” while celebrating “standing up for the little guy against the richest man in the world.”²

Sorry, Elon. Sorry, Quinn Emanuel. Thanks \$2 billion for your help in this trial. It was a pleasure working against you.

16. The post then shifted gears to hail the Plaintiffs’ attorneys that hired Mr. Plotkin and to frame the supposed victory in social justice terms:

Congratulations to the trial team at Cotchett, Pitre & McCarthy, LLP and Bottini Law for standing up for the little guy against the richest man in the world.

17. By the morning of March 23, 2026, the LinkedIn account of Chancellor McCormick publicly endorsed those statements, selecting an emoticon that delivers a cartoon heart to “Support” Mr. Plotkin’s post.

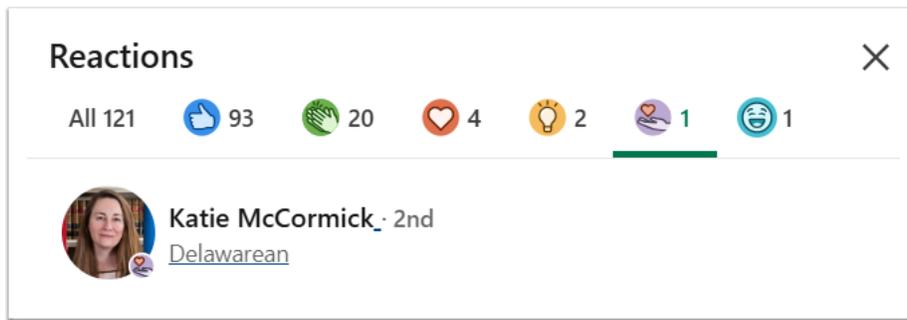
18. The particular reaction selected by Chancellor McCormick’s account—“Support,” symbolized by a heart hovering in an outstretched hand—requires

² https://www.linkedin.com/posts/harry-plotkin-154b367_homepage-share-7440880895684849664-FZCc.

deliberate selection, an effort beyond clicking the generic “like” button. See LinkedIn, *Use LinkedIn reactions*.³



19. Of about 121 reactions to the post, 93 chose the default “like” and only one selected the outstretched heart in hand to “support[]” the post.



20. In reacting to the LinkedIn posts, Chancellor McCormick and the staff member broadcast the posts to all their followers, along with a banner announcing the reactions they chose (“Katie McCormick supports this” and “[staff member in the chambers of the Hon. Kathaleen St. J. McCormick] likes this”). See LinkedIn, *Like, unlike, and react to posts or comments*⁴ (“Posts and comments that you like or react to will be shared with your network, and they’ll be informed of the reaction you chose.”). The posts were also thereby featured on the “Activity” feeds of their

³ <https://www.linkedin.com/help/linkedin/answer/a528190>.

⁴ <https://www.linkedin.com/help/linkedin/answer/a522684>.

LinkedIn profile pages, where they remain accessible for an indeterminate period of time. *See id.*

21. On the evening of March 23, 2026, Chancellor McCormick’s LinkedIn account appears to have been de-activated.

ARGUMENT

22. The Delaware Supreme Court has “emphasize[d] the importance of maintaining the public’s confidence in the judicial system and of guarding against situations where a judge’s impartiality might reasonably be questioned.” *Meso Scale Diagnostics v. Roche Diagnostics GmbH*, 247 A.3d 229, 258 (Del. 2021).

23. It is well-settled that even where a judge “harbors no personal prejudice, the judge must recuse” where an “objective observer” might even perceive bias. *Los v. Los*, 595 A.2d 381, 385 (Del. 1991) (“[E]ven if the judge believes that he has no bias, situations may arise where, actual bias aside, there is the appearance of bias sufficient to cause doubt as to the judge’s impartiality.”); *Willis v. State*, 302 A.3d 417, 426 (Del. 2023) (“[T]he appearance of impropriety is conceptually distinct from the subjective approach of a judge facing a possible disqualification challenge and does not depend on the judge’s belief that he or she is acting properly.”); *Home Paramount Pest Control v. Gibbs*, 953 A.2d 219, 222 (Del. 2008) (considering recusal “requires an examination of the facts as they appear to an outsider”).

