IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DAVID M. WAGNER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action
	:	No. 2021-1090-JTL
TESLA, INC., a Delaware corporation,	:	
	:	
	:	
Defendant.	:	

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Chancery Court Chambers
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Wednesday, January 19, 2022
2:00 p.m.

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BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor.

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TELEPHONIC ORAL ARGUMENT AND GUIDANCE OF THE COURT ON PLAINTIFF'S MOTION TO EXPEDITE PROCEEDINGS

CHANCERY COURT REPORTERS
Leonard L. Williams Justice Center
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0532

APPEARANCES:

KURT M. HEYMAN, ESQ.
GILLIAN L. ANDREWS, ESQ.
Heyman Enerio Gattuso & Hirzel LLP
-and-
GUSTAVO F. BRUCKNER, ESQ.
SAMUEL J. ADAMS, ESQ.
DARYOUSH BEHBOOD, ESQ.
of the New York Bar
Pomerantz LLP
for Plaintiff

MICHAEL A. BARLOW, ESQ.
Abrams & Bayliss LLP
-and-
ALEX SPIRO, ESQ.
ANDREW J. ROSSMAN, ESQ.
SASCHA N. RAND, ESQ.
of the New York Bar
Quinn Emanuel Urquhart & Sullivan, LLP
for Defendant

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THE COURT: Travis Laster joining.

Who will be presenting for the plaintiff?

ATTORNEY ANDREWS: Good afternoon, Your Honor. This is Gillian Andrews from Heyman Enerio. I will be presenting today on behalf of plaintiff David Wagner today.

THE COURT: Who is going to be speaking for the respondent?

ATTORNEY BARLOW: Your Honor, Mike Barlow of Abrams & Bayliss on behalf of defendant Tesla. I am joined today by colleagues from Quinn Emanuel: Mr. Alex Sprio, Mr. Andy Rossman, and Mr. Sascha Rand. I'll be handling the argument today.

THE COURT: Well, I've read your papers. Let's get underway.

ATTORNEY ANDREWS: Thank you, Your Honor. And I'd be remiss if I didn't also introduce Kurt Heyman on the line as well and my colleagues from Pomerantz: Gustavo Bruckner, Sam Adams, and Daryoush Behbood.

With that, I'll go ahead and proceed with my presentation on the plaintiff's motion to expedite this Section 220 proceeding. And I would

like to thank the Court for the prompt hearing on this matter in such short order after the case was reassigned to Your Honor.

Plaintiff filed his Section 220 action and this motion on December 16th after Tesla failed to respond to the December 2nd demand. We are now before the Court over one month later, through no lack of effort by the plaintiff, seeking expedition of this summary proceeding.

Section 220 actions are statutory summary proceedings. And we provided several authorities in our reply where expedition was granted and a trial scheduled within two to three months, which is what we are seeking here.

There is also a heavy burden on a defendant to prove that a case is so unusual that expedition is not warranted. In that attempt, Tesla points to the *Gharrity I* opinion, noting that there is a possible risk of the public misconstruing a ruling on the low evidentiary threshold of Section 220 actions, but fails to acknowledge that the Court was willing to grant expedition there despite those concerns.

And I'll quote from Vice Chancellor

Slights: "If it isn't stayed, it will be expedited, as all 220s in this court are." And that's from page 83 of the transcript attached to defendant's brief as Exhibit D.

I also note that in *Gharrity I*, the Section 220 action, Tesla produced documents to the plaintiff, but is seemingly reluctant to do so here.

Defendant opposes expedition by alleging this action is a copycat of other pending derivative lawsuits. This is a Section 220 action, not a plenary litigation, and it is not the same. None of the other actions concern the November 2021 tweets we highlighted, and all but one of those actions was filed before the consent motion in April 2019.

Indeed, the most recent allegations in *Gharrity II* are from May 2020. The company's review of any particular tweet is a distinct factual matter, including whether that review complied with the consent motion. And that is what plaintiff seeks to investigate in this action.

The board composition has changed several times since 2019. And as of October 2021, the board has been reduced to eight directors.

Additionally, consistent turnover in the general counsel's office since 2019 is also a cause for a concern. These changes could have led to a different policy or procedure or could have had an impact on how the board is receiving or handling information related to the consent motion and managing the company's compliance with Texas law.

Tesla's arguments regarding a stay also fail to preclude expedition. This case poses no true risk of prejudice or an adverse or inconsistent ruling to the derivative suits.

