

COTCHETT, PITRE & MCCARTHY, LLP

Joseph W. Cotchett (SBN 36324)
jcotchett@cpmlegal.com
Mark C. Molumphy (SBN 168009)
mmolumphy@cpmlegal.com
Tyson C. Redenbarger (SBN 294424)
tredenbarger@cpmlegal.com
Elle D. Lewis (SBN 238329)
elewis@cpmlegal.com
Gia Jung (SBN 340160)
gjung@cpmlegal.com
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, California 94010
Telephone: (650) 697-6000

BOTTINI & BOTTINI, INC.

Francis A. Bottini, Jr. (SBN 175783)
fbottini@bottinilaw.com
Aaron P. Arnzen (SBN 218272)
aarnzen@bottinilaw.com
7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037
Telephone: (858) 914-2001

Counsel for Lead Plaintiffs and the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GIUSEPPE PAMPENA, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

ELON R. MUSK,

Defendant.

CASE NO. 3:22-CV-05937-CRB

**PLAINTIFFS' MOTION FOR
MODIFICATION OF PARAGRAPH
FIVE OF VERDICT FORM AS TO
OPTIONS DAMAGES**

Case No: 3:22-CV-05937-CRB

PLAINTIFFS' MOTION FOR MODIFICATION OF PARAGRAPH FIVE OF VERDICT
FORM AS TO OPTIONS DAMAGES

1 Plaintiffs Brian Belgrave, John Garrett, and Nancy Price, hereby file the present motion
2 seeking modification of paragraph five of the verdict form. This motion is based on this motion,
3 the accompanying memorandum, and the Declaration of Francis A. Bottini, Jr.

4 I. INTRODUCTION

5 Plaintiffs file the present motion to request a modification to the verdict form (ECF 525).
6 Plaintiffs request that *paragraph five* of the verdict form, pertaining to damages to the put and call
7 options that are part of the certified Class, be changed to be consistent with the form of the proposed
8 verdict that Plaintiffs submitted last Friday. For the reasons explained below, it is important that
9 the verdict form be changed to ensure that the jury can accurately assess the requested damages for
10 options. The present form of the verdict with respect to options was submitted by Defendant and
11 is flawed, as Plaintiffs' expert explained today once Plaintiffs had an opportunity to discuss it with
12 him.

13 II. ARGUMENT

14 The present verdict form contains a paragraph five pertaining to options damages that was
15 proposed by Defendant on Friday. Plaintiffs opposed this proposal and submitted a different
16 suggested form of verdict for options damages. Today, the Court disseminated a verdict form that
17 adopted Defendant's proposal. Plaintiffs have just discussed that form with their damages expert,
18 Dr. Tabak, who has explained that Defendant's form is unworkable and will not enable the jury to
19 accurately award damages for the options should they choose to do so. *See* Declaration of Francis
20 A. Bottini, Jr. in Support of Plaintiffs' Motion for Modification of Paragraph Five of Verdict Form
21 as to Options Damages ("Bottini Decl."), ¶1. As a result, Plaintiffs request that paragraph five be
22 modified before the verdict form is disseminated to the jury.

23 In short, Defendant's proposal form for options damages contains only a single line for each
24 day of the Class Period. However, many options traded each day, not just one. Each option may
25 have had different expiration dates and strike prices and thus different damages calculations. There
26 were literally thousands of call and put options that traded during the Class Period. Thus, the form
27 of the verdict for options damages submitted by Defendant does not and cannot accurately award
28 damages for each particular option, since they have provided only a single line each day and one
dollar figure to be entered. Also, paragraph five of the verdict form still references "but-for
volatility" as something that the jury is determining, which is inaccurate – the jury is being asked

1 to award dollar-per-share damages for the options, not determine the implied volatility of each of
2 the thousands of the options that traded during the Class Period.

3 As Dr. Tabak has explained, his damages analysis contains thousands of calculations for each
4 of the put and call options that traded during the Class Period. Bottini Decl., ¶2. The exact damages
5 calculations are contained in **Exhibit 298**, which was admitted into evidence during Dr. Tabak's
6 testimony. *See* Trial Tr., Vol. 9, at 1863. The current verdict form does not contain lines to allow
7 the jury to enter a damages amount for each of these options, nor is it reasonable to require the jury
8 to do so. The only realistic and accurate way for the jury to be able to award options damages
9 should they desire to do so is to select among several options by checking a box on the verdict form,
10 as Plaintiffs proposed in their version of the verdict form that they submitted Friday.¹ Plaintiffs'
11 proposed form also contains an option permitting the jury to award no damages for the options
12 should they so choose, and thus is fair to the Defendant.

13 As a result, Plaintiffs request that paragraph five of the verdict form be modified to read as
14 follows:

15 5. Determine the amount of damages to Twitter options proved by Plaintiffs (check only
16 one box)

17 ☐ The amount of damages Plaintiffs' expert calculated in Exhibit 298 based on the
18 existence of a scheme to defraud.

19 ☐ The amount of damages Plaintiffs' expert calculated in Exhibit 298 based on the false
20 statements made by Musk.

21 ☐ An amount of damages consistent with the amount of stock deflation we selected in
22 paragraph four above (choose this box only if you selected an amount of deflation in paragraph 4
23 that is different than an amount calculated by Plaintiffs' expert).

24 ☐ We do not award any damages for the options.

25
26 ¹ Defendant's expert submitted no calculations or proposed damages for the options.
27

III. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that paragraph five of the verdict form be modified in the manner suggested above. For the convenience of the Court, a modified version of the verdict form incorporating such suggested change is attached hereto as **Exhibit 1.**

Dated: March 16, 2026

BOTTINI & BOTTINI, INC.

By: /s/ Francis A. Bottini, Jr.
FRANCIS A. BOTTINI, JR.
Counsel for Plaintiffs