24. Recusal upon even an appearance of bias is required to protect the integrity of the judicial system. *State v. Charbonneau*, 2006 WL 2588151, at *3 (Del. Super. Sept. 8, 2006) (“Recusal is required for situations in which there is either a subjective belief that the judge cannot proceed or there is an appearance of bias sufficient to cause doubt as to the judge’s impartiality.”); Code of Judicial Conduct Rule 1.2 (“A judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”). Though litigants may waive all sorts of potential conflicts, recusal for potential bias is non-waivable. *See* Code of Judicial Conduct Rule 2.11(C) (excepting “bias or prejudice” under Rule 2.11(A)(1) from scope of rule allowing disclosure and waiver).

25. The Delaware Supreme Court has set the bar for recusal commensurate with the important goals it promotes: recusal is required where there is “any reasonable basis to question the impartiality of the trial judge.” *Beck v. Beck*, 766 A.2d 482, 485 n.8 (Del. 2001) (noting that recusal is required where there is “an appearance of bias” and “[a]s a general rule, there is an appearance of bias where there is ‘any reasonable basis to question ... impartiality’”).

26. The Delaware courts have also put in place several guardrails to avoid an appearance of bias.

27. The Code of Judicial Conduct requires a judge to “abstain from public comment on the merits of a pending or impending proceeding in any court.” Code

of Judicial Conduct Rule 2.10. “[S]imilar abstention” is required “on the part of personnel subject to the judge’s direction and control.” *Id.*

28. Rule 5.6 of the Delaware Judicial Branch Social Media Policy, which applies to all court employees, prohibits social media use “[e]xpressing personal opinions about a case or issue pending before the Judicial Branch.”⁵

29. Though adopted after this case was originally assigned, the Court of Chancery, under the direction of Your Honor, implemented a random assignment system to further prevent fostering the appearance that any single judge has any interest in any single litigant.⁶ The Governor praised the change, noting that repeat litigants should not “feel like the result of the case is a foregone conclusion.”⁷

30. These traditional safeguards protecting the appearance of propriety failed here. The Court’s support of posts about a “pending ... proceeding” in the Northern District of California runs afoul of Rule 2.10 requiring abstention “from public comment on the merits of a pending ... proceeding in any court.” And it also qualifies as prohibited under Rule 5.6 of the Delaware Judicial Branch Social Media

⁵ <https://courts.delaware.gov/Forms/Download.aspx?id=139948>

⁶ *See* <https://delawarelive.com/delaware-court-of-chancery-to-implement-automated-wheelspin-case-assignments>; <https://www.law360.com/pulse/articles/2373104/chancery-spreading-workload-automating-case-assignments>.

⁷ <https://news.bloomberglaw.com/litigation/delaware-business-court-plans-to-automate-its-case-assignments>

Policy prohibiting posting “personal opinions about a case or issue pending before the Judicial Branch.” The resulting appearance of bias is inevitable (and not aided by the original lack of random assignment for this case).

31. As explained above, Plaintiffs in the present consolidated and coordinated cases complain that Mr. Musk posted allegedly false statements on May 13 and May 17 that his purchase of Twitter was “on hold” and “cannot move forward.” Dkt. 1 ¶¶ 151 & 153; *id.* ¶¶ 158 & 368. On that basis, Plaintiffs bring *Brophy* and *Caremark* claims. *See id.* ¶¶ 368 & 433.

32. To support their opposition to the pending motion to dismiss, Plaintiffs’ Answering Brief pointed the Court to a parallel matter in the Northern District of California where purportedly similar allegations had survived a motion to dismiss. *See Pampera v. Musk*; *see* Trans. ID 76325908, MTD Opp. at 12 n.38 & associated text (“A federal court has already upheld claims that these statements were fraudulent.”).

33. The LinkedIn posts taking aim at Mr. Musk and his attorneys at Quinn Emanuel, described *supra* ¶¶ 11 & 13-14, pertained to the testimony and verdict in *Pampera v. Musk*. The supportive reactions to those posts, by accounts under the control of the Court and a member of court staff, independently create a perception of bias in these cases that the Court supports the outcome in the *Pampera* case and would support a similar outcome for allegations made here.

34. Nor do those LinkedIn reactions exist in a vacuum. The Chancellor has handled several high-profile cases against Mr. Musk. Mr. Musk has expressed dissatisfaction of the Chancellor’s handling of those cases—including in his most recent testimony in the *Pampena* case itself.