Tesla points to dicta in the hearing transcript in *Gharrity I* but fails to note exactly how a finding here would negatively impact the derivative lawsuits.

Also, Tesla relies on *Ohio Laborers*, another derivative suit, where Vice Chancellor Slights noted that there was a basis for expedition and expressly recognized the possibility of ongoing misconduct that could necessitate lifting of the stay.

The same risks are not present here in this Section 220 action, as plaintiff's statutory inspection right is not a matter of "front and center in ... the pending federal actions." And that's a

quote from the transcript at page 39 attached to defendant's brief as Exhibit A.

There is no risk of claim or issue preclusion or any jurisdictional issues presented by plaintiff's claims here. Nevertheless, a preliminary motion to expedite a Section 220 action is not the stage to litigate the merits of any hypothetical underlying derivative claims and whether or not they would be subject to a stay.

Lastly, plaintiff has standing to pursue inspection as a Tesla stockholder. A "Stockholder" is defined by the statute as "a holder of record of stock ... or a person who is the beneficial owner of shares of such stock ...."

There is no minimum holding requirement under the statute, nor is there a voting requirement. As evidenced by the attachments to the demand letter, which are also appended to the complaint, plaintiff holds Tesla common stock.

Indeed, the Court has granted expedition in Section 220 matters even where standing was at issue. And that's evidenced in the *Knott Partners v. Telepathy Labs* case that we cited.

The Court should not impose such

standing restrictions that Tesla seeks to grasp onto Section 220, particularly on such an incomplete record. With that, Your Honor, plaintiff respectfully asks that the Court grant the motion to expedite and promptly schedule a trial on this matter within 60 days.

Unless Your Honor has any questions for me, I will turn the microphone over to Mr. Barlow.

THE COURT: Thank you.

Mr. Barlow.

ATTORNEY BARLOW: Your Honor, I want to echo the appreciation for hearing us promptly in light of the transfer of the case.

Your Honor, we respect and understand plaintiff's position that this is a Section 220 summary proceeding. But it's also the case that opinions of the Delaware courts going back to -- the one I remember is *Seinfeld v. Verizon* from the Delaware Supreme Court -- expounding upon the credible basis requirement discussed the balancing of interests that a court engages in in handling Section 220 cases as between a stockholder's access to books and records to investigate wrongdoing and the right of the company to be free from fishing expeditions based on suspicion

or curiosity. And, Your Honor, that's a quote about the credible basis standard.

But we think the same considerations animate how the Court should approach a scheduling of a Section 220 proceeding, and this Section 220 proceeding, consistent with the Court's inherent authority to control its docket, which is, to consider and balance and address the interests of a plaintiff who purports to be a fractional stockholder, who, in today's presentation and in any of the papers, never explained any type of specific reason why it needs the documents on the time period they request, with the interest of the corporation, which, in this case, faces federal securities litigation on these issues starting in May.

And so on behalf of Tesla, what we are asking today is that some consideration be given to those facts that have been -- that are for realities before us and the matter be put down on a reasonably prompt schedule for trial in June of 2022.

And I want to expand a little bit on the plaintiff's issues because we heard some things today about how this case is different. And, candidly, I respectfully disagree.

Plaintiff purports to bring -- or wants to investigate bringing potential derivative claims. That would be the tenth cause of action relating to that subject pending in the courts of Delaware, two of which are pending in federal court and seven of which are pending in this Court, Your Honor. And all of those cases have been stayed.

And the argument that this case relates to later tweets or that this case relates to different tweets has been uniformly rejected by this Court. It was addressed specifically in the *Laborers' District Council* action in 2019, where a contested stay petition was, nonetheless, stayed. And the Court addressed, there, not only issues of the 2018 tweets relating to whether Tesla would go private, but also later tweets in 2019 and 2020 in both the *Laborers'* and the *Gharrity* action. Again, all of those cases have been stayed.

So the suggestion that this is not a copycat action, I think, Your Honor, is belied -- and I don't mean to be pejorative about this -- but it's belied by the complaint, most of the paragraphs of which, as it relates to substantive background, go back to 2013, 2018, 2019 and all of the same factual

allegations that are alleged in those other derivative complaints. There's only a handful relating to the current tweets.

And then if you look at the time period in the demand, they want to go back to 2018, January 1st, 2018.

And I heard today that the board is somehow different. In fact, it's not. I believe all of the current members of the board are named defendants in the *Gharrity* suit.

