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13 *Attorneys for Defendant Elon Musk*

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

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

19 Plaintiff,

20 vs.

21 ELON R. MUSK,

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

**DEFENDANT ELON MUSK'S
AUTHORITY IN RESPONSE TO JUROR
NOTE #2**

Judge: Hon. Charles R. Breyer

1 On March 18, 2026, the jury submitted a note to the Court requesting clarification on whether
2 they must find that the alleged misrepresentations are “false and misleading” or “false or
3 misleading.” In addition to requesting that the Court direct the jury to the materiality instruction
4 and the language in the jury instructions about an “untrue statement of material fact,” Defendant
5 submitted the below to the Court:

6 In response to the Court’s question, the distinction between “untrue” and “misleading”
7 comes from Rule 10b-5(b) itself: “(b) To make any untrue statement of a material fact or to omit to
8 state a material fact necessary in order to make the statements made, in the light of the circumstances
9 under which they were made, not misleading.”

10 The Court removed any reference in the jury instructions to an omissions theory of liability
11 because Plaintiffs have not pled an omissions theory. Thus, under these circumstances, it would be
12 an inaccurate statement of the law for the Court to advise the jury that it may find liability if the
13 statement is false or misleading. Indeed, the Ninth Circuit has explained this very distinction:

14 “In setting forth the reasons why they contend that each challenged statement is misleading,
15 securities plaintiffs may rely on either an affirmative misrepresentation theory or an omission
16 theory. *See* 17 C.F.R. § 240.10b-5(b). Under Rule 10b-5, an affirmative misrepresentation is an
17 ‘untrue statement of a material fact,’ and a fraudulent omission is a failure to ‘state a material fact
18 necessary in order to make the statements made, in the light of the circumstances under which they
19 were made, not misleading.’” *Wochos v. Tesla, Inc.*, 985 F.3d 1180, 1188 (9th Cir. 2021).

1
2 DATED: March 19, 2026

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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 Thursday, March 19, 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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