35. And public opinion has seized on this topic—with many people weighing in to express a variety of opinions. This activity has itself merited attention. Indeed, the General Assembly and the Court itself are perceived to have enacted reforms and safeguards in response to that unwanted attention. *See, e.g.*, Jennifer Kay, *Delaware Automates Judge Assignments After Musk Criticism*, Bloomberg (Aug. 4, 2025), <https://news.bloomberglaw.com/litigation/delaware-business-court-plans-to-automate-its-case-assignments>; Lora Kolodny, *After Elon Musk’s Delaware Exit, State Lawmakers Weigh Bill To Overhaul Corporate Law*, CNBC (March 15, 2025), <https://www.cnbc.com/2025/03/15/after-elon-musk-delaware-exit-state-weighs-overhaul-of-corporate-law.html>.

36. Regardless of that context, and especially within it, the recent support by this Court’s social media accounts of posts about Mr. Musk, his attorneys, and the *Pampena* case provide the conditions for an appearance of bias if the Court were to issue rulings adverse to the defendants in the cases currently pending before this Court. The framing of “standing up for the little guy against the richest man in the world” evokes the most fundamental notions of justice. *See, e.g.*, 18 June 1779 Bill

Constituting The High Court Of Chancery, founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0090 (“you will do equal right to all manner of people, great and small, high and low, rich and poor”); 28 U.S.C. § 453 (requiring judges to swear to “do equal right to the poor and to the rich”). And it echoes the opening line of this Court’s post-trial opinion in *Tornetta v. Musk*: “Was the richest person in the world overpaid?” *Tornetta v. Musk*, 310 A.3d 430, 445 (Del. Ch. 2024).

37. Support on social media for shaming a single litigant (and his counsel) and for elevating “the little guy against the richest man in the world” raises, absent recusal, an unavoidable specter of bias against him.

38. That appearance of bias extends to Mr. Musk’s co-defendants in these actions. A ruling against Musk may, and often has, directly resulted in rulings by this Court against all Defendants and against Tesla. *See, e.g., Tornetta v. Musk*, 310 A.3d 430, 502 (Del. Ch. Jan. 30, 2024) (“The rest of the fiduciaries acted beholden to Musk ... Musk controlled Tesla.”); *Tornetta v. Musk*, 326 A.3d 1203, 1262 (Del. Ch. Dec. 2, 2024) (awarding “\$345 million” in fees against Tesla, including because the case “involv[ed] a close-knit group of Musk loyalists”). Plaintiffs here seek nothing less. *See, e.g.,* C.A. No. 2022-0953-KSJM Trans. ID 72896924, *Wagner Am. Compl.* ¶¶ 116 & 167-172 (alleging that the Tesla directors are not independent of Musk and seeking damages for failure to supervise); C.A. No. 2024-0631-KSJM

Trans. ID 73333445, Consol. Compl. ¶¶ 309, 426 & 433 (alleging “all eight of Tesla’s current directors ... [are] beholden to Musk” and seeking to impose *Caremark* liability on that theory).

39. If the Court were to rule in favor of Plaintiffs, it would be inevitably tainted by the Court’s publicly-expressed “*support*” for “standing up for the little guy against the richest man in the world.”

40. Under the safeguards intended to prevent this appearance of bias, recusal is mandated by the rules and warranted to protect the integrity of this Court.

CONCLUSION

Defendants respectfully request that the Court recuse and randomly re-assign these cases to avoid the appearance of bias and to promote the integrity of this Court.

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Case Details

Case Number	Case Name
2020-0477-KSJM	CONF ORDER The Police and Fire Retirement System of the City of Detroit v. Elon Musk, et al.
2024-0560-KSJM	CONF/COORDINATED/W CONS C.A. 2024-0631-KSJM - Michael Perry v. Elon Musk, et al.
2024-0631-KSJM	CONS W/ 2024-0646-KSJM- IN RE TESLA, INC. DERIVATIVE LITIGATION
2024-0646-KSJM	CLOSED - 1/27/2025 - CONS W/ 2024-0631-KSJM - Cleveland Bakers and Teamsters Pension Fund, et al v. Elon Musk, et al