And so the suggestion that this case is somehow distinct as a factual matter, respectfully, Your Honor, I don't think holds water and doesn't change the fact that the presentation of derivative claims based on these same facts -- without getting ahead of addressing what those derivative claims might be -- I have every confidence, would be stayed pending consideration of the federal securities litigation.

And, Your Honor, to return to that federal securities litigation and the balancing, I do think it is important to recognize that in scheduling this matter, having the matter heard in June, after that federal securities litigation is considered, is absolutely consistent with the precedent of this court

in which derivative and -- both types of claims have been stayed pending the underlying federal securities litigation.

And I specifically was -- and we quoted at length in our papers the quote of Vice Chancellor Slights in the *Gharrity* Section 220 case in which he expressly recognized the risk that the public would perceive a credible basis finding as more than what the court might intend under the law and noting that that's especially the case where "the allegations of wrongdoing are well-known in the public sphere."

And, Your Honor, I note that quote because, as lawyers, we often spend time analogizing quotes in other cases to the different sets of facts that apply here. To be clear, those -- that is the same company, and these are the same sort of types of allegations. And so I believe Vice Chancellor Slights' concern manifested in *Gharrity* is exactly evident here and can be very reasonably addressed by handling trial on a schedule in June.

What we didn't hear in the discussion of the *Gharrity* Section 220 case in my colleague's presentation was an explanation that the way Vice Chancellor Slights handled that matter to avoid

imposing the prejudice of litigating a credible basis determination on Tesla was to litigate scope issues first and not litigate the credible basis issues. And that's why we attached that ruling and that explanation to our opposition.

So that was a creative way of addressing that situation here. We don't think our proposal of doing a trial in June is nearly as creative as that but fundamentally gets to the same point, which avoids the risk that the Court would be making a credible basis determination in just the weeks before the company faces federal securities litigation and a jury trial in the Northern District of California.

In addition, there are practical considerations that I don't need to remind the Court about: How much extra effort expedited proceedings places on both the Court and on the parties. And that is particularly the case here, where many of the same personnel are essentially litigating many of those similar issues in California right around the same time frame.

And lastly, I want to point out that there are important issues to litigate here that are

perhaps different from some of the cases that we've cited earlier. Mr. Wagner purports to own one-tenth of one share of Tesla stock.

I am not aware of precedent in this court addressing someone who only owns -- or purports to own a fractional interest like that. And I think it presents interesting questions of whether when the General Assembly expanded Section 220 to include beneficial owners in 2003, it intended to create a situation where brokers could, as an accounting mechanism, divide the fractional ownership of one share among tens or hundreds of people and give them all inspection rights. The term "beneficial owner" has long been understood, as a matter of securities practice, to be something that you define by the ability to exercise a voting right or the ability to transfer shares.

And from what we can tell from the M1 website, which is the brokerage where the plaintiff purports to own, he doesn't, as we can tell, have the right to transfer his one-tenth of a share or the right to vote it.

So we heard in the reply brief that they want to take -- they think that matter should be

addressed on a complete record, at paragraph 31. We agree. We think it's going to take some time to address that issue, to get the documents about the plaintiff's holdings in Tesla and have that addressed, and, if those documents aren't sufficient, to potentially explore other documents that go to the issue of whether or not he is, in fact, a beneficial owner.

So I understand plaintiff's position that they seek to proceed on a 60-day schedule, but I do not think that it is warranted by the actual facts of this case, Your Honor. And I note that their indication of authority for the proposition that, for example, all 220 cases are expedited and, therefore, this one must be, I think, falls apart if you merely look at it.

They cite, for example, for the proposition -- the *Gharrity* quote about expedited proceedings in Footnote 1 of their reply. And, again, that *Gharrity* proceeding -- we litigated over the course of a year in that case addressing stay proceedings and then scope issues. That is not what we are proposing today.

What we are proposing is what we

believe to be a much more reasonable and prudential scheduling of this matter shortly after the jury trial in the Northern District of California on similar issues. That matter is set for a 10-day jury trial beginning immediately after Memorial Day. We have, in full disclosure, added one week, and that is why the June 20th date is referenced in our papers as one week from the expected end of that 10-day trial to allow for jury deliberations and the like.

So we have an interest in moving this matter forward -- and promptly, Your Honor -- but we think the schedule the defendant proposed is the reasonable one, and we ask that it be adopted.

THE COURT: All right. Reply.

