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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

vs.

ELON R. MUSK,

Defendant.

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

**DEFENDANT ELON MUSK'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR MODIFICATION OF
PARAGRAPH FIVE OF VERDICT FORM
AS TO OPTIONS DAMAGES**

Judge: Hon. Charles R. Breyer

1 Defendant maintains his prior objections to Plaintiffs’ proposed verdict form and to any
 2 reference to Plaintiffs’ experts’ opinions, and also maintains his request for the full verdict form he
 3 proposed. Defendant writes briefly to respond to Plaintiffs’ untimely proposed modification to the
 4 Court’s final verdict form.

5 **ARGUMENT**

6 **I. Plaintiffs Already Agreed To The Verdict From**

7 First and foremost, Plaintiffs already agreed to the Court’s verdict form. At the charge
 8 conference, the Court first turned to the Plaintiffs, and asked “No problem with the verdict form
 9 from the Plaintiffs.” Rgh. Tr. at 103:20-21. Counsel responded, “None.” *Id.* at 103:22. After the
 10 Court spoke with Defendant, another lawyer for Plaintiffs then interjected and proposed specific
 11 changes to the first sentence of Question 5, which the Court adopted in its final verdict form. *Id.* at
 12 104:17-105:1 (“So the paragraph that’s numbered 5, it says [as read]: ‘Determine the but-for
 13 implied volatility percentages.’ . . . So I think it should just state instead of ‘but for implied
 14 volatility percentages,’ just say ‘Determine the damages proved by plaintiffs for each option contract
 15 traded during the class period.’”). That is precisely what the Court’s final verdict form reflects.
 16 Plaintiffs did not raise any challenge to the remainder of the question or verdict form. Plaintiffs
 17 have accordingly waived any objection to the Court’s final verdict form. In addition to failing to
 18 raise any objection to the second sentence of the Court’s proposed question 5, Plaintiffs did not
 19 request that the Court replace the chart in its proposed verdict form with a box the jury can check
 20 that simply adopts Dr. Tabak’s analysis, and Plaintiffs cannot request that now.

21 Plaintiffs’ proposal is untimely for another reason. Plaintiffs suggest that this form of verdict
 22 was “proposed by Defendant on Friday.” Dkt. No. 526 at 1. But Defendant filed his proposed
 23 verdict form (which, in any event, is not identical to the Court’s verdict form but rather included
 24 questions on each element) along with a brief in support of that verdict form on January 27, 2026.
 25 Dkt. No. 360, Dkt. No. 367. Defendant simply emailed a Word version of that proposal to the Court
 26 on Friday in response to the Court’s request. Plaintiffs have had months to consult with their expert
 27 about that proposal. Waiting until after the Court files a final verdict form to do so is untimely.

1 II. Plaintiffs' Proposed Unduly Prejudicial Damages Framing Should Be Rejected

2 The Court should also reject Plaintiffs' motion on the merits. Courts in this district in
 3 securities class actions have previously rejected similar verdict forms that invite the jury to simply
 4 check a box adopting an expert's report as improperly suggestive. Ex. 10, Oct. 25, 2022 Pretrial
 5 Conference Tr., *In re Tesla Sec. Litig.*, 18-cv-4865 at 140:2-8 ("Similarly I would like you to discuss
 6 the verdict form. I will tell you right now my inclination is not to have a filled in blanks and say
 7 yeah or no. I think that's -- I don't want to suggest anything to the jury. And so to the extent that
 8 the proposed verdict from the plaintiff has an already table to be prepared and you just have to check
 9 a box to say yes, I don't look too favorably on that."). Any verdict form should—like all recent
 10 other verdict forms issued in securities class actions in this Circuit, *see* Ex. 8, Verdict Form,
 11 *HsingChing Hsu v. Puma Biotech. Inc.*, 15-cv-865 (C.D. Cal. Feb. 4, 2019), Dkt. No. 718; Ex. 9,
 12 Verdict Form, *In re Tesla Sec. Litig.*, 18-cv-4865 (N.D. Cal. Feb. 2, 2023), Dkt. No. 659—include
 13 only blank charts for the jury to populate with the respective deflation and but-for implied volatility
 14 it determines Plaintiffs have proven.

15 Moreover, the proposed modification is improper because it does not ask the jury to decide
 16 the amount of options deflation proven at all. The jury is allowed only to agree with Plaintiffs'
 17 expert's calculation, choose some unquantified number based on stock deflation, or award no
 18 damage. The form does not contemplate the jury making its own finding as to the amount of
 19 deflation based on the evidence presented, which is its charge and what courts consistently require
 20 of juries in securities class actions. *See* Ex. 8, Verdict Form, *HsingChing Hsu v. Puma Biotech.*
 21 *Inc.*, 15-cv-865 (C.D. Cal. Feb. 4, 2019), Dkt. No. 718; Ex. 9, Verdict Form *In re Tesla Sec. Litig.*,
 22 18-cv-4865 (N.D. Cal. Feb. 2, 2023), Dkt. No. 659.

23 The proposed modification would also incorrectly ask the jury to determine "the amount of
 24 damages to Twitter options" Dkt. No. 526 at 2. But Plaintiffs' expert did not calculate
 25 "damages," he calculated deflation via implied volatility—which is what the jury will be asked to
 26 determine. *See* Tabak Supp. Report at ¶ 28 ("I use the 'implied volatility' and calculate the effect
 27 of the deflation in Twitter's stock price on each option."). In addition, Plaintiffs' proposed
 28 modification would improperly give the jury the option to simply check a box to adopt the "amount

1 of damages Plaintiffs' expert calculated." And finally, as a third option, Plaintiffs ask the jury to
2 award "[a]n amount of damages consistent with the amount of stock deflation we selected in in
3 paragraph four above." The quantum of that amount? Unknown, as Dr. Tabak did not separately
4 calculate option volatility "consistent with the amount of stock deflation" he identified, let alone
5 some yet-to-be determined amount the jury may decide.

6 The Court should reject Plaintiff's motion to modify the verdict form.

7 **CONCLUSION**

8 For the foregoing reasons, Defendant respectfully requests that the Court reject Plaintiffs'
9 motion.

10 DATED: March 17, 2026

11 QUINN EMANUEL URQUHART &
12 SULLIVAN, LLP

13 By /s/ Alex Bergjans

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all counsel of record electronically or by another manner authorized under FED. R. CIV. P. 5(b) on Tuesday, March 17, 2026.

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ATTESTATION

Pursuant to Civil L.R. 5-1, I attest under penalty of perjury that concurrence in the filing of this document has been obtained from the other signatories herein.

By /s/ Alex Bergjans

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