ATTORNEY ANDREWS: Thank you, Your Honor. And I will be brief.

It is clear that Mr. Musk continues to tweet and continues to show a disregard for the compliance with the consent motion. So that has the potential to cause further and imminent harm to the company and plaintiff's interests as a stockholder.

To touch on a few other items, we have expressly not limited our demand to pursuing derivative claims, and we have left open appropriate

other prophylactic options depending on what we discover after receiving these books and records.

To address how our case is different from the other pending derivative lawsuits, our claims are temporally distinct, and they occur well after the entry of the consent motion. As I noted, changes in the general counsel's office and on the board may have led to changes in critical policies since the last case was filed that likely affects how and when information regarding compliance with the consent motion reaches the board and how it is then handled.

We do not know what the records may show, but Mr. Musk has been very active on Twitter, and there is much that should have happened at the company between May 2020 and now that is not covered by the prior pending derivative actions. And to include such allegations, the plaintiffs in the other derivative suits would be required to submit a new demand letter and/or amend their existing complaint. The merits of any derivative suit that plaintiff may eventually bring based on what is discovered should not be prejudged at this nascent stage of a statutory summary proceeding.

The issues that my colleague raises

are precisely the kinds of issues that are routinely addressed on an expedited basis in Section 220 matters. As I noted, cases where standing is contested have even been allowed to proceed on an expedited basis. And that's the *Knott Partners* case that we referenced in our reply brief.

We think that the requested documents are necessary to plaintiff's purposes in fully investigating the potential misconduct. And we have requested documents dating back to January 2018 because we believe that is when the conduct began.

The Court made clear in *Bloom Energy* that "The temporal scope of a Section 220 inspection that is based on suspected wrongdoing or mismanagement extends to the time when the evidence reveals the wrongdoing or mismanagement began."

Of course, the plaintiff is willing to engage in discussions to reasonably narrow his request, as appropriate, while still seeking to obtain all documents necessary to complete a full investigation. And if it is, in fact, true that the documents from January 1st, 2018, through May 2020 are mirror or copy requests previously made by other stockholders, then those materials should be readily

available, collected, and reviewed and should not be burdensome to produce here.

Again, Your Honor, we would respectfully request a trial on this matter within 60 days at the Court's convenience.

THE COURT: So from your standpoint, what is the real-world difference between the middle of March and the middle of June? Mr. Barlow has pointed to real-world things, like the trial in the Northern District of California, to suggest that it really would be better, from his perspective, to have the trial in June. What would be the real-world practical implications of that for you and your side?

ATTORNEY ANDREWS: Your Honor, we, of course, have an interest in getting information as soon as possible to make a determination about how best to proceed. We think that with Tesla's cooperation and on a trial in 60 days, which would put us somewhere towards the end of March, beginning of April, we could be clear of the one-day trial in this matter well before the securities class action proceeds at the end of May.

Obviously, as Your Honor well knows, these are summary by nature. We're not going to have

a wealth of discovery or dispositive motion practice or anything like that, and it will be a summary one-day trial. So we think that we could get clear of that well in advance of the securities class action and alleviate, hopefully, any issues with that.

THE COURT: What happens in terms of the information you have requested if the securities action is resolved in favor of Musk?

ATTORNEY ANDREWS: Again, Your Honor, these are distinct tweets -- or they are happening while the board has changed, while general counsel is in flux. We do not know if the policies and procedures have been changed such that we may still have an ability to proceed if not with a derivative suit, then maybe some other prophylactic measure directed toward the board to address what the stockholder is very concerned about and has been evidenced in the fluctuation and the stock prices in the market with the ongoing tweets and the like.

So we're really just looking to, hopefully, address those issues one way or the other, whether it's in a lawsuit or through some type of prophylactic demand or approach to the board. And that's really what we're looking to accomplish.

THE COURT: All right. Let's take a couple-minute pause. It's 2:24 right now. Let's take ten minutes, until 2:35.

(Recess taken from 2:25 p.m. until 2:35 p.m.)

THE COURT: This is Travis Laster speaking. I am not sure if I said to return at 2:35 or 2:40. Are people back and ready to go, or did I say 2:40 such that I should wait a couple more minutes?

ATTORNEY ANDREWS: I am on the line, Your Honor.

ATTORNEY BARLOW: Your Honor, this is Mike Barlow. I'm here. I think you said 2:35.

THE COURT: That makes me feel a little bit better. I appreciate that.

I am going to go ahead and give you an answer now. Let me give you the bottom line up front. I'd like to schedule this for a half-day trial during the week of April 4th. So that would be, based on what I've got on my calendar, most likely either the 4th or the 6th. I could potentially move things around to other days that week, if necessary.

Let me tell you why I'm doing that. I've thought seriously about what the company has said

regarding the other demands, the other derivative actions, and the action in the Northern District of California, and I have a couple thoughts.

I start from the proposition that 220 actions are summary proceedings. They are supposed to be straightforward. They are supposed to be relatively easy to handle. They are not supposed to be the equivalent of merits-based litigation in the guise of 220. That counsels in favor of getting these done on a faster schedule to maintain that principle. If we start elongating things and letting people dig into more and more collateral issues, or at least try to, it risks letting 220 get turned into something that it's really not.

To that effect, the concern has been expressed that if this Court were to permit documents regarding these tweets, that that could send a signal in advance of the trial in the Northern District of California that might be misinterpreted. I am not so enamored with my own influence.

All that would be necessary for this plaintiff to obtain documents is a credible basis to suspect that there was some type of violation of the consent order. That doesn't mean there is a violation

of the consent order. That doesn't mean it's even more likely than not that there was a violation of the consent order. It just means that there is some reason why we might want to find out more. The same would be true regarding oversight of Musk or policies that might be in existence or things of that nature. I don't think that anyone is going to be able to spin that into some prejudicial ruling.

The times when things get sometimes misinterpreted is when we have the equivalent of defendants engaging in scorched earth litigation and trying to inject merits-based defenses into the Chancery proceeding.

My *Amerisourcebergen* decision went into a lot of deal about the opioid crisis, but that was because the company put it at issue. Vice Chancellor Slights' decision in *Facebook* went into a lot of analysis about the underlying wrongs in the Cambridge Analytica situation, but that's because the company, for whatever reason, wanted to fight on that ground.

So Tesla holds the keys to the kingdom here. If they want to treat 220 like it's supposed to be treated and to approach this as an information

access dispute, in which the petitioner ultimately would be entitled, at most, to a reasonable set of documents tailored to the demand, there really isn't any risk. And if, for whatever reason, Tesla wants to engage in the types of scorched earth behavior that we've seen other companies try to engage in, that's on you-all. That's not on me. That's not all on the petitioner.

I have also thought about this from a scheduling standpoint. If the trial in the Northern District of California is a big deal and the trial is scheduled to go when it goes, that strikes me as more of a problem for a June trial than anything else.

I will say that I'm, frankly, skeptical about it being a problem. There's no doubt in my mind that a company with the largest market cap in the world has the ability to litigate multiple things at once. There's no doubt in my mind that the fine lawyers can litigate in multiple places at once. Mr. Barlow could easily handle this 220 case on his own or even delegate it to one of his very skilled associates, of which I know he has several, who are able to do 220 proceedings. I am just not swayed that those are real-world concerns.

I think the better thing to do for everyone is to get this done and move on and not have a potential rescheduling or extension of the trial in the Northern District of California hanging over people's heads. I don't want people coming to me and saying, "Oh, well, we thought we could do the trial in June, but we really can't get people to do our pretrial brief because they are in trial." Again, I'd be very skeptical of that. I think the better approach is to get the 220 done up front.

I've also thought about these other derivative actions. I am sympathetic to the idea that an issuer faces a lot of 220 demands. Here, I do think that Mr. Musk brings some of this on himself with his serial tweeting. What the plaintiff is doing here in terms of seeking 220 documents is actually what I think is and what I think our Supreme Court has made clear is the preferred way to do things.

In other words, don't file suit first and seek documents later. Don't make assertions first and seek documents later. Seek documents first and figure out whether there's anything there that you actually need to pursue. If the documents come back and there is nothing meaningful there in terms of a

problem, that's a very different situation than if there's a basis to move forward with some sort of remedial-oriented action.

I think those are all the reasons why I am not swayed by the existence of these other litigations, be it the Northern District of California proceeding or the other derivative actions.

Let me also say that I just don't think this thing ought to be that burdensome. The plaintiffs have sought a relatively appropriate level of documents in terms of how deep into the company they are going. It seems to me that this really ought to involve, in the first instance, board-level documents and policies. There ought to be a way to get that done or worked out.

The plaintiffs aren't seeking litigation-style discovery. And I'll tell you, I'm not going to give them litigation-style discovery. I understand that 220 is different from litigation-style discovery. Yes, there are times, given a sufficient showing, when a plaintiff might be able to get some documents, like emails, that ordinarily would not be available until litigation, but that requires a showing. And here, it seems to me that, in the first

instance, we're likely at more governance-level documents than we are at email-level documents. But we shall find out.

I'm happy to take up in due course this interesting question about the holder of a fractional share. I'll tell you what I think is likely going to happen when we dig into this. And I'm speaking here based on my knowledge of UCC Article 8, not anything specific about the case. What I think you are likely to find is even the nominal holder beneficially of, let's say, a thousand shares through a brokerage account is not the holder of a thousand shares in the sense that Delaware pretends they are. What they are is an entitlement holder, which gives them a proportionate interest in the fungible bulk that their brokerage firm holds. So what this person happens to hold is a smaller interest in that fungible bulk.

I'm going to be surprised if there is really, ultimately, an analytical or legal difference between the rights that this gentleman has and the rights that someone who we think owns whole shares has. The reality is that Article 8 just doesn't work the way the Delaware Code thinks stockholder ownership

works. It operates under a system of entitlement interests and fungible bulk. That is an aliquot system where you are not even entitled to a specific number of shares.

You guys can explore it. You can bring me the learning. That's my bet as to what's ultimately going to happen.

Now, maybe this is a different product. Maybe this is a product that is not held that way. I will be happy to be edified as to that, and we can take up whatever needs to be done. But I wouldn't be surprised if Mr. Wagner is an entitlement holder just like anybody else who holds through a broker, notwithstanding the DGCL's failure -- I shouldn't say "failure." We link to Article 8 of the UCC, but our statutes are still based on this idea that even beneficial owners hold discrete shares when, again, what they hold are entitlement interests.

So that's a roundabout way of saying that I think that I will resolve whatever that issue is in conjunction with the trial so that you-all can give me the factual record that I need on that.

Bottom line, why don't you-all figure out some reasonable set of documents that gives

Mr. Wagner a sense of what's going on with the tweeting oversight and the tweeting.

I think it's not good that there wasn't any response to this. I saw in the answer a statement that the right people at Tesla didn't get the demand. Well, now people are in the know.

I would encourage Mr. Barlow to meet with his friends from the Heyman Enerio firm. But for COVID, I would encourage you-all to get together and actually be in the same room. I won't require or even encourage you to do that under current circumstances. But why don't you talk about whether there is a reasonable set of documents that this plaintiff can get and then move on. Assuming there's a credible basis to suspect wrongdoing, which you-all know is a low threshold, and assuming that we get past this beneficial ownership issue, that's all he's going to get. I'm not going to give wide-ranging inspection into the company. There's going to be some reasonable set.

I would really encourage you-all to figure this out. Otherwise, we'll go forward. We'll get together during the week of April 4th. We'll get this out of the way, and then people can move on to

other things. The bigwigs who are dealing with the Northern District trial can fly out to California and do their thing there, and everyone can put this one in the rearview mirror and head on to the next engagement. That's my ruling.

I would ask that Mr. Barlow and Ms. Andrews work on getting some type of stipulated schedule together. Since Tesla has answered, I would put in a limited discovery cutoff and then a sequence for pretrial briefing and the pretrial order.

Let's be reasonable on discovery. We've got to figure out what this beneficial ownership thing is. In my world, I think the plaintiff is entitled to understand generally what types of documents Tesla has. They don't get the documents. Nobody is suggesting that they get the documents. But they get to understand what there is so that they don't come and argue to me for things that don't exist and they can actually think about it, and you guys can work constructively on something that might be reasonable and sufficient. If Tesla wants to depose the plaintiff, there can be a deposition of the plaintiff. But I would exhort you-all not to make this 220 case more than it needs to be.

So those are my thoughts. I'll look forward to getting some type of stipulation from you. Just to give you a due date, why don't you-all get me a stipulation by a week from today -- so that's the 26th -- and then you-all can be on your way.

Thank you very much.

(Court adjourned at 2:52 p.m.)

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CERTIFICATE

I, DENNEL NIEZGODA, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Merit Reporter, Certified Realtime Reporter, do hereby certify that the foregoing pages numbered 3 through 31 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except for the guidance at pages 21 through 31, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 21st day of January, 2022.

/s/ Dennel Niezgoda

Dennel Niezgoda
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter