

1 APPEARANCES:

2

3

4 On behalf of the Securities and Exchange Commission:

5 WALKER NEWELL, ESQ.

6 STEVEN D. BUCHHOLZ, ESQ.

7 E. BARRETT ATWOOD, ESQ.

8 BRENT SMYTH, ESQ.

9 44 Montgomery Street, 28th Floor

10 San Francisco, California 94104

11 (b)(6), (b)(7)(C)

12 newellw@sec.gov

13 buchholzs@sec.gov

14

15

16 CHERYL L. CRUMPTON, ESQ.

17 (b)(6), (b)(7)(C)

18 100 F Street, N.E.

19 Washington, D.C. 20549

20 (202) 551-5000

21 crumptonc@sec.gov

22

23

24

25

1 APPEARANCES (CONT.):

2

3 On behalf of the Witness:

4

5 STEVEN FARINA, ESQ.

6 DANE BUTSWINKAS, ESQ.

7 Williams & Connolly

8 725 Twelfth Street, N.W.

9 Washington, D.C. 2005

10 (202) 434-5000

11 sfarina@wc.com

12

13

14

15 TERENCE M. HEALY, ESQ.

16 ROEL C. CAMPOS, ESQ.

17 Hughes Hubbard & Reed

18 1775 I Street, N.W. Suite 600

19 Washington, D.C 20006

20 (202) 721-4600

21 terence.healy@hugheshubbard.com

22

23

24

25

1 APPEARANCES (CONT):

2

3 On behalf of the Witness (cont.):

4 BRADLEY J. BONDI, ESQ.

5 Cahill Gordon & Reindel, LLP

6 1990 K Street, N.W. Suite 950

7 Washington, D.C. 20006

8 (202) 862-8900

9 bbondi@cahill.com

10

11

12

13

14

15

16

17

18

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23

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25

1 APPEARANCES (CONT.) :

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3 Also Present:

4 (b)(6),(b)(7)(C) Video Operator

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C O N T E N T S

1			
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4	WITNESS:		EXAMINATION
5	Elon Musk		12
6			
7			
8	EXHIBITS	DESCRIPTION	IDENTIFIED
9			
10	1	SEC form 1662	10
11			
12	2	Deposition Subpoena	14
13			
14	3	Subpoena for Tesla Motors	18
15			
16	4	Subpoena for documents	24
17			
18	5	Printout of tweets	69
19			
20	6	Printout of tweets	71
21			
22	7	August 7th blog post	79
23			
24	8	August 13 blog post	83
25			

C O N T E N T S (CONT.)

EXHIBITS	DESCRIPTION	IDENTIFIED
9	Calendar invitation	106
10	Spreadsheet	165
11	Email, Bates stamp 59230	186
12	Phone records	198
13	August 7th tweet	223
14	August 7th tweet	238
15	August 8th tweet	239

1 C O N T E N T S (CONT.)

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4 EXHIBITS DESCRIPTION IDENTIFIED

5

6 16 August 7th tweet 248

7

8 17 Calendar invitation 274

9

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P R O C E E D I N G S

(SEC Exhibit No. 1 was marked
for identification.)

VIDEO OPERATOR: Here begins DVD No. 1 in the
testimony of Elon Musk in the investigation by the U.S.
Securities and Exchange Commission in the Matter of:
Tesla Motors, Inc., File SF-04082-A

Today's date is August 29th, 2018. The time on the
video monitor is 9:17. The video operator today is (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) employed by Behmke Reporting and Video Services, Inc.,
subcontracted by Diversified Reporting Services, Inc.

This video investigation is taking place at 44
Montgomery Street, Suite 2800, San Francisco. The court
reporter today is (b)(6),(b)(7)(C) Certified Shorthand
Reporter, contracted by Behmke Reporting and Video
Services, Inc., and subcontracted by Diversified Reporting
Services.

Counsel, please voice identify yourselves for the
record.

MR. FARINA: Steve Farina, Williams and Connolly,
on behalf of the witness.

MR. HEALY: Terence Healy, Hughes Hubbard & Reed,
LLP, on behalf of the witness.

MR. CAMPOS: Roel Campos, Hughes Hubbard & Reed,
on behalf of the witness.

1 MR. BONDI: Brad Bondi, Cahill, Gordon &
2 Reindel on behalf of the witness and the company.

3 MR. BUTSWINKAS: Dane Butswinkas, Williams and
4 Connolly, on behalf of Mr. Musk.

5 MR. NEWELL: I'm Walker Newell, Securities and
6 Exchange Commission. With me are Steven Buchholz, Cheryl
7 Crumpton, Barrett Atwood and Brent Smyth, and with us via
8 the video is (b)(6),(b)(7)(C)

9 Mr. Musk, please raise your right hand.
10 Whereupon,

11 ELON MUSK

12 was called as a witness and, having been first
13 duly sworn, was examined and testified as follows:

14 EXAMINATION

15 BY MR. NEWELL:

16 Q Please state your full name and spell it for the
17 record.

18 A Elon Reeve Musk, E-L-O-N, R-E-E-V-E, M-U-S-K.

19 Q We're going to do a little redux of what we just
20 did for the record again. So, apologies for the
21 redundancy.

22 Again, my name is Walker Newell. With me are
23 Steven Buchholz, Cheryl Crumpton, Barrett Atwood, Brent
24 Smyth and (b)(6),(b)(7)(C) on video from Washington, D.C. We're
25 officers of the Commission for purposes of this

1 proceeding.

2 This is an investigation by the United States
3 Securities and Exchange Commission in the matter of Tesla
4 Motors, Inc., to determine whether there have been
5 violations of certain provisions of the federal securities
6 laws.

7 However, the facts developed in this investigation
8 might constitute violations of other federal, or state,
9 civil or criminal laws.

10 Prior to the opening of the record, you were
11 provided with a copy of the formal order of investigation
12 and a supplemental formal order of investigation in this
13 matter. Those will be available for you to review
14 throughout the course of the proceeding.

15 Have you had an opportunity to review the formal
16 orders?

17 A May I take an opportunity to review it again?

18 Q Absolutely.

19 And then there's a second one as
20 well if you want to take a quick look.

21 MR. FARINA: Thank you. That's the supplement.

22 THE WITNESS: All right. Thank you.

23 BY MR. NEWELL:

24 Q Have you had an opportunity to review the formal
25 orders?

1 A You're referring to these?

2 Q Yes. The first two documents. And just to be
3 clear for the record, the document you were just reviewing --

4 A General rules.

5 Q -- has been previously marked as Exhibit 1. I'm going
6 to ask you if you've had an opportunity to read that
7 exhibit now. Sounds like you have.

8 A Yes.

9 Q Do you have any questions about the exhibit
10 you just reviewed?

11 A I do not.

12 Q Okay. Mr. Musk, are you represented by counsel
13 today?

14 A I'm sorry.

15 I forget that even though it's video-taped
16 there's also a written thing, which, hence the clarification,
17 sort of a puzzle -- why it's being videoed.

18 Q And we'll go through some ground rules about just
19 how to create a clear record.

20 It's a bit unnatural, I know. Let's go through
21 these preliminaries --

22 A Sure.

23 Q -- and we'll get there.

24 Are you represented by counsel today?

25 A Yes, I am.

1 Q And again, sorry for the redundancy, but I'd ask
2 counsel to again identify themselves for the record, one by one.

3 MR. FARINA: Steve Farina, Williams and Connolly.

4 MR. HEALY: Terence Healy, Hughes Hubbard & Reed.

5 MR. CAMPOS: Roel Campos, Hughes Hubbard & Reed.

6 MR. BONDI: Brad Bondi, Cahill Gordon &

7 Reindel on behalf of Mr. Musk, and Tesla.

8 MR. BUTSWINKAS: Dane Butswinkas, Williams and

9 Connolly.

10 MR. NEWELL: Thanks.

11 BY MR. NEWELL:

12 Q Mr. Musk, you may be represented by counsel who
13 also represents other persons involved in the commission's
14 investigation.

15 This multiple representation presents a
16 potential conflict of interest if one client's interests
17 are or may be adverse to another's. If you are represented
18 by counsel who also represents other persons involved in
19 the investigation, the Commission will assume that you and
20 counsel have discussed and resolved all issues concerning
21 possible conflicts of interest.

22 The choice of counsel and the responsibility
23 for that choice is yours.

24 A Yes.

25 MR. NEWELL: Please mark this as EM Exhibit 2.

1 Here you go.

2 (SEC Exhibit No. 2 was
3 marked for identification.)

4 BY MR. NEWELL:

5 Q Mr. Musk, I'm handing you what appears to be a
6 copy of a testimony subpoena. It's been marked as EM
7 Exhibit 2.

8 A Mm-hmm.

9 Q Is this a copy of the subpoena you're appearing
10 pursuant to here today?

11 A Yes, I believe so.

12 Q So let's move on to -- and if you could just set that
13 aside. But generally speaking, we're going to keep --
14 looks like your counsel will help you keep things just --

15 A The documents, sure.

16 Q -- kind of at hand; we may refer back to certain
17 things.

18 A few -- a few brief things to go over
19 before we get started substantively here.

20 Have you ever given testimony under oath in a
21 proceeding like this before?

22 A I mean, not before, the government's, but I've done
23 depositions in civil cases.

24 Q Civil depositions?

25 A Yeah, yeah.

1 Q About how many?

2 A (b)(6); (b)(7)(C)

3 Q (b)(6); (b)(7)(C)

4 (b)(6); (b)(7)(C)

5 A (b)(6); (b)(7)(C)

6 Q This is similar to a deposition; a little bit
7 different. It's investigative testimony. Just a few
8 baseline things. As we discussed a bit earlier, the court
9 reporter is transcribing everything we say, so it's
10 important that we both speak clearly.

11 A Sure.

12 Q Try to speak slowly. I often fail at this
13 myself. Try to speak loudly and just make our remarks
14 clear.

15 A Got it. Absolutely.

16 Q Please, no gestures, anything like that --

17 A For sure.

18 Q -- because can't get it on the written record.

19 A Understand.

20 Q The oath you just took has the same effect as if
21 you were testifying in court --

22 A Sure.

23 Q -- and it carries the same
24 penalty for perjury. It's a crime to knowingly present
25 false information in this investigation.

1 Do you understand that?

2 A I do.

3 Q If you don't understand a question, or if it's a
4 bad question, which I've been guilty of on numerous
5 occasions, just ask me to rephrase it if you don't understand
6 it.

7 A Sure.

8 Q If you don't -- if you do answer a
9 question, we're going to assume you understood it.

10 A Yeah.

11 MR. FARINA: Elon --

12 THE WITNESS: Should I be answering these or just
13 acknowledging them or --

14 MR. FARINA: The one thing that's important as
15 we go forward through the day, is that -- let him finish
16 his question and then --

17 THE WITNESS: Okay. Wait for a pause.

18 MR. FARINA: That way, she can take down what's
19 going on.

20 THE WITNESS: My apologies.

21 MR. NEWELL: I was just getting to that piece,
22 but thanks for fronting it.

23 THE WITNESS: If I'm making it difficult for our
24 stenographer at some point, please let me know.

25 BY MR. NEWELL:

1 Q That's probably the most difficult part, is trying
2 not to speak over one other. So I'm going to do my best.

3 I would ask that we just give each other a
4 beat at each finished statement, and make sure that there's
5 nothing more forthcoming.

6 A Sure.

7 Q I appreciate it.

8 Again, we control the record today. So we'll
9 decide when to take breaks, but we will be reasonable, and
10 we want to accommodate reasonable breaks. And so just let
11 us know if you need a break, and we'll take one. We just
12 won't take breaks while there's a question pending.

13 A Yes.

14 Q Is there any reason today that you can't give
15 full, complete, and truthful testimony?

16 A No.

17 Q Are you taking any medications or other
18 substances that would affect your memory or ability to
19 testify truthfully?

20 (b)(6); (b)(7)(C)

21 Q Thank you.

22 What did you do to prepare for testimony
23 today?

24 A I -- I reviewed documents last night with
25 counsel, and that's pretty much it.

1 Q Other than conversations you had with counsel,
2 did you speak to anyone else about the substance of your
3 testimony today?

4 A No.

5 Q Anyone tell you how to testify, setting aside
6 conversations with counsel?

7 A Did anyone to tell me to testify? Sorry.

8 Q How to testify.

9 A Oh, no, no.

10 MR. NEWELL: Let's mark this EM Exhibit 3.

11 (SEC Exhibit No. 3 was
12 marked for identification.)

13 MR. NEWELL: Mr. Musk, I'm handing you a document
14 that's been marked as EM Exhibit 3. It appears to be a
15 document subpoena to Tesla, Inc.

16 Take your time to review it, and let me know when
17 you've had a chance.

18 THE WITNESS: Well, "concerning" is broad.

19 BY MR. NEWELL:

20 Q Do you recognize this document?

21 A No.

22 Q Have you ever seen it before?

23 A No. But I was just remarking on the definition of
24 "concerning" being quite broad.

25 Q You -- you --

1 A Sorry. Defining the word "or" to mean "and/or".
2 And the word "and" also means "and/or".

3 Sorry. The masculine gender includes the female
4 gender. Okay. Yeah.

5 MR. FARINA: Elon, Page 4 -- do you want to
6 direct him to Page 4 to the list of documents?

7 BY MR. NEWELL:

8 Q We'll just get a record, Mr. Musk. Do you have
9 any recollection of seeing this document before today?

10 A No. No.

11 Q Okay; well, let's move on to --

12 A I'm sorry -- some of these definitions,
13 given that they are contrary to the standard English
14 meaning of the words, I think maybe I should spend a
15 moment just understanding them, because it is interesting
16 that it defines words differently than one would use in the
17 common vernacular.

18 Q Sure. So I'm not going to have any more
19 questions on that exhibit at this time, given that you
20 haven't seen it before. If you want to spend some more
21 time with it, that's fine. We do have a long day, so.

22 A Yeah, yeah. Absolutely.

23 Just, you know, when something says like
24 the word "or" has been redefined to mean "and/or" --
25 and "and" is defined to mean "and/or" as well --

1 is unusual. And I've not seen that before. All right.
2 Thank you.

3 Q We can set that aside for now, since you've never
4 seen the document itself.

5 Do you recall around the time of the date of that
6 subpoena in Exhibit 3, Mr. Musk, which was August 7th,
7 being -- receiving any type of preservation requests in
8 connection with this investigation?

9 A Yes.

10 Q Do you remember what day you received that
11 request?

12 A Not offhand, no.

13 Q Sometime around August 7th?

14 A Yes.

15 Q Did you do anything personally to make sure that
16 materials weren't lost or inadvertently deleted after you
17 received that request?

18 A I did not, no.

19 Q Did you delete any materials that might be
20 responsive to that August 7th subpoena after you received
21 the preservation request?

22 A So, not that I can recall. I do not think
23 so.

24 Q And did you at some point, after receiving that
25 preservation notice, tender devices, like laptops and

1 phones that you used for Tesla business, for imaging?

2 A Yes.

3 Q Do you remember when those devices were collected
4 from you?

5 A I'm not sure of the exact date, but shortly
6 thereafter.

7 Q Sometime after August 7th; you're not sure of the
8 exact date?

9 A Yes.

10 Q Do you recall whether it was the next day or a
11 week later, anything more specific?

12 A I think it was within a few days. Some might have
13 been immediate; I'm not sure.

14 Q What specific devices did you provide to be
15 imaged?

16 A I provided my phone and several computers.

17 Q And by your phone, is that (b)(6); (b)(7)(C)

18 A (b)(6); (b)(7)(C)

19 Q (b)(6); (b)(7)(C) you were currently using at the time
20 that you received the preservation request?

21 A (b)(6);
(b)(7)(C)

22 Q Do you have -- strike that.

23 At the time you received the request, did
24 you use multiple phones?

25 A (b)(6); (b)(7)(C)

1 Q Just that (b)(6); (b)(7)(C) that you provided to be
2 imaged?

3 A Yes.

4 Q Was it an (b)(6); (b)(7)(C)

5 A Yeah, it is.

6 Q What about other devices?

7 MR. FARINA: The laptops, you mean?

8 MR. NEWELL: Yeah. Let's start with laptops.

9 THE WITNESS: (b)(6); (b)(7)(C)

10 (b)(6); (b)(7)(C)

11

12

13

14 BY MR. NEWELL:

15 Q (b)(6); (b)(7)(C)

16 A I don't have one.

17 Q Do you have additional SIM cards for your phone,
18 or just one?

19 A (b)(6); (b)(7)(C)

20 Q Have you ever used burner or disposable phones in
21 the past? Let's say, in July or August of 2018?

22 A (b)(6); (b)(7)(C)

23 Q (b)(6); (b)(7)(C)

24 (b)(6); (b)(7)(C)

25 A (b)(6); (b)(7)(C)

1 MR. FARINA: (b)(6); (b)(7)(C) and you all
2 received a copy of the phone log two days ago.

3 MR. NEWELL: Thanks.

4 THE WITNESS: Of course, being -- (b)(6); (b)(7)(C)

5 (b)(6); (b)(7)(C)

6 BY MR. NEWELL:

7 Q And this is a good opportunity to just try --
8 I'm obviously pausing in the middle of my questions.

9 If you could just give me a moment
10 to make sure I finish, and you hear the
11 question mark, I'd appreciate it.

12 I know it's not natural. So I apologize
13 in advance.

14 A Sure.

15 Q Any other times in July or August of 2018 that
16 you recall (b)(6); (b)(7)(C)

17 A No. (b)(6); (b)(7)(C)

18 (b)(6); (b)(7)(C) --

19 Q So that's the term I use.

20 A Okay.

21 Q -- so I apologize for
22 that. How would you characterize (b)(6); (b)(7)(C)

23 A (b)(6); (b)(7)(C)

24 (b)(6); (b)(7)(C)

25

1 (b)(6); (b)(7)(C)

2 Q (b)(6); (b)(7)(C)

3 (b)(6); (b)(7)(C) ?

4 A (b)(6); (b)(7)(C) .

5 MR. NEWELL: This is Exhibit 4, please.

6 (SEC Exhibit No. 4 was
7 marked for identification.)

8 BY MR. NEWELL:

9 Q Handing you a document, Mr. Musk, that's been marked
10 as EM Exhibit 4; it appears to be a subpoena for documents.

11 Take your time to review that, and let me know
12 when you're ready to discuss it.

13 MR. FARINA: With respect to identifying and producing
14 documents responsive to both subpoenas, Mr. Musk has
15 worked through counsel, including my firm, and counsel for
16 the company. So I don't know that Mr. Musk has actually
17 seen this before, but he has been involved in gathering
18 and producing documents through his counsel.

19 MR. CAMPOS: He's worked with Hughes Hubbard as
20 well for documents.

21 THE WITNESS: All right.

22 BY MR. NEWELL:

23 Q Have you seen that document before?

24 A No.

25 Q Mr. Musk, have you tendered to the staff all

1 documents called for by Exhibit 4?

2 A I believe so.

3 Q Were any documents called for by the subpoena not
4 produced for any reason other than privilege?

5 A No.

6 Q Do you know of any documents responsive to Exhibit 4,
7 but not produced, that were in your possession at a prior
8 time, or that were lost, destroyed, or otherwise disposed
9 of?

10 A No.

11 Q Did you provide the SEC staff with a copy of the
12 voluntary background questionnaire in this matter?

13 MR. FARINA: He has not.

14 BY MR. NEWELL:

15 Q Just a couple of quick high-level background
16 questions.

17 What's your date of birth?

18 A (b)(6),(b)(7)(C)

19 Q And where were you born?

20 A Pretoria, South Africa.

21 Q Could you give us a very quick, please, high-
22 level walk-through of your educational history, post high
23 school?

24 A I was -- I went to Queen's University in Canada;
25 I was there for two years. Transferred to the University of

1 Pennsylvania. I completed a dual undergraduate degree in
2 Physics and Economics at the Wharton School, and then came
3 out to California to do a Ph.d in Applied Physics and Empirical
4 Sciences at Stanford, but ended up putting that on hold to
5 start an internet company.

6 Q Any particular focus in your economics degree at
7 Wharton?

8 A (b)(6); (b)(7)(C)

9 Q Did you take courses addressing Corporate Finance when
10 you were at Wharton?

11 A (b)(6); (b)(7)(C)

12 Q Corporate Law?

13 A (b)(6); (b)(7)(C)

14 Q Not Corporate Law, specifically?

15 A (b)(6); (b)(7)(C)

16 Q Any training --

17 A (b)(6); (b)(7)(C)

18 Q Any training in investment banking?

19 A (b)(6); (b)(7)(C) I met a lot of future
20 investment bankers who convinced me not to have a career
21 in that direction.

22 Q Let's turn to your role at Tesla today. I'm going to
23 use the term "Tesla" to refer to Tesla, Inc. I know
24 that's not much of a shorthand, but just so the record is
25 clear, if I refer to "Tesla", you understand I'm referring to the

1 entity, Tesla, Inc.?

2 A Yes.

3 Q I'll do a couple of those throughout the day
4 today. I know it's ponderous, but it's just good for a
5 clean record.

6 A No problem.

7 Q What's your current role at Tesla?

8 A I am the CEO of the company, although I'm
9 considering changing my title.

10 Q What are you considering changing your title to?

11 A Nothing. Quite literally.

12 Q Could you expand on that?

13 A No. I just think -- there's too much focus on
14 titles. And I think that we have all these titles, like
15 Chairman, and CEO, and sort of all these titles; and people
16 get too focused on titles, and then everyone wants a title. And so
17 I think the best title is no title.

18 Q Are you also currently Chairman of the Board of
19 Directors at Tesla?

20 A Yes.

21 Q Are you also considering changing your role in
22 that respect?

23 A Yes, I -- well, I'm considering just not having a
24 title there either.

25 Q So that -- would that entail remaining involved in

1 board meetings, as a voting member of the board, but not having
2 the same title?

3 A The title of Chairman is somewhat of an honorific, and
4 has little in the way of de facto value. So --

5 MR. FARINA: To be clear, I don't think he was
6 talking about changing his function in any respect, just
7 the title.

8 MR. NEWELL: Understood. Yeah

9 UNIDENTIFIED SPEAKER: And let me -- let's just ask, along
10 with changing the title, were you considering any changes to
11 functions?

12 THE WITNESS: No.

13 MR. NEWELL: Any other --

14 THE WITNESS: I just think people are too concerned about
15 titles.

16 BY MR. NEWELL:

17 Q Recognizing your view on titles, any other titles
18 that you currently hold at Tesla?

19 A I hope not. I don't think so.

20 Q Are you a co-founder of Tesla?

21 A Well, yeah. But that's not really a title.

22 Q How about with respect to engineering? Are you ever
23 referred to as Head of Engineering, or something to that
24 effect?

25 A Well, I think I somewhat embarrassingly called

1 myself Chief Product Officer, or something like that. That was
2 in the vestiges of the past; it's one of the tragic
3 titles.

4 Q Not currently, though? It's not still in effect?

5 A I think it might be, unfortunately.

6 Q When did you first become involved in Tesla?

7 A Umm -- well, so the origins are interesting.

8 The -- at some point there should be some accurate
9 recounting of this.

10 But in 2003, when I had lunch with J.B. Straubel
11 and another fellow, who was -- whose name
12 I'll remember in a moment -- but he's quite famous in space.
13 And he -- he's the one that requested the meeting.

14 And in the course of the meeting in 2003, we got
15 to the subject of electric vehicles. And I mentioned that
16 my Ph.D. at Stanford would have been in high-energy,
17 high energy density, electric -- electric energy storage,
18 for electric vehicles. Essentially trying
19 to develop advanced ultra-capacities in these electric
20 vehicles, in order to commercialize electric vehicles and
21 make them more -- and have long-range, and fast charging.

22 Is this too fast? Is this okay?

23 THE COURT REPORTER: It's all right.

24 A And so J.B. suggested that I have a test drive of
25 the T-0 vehicle from -- that was made by AC Propulsion,

1 which is a small -- sort of a small engineering shop in
2 Southern California.

3 And so I had a test drive of the T-0, which was a
4 sports car that had essentially the properties of what
5 related to the Tesla with the Roadster, where it had about
6 a 250-mile range, a zero to 60 time was under four seconds.
7 And -- yeah. So it was sort of, improve upon the concept
8 prototype.

9 And I talked to Tom Gage and Al Cocconi at AC
10 Propulsion and tried to convince them to commercialize the
11 T-0 and saying the world needed to see what electric cars
12 were capable of.

13 And despite my best efforts, I could not convince
14 them to commercialize the T-0. So they were just not interested
15 in going beyond this sort of small engineering shop.

16 So after a few months of trying to convince them
17 to do that, "If you guys are not going to, to recreate a
18 productized commercial version of the T-0, then would you
19 mind if I did that?" And they said "Sure."

20 And it's important to note that the T-0, while it
21 was a two-seater electric sports car, it also didn't have
22 any doors or air bags, or any safety features, and it was
23 extremely expensive to make. On a one off basis, it was
24 like half a million dollars.

25 So there's quite a big gap between a prove the

1 concept prototype and a car that meets all of the regulatory
2 requirements, and is safe and reliable, and doesn't cost
3 half a million dollars.

4 So when I suggested that to Tom Gage,
5 he said, "Well, there are two other teams that are
6 interested in doing this as well." I never met the other
7 team, but the first -- the one team he did introduce me to was
8 Martin Everhart, Rod Topney, and Ian Wright.

9 THE COURT REPORTER: What's the last name?

10 THE WITNESS: Wright, with a W.

11 THE COURT REPORTER: The first name?

12 THE WITNESS: Oh, Ian. I-A-N.

13 A So they didn't have anything except a business
14 plan, which involved commercializing the AC Propulsion
15 T-0. And I thought -- I was running SpaceX at the time --
16 this was maybe a way for me to advance the course of
17 electric vehicles, without having to run two companies.
18 So, that didn't work out, obviously. I think, like,
19 to some degree, it's sort of like a case of, you know,
20 you can't have your cake and eat it too.

21 Whenever you try to do something and avoid hard
22 work, good things do not come from that. Or it needs too much
23 work.

24 So I thought I would combine forces with Mark,
25 Martin, and Ian, and then bring in J.B. rather than just

1 create a separate company with J.B. and me. And then --

2 MR. FARINA: And at this point --

3 THE WITNESS: Maybe I put
4 a little more detail in -- but I mean, I -- you know,
5 it's interesting.

6 MR. NEWELL: Yeah.

7 THE WITNESS: I mean, how much detail do you
8 want?

9 BY MR. NEWELL:

10 Q We appreciate -- we appreciate the
11 background. Let's -- let's move along though,
12 because we have a long day and a long, long set
13 of questions.

14 A Sure.

15 Q We appreciate that.

16 Did Tesla at some point engage in an initial
17 public offering?

18 A Yes.

19 Q When was that?

20 A I know that date well because it was (b)(6),(b)(7)(C)
21 It was June 28th, 2010.

22 Q Has Tesla remained a publicly-traded company
23 since that time, until today?

24 A Yes.

25 Q It files periodic reports with the SEC?

1 A Yes.

2 Q And do you sign those reports as the company's CEO?

3 A I do. Is it legally the president, or actually the
4 CEO that's the head? I'm not sure if that's --
5 I think technically it's the president, or something
6 like that, but yeah, the head of
7 the company.

8 Q Roughly what percentage of Tesla's outstanding
9 common stock do you currently own sitting here today?

10 A Approximately b6
b7c percent.

11 Q You mentioned SpaceX a moment ago. Briefly,
12 what's your role at SpaceX?

13 A Similar. So I am the CEO and Chief Engineer,
14 Chief Designer of the rockets. It's really pretty similar
15 in both companies. I drive the technical direction of the
16 product. So I'm the overall Head of Engineering or Design,
17 and I -- and also run the company.

18 Q Do you have roles at other companies as well?

19 A Yes. But they are -- the time allocation is minor.
20 So I own some little companies.

21 Q Could you please just list them for us, just --
22 you don't need to unpack what you do at each, or what the
23 companies are, but just a quick list of companies that you
24 play a role in today.

25 A Sure. Yeah. Well, I have the Boring Company;

1 which digs tunnels, bores tunnels.

2 And that's a real fun company. I have to say,
3 the enjoyment to grief ratio is very good there so far.

4 THE COURT REPORTER: I'm sorry. "It's a fun
5 company. I have to say" --

6 THE WITNESS: The enjoyment to grief ratio is
7 quite good, for now at least. Famous last words.
8 So that's digging tunnels, and selling bizarre
9 merchandise. And then there's Neuralink, which is --
10 where the goal is to help solve brain injuries,
11 and you know, strokes, dementia, Parkinson's.
12 There's a whole range of things. Epilepsy. And using
13 computer chips to be able to do that.

14 And this is a bit esoteric, but in the
15 longer-term view to potentially achieving
16 symbiosis with artificial intelligence, which
17 could ultimately --

18 THE COURT REPORTER: I'm sorry, I lost your --
19 "to potentially" --

20 THE WITNESS: Achieving symbiosis with
21 artificial intelligence, which could be
22 important for, on an existential level, for civilization.

23 Q Are any of your other companies publicly traded,
24 setting aside Tesla?

25 A No.

1 Q Do you have an email address at Tesla.com?

2 A Yes.

3 Q At SpaceX as well?

4 A Yes.

5 Q Any other company email addresses?

6 A Just Neuralink, just those -- those three for
7 companies, yeah.

8 Q How do you --

9 A I haven't followed with a Boring address.

10 Q How do you differentiate between use of those email
11 addresses? Are you good about using only the Tesla.com address
12 to discuss Tesla, and likewise for SpaceX and Neuralink?

13 A Yes, there may be occasional mistakes, but almost
14 always, I try to be quite careful about specificity of
15 each company.

16 Q How are you able to accomplish that on your
17 device?

18 A Actually, the phone is pretty good.
19 Essentially, if someone emails me from Tesla,
20 it's automatically going to initiate a an email -- the reply
21 will automatically come from my Tesla address.
22 Likewise, if I send an email to somebody working at Tesla, it will
23 default to sending from my Tesla address.

24 Q What methods do you use to communicate about
25 Tesla business?

1 A To the public, you mean?

2 Q Internally, with other Tesla employees?

3 A (b)(6); (b)(7)(C)

4 Q By phone as well?

5 A (b)(6); (b)(7)(C)

6 (b)(6); (b)(7)(C)

7 Q Sorry. Maybe the question was unclear. I'm
8 asking globally any communications --

9 A (b)(6); (b)(7)(C)

10 (b)(6); (b)(7)(C)

11 (b)(6); (b)(7)(C)

14 Q Anything else, any internal messaging systems at
15 Tesla, like Jabber, or something like that, that you use to
16 message folks at Tesla?

17 A (b)(6); (b)(7)(C)

18 (b)(6); (b)(7)(C)

19 Q What about other messaging applications?

20 A (b)(6); (b)(7)(C)

21 (b)(6); (b)(7)(C)

22 Q What is (b)(6); (b)(7)(C)

23 A (b)(6); (b)(7)(C)

24 (b)(6); (b)(7)(C)

25 Q Do you remember when you (b)(6); (b)(7)(C)

1 A I (b)(6); (b)(7)(C)

2 (b)(6); (b)(7)(C)

3 (b)(6); (b)(7)(C)

4 Q (b)(6); (b)(7)(C)

5 A (b)(6); (b)(7)(C)

6 Q (b)(6); (b)(7)(C)

7 A (b)(6); (b)(7)(C)

8 (b)(4)

9 (b)(4)

10 (b)(4) (b)(6); (b)(7)(C)

11 (b)(6); (b)(7)(C)

12 (b)(6); (b)(7)(C)

13 Q (b)(6); (b)(7)(C)

14 (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

15 A (b)(6); (b)(7)(C)

16 (b)(6); (b)(7)(C)

17

18

19

20

21 Q (b)(6); (b)(7)(C)

22 A (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

23 (b)(6); (b)(7)(C)

24 (b)(6); (b)(7)(C)

25 Q (b)(6); (b)(7)(C)

1 A (b)(6); (b)(7)(C) (b)(4)

2 (b)(4)

3 Q (b)(6); (b)(7)(C) (b)(4)

4 (b)(4)

5 A (b)(4)

6 Q (b)(6); (b)(7)(C) (b)(4)

7 (b)(4)

8

9 (b)(6); (b)(7)(C)

10 Q (b)(6); (b)(7)(C) (b)(4)

11 (b)(4)

12 A (b)(6); (b)(7)(C)

13 Q (b)(4)

14 A (b)(6); (b)(7)(C)

15 (b)(6); (b)(7)(C)

16

17

18

19

20 Q (b)(6); (b)(7)(C)

21 (b)(6); (b)(7)(C)

22

23

24

25 (b)(4)

1 A (b)(4)

2 Q (b)(4)

3 (b)(4)

4 (b)(4)

5 A (b)(4)

6 Q (b)(4)

7 A (b)(4)

8 (b)(4)

10 Q (b)(4)

11 A (b)(4)

12 Q Is it your understanding that if (b)(4)

13 (b)(4)

15 A (b)(4)

16 Q (b)(4)

17 to (b)(4)

18 A (b)(4)

19 (b)(4) (b)(4)

20 (b)(4)

25 Q (b)(4)

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b(4)

A b(4)

Q Go ahead. Sorry.

A I mean, there's only one -- I know I'm not supposed to do this, but there's only one communication I recall relating at all to the take-private, which was Todd Maron sending me a note saying --

MR. FARINA: Don't, don't, don't -- you shouldn't disclose the contents of the communication.

THE WITNESS: Okay.

MR. FARINA: Or at least give us a chance to intervene.

So Todd is the company's general counsel?

THE WITNESS: Yes. Yes.

MR. FARINA: Okay. We can talk about that at a break before --

MR. BUCHHOLZ: I have some follow-up.

MR. FARINA: Yes, go ahead.

BY MR. BUCHHOLZ:

Q Were you seeking legal advice, or was he providing legal advice in that communication?

A Yes. It was just one -- one note, yes.

Q Okay. Then, we don't want it.

A It may -- it may be privileged. I don't know. But it's not for -- not -- yeah, it's not like -- it

1 was just --

2 MR. HEALY: Let the lawyers decide that.

3 BY MR. NEWELL:

4 Q What was the date of that communication?

5 A I'm not sure exactly. But early August.

6 BY MR. BUCHHOLZ:

7 Q Is it helpful if we put the August 7 day of the
8 tweets out there? Do you think it was --

9 A Just, it was prior to that, yes.

10 Q Okay.

11 A It informed the tweets;
12 so that's why I think it may be relevant.

13 MR. FARINA: Okay.

14 Why don't we talk about that at a break,
15 and we can always come back to it? How's that?

16 THE WITNESS: Yeah.

17 BY MR. BUCHHOLZ:

18 Q (b)(4)

19 (b)(6); (b)(7)(C)

20 A (b)(4); (b)(6); (b)(7)(C)

21 (b)(6); (b)(7)(C)

22 BY MR. NEWELL:

23 Q And for the record, who are Mr. Teller and (b)(6); (b)(7)(C)

24 A Sam Teller is my Chief of Staff, and (b)(6); (b)(7)(C) is --

25 not sure what (b)(6); (b)(7)(C) is, he is (b)(6); (b)(7)(C) on the --

1 he's just part of my executive office, considered
2 like essentially (b)(6);(b)(7)(C) effectually.

3 Q What's his last name?

4 A (b)(6);(b)(7)(C) I believe.

5 Q What do you recall discussing (b)(6); (b)(7)(C) with
6 Mr. Teller and/or (b)(6);(b)(7)(C)

7 A Yeah, I do want to emphasize that very little was
8 discussed at all. (b)(4)

9 (b)(4)

10

11

12

13 Q So this is the same (b)(4) related discussion that you
14 were referencing earlier?

15 A Yeah.

16 Q Anyone else involved in that (b)(6); (b)(7)(C) conversation,
17 apart from you, Mr. Teller, and (b)(6);(b)(7)(C)

18 A I don't think so.

19 Q How long did that conversation last (b)(6); (b)(7)(C) in
20 terms of calendar time?

21 A It was very brief.

22 Q A week, a month, a day?

23 A Maybe a few weeks. But this was very, very little, and
24 yeah, it was unrelated to this matter.

25 BY MR. BUCHHOLZ:

1 Q About when was that? What time period?

2 A Probably June, yeah.

3 Q June of this year?

4 A I think so.

5 BY MR. NEWELL:

6 Q Is it appropriate to talk (b)(6); (b)(7)(C) in
7 context of the contacts, like you would have on your phone,
8 for phone numbers? Is that what you have (b)(6); (b)(7)(C) as well?

9 A (b)(6); (b)(7)(C)

10 (b)(6); (b)(7)(C)

11 Q (b)(6); (b)(7)(C)

12 (b)(6); (b)(7)(C)

13 A Yeah.

14 Q So all of your phone contacts were available to
15 you (b)(6); (b)(7)(C) when you were using it?

16 A Yes, yes.

17 Q Can you recall communicating with anyone else at
18 Tesla, apart from what we've already discussed (b)(6); (b)(7)(C)
19 about any topic?

20 A No.

21 BY MR. BUCHHOLZ:

22 Q How long was the (b)(6); (b)(7)(C)
23 after what period of time?

24 A I don't recall. I don't.

25 Q Did you do the settings for it, or have

1 someone else help you do the settings?

2 A I think Sam may have just set the setting, but
3 I'm not sure.

4 Q And just to be clear, so if you use "Sam", you
5 giving us "Teller"?

6 A Sam Teller, Sam, yeah.

7 Q That's fine; just so we're clear.

8 MR. NEWELL: Setting --

9 THE WITNESS: I mean, typically, there was
10 was very little (b)(6);(b)(7)(C) It's
11 not like there was, you know, a ton of communication.
12 There was very little on it.

13 BY MR. NEWELL:

14 Q Setting aside the communication that you were
15 just referencing with (b)(6);(b)(7)(C) not asking for the
16 substance of that communication, or the substance of any
17 previous communications with (b)(6);(b)(7)(C) But did you have
18 any previous communications with (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
19 before August 2018?

20 A I don't recall any communications.

21 Q The first one you recall is in that August 2018
22 time frame, but before August 7th?

23 A Yes.

24 MR. BUCHHOLZ: How did you know that he used
25 (b)(6);(b)(7)(C)

1 THE WITNESS: I didn't. I was actually quite
2 surprised to see a note from him (b)(6); (b)(7)(C)

3 MS. CRUMPTON: (b)(6); (b)(7)(C)

4 (b)(6); (b)(7)(C)

5 THE WITNESS: (b)(6); (b)(7)(C)

6 (b)(6); (b)(7)(C)

8 BY MR. NEWELL:

9 Q What about any other messaging applications?
10 I'll give you a couple examples, to orient you on what I'm
11 talking about. Applications like Whatsapp, WeChat;
12 analogous applications. Did you ever use anything like that to
13 discuss Tesla?

14 A (b)(6); (b)(7)(C)

15 (b)(6); (b)(7)(C)

16 THE COURT REPORTER: That would be?

17 THE WITNESS: Unwise.

18 A I did have (b)(6); (b)(7)(C) installed, but I
19 actually have not used it in years. And I don't use

20 (b)(6); (b)(7)(C) because (b)(6); (b)(7)(C)

21 (b)(6); (b)(7)(C)

22 Q Wicker?

23 A (b)(6);
(b)(7)(C)

24 Q Any other messaging applications that you can
25 recall using to discuss Tesla?

1 A No.

2 Q Let's turn to your use of social media. What
3 social media accounts do you currently have, sitting here
4 today?

5 A I have Twitter.

6 Q No others?

7 A Correct.

8 THE COURT REPORTER: I'm sorry, Counsel. No --

9 MR. NEWELL: I said, "No others?"

10 BY MR. NEWELL:

11 Q Did you have an Instagram account at one point?

12 A Yeah. It's embarrassing. This is -- (laughing).

13 Q Why is it funny?

14 A Why is it funny? Well, there's just -- yeah,

15 I just don't -- (b)(7)(C)

16 (b)(7)(C) You know, I think it sort of

17 gives us a false impression of people having

18 these amazing lives, when in fact they can be quite

19 miserable. And it then creates unhappiness, because people

20 compare their life to the apparent life of others, and

21 then they feel bad. And I think it may actually contribute

22 to an increase in the suicide rate, which is terrible.

23 And so I didn't like it, and deleted it.

24 Q When did you delete it?

25 A About a week ago.

1 Q And do you remember when you started using it,
2 roughly?

3 A Yeah. Right in the beginning, when it was a floater
4 for Twitter, it used to be like, you know, you'd have an
5 edge up on Twitter; it was like a plug-in. And it was like,
6 you know, it was the first -- I was one of the first
7 people to use it, actually. So I took snapshots of like
8 the few photos that I care about, and then I deleted it.

9 Q Did you have access to a beta version or something
10 at teh outset of Instagram?

11 A Kind of -- close to it, an early version.
12 Literally, beta. It was like, very early.
13 You can't even get those filters anymore.

14 Q It sounds like you used it for several years, up
15 until your deletion of it in the recent past?

16 A I used it infrequently. I mean, I had it, I think, for
17 six -- six or six and a half years. And in that entire
18 time, probably did an average of one post a month or
19 something like that.

20 Q Did you ever use the private messaging or direct
21 messaging feature on Instagram at any time?

22 A Actually I only realized about a year ago that
23 there was one. But it was entirely for personal reasons, and
24 generally involved sending some Instagram picture to
25 somebody else, with, you know, "LOL" or something.

1 Q You did use it, but just for purely personal
2 reasons?

3 A Yeah, that is --

4 Q No use of it with Tesla?

5 A -- true.

6 Q Sorry to cut you off there.

7 A Sorry.

8 Q Go ahead.

9 A It was entirely frivolous.

10 Q Any connection between the events surrounding the
11 tweets you sent on August 7th of this year, and your
12 deletion of Instagram over the last couple weeks?

13 A No, not at all.

14 Q Let's talk about Twitter now. When did you first
15 sign on for Twitter?

16 A Well, technically, I first signed up for Twitter when
17 it was very tiny. I think it only had a few thousand
18 users. And a friend of mine was the -- was one of the lead
19 Series A investors in Twitter, and I signed up. And then
20 people just kept talking about what kind of latte they had
21 at Starbucks. So then I was like, "This is ridiculous," and
22 deleted my Twitter, because it just seemed like nonsense.

23 And then somebody else took over
24 my Twitter handle and started posting things in
25 my name. But I kind of ignored Twitter until about

1 that time. So about probably -- when was it -- 2011 or '10 or
2 something.

3 And a friend of mine suggested that Twitter would be
4 a good way to talk directly to the public and bypass the
5 media. Obviously, a double-edged sword. But I thought,
6 well, this could be a good way to not always have what I want
7 to say filtered through the lens of a journalist.

8 Q It was around the time Tesla went public that you
9 decided to resume your use of Twitter?

10 A Close. It was unrelated to -- well, it's
11 really from a press standpoint. As a means
12 of counteracting press. But yeah, around that time.

13 Q What is your Twitter handle?

14 A Elon Musk.

15 Q Have you ever used any other Twitter handles?

16 A No.

17 Q You don't have access to any other Twitter handles?

18 A No.

19 Q Between the time you resumed your use of Twitter,
20 to the present day, has anyone else had access to your
21 Twitter account?

22 A I don't think so.

23 Q Anyone else have your password?

24 A No.

25 Q You ever ask anyone to write a tweet

1 directly on your behalf?

2 A No.

3 Q Did you begin using Twitter to discuss Tesla
4 around the time that you resumed your use of Twitter in 2010
5 or 2011?

6 A In the beginning, I'm not sure what -- I don't
7 think -- I think I was just tweeting nonsense.

8 Q Lattes and the like?

9 A Umm -- I was torturing people with my terrible
10 sense of humor.

11 Q More of a social pastime than a --

12 A Yes.

13 Q -- method of communicating
14 information about your company?

15 A Yes.

16 Q When did that change?

17 A Well, I'm not sure it has, entirely. It's still --
18 you know -- whimsical, bad humor interspersed with talk of
19 SpaceX and Tesla and Boring Company and Neuralink and
20 Opening Eye -- I forgot to mention Opening Eye.

21 Q It's another of your companies?

22 A Sort of. It's a non-profit. I'm not on the board
23 or anything.

24 Q Let me -- let me try and ask the question a little bit
25 differently.

1 **Was there a point in time at which you began**
2 **discussing Tesla more frequently on Twitter?**

3 A I think it would have been two or three years
4 ago. Not more than four years ago.

5 Q **Somewhere between 2014 and 2016?**

6 A Yeah.

7 Q **You recall an uptick in your use of Twitter to**
8 **discuss Tesla?**

9 A Yes.

10 Q **Can you a trace that to any specific or**
11 **precipitating event or events?**

12 A Yeah. The -- there was a blatantly false review
13 in the New York Times about this terrible test drive that a
14 journalist had in our car, where he fundamentally
15 misrepresented the test drive and flat out lied, which we
16 were able to determine from the car log, since it was our
17 car he was driving.

18 We had full access to logs, including everything
19 the car did. And his entire story was a piece of fiction;
20 and so we pointed that out.

21 Q **Was that a Model S test drive?**

22 A It was.

23 Q **Do you recall approximately when that review came**
24 **out?**

25 A I think 2013 or 2014 or something; something like that.

1 Q And this is the event that sticks out in your
2 mind as starting --

3 A Yes.

4 Q -- the process whereby you used Twitter more
5 frequently to discuss Tesla?

6 A Yeah, essentially to try to --
7 to try to combat what I saw as a
8 misrepresentation of Tesla in the media.

9 Q How often, on average, do you use Twitter to
10 discuss Tesla?

11 A Hmm. I think it varies quite a lot.
12 So it could be -- anywhere -- maybe once a week
13 or something like that on average. But then there's times
14 when there's a lot more tweets than that.

15 Q It varies over time?

16 A Yeah, I think there can be a week could go by with no
17 mention of Tesla, and then a day, there could be a day where
18 there's a great deal of it.

19 Q Let's take ourselves outside the time frame of
20 August 2018. So any time prior to August 2018. When
21 you've used Twitter to discuss Tesla in the past, what
22 capacity were you speaking in?

23 MR. FARINA: Do you understand what he means by
24 that?

25 THE WITNESS: Do you mean, was I speaking as the

1 CEO of Tesla or --

2 BY MR. NEWELL:

3 Q What was your understanding of the capacity in
4 which you were speaking, when you were tweeting about Tesla
5 prior to August 2018?

6 A I felt I was sort of speaking as the leader of the
7 company.

8 Q Does that mean CEO?

9 A Yes, I guess.

10 MR. FARINA: Are you at a convenient point and
11 switching subjects? Want to take a break?

12 MR. NEWELL: Yeah, absolutely. We've been going about an
13 hour. I did want to stay on the subject for a moment.
14 If folks need a break now, we can return back to it.
15 For efficiency's sake, though, it might be better
16 to just take another five to ten
17 minutes instead. But if anyone needs
18 a break, we could stop now.

19 THE WITNESS: Five to ten minutes is okay.

20 MR. FARINA: Okay. Are you okay?

21 THE WITNESS: Yeah. No problem.

22 MR. NEWELL: Let us know if we go on too long,
23 and you need to stop.

24 BY MR. NEWELL:

25 Q Do you routinely confer with others at Tesla

1 before posting information about Tesla on Twitter?

2 A No.

3 Q Do you routinely confer with counsel at Tesla before
4 posting information about Tesla on Twitter?

5 A No.

6 Q Have you ever consulted with others at Tesla
7 before posting information about Tesla on Twitter?

8 A I mean, occasionally I've asked Sam, "What do you
9 think? What do you think of this tweet?"

10 Q Mr. Teller?

11 A Yes.

12 Q Sorry. We'll stipulate that "Sam" refers to Mr.
13 Teller --

14 A Yes.

15 Q -- for the remainder of today's testimony.
16 If you start talking about another Sam, we'd just
17 ask you to tell us who you mean.

18 Under what circumstances do you get Mr. Teller's
19 take, before posting a tweet?

20 A Well, if he happens to be there and I'm not too
21 certain about the tweet, I'll ask Sam, "What do you
22 think?" Most of the time, I do not ask anyone.

23 Q Prior to August 2018, were you aware of any Tesla
24 policy addressing your use of Twitter?

25 A Yes. There's -- well, yes, there's, I believe,

1 a disclosure, in our corporate documents, that I use
2 Twitter.

3 Q You're referring to a disclosure in SEC filings
4 that indicates your Twitter account is a source of company
5 information?

6 A Yes.

7 Q What about -- setting that disclosure aside, what
8 about Tesla corporate policies? Are you aware of any
9 Tesla corporate policies in effect prior to August of 2018
10 that addressed your use of Twitter in any way?

11 A No.

12 Q So no formal policy regarding your use of Twitter
13 at Tesla during that time frame?

14 A I'm not aware of a formal policy.

15 Q What about informal policies; anything that comes
16 to mind?

17 A Not really.

18 Q Have you blocked users on Twitter in the past?

19 A Yes.

20 Q Have those users included journalists?

21 A In some cases. Very few. But I've actually gone
22 back and unblocked a bunch of them. It is better to just mute
23 them. Because then they use the block feature; they
24 get all -- they're all excited about that.

25 Mute is way better. They can still

1 see my tweets, but I can't see theirs.

2 Q Have you ever used Twitter's direct messaging
3 feature?

4 A Yes.

5 Q Ever used that to discuss Tesla?

6 A No.

7 Q Can't recall any instances in which you did that?

8 A I cannot recall any instances where I did that.

9 Q Have you ever discussed Tesla by using the reply
10 feature on Twitter, to reply to other users' posts, that
11 they originated as --

12 A Yes.

13 Q -- distinct from posts that you posted
14 originally, you're now replying to? Do you
15 understand what I'm saying?

16 A Yeah.

17 Q You have used the replies feature in that way
18 to discuss Tesla?

19 A Yes.

20 MR. NEWELL: Okay. I think it's a good
21 opportunity take that break. Let's go off the record.

22 VIDEO OPERATOR: Going off the record. The time
23 is 10:22.

24 (Recess taken.)

25 VIDEO OPERATOR: We are back on the record. The

1 time is 10:35.

2 BY MR. NEWELL:

3 Q Mr. Musk, on the break, did you have any
4 substantive discussions with the SEC?

5 A No.

6 Q So we just discussed -- before going back on the
7 record, you had asked whether we could share with you what all
8 of our roles are. I'm happy to do that. I
9 just wanted to do it on the record.

10 A Oh, sure. Yeah.

11 Q And so, we'll do that now. I'm a
12 staff attorney here with the SEC at San Francisco.
13 And I can let everyone else introduce themselves.

14 MS. CRUMPTON: Sure; I'm Cheryl Crumpton. I am
15 a trial counsel and a supervisor in the SEC's D.C. office.

16 MR. ATWOOD: I'm Barrett Atwood. I'm a trial
17 attorney here in the San Francisco office.

18 MR. SMYTH: My name is Brent Smyth. I'm a Senior
19 Counsel in the Division of Enforcement,
20 in the San Francisco office.

21 THE WITNESS: Okay.

22 (b)(6),(b)(7)(C) I'm (b)(6),(b)(7)(C) I'm (b)(6),(b)(7)(C)

23 (b)(6),(b)(7)(C) in D.C.

24 MR. NEWELL: And then Steven Buchholz, who
25 will come back in shortly, is an assistant

1 director here in the SEC San Francisco office.

2 THE WITNESS: Okay.

3 MR. NEWELL: A supervisor.

4 THE WITNESS: All right. Sounds good. Cool.

5 BY MR. NEWELL:

6 Q All right. I'll turn to a different topic.

7 Let's move away from Twitter for a moment.

8 Do you think that Tesla has been unfairly
9 targeted by short sellers?

10 A Unfairly -- umm, yes, unfair in the sense that
11 I think they are incorrect, and that they are frequently sending
12 information to the press, or publishing it on Twitter or
13 other social media, that I feel is false.

14 Q Can you give us some examples of areas in which
15 short sellers are disseminating information about Tesla
16 that you think is false?

17 A (b)(4)

18 (b)(4)

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25 Q Anything else in the realm of

1 areas of false information that you believe are
2 being disseminated about Tesla by short sellers?

3 A Let's see.

4 Well, they are frequently on television saying
5 that Tesla is a fraudulent company. That I am a fraud and
6 liar. I do not believe these are true. Yes. They also
7 say that our stock should be worth zero. There's a long
8 list.

9 Q So some of your disputes with them include their
10 characterization of Tesla's financial condition?

11 A Well, yes. They've claimed that we have fraudulent
12 accounting multiple times, when that is not true.

13 Q Would you say that short seller pressure on Tesla
14 has increased over time?

15 A Yes. The objective numbers are very high.
16 There's, I believe, something on the order of 11 or 12
17 billion dollars of short position officially against
18 Tesla. This does not count synthetic shorts or possible
19 illegal shorting, which would suggest that number is
20 higher, possibly on the order of 15 billion.

21 Q Setting aside the actual magnitude of short
22 positions, would you say that the other activities of
23 short sellers, like disseminating information you believe
24 to be false about Tesla has increased over time?

25 A Yes.

1 Q Can you pinpoint the genealogy of when you think
2 that began to increase, or has it been a steady increase
3 since the time Tesla's been a public company?

4 A Yeah. So, from the moment that Tesla went public, even
5 before it was really legally possible to short sell Tesla
6 stock, they seemed to have found ways to do so. For the
7 first year or two, this was not too much of a problem.

8 It became pretty extreme around the first quarter
9 of 2013. Very extreme. To the degree that the days to
10 cover, I think, was on the order of 30. This is
11 essentially incredibly difficult, almost impossible to
12 cover your short position. And I pointed this out to them
13 in the media a few times, that this is really unwise to
14 have this level of shorting.

15 I recommended they do not short Tesla, for
16 their own good. It's like, too crazy.

17 Q What about over the past year? Would you say that
18 the level of intensity concerning short seller
19 dissemination of information you believe to be false about
20 Tesla has increased?

21 A Over the past two years, I would say it has
22 increased, yes.

23 Q Past two years?

24 A Yeah. This has increased -- you can see the
25 objective number, or the dollar value of the short

1 positioning against Tesla, has increased dramatically. And
2 proportionate with that dollar value increase, the
3 negative propaganda has roughly matched that increase in
4 short position.

5 Q Why do you think that Tesla is -- well, strike
6 that.

7 Do you think that Tesla is targeted to a greater
8 degree than other public companies by short sellers?

9 A Objectively, it is. The dollar value of the short
10 position against Tesla, on a sustained basis, is the
11 largest short position against almost any company in the history
12 of the American stock market.

13 Q Why do you think that is?

14 A Maybe I should talk to them more. They do not
15 believe that it is possible for Tesla to do what it is
16 doing. They think that there is no way for a new car
17 company to prosper when faced with competition that is far
18 greater and has vastly more resources. And they do not believe it
19 is possible for us to execute as we have executed. And they
20 have held this opinion for a long time, and they have been
21 proven wrong for many years. So it does seem strange that
22 they would not change their opinion.

23 Q Do you think if Tesla continues to execute, they'll
24 go away eventually?

25 A That was my theory. After 2013 -- in 2013 we had --

1 the short sellers generally felt we were going to go
2 bankrupt right around early 2013.

3 And, in fact, we were able to
4 achieve a small profit in the first quarter of 2013.

5 This was contrary to all their expectations. I

6 (b)(4)

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15 The thing that they weren't expecting in Q-1 of
16 2013 was that we would actually be able to rally the
17 entire company, and get about half of the quarters -- we'd
18 only -- there were two weeks left in the quarter, and we'd
19 only delivered half of all the vehicles we were supposed
20 to deliver in that quarter. So they were expecting a
21 massive revenue shortfall and a massive loss.

22 I reorganized the company, and everyone's job was
23 delivering cars, from the design studio, human resources,
24 legal, the general counsel, everyone. Me too. Two weeks
25 solid, delivering cars. We had made the cars. We had

1 customers, we just needed to get the cars to customers.

2 They were not expecting a reorganization of the
3 company of that nature. And in the space of two weeks, we
4 doubled our deliveries to customers.

5 Q Circling back to the question I asked earlier,
6 let me put a different spin on it.

7 It sounds like you're not sure whether Tesla's
8 continuing to execute will cause short sellers to go away
9 at this point, fair to say?

10 A Fair to say. Historically, since the short
11 sellers have been on our case for eight years, even though
12 I expect us to be profitable, and cash flow positive this
13 quarter, probably next, and hopefully going into the
14 future, at least to some degree of positive cash flow and
15 minor profitability, that should, you know, really be
16 quite destructive to the short thesis, because that
17 thesis is contrary to that.

18 They say we'll never make a profit and we'll have
19 to raise massive amounts of money, and if we cannot do that,
20 we will definitely die.

21 So that would break -- that would break
22 the short thesis, at least, you know -- at least
23 at least mostly break the short thesis.

24 That said, I don't think they will go away.
25 They will just come back every year and say this time

1 they're right.

2 Q Given that, is there anything else you plan to do
3 to try to limit their impact on Tesla going forward?

4 A I'm not sure what to do, actually. They do cause
5 a lot of brand damage. Because, independent of outright
6 false information, they are extremely good at amplifying
7 any real negative information. So, if there's, for
8 example, a car accident, even though every year in the
9 United States 40,000 people die in car accidents -- if
10 there's an accident in a Tesla, it's front page news, even
11 if nobody is even injured. This is crazy.

12 And this is because when that happens, they --
13 they engage their PR agencies, and they send --

14 THE COURT REPORTER: They engage their --

15 THE WITNESS: They engage their PR agencies.

16 THE COURT REPORTER: Thank you.

17 A And they send this to every media
18 outlet, in the most inflammatory way possible. I -- the media
19 tells me this. It's not -- I'm not speculating.

20 And they amplify it on social media.

21 And, you know, if there's a Tesla car fire,
22 although you're literally ten times less likely --
23 ten times less likely to have a fire in a Tesla
24 than in a gasoline car, they'll try to
25 create the impression that Teslas have a fire risk.

1 Nobody has even burned a finger in a Tesla, ever.
2 Zero fire injuries, ever. But you wouldn't know that from
3 reading the news. You wouldn't know that our car still
4 has the lowest probability of injury, Model S.
5 Actually, technically, the Model 3 is about to be the
6 best. About to be slightly better. The Model 3 -- the Model S
7 has the lowest probability of injury of any --

8 THE COURT REPORTER: I'm sorry. S?

9 THE WITNESS: The model, the model S --

10 THE COURT REPORTER: Uh-huh.

11 THE WITNESS: -- has the lowest probability of
12 injury of any car ever tested by NTSA.

13 A And the Model X is number two. And the Model 3 will
14 soon be number one by half a percent, a small number. So
15 you wouldn't know that this is the safest car --
16 this is the safest car that's ever made,
17 because you just constantly read about Tesla
18 accidents.

19 And there will be some outrageous thing, where,
20 where someone will, as it happens, crash into a fire
21 truck, or at 70 miles an hour, walk away with no injuries
22 or in one case a broken ankle -- a sprained ankle, it
23 wasn't even broken -- a sprained ankle. And what's remarkable
24 about that is they walked away from a 70-mile-an-hour
25 impact into an essentially immovable object. You could not

1 survive in any other car. That's the thing:
2 let alone no injuries; you could not survive.

3 Q Fair to say you've used Twitter to discuss short
4 sellers in the past?

5 A A little bit.

6 If I may add some color commentary there? The
7 people who think -- who most think I'm obsessed about the
8 short sellers, are the short sellers.

9 Q Are you familiar with an Internet blogger,
10 goes by the pseudonym (b)(6);(b)(7)(C)

11 A Yes.

12 Q How did you become familiar with that blogger?

13 A It was hard not to. It was like --

14 He wrote a series of carefully crafted pernicious
15 articles on Seeking Alpha, and --

16 THE COURT REPORTER: On Seeking?

17 THE WITNESS: On Seeking Alpha.

18 THE COURT REPORTER: Mm-hmm.

19 A And they would apparently show
20 up in my Google alerts. And then he had a very active
21 social media presence.

22 He is, in my opinion, quite an evil person.

23 Q Do you know whether he's still blogging about
24 Tesla today?

25 A I bet he is. Yes, I would say with certainty --

1 I don't know, but I would say with certainty -- like, if you ask
2 me to place a bet, I would place that bet on a thousand to
3 one that he is, yes.

4 Q Are you aware of publicly available news reports
5 indicating that you reached out to his employer to ask
6 that he cease blogging about Tesla?

7 A Yes.

8 MR. FARINA: You -- okay.

9 MR. NEWELL: Just asking whether Mr. Musk is
10 aware of those reports.

11 THE WITNESS: (Witness nods head.)

12 BY MR. NEWELL:

13 Q Do you know anything about facts underlying those
14 reports, if they're true?

15 A As usual, he misrepresented the situation. So on
16 Twitter, he was saying that this guy's name is (b)(6),(b)(7)(C)
17 (b)(6),(b)(7)(C) that he is (b)(6),(b)(7)(C) for (b)(6),(b)(7)(C)
18 (b)(6),(b)(7)(C) of (b)(6),(b)(7)(C)

19 This was like, quite a surprising thing to me. I
20 did not actually think this could be --
21 this seemed very strange, because
22 (b)(6),(b)(7)(C) had purchased several Teslas over the years
23 and had spoken positively about Tesla.

24 This seemed inconsistent with what (b)(6),(b)(7)(C)
25 (b)(6),(b)(7)(C) was saying.

1 So I sent a text to (b)(6);(b)(7)(C) saying -- asking
2 who -- is this guy -- do you know this guy?

3 And do you agree with what he is saying?

4 And then (b)(6);(b)(7)(C) looked
5 into it, and he did not agree with what (b)(6);(b)(7)(C) was
6 saying. And he had no idea that this was going on, and he was
7 quite outraged, and asked him to stop.

8 Because obviously, if somebody
9 is (b)(6);(b)(7)(C) and is espousing these views
10 that are completely contrary to the principal, then people
11 will think, these are the views of the principal -- this is
12 not right.

13 **Q** Any other instances that you can recall where you
14 reached out to folks connected in any way with Tesla short
15 sellers to complain about what you perceived to be
16 negative false information being disseminated about Tesla?

17 **A** I sent emails to -- this also is like something,
18 I can put it they were saying that there was this guy,
19 who was (b)(6);(b)(7)(C) who was saying
20 all sorts of crazy negative stuff about Tesla.
21 And so I sent a note to (b)(6);(b)(7)(C) asking "Is
22 this guy your employee? Is your employee blogging about,
23 making all these like, outrageous statements about Tesla?" And he
24 looked into it and said "No, it's (b)(6);(b)(7)(C)

25 **Q** Any others who you remember in that area?

1 A No. It just seemed a bit -- you know, [b)(6);(b)(7)(C)] would
2 be on pretty tenuous ground. You know, dirty trick
3 campaigns, you know, are not good.

4 MR. NEWELL: Please mark this as EM Exhibit 5.
5 (SEC Exhibit No. 5 was
6 marked for identification.)

7 BY MR. NEWELL:

8 Q I'm handing you, Mr. Musk, a document
9 that's been marked as EM Exhibit 5. It appears
10 to be a printout of a tweet.

11 Do you recognize this document?

12 A I do, yeah.

13 Q Did you write this tweet on or about May 4, 2018?

14 A Yes.

15 Q What is a short burn?

16 A A short burn is where there's a sudden rise in
17 the stock price that causes shorts to have to cover their
18 losses, and it can cause them to lose lots of money.

19 Q You wrote, and I'm quoting from the exhibit,
20 "Short Burn of the Century Coming Soon."

21 What did you think would cause the short
22 burn to come when you wrote this tweet?

23 A Tesla reaching cash flow positive -- Tesla
24 reaching the goal of 5,000 Model 3's per week, and
25 then shortly thereafter, it being profitable and cash flow

1 positive.

2 Q Those were events in your mind when you wrote this
3 tweet --

4 A Yeah.

5 Q That was your expectation, that Tesla stock
6 price would increase, when those events transpired?

7 A Yes.

8 Q Do you remember writing another tweet around June
9 of 2018, referencing a short position?

10 MR. FARINA: Do you have a copy of something you
11 want to show him?

12 MR. NEWELL: We're just asking for Mr. Musk's
13 recollection. We can certainly look at a document
14 if he doesn't recall.

15 THE WITNESS: A document would be helpful.

16 MR. NEWELL: EM Exhibit 6, please.

17 (SEC Exhibit No. 6 was
18 marked for identification.)

19 BY MR. NEWELL:

20 Q I'm giving you another document. It's been marked EM
21 Exhibit 6. It appears to be another printout of a tweet.

22 A Mm-hmm. Yes.

23 Q Do you recognize that document?

24 A Yes.

25 Q Did you write that tweet?

1 A Yes.

2 Q Quoting from the the document:

3 "They have about three weeks
4 before their short position explodes."

5 Do you see that?

6 A Yes.

7 Q What was that referencing?

8 A Reaching -- Tesla reaching 5,000
9 Model 3s per week.

10 THE COURT REPORTER: I'm sorry, can I have that again?

11 THE WITNESS: Tesla a reaching production rate of
12 5,000 Model 3s per week.

13 Q Sounds like this one was more specific-targeted
14 on, or focused on, the production goal?

15 A Yes.

16 Q Whereas the previous one we just reviewed was
17 related to both the financial goals and the production goal?

18 A Yes, the -- yes. But the shorts were just very tenuous.
19 They're very -- I should state, not tenuous, very tenacious,
20 in hanging on to their thesis that Tesla is
21 going to go bankrupt.

22 And so amazingly, despite reaching
23 5,000 vehicles per week, they still thought their
24 original thesis was -- held water.

25 Q Why not just wait until the news about Tesla

1 reaching its goal became public, and let that impact
2 the stock price?

3 A I think, in retrospect, that would have been the
4 smarter move.

5 Q Let's situate ourselves in time in the month of
6 August 2018. So this month.

7 Did you, at some point in August, send an email to
8 Tesla's Board of Directors with an offer to take Tesla
9 private?

10 A Yes. Not in this month -- was it this month?

11 MR. FARINA: He can show you the document to
12 refresh your recollection.

13 THE WITNESS: Okay. Yeah. It may have been
14 this --

15 MR. FARINA: He'll show you the document.

16 THE WITNESS: Yes, yes, it was, actually.
17 Just barely this month.

18 BY MR. NEWELL:

19 Q I'll represent to you it's August 2nd;
20 and we can bring out that document, and you can
21 look at it and tell me if I'm wrong. But
22 I want to go without documents for a moment here.

23 Do you recall sending an offer to the Tesla Board of
24 Directors via email?

25 A Yes.

1 Q In what capacity were you speaking when you sent
2 that email to the Tesla Board of Directors?

3 A As effectively a buyer. But it's, I mean,
4 there is -- not in the normal sense of a take private,
5 being a leveraged buyout, where shareholders are squeezed out.

6 So it's a buyer -- it's a buyer
7 of those who did not wish to remain private,
8 but not a buyer of the company as a whole.

9 MR. FARINA: You said a buyer for those who do
10 not wish to remain private.

11 THE WITNESS: Sorry, sorry, buyer for those who
12 do not wish to remain with the company when it is
13 private.

14 So a buyer technically, but not -- a buyer
15 only if people really did not want to be part of the
16 company when it was private.

17 BY MR. NEWELL:

18 Q Were you acting in your capacity as Tesla's CEO
19 when you sent the offer to the board?

20 A No.

21 Q Do you recall attending a board meeting or board
22 call on August 3rd, 2018?

23 A Yes.

24 Q Were you acting in your capacity as Tesla's CEO
25 on that board call specifically?

1 A You know, obviously one has multiple
2 hats in these situations.

3 So there may be moments where it would have been
4 me as Tesla's CEO, and moments with me as a Tesla --
5 as the proposed buyer.

6 Because obviously I run the company, and I'm the
7 buyer. I cannot be two people. It's very difficult to
8 be two people explicitly. But I try to do that, but --

9 Q Can you recall any specific instances during the
10 August 3rd board meeting where you put on the CEO hat and
11 instances where you put on the buyer hat?

12 A I guess the CEO hat would be answering questions
13 about -- operationally about the company. And buyer hat would be
14 answering questions about the take private.

15 Q Did you answer questions operationally about the
16 company during that board meeting?

17 A I think so, yeah. Just generally about what's
18 the status of the company, where things are.

19 Q Were those discussions in the context of a
20 discussion about the going private transaction involving
21 Tesla?

22 A I'm sorry, could you clarify the question?

23 Q Was the August 3rd board meeting a special board
24 meeting?

25 A Yes.

1 Q Was it convened in response to your offer to the
2 board?

3 A Yes.

4 Q Was there any general discussion that you can
5 segregate from discussions surrounding the going private
6 transaction you proposed at that August 3rd board meeting?

7 A I'm not sure I fully understand how to answer
8 the question.

9 You know, this -- there's -- generally -- in that
10 board meeting I do recall answering questions about the
11 current status and progress of the company, and I also
12 recall answering questions about the potential idea of
13 going private.

14 Q Okay. I'm just trying to understand what your
15 belief was at the time of that meeting. It sounds like
16 your testimony is that when you're answering questions or
17 discussing operational issues at Tesla, you were wearing
18 your CEO hat but not your buyer hat. When you were
19 answering questions about your offer, you were wearing
20 your buyer hat but not your CEO hat; is that right?

21 A Essentially, yes.

22 Q In the context of those --

23 A Sorry, (b)(6); (b)(7)(C)

24 (b)(6); (b)(7)(C)

25 Q I have a similar thing. Would you like to take a

1 quick break?

2 A It's okay, but thanks for offering.

3 Q Still on the topic of that August 3rd board
4 meeting, based on your understanding, was your CEO hat off
5 at the times you were speaking as a buyer during that
6 meeting?

7 A Yes, I think so.

8 Q You, at some point on August 7, 2018, wrote a
9 series of tweets about the potential of going private
10 investment -- excuse me.

11 Strike that.

12 At some point in the day on August 7, 2018, did
13 you write a series of tweets about a going private
14 transaction involving Tesla?

15 A Yeah.

16 Q When you wrote those tweets, what capacity were
17 you speaking in?

18 A As a buyer.

19 Q Did you have your CEO hat on when making those
20 statements?

21 A I don't think so.

22 Q Do you recall that a blog post was made public on
23 Tesla's website on August 7th concerning a going private
24 transaction?

25 A Yes.

1 Q Was that blog post derived from an email that you
2 had previously written to Tesla employees?

3 A Yes, I believe so. Derived from -- yeah.
4 I mean, I'm not sure -- they're close, yeah.

5 Q Did you authorize that blog post to be published
6 on Tesla's website?

7 A Yes.

8 Q And in what capacity were you speaking in that
9 blog post?

10 MR. FARINA: Hang on. Are you -- hang on. Hang on
11 a second. Are you asking him whether he thought that at the
12 time, what was his thinking at the time, or are you asking
13 him now, sitting here today, in what capacity he thinks he
14 was acting?

15 MR. NEWELL: Throughout, I've been -- and if this
16 is unclear, we can go back and revisit each of these --
17 asking what his understanding was at the time he posted
18 the statements.

19 MR. FARINA: Okay.

20 THE WITNESS: Okay.

21 BY MR. NEWELL:

22 Q Well, let me just ask you, Mr. Musk, does that
23 change any of your prior answers?

24 A I don't think so.

25 Q Okay.

1 MR. BONDI: If I may, I'll assert an objection to
2 these questions, in that they're calling for a legal determination.
3 Mr. Musk isn't an attorney; so in terms of what capacity he may be
4 speaking, he's just answering in terms of his understanding as
5 a non-attorney. Moreover, I think when you get to
6 questions about which hat is he wearing when, he is the CEO, and he
7 has remained the CEO of the company, as he's testified.

8 So in later instances, I think we're going to
9 have to parse those out a bit and then have some discussions
10 about privilege.

11 BY MR. NEWELL:

12 Q You can answer.

13 MR. FARINA: Why don't you repeat the question.

14 MR. NEWELL: Of course.

15 BY MR. NEWELL:

16 Q In your remarks in that August 7 blog post that was
17 published on Tesla's website, what was your understanding,
18 at the time of the post, of the capacity in which you were
19 speaking?

20 A Umm, may I see the blog post? Yeah -- just to
21 make sure that I am -- I'm trying to be as precise as
22 possible.

23 MR. NEWELL: Please mark this as EM Exhibit 7.

24 (SEC Exhibit No. 7 was
25 marked for identification.)

1 BY MR. NEWELL:

2 Q Mr. Musk, you've just been handed what's been marked
3 as EM Exhibit 7. It appears to be a copy of an August 7th
4 blog post.

5 A Right.

6 Q Do you recognize that? Is that the blog post
7 we've been discussing?

8 A Yes. So I think this blog post was in the
9 context of me as the buyer, if you will. Although as
10 mentioned, I think it's sort of an important distinction
11 that this take private is different from the vast majority
12 of take privates, in that --

13 THE COURT REPORTER: I'm sorry. The rest of the --

14 THE WITNESS: I'm sorry?

15 THE COURT REPORTER: Go ahead.

16 MR. FARINA: The vast majority of take privates.

17 THE WITNESS: Yeah, the vast majority of take privates
18 generally involve an attempt by the buyer to obtain a very
19 large percentage of the company's stock by obtaining a
20 loan or through other means. And this was not one of
21 those. This was simply a desire to have -- this was
22 just what and I expressly said this, is I'd have
23 the same shareholder base, but not be publicly traded.

24 And so the notion of buying, in a sense, would not
25 necessarily be the same as it would typically be, in a take

1 private.

2 BY MR. NEWELL:

3 Q How did that affect your understanding of the
4 capacity that you were acting in when you wrote that --
5 rather, on your publication of the blog post?

6 A Yeah, I still wrote this from the standpoint of a
7 "buyer", in quotes. I'll speak louder.

8 I sort of wrote this from a standpoint of a buyer, (b)(6); (b)(7)(C)

9 (b)(6); (b)(7)(C)

10 Q At the time that you wrote the email that
11 underpinned that blog post, your hope was to not
12 make any additional equity investment in Tesla personally?

13 A My hope was that all shareholders would remain with the
14 company, even if we are not publicly traded.

15 Q Did anyone help you draft the language of that
16 blog post?

17 A Yeah. That would be Todd Maron.

18 Q Anyone else at the company?

19 A There may have been others, but I don't know who
20 they would have been.

21 MR. BUCHHOLZ: Did Mr. Ajuja participate in the
22 preparation?

23 THE WITNESS: He -- there's a good chance he did.
24 But I don't know what contributions he made, if any.

25 BY MR. NEWELL:

1 Q What did you discuss with Mr. Maron about the
2 substance of this blog post, before it was published?

3 MR. FARINA: Mr. Maron is obviously the general
4 counsel of Tesla. I'm going to defer to company counsel
5 about the assertion of privilege over communications between you
6 and company counsel. But I'm going to caution you not to
7 disclose privileged information unless it's authorized by
8 the company.

9 MR. BONDI: I'm going to echo that. That goes to
10 the heart of the attorney-client privilege of the
11 company. Mr. Maron's involvement was with
12 respect to an email from Mr. Musk to employees of the
13 company, that ultimately got posted as a blog post.
14 Accordingly, any advice that Mr. Maron, in conjunction
15 with others, gave to Mr. Musk would be privileged to the
16 company's attorney-client privilege. So we're going to instruct
17 the witness not to answer.

18 MS. CRUMPTON: Mr. Musk just testified that he wrote
19 this blog post from the perspective of a potential counterparty to
20 Tesla, and not as the CEO of Tesla.

21 MR. BONDI: This is going to employees. This is
22 an email from Mr. Musk's Tesla email account, to other
23 Tesla personnel, Tesla employees, communications to Tesla
24 employees from a CEO. And the advice with respect to
25 those communications are going to be privileged. We're

1 asserting the privilege, and you can move on.

2 MS. CRUMPTON: I think that's fine for now. I think
3 we need to have a further conversation about that, because I
4 don't think that position is supported by case law.

5 MR. BONDI: We believe it is.

6 MS. CRUMPTON: We can discuss it off the record.

7 THE WITNESS: I should be clear --

8 MR. FARINA: There is no question pending.

9 THE WITNESS: Okay.

10 BY MR. NEWELL:

11 Q Let's move on from that question that was just
12 posed Mr. Musk, which counsel for the company and also
13 counsel for you, from Cahill, has instructed you not to
14 answer.

15 Did you have any discussions with Mr. Ahuja
16 outside of discussions with Mr. Maron about the substance of
17 that blog post?

18 A I don't recall any conversations.

19 MR. FARINA: What about with (b)(6);(b)(7)(C)

20 THE WITNESS: It's possible there was some email
21 exchanges but not -- not of any substance.

22 BY MR. NEWELL:

23 Q And by (b)(6);(b)(7)(C) for the record, we're referring to
24 (b)(6);(b)(7)(C)

25 A Yes.

1 Q Who is (b)(6), (b)(7)(C) at Tesla?

2 A (b)(6), (b)(7)(C)

3 Q Do you recall that Tesla issued a blog post on
4 August 13th, 2018, about a potential going private
5 transaction?

6 A Yes.

7 Q I want to ask you a few questions about that.
8 Would you prefer to see the document itself?

9 A Yes.

10 MR. NEWELL: Let's mark this as EM Exhibit 8.
11 (SEC Exhibit No. 8 was
12 marked for identification.)

13 BY MR. NEWELL:

14 Q Do you recognize Exhibit 8, Mr. Musk?

15 A Yes.

16 Q Is this the blog post that was published on
17 Tesla.com on August 13th, 2018?

18 A Yes.

19 Q Looks like it's phrased in the first person.
20 There's a lot of instances of the word I, and I'm in
21 there.

22 Do you see that?

23 A Yes, it's like -- that's really bothered me
24 actually, because it's bad grammar, and obnoxious
25 generally to use "I" so frequently.

1 Q Same question we've been asking you about prior
2 statements regarding the going private transaction.

3 Were you speaking in your individual capacity as
4 a buyer when you authorized the publication of this blog
5 post?

6 A Yes.

7 Q Were you also speaking in your capacity as
8 Tesla's CEO?

9 A No.

10 Q Setting aside discussions with counsel, did you
11 have any discussions about the substance of this blog post
12 with anyone before it was published?

13 A Umm, I don't think so, no.

14 Q Did anyone help you draft it?

15 A Counsel, yeah. I generally write my own blogs;
16 so it's not as though -- I mean, the point worth making
17 I've written many blogs over the years, I don't need
18 somebody else to write something for me. When I see like
19 the taking Tesla private, these are fundamentally my words,
20 not somebody putting words in my mouth.

21 Q What about editing help?

22 A You know, certainly getting suggestions on
23 things -- corrections, additions. This is fundamentally
24 just a statement of the facts, and I think quite an accurate one.

25 Q Without asking you to disclose -- strike that.

1 **When you said you discussed the August 13th blog**
2 **post with counsel, what counsel were you referencing?**

3 A That would be Steve Rosenblum, I think, primarily
4 Steve. I think this did go past Todd Maron's company counsel as
5 well. I'm not sure of everyone who saw it.

6 BY MR. BUCHHOLZ:

7 Q **So were you seeking legal advice from Mr. Maron**
8 **in your personal capacity, in connection with your blog post?**

9 A No.

10 Q **What do you recall discussing with Mr. Maron?**

11 MR. FARINA: I'm going to -- let's take a break,
12 or let's stop. Mr. Maron is company counsel. Company is
13 asserting a privilege over communications between you and
14 company counsel. I'm going to let Mr. Bondi speak to
15 that, but you should respect -- as your lawyer, I'm advising
16 you to respect the privilege determinations made by the counsel
17 for the company.

18 Do you have anything to add?

19 MR. BONDI: I do.

20 This blog post came in response and
21 following a communication with the Director of Corporation
22 Finance at the SEC, and a letter that the Director
23 of Corporation finance wrote to the company.
24 And in his letter he said in our call we note --

25 MS. CRUMPTON: Mr. Bondi, I'm sorry to interrupt you.

1 At this point you're sort of testifying. So could we have this
2 discussion off the record? I don't think there's a
3 need to have this in the transcript.

4 MR. BONDI: I'd like to put it in the transcript,
5 because I think it's important. The Director of
6 Corporation Finance wrote in his letter,
7 quote, in our call we noted that the company should
8 consider sharing its understanding of these matters and
9 informing Tesla investors whether the statements of Mr.
10 Musk are in his capacity as CEO of Tesla or in some other
11 capacity, such as a prospective bidder.

12 We ask that the company should -- whether the
13 company consider whether providing such clarity would be
14 consistent with the company's obligations to maintain
15 effective disclosure controls and procedures.

16 This announcement, which was posted on the
17 company's blog, was any review from the general counsel
18 and involvement of the general counsel was in keeping with
19 those disclosure controls and obligations of the company
20 that (b)(6);(b)(7)(C) noted in his letter. And so any involvement of the
21 general counsel and any advice given of the general
22 counsel in conjunction with any announcement on 8/13
23 would be privileged. It would be the company's
24 attorney-client privilege, and I would instruct
25 the witness not to answer.

1 Moreover there's also work a product objection as
2 well, because of the fact that an SEC investigation was
3 already underway concerning the disclosure.

4 BY MS. CRUMPTON:

5 Mr. Musk, was this blog post created in
6 anticipation of litigation?

7 MR. FARINA: I don't know that he's in a position
8 to answer that. He certainly had lawyers at the time who
9 were advising him, and any communications with Mr. Musk
10 during that time period about the possibility of
11 litigation or the investigation would clearly be
12 privileged. So all of his information he would have on
13 that subject would have come from lawyers.

14 MS. CRUMPTON: Putting aside what you may have discussed
15 with a lawyer, did you contemplate litigation when you
16 drafted this blog post?

17 MR. FARINA: I don't know how he can answer that,
18 setting aside the information he received from counsel.

19 THE WITNESS: The answer is very obvious. Tesla
20 is in constant litigation. We are constantly sued for
21 frivolous purposes. For example, this absurd 5,000 car
22 per week thing, which the judge just ruled against.

23 BY MR. BUCHHOLZ:

24 Q Okay. You did testify that you were not seeking
25 any legal advice from Mr. Maron in connection with

1 **preparing and posting the blog post, correct?**

2 A Which blog post are you referring to?

3 Q **The August 13th blog post.**

4 A I think we're in sort of a semantic debate here.

5 I would defer to my counsel to --

6 MR. FARINA: I think --

7 MR. BUCHHOLZ: We're just trying to understand who
8 the person is seeking legal advice in connection with
9 the objection the company is making.

10 MR. FARINA: Understood. But if Mr. Musk is
11 receiving -- is receiving legal advice from Mr. Maron and
12 he's receiving legal advice from Mr. Maron in part because
13 of the need for the company to make certain disclosures,
14 then all of that would be encompassed within the
15 privilege. I believe that's the company's position.

16 Mr. Musk is obviously not a lawyer, and I, you
17 know, I don't want him to get tripped up here because he's
18 not a lawyer.

19 There's been an assertion of the privilege. I
20 think the record is pretty clear on that. I don't know
21 that Mr. Musk has anything that he can add to that, not
22 being a lawyer. Obviously, this is going to have to be
23 sorted out at some point.

24 BY MR. BUCHHOLZ:

25 Q Did Mr. Maron ever represent you personally

1 during this time period that we're discussing?

2 MR. FARINA: As opposed to representing him --
3 Mr. Musk and the company in Mr. Musk's capacity as an
4 officer of the company?

5 MR. BUCHHOLZ: Correct. That's the question.

6 THE WITNESS: Did he ever represent me
7 personally, independent of the company?

8 MR. BUCHHOLZ: Yes.

9 THE WITNESS: I don't believe so.

10 BY MR. NEWELL:

11 (b)(6),(b)(7)(C)

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22 BY MR. BUCHHOLZ:

23 Q With regard to the August 13th blog post, was it
24 your understanding that Mr. Maron was providing you legal
25 advice in connection with your role in the company?

1 MR. FARINA: I don't know that he could have an
2 understanding other than from communications with Mr.
3 Maron, which would be privileged. So in order for him to
4 answer that, he would have to reveal privileged
5 communications.

6 In other words -- Mr. Maron is explaining why
7 he's providing legal advice. That would be in a
8 privileged communication.

9 MR. NEWELL: We're asking for what's in Mr. Musk's
10 mind.

11 MR. FARINA: I think what's in Mr. Musk's mind is
12 the product of what he's told by his lawyers at least on
13 these types of matters.

14 MR. BUCHHOLZ: We're not asking for a legal
15 determination from Mr. Musk. Just a personal
16 understanding. He's acknowledged he had different hats.
17 Did he have an understanding that Mr. Maron was providing
18 him legal advice in connection with Tesla and the blog
19 post.

20 MR. FARINA: If that understanding is informed by
21 legal advice that he received either from Mr. Maron or
22 from any other lawyer, then the substance of that
23 communication is privileged, and I do not want him to
24 disclose it.

25 Now, we can take a break, and I can see if

1 there's a way to cut through this, but I do not want him
2 disclosing privileged information. We do not want to
3 effect a waiver.

4 MR. NEWELL: Just one more question, Mr. Farina;
5 understand where this ends. Is it
6 your position if Mr. Musk at any point in time
7 historically had a conversation with an attorney that affected
8 his understanding of whether or not he was asking for legal
9 advice in the context of these discussions, then that conversation
10 would thereby be privileged?

11 MR. FARINA: I don't think I've made a statement
12 that is that broad, nor do I need to.

13 But if Mr. Maron provided Mr. Musk
14 legal advice in connection with this blog post, then that legal
15 advice is what would inform Mr. Musk's answer to your questions;
16 then he should not be disclosing legal advice by answering the
17 question. Again, I'm not asserting his personal privilege, I'm
18 defending the witness and protecting the company's assertion
19 of its privilege.

20 If the company at some point chooses to waive the
21 privilege, that's between the company and you folks.

22 Sitting here today representing the witness, I'm
23 just ensuring that the company's assertion of privilege is
24 respected by Mr. Musk, because Mr. Musk is still the CEO
25 of Tesla.

1 THE WITNESS: Yeah, I can say -- my recollection
2 and my --

3 MR. FARINA: You know what, you really shouldn't
4 speak to this if the communications are privileged. We
5 can take a break, we can talk about it. Happy to do that.

6 THE WITNESS: Without specifics to whether it's
7 privileged or not, my recollection is that Todd Maron was
8 extremely rigorous about representing the company and not
9 me as an individual, as buyer. If what you're getting at
10 is are you concerned whether there was -- Mr. Maron
11 representing me when he should have been representing the
12 company, I do not think that is the case. I am -- he's
13 extremely ethical, and throughout this process,
14 represented the company.

15 MR. FARINA: Why don't we take a break.

16 MR. NEWELL: Sure. Let's go off the record.

17 VIDEO OPERATOR: Off the record. The time is
18 11:29.

19 (Recess taken.)

20 VIDEO OPERATOR: We're back on the record. The
21 time is 11:43.

22 BY MR. NEWELL:

23 Q Mr. Musk, during the break, you did ask the SEC
24 if any of us visited the Tesla facility, and invited us to come in
25 the future. Other than that conversation, which we didn't

1 respond to, any conversations substantively you had with
2 the SEC staff off the record?

3 A No.

4 Q Thanks.

5 A Sorry.

6 Q Before the break we were asking you a series of
7 questions concerning conversations you may have had with
8 Mr. Maron, company counsel. Your counsel advised you not
9 to answer, an acknowledgment of company counsel's assertion
10 of privilege.

11 Are you taking your counsel's advice not to
12 answer those questions?

13 A Yes. I think -- yes. Yes.

14 MR. FARINA: Okay.

15 BY MR. NEWELL:

16 Q Let's take a look at, for another moment, the
17 August 13th blog post, which is Exhibit 7, I believe. I'm
18 sorry. Exhibit 8. The blog post, Exhibit 8.

19 MR. FARINA: Are you done with Exhibit 7?

20 MR. NEWELL: We can set that aside for now.

21 Thanks.

22 Q I want to direct your attention, Mr. Musk, to one
23 portion of the exhibit, toward the bottom of the first
24 page. I'll just quote: "To be clear, when I made the
25 public announcement, just as with this blog post, and all

1 other discussions I've had on this topic, I'm speaking for
2 myself as a potential bidder for Tesla."

3 Do you see that?

4 A Sorry, where?

5 Q It's toward the bottom of the first page of the
6 exhibit.

7 A Yeah.

8 Q Under the heading, "Why did I make a public
9 announcement?"

10 A Yes.

11 Q Is that statement accurate?

12 A I think it is, yes.

13 Q Any discussions that you had, starting from the
14 time that you sent your offer to the board, through the
15 time that you discontinued consideration of a going private
16 transaction at Tesla, where you were not speaking for
17 yourself as a potential bidder for Tesla but were speaking in
18 another capacity?

19 MR. FARINA: Talking about public statements?

20 MR. NEWELL: This is referencing discussions. I'm
21 using the language of the blog post. So any discussions.

22 MR. FARINA: So the language of the blog post -- okay.
23 You're referring to the last sentence?

24 MR. NEWELL: I'm referring to the phrase I read,
25 "all other discussions I've had on this topic."

1 THE WITNESS: To the best of my recollection,
2 that is true.

3 BY MR. NEWELL:

4 Q What about with respect to public statements?
5 Same answer?

6 A All public statements? Or related to the
7 transaction?

8 Q Public statements relating to the transaction
9 between the period when you first sent your offer to the
10 board through and including the time that you announced
11 that you were no longer considering a transaction.

12 A I would -- I think it would be good to review those
13 statements before answering.

14 Q What about with respect to the statements that
15 we've reviewed up to this time, during today's testimony?

16 A We've reviewed a lot of statements.

17 Q Okay. Well, we can -- do you want to take a look
18 at those documents individually, or --

19 A Yeah, I mean, I think if there's documents that
20 you have in mind, I mean -- because we've also reviewed
21 documents that are unrelated to the transaction. So then
22 obviously, that cannot be related to the transaction.

23 Q Setting those aside. I know we've looked at other
24 exhibits today. I'm not referring to those.

25 Well, let's talk about the two documents that we've

1 been looking at in the recent past here, Exhibit 8 and
2 Exhibit 7, which are -- Exhibit 8 is the August 13th blog
3 post. Exhibit 7 is the August 7th blog post.

4 A Yes. These are from the standpoint of a buyer,
5 although, as I explained -- in fact, as I articulated in the
6 blog post, this is not a buyer in any standard
7 any sense of the word. This is more from a standpoint of
8 wanting to have a more efficiently operated company,
9 and the belief that it could be more efficiently operated
10 as private. (b)(6); (b)(7)(C) So it's
11 only a "buyer" in a very technical sense of the word.

12 Q Does that distinction mean you were also acting
13 in the capacity of CEO when you authorized publication of
14 those statements?

15 A I mean -- obviously I cannot -- I am still the
16 CEO of the company.

17 And so there is a double duty of what is right
18 for the company, and then what is right from the standpoint
19 of what is here termed as a "buyout", although it's
20 not a buyer in any meaningful sense of the word -- not a
21 buyer in the sense of me acquiring shares.

22 Q We've been talking about the concept of the buyer
23 hat and the CEO hat in this testimony. Are you able to
24 distinguish between which hat you understood yourself to be
25 wearing when you authorized the publication of these

1 **two blog posts?**

2 A I would not -- I'm not trying to claim I'm
3 perfectly able to separate and be in two minds.

4 I mean, one is human; you know,
5 it is difficult to completely partition one's mind.

6 Q What about with respect to the August 7th tweets
7 that we've been discussing today? Does the same answer
8 apply to which hat you were wearing when you wrote and
9 published those tweets?

10 A Yeah, I think it would be fair to say that
11 aspirationally these were from the standpoint of a
12 buyer. Essentially, I was trying to do the right thing
13 from what perspective this was operated from.

14 At the same time, I'm also the CEO of the
15 company. So, you know, it's far from certain that I was --
16 in fact, I would not claim to be perfect in this regard.
17 I think that is a very difficult thing to do, to wear two
18 hats, and to err is human.

19 Q Let's look back at the language we were just
20 discussing, on the 13th blog post, Exhibit 8.

21 I want to read it again: "To be clear when I made
22 the public announcement just as with this blog post and
23 all other discussions I've had on this topic, I'm speaking
24 for myself as a potential bidder for Tesla."

25 Is there any reference in there to you speaking

1 while wearing other hats?

2 A The hat analogy is really --

3 Q If you don't like it, I imagine we can adopt
4 another one.

5 A Is there one?

6 Q Capacity?

7 A Capacity, sure.

8 Q All right.

9 A I just cannot get the picture of
10 that. I have the picture of a hat, and
11 somebody, you know, having a hat on a hat. I have
12 like a very sort of visual perception of things.

13 Q Let's use "capacity". It's a bit more abstract.

14 A Yeah, yeah.

15 Q This statement in the August 13th blog post
16 begins with, "to be clear", and it ends with, "I am speaking
17 for myself as a potential bidder for Tesla."

18 Do you see that? It's in Exhibit 8. You're
19 looking at the wrong one.

20 A I'm sorry, 8.

21 MR. FARINA: Right there.

22 THE WITNESS: Yep. Yes. I see it.

23 BY MR. NEWELL:

24 Q Is that accurate?

25 A I think that is aspirationally accurate.

1 Q What do you mean by "aspirationally accurate"?

2 A I mean, it's certainly possible -- I mean,
3 that was certainly what I intended -- that was certainly
4 what I intended and believed. But it is
5 also possible that I made some mistakes here, you know,
6 somewhere in the process.

7 BY MR. BUCHHOLZ:

8 Q Did you believe there were likely going to be some
9 conflicts during this process between the part of you
10 that was operating in the bidder capacity and the part
11 of you that was acting as the CEO of Tesla?

12 A Well, I think it's important to -- like
13 my motivations for doing this were, at least
14 from my perspective, to enable Tesla to
15 execute better over time. Because I felt that at
16 SpaceX, where we are private, we are able to execute better
17 than at Tesla, where we are public. And I described that
18 in the blog.

19 So if you asked me in either capacity did I think
20 that there was strong merit to being private, I would have
21 said yes.

22 Q Okay, right. But what
23 about the question about whether you
24 believed there could be conflicts between the two
25 capacities? Because you did understand that a transaction

1 would ultimately have a counterparty that would be
2 involved in the financing, et cetera, correct?

3 A Not exactly. One of the things that we could
4 have done would just be to delist. There's no
5 counterparty.

6 Q Is that something that you were actively
7 considering?

8 A Yes.

9 Q During what time period?

10 A From the taking Tesla private tweets -- well, you
11 know, basically, since when -- I didn't know all of the ways
12 that one could go private.

13 So in order to explore these ways and to be able
14 to do so, without creating a selective disclosure issue, I
15 felt I needed to talk to our major investors, and to
16 understand, is there a path to being private that they
17 would be -- that they would support, that they would think
18 is a good idea? Would they be able to stay with the
19 company? Because if they were not able to stay with the
20 company, that's a big deal. I believe strongly in
21 loyalty. And if they have been loyal investors in Tesla and
22 are unable to remain, that's a big factor, if they
23 wanted to.

24 So -- so one of the considerations was what if we
25 simply delist, no counterparty.

1 Q Okay; and that came up after the August 7th tweets?

2 A Yes.

3 MR. BUCHHOLZ: Okay. I think
4 we'll get back to more about the other things as
5 we try to take that chronologically.

6 MR. NEWELL: We'll return to that.

7 Just for the record -- sorry, did I cut you off,
8 Mr. Musk?

9 A No, no. I mean, it's still --
10 At some point -- that's one of the
11 options in the future, is delisting.

12 MR. NEWELL: For the record, before we move on,
13 we'll just reiterate that SEC staff does not agree with the
14 company counsel with respect to the privileged status
15 of communications between Mr. Musk and
16 company counsel. We're not going to spend any more time
17 on that here, but we do want to make that clear for the
18 record.

19 BY MR. NEWELL:

20 Q Mr. Musk, you referenced Mr. Teller earlier in
21 today's testimony. What is Mr. Teller's role, briefly?

22 A Sam Teller is my Chief of Staff.

23 Q Did Mr. Teller contact you at some point in July
24 2018 regarding an entity called the Saudi Arabian
25 Public Investment Fund?

1 A Do you mean to set up a meeting or something
2 or --

3 Q To set up a meeting.

4 A Sam -- Sam did -- I think Sam mentioned that
5 Yasir -- I think Yasir -- I called him Yasir, of Arabia,
6 wanted to meet.

7 Q By "Yasir", do you mean Yasir Al-Rumayyan, the
8 Managing Director of the Public Management Fund?

9 A Yes.

10 Q I'm going to use PIF to refer to Public Investment
11 Fund today. You'll understand me if I do that?

12 A Yes.

13 Q When Mr. Teller contacted you about a potential
14 meeting with PIF, did you have any expectation that PIF
15 would be reaching out in that time frame, around July
16 of 2018?

17 A No. I wasn't surprised though, really.

18 I mean, Yasir has tried to meet with
19 me quite a lot over the past few years, and
20 we've had some meetings (b)(4)

21 (b)(4)

22 Q What's Mr. Al-Rumayyan's title at the PIF, if you
23 know?

24 A I believe he's the Managing Director or
25 he's the head guy.

1 Q You said that the outreach was somewhat
2 unexpected; is that fair?

3 A Yes.

4 Q In July 2018?

5 A Yes.

6 Q What was your expectation at the time that Mr.
7 Teller told you that PIF wanted a meeting, about what the
8 meeting would cover?

9 A (b)(4)

10 (b)(4)

11

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17 I said, "Okay, we can meet in the factory."

18 And so we met in the factory.

19 Q (b)(4)

20 (b)(4)

21 A (b)(4)

22 Q Did you have separate communications with Mr.
23 Al-Rumayyan where he asked you to meet, distinct from Mr.
24 Teller telling you that PIF wanted to meet?

25 A Specifically in July?

1 Q In July of 2018.

2 A I mean, he might have sent me a text or
3 something, it's possible.

4 Q You're not sure one way or the other?

5 A No.

6 Q But you do recall Mr. Teller reaching out to you and
7 saying that the PIF wanted to meet?

8 A Yeah.

9 BY MR. BUCHHOLZ:

10 Q (b)(4)

11 (b)(4)

12 A (b)(4)

13 (b)(4)

14 Q Did Mr. Teller tell you that?

15 A Yes.

16 Q Did he give any more specifics?

17 A No.

18 Q Do you remember how Mr. Teller, in what medium
19 Mr. Teller told you that PIF wanted to meet?

20 A I think just verbally. I didn't think -- I was
21 just -- really -- a case of, you know, (b)(4)

22 (b)(4)
23
24

25 Q Anything else you remember discussing with Mr.

1 Teller in the lead-up to the meeting about the PIF?

2 A No.

3 Q Anyone else at Tesla you discussed the PIF with?

4 A No.

5 Q In that period, again, from the time you
6 learned the meeting request had come in until the time the meeting
7 was held?

8 A No.

9 Q Anyone else, setting aside folks at Tesla, that
10 you discussed the PIF with --

11 THE COURT REPORTER: I'm sorry, counsel.

12 Q -- in that period?

13 THE COURT REPORTER: No one else?

14 MR. NEWELL: Anyone else, setting aside folks from
15 Tesla, that you discussed the PIF with during that period from
16 when Mr. Teller reached out to you to let you know that they
17 wanted a meeting, until the time meeting itself was
18 held?

19 A No. I mean, I thought this was going to be a
20 non-meeting, like it's another like, relationship, touching base,
21 meeting, or something like that.

22 Q It didn't stick out to you in your schedule?

23 A No.

24 Q When, if you recall, was the meeting held?

25 A What time of day, you mean, or --

1 Q What date, first of all?

2 A I think the 31st.

3 Is that correct?

4 MR. FARINA: We have documents that can address
5 that.

6 MR. NEWELL: I can show you a document.

7 Please mark this as EM Exhibit 9.

8 (SEC Exhibit No. 9 was
9 marked for identification.)

10 BY MR. NEWELL:

11 Q Mr. Musk, you've been handed a document that's
12 been marked as EM Exhibit 9. It appears to be a calendar
13 invitation bearing a Bates number ending 59286.

14 A Yes. Yeah.

15 Q Do you recognize this?

16 A Not really. But I know -- I have not seen it in this
17 format before, but normally it's just a line on my phone.

18 Q (b)(4); (b)(6); (b)(7)(C)

19 (b)(4); (b)(6); (b)(7)(C)

20 A (b)(4); (b)(6); (b)(7)(C)

21 Q

22 A

23 Q Does this help refresh you as to the exact date
24 of the meeting with the PIF?

25 MR. FARINA: Just as a caution, the production, I

1 think, was made using a standardized time zone, which I
2 think in many instances is different than the actual time
3 zone where the event or the email --

4 THE WITNESS: Yeah. That's why we put
5 it in the subject. 6:00 p.m.

6 BY MR. NEWELL:

7 Q So I'll represent to you that based on
8 conversations we've had with counsel, the date of --
9 rather the time zones reflected in this document and some
10 others we may review are in UTC time, which to our
11 understanding is seven hours ahead of Pacific Daylight
12 Time, which we are in, in August 2018?

13 A Right.

14 MR. HEALY: UTC is Greenwich Mean Time. Greenwich,
15 England.

16 MR. NEWELL: Okay.

17 MR. HEALY: So that's not seven hours.

18 MR. FARINA: I think it is seven hours.

19 MR. HEALY: Is that --

20 MR. FARINA: For daylight. Correct.
21 it is. For this period, I think, we'll believe it is
22 seven hours.

23 THE WITNESS: It's kind of amazing that it's
24 referenced off of little Greenwich. (b)(6); (b)(7)(C)

25 The French had a real fit about that.

1 BY MR. NEWELL:

2 Q So the time here is 8-1-2018, at
3 1:00 a.m. If we subtract seven hours, that gets
4 us to 7-31-18, 6:00 p.m. Does that sound right to you?

5 A Umm -- about right, yeah. I'm not sure if
6 that's when the meeting actually occurred,
7 but that's certainly is what's referenced on
8 the calendar.

9 Q When it was scheduled?

10 A Yeah.

11 Q Where did you work from on the day of July 31st?

12 A The factory, the car factory.

13 Q In Fremont, California?

14 A Yes.

15 Q And the meeting invite again references

16 Location: (b)(4) in the factory.

17 Do you see that?

18 A Yeah. I mean, it's just a conference room in
19 the (b)(4)

20 Q (b)(4) is a conference room?

21 A Yes.

22 Q Did you hold any meetings in the (b)(4)
23 conference room immediately prior to the meeting with the
24 PIF?

25 A Possibly. There's a lot of meetings in that

1 conference room.

2 Q No specific recollection of the meeting preceding
3 the one that's reflected in this invite?

4 A No.

5 Q Do you remember where you were when the PIF
6 arrived at the Fremont factory?

7 A I think I was at (b)(6), (b)(7)(C)

8 (b)(6), (b)(7)(C)

9 Q And did you greet the representatives from the
10 PIF at your desk, or did someone else take them to the
11 conference room?

12 A I might have said hi, but I recall seeing them in
13 the conference room -- I might have said hi as they were
14 going in, or something. (b)(6), (b)(7)(C)

15 (b)(6), (b)(7)(C)

16
17 Q Do you recall how many people were present from
18 the PIF?

19 A I think three.

20 Q The three individuals referenced on this calendar
21 invitation here?

22 A There were three individuals. I don't know the
23 other two, but I do know Yasir.

24 Q You're not sure who Saad Al-Jarboa or
25 Naif Al-Mogren are?

1 THE COURT REPORTER: Say it one more --

2 MR. NEWELL: Naif Al-Mogren.

3 THE COURT REPORTER: Uh-huh.

4 UNKNOWN SPEAKER: The usual spelling.

5 (Laughter.)

6 THE COURT REPORTER: Thanks.

7 BY MR. NEWELL:

8 Q But do you recall there being three representatives
9 from the PIF at the meeting?

10 A Yes.

11 Q Do you recall who escorted them to the (b)(4)
12 conference room?

13 A No.

14 Q Is it a long walk from the front desk at the
15 Tesla factory in Fremont to the (b)(4) conference room?

16 A Yes.

17 Q Someone escorted them, you're just not sure who?

18 A Correct. (b)(6), (b)(7)(C)

19 Q Who attended the meeting with PIF alongside you
20 at the outset of the meeting?

21 A I think Sam Teller. I mean, I know Sam Teller was
22 there. I'm not sure if he was there or not for the entire
23 meeting.

24 Q Do you recall approximately when the meeting
25 began? We're looking at a calendar invite that says

1 6 p.m. Do you remember if it was 6:00 p.m. on the
2 dot? 6:15? 6:30?

3 A No, it's like Vegas in the factory, minus the
4 fun part. But you cannot see. It's like you lose track
5 of time. (b)(6); (b)(7)(C)

6 (b)(6); (b)(7)(C)

7 Q So, but do you recall the meeting beginning at
8 some point in the evening of July 31st?

9 A Yes.

10 Q Did you bring anything into the meeting with you?

11 A No.

12 Q No phone, no --

13 A Oh, phone, maybe, phone, yeah, sure.

14 I probably had my phone with me, but I'm not sure.

15 It might have -- it's either charging at
16 my desk, or in my pocket, usually.

17 Q You don't remember if you had it with you or not?

18 A No.

19 Q What about Mr. Teller, do you remember if he brought
20 anything with him to the meeting?

21 A Probably his phone.

22 Q Probably meaning maybe?

23 A I don't know for sure.

24 Q What about the folks from the PIF? Did
25 they have anything with them?

1 A I think Yasir had some kind of tablet thing. I'm
2 not sure if it was an iPad or something else.

3 Q Something like an iPad --

4 A Yeah, yeah. Some sort of tablet device.

5 Q Any of them have physical notepads?

6 A Maybe. I'm not sure.

7 Q Did Yasir, do you remember?

8 A I don't think so. I don't know.

9 Q Possibly the other two?

10 A Possibly the other two. I do remember them, like,
11 writing things down, but I'm not sure what they wrote.

12 Q Do you remember if they were writing things down
13 in hard copy or typing away on a laptop?

14 A I'm not certain.

15 Q Was anyone else present at the outset of the
16 meeting from Tesla, apart from you and Mr. Teller?

17 A Not that I'm aware of.

18 Q Sounds like you may have had a greeting with the PIF
19 outside the conference room; is that right?

20 A Literally might have said "Hello" as they walked
21 in.

22 Q Went into the conference room and closed the
23 door?

24 A Yes.

25 Q What happened next?

1 A I don't remember everything about the meeting.
2 It was like pleasantries. We exchanged pleasantries. And
3 then he was very excited to tell me that they had made a
4 substantial investment in Tesla, through the public markets,
5 right up to the absolute limit of just below 5 percent.

6 Q On that -- on that point,
7 was that the first substantive comment anyone
8 made after the exchange of pleasantries?

9 A That I recall, yes.

10 Q Mr. Al-Rumayyan told you that the PIF had built
11 up a large stake in Tesla common stock on the public
12 markets?

13 A That's correct.

14 Q Did you have any prior knowledge before that
15 meeting that PIF had done that?

16 A No, I was surprised to learn this.

17 Q What was your reaction when he said that?

18 A I was like, great, thank you for being a
19 shareholder, that's awesome.

20 Q You thanked him?

21 A As I do anyone who places their funds in our
22 trust.

23 Q Did you say anything else in response apart from
24 expressing your gratitude for the support of the company?

25 A No, I don't think so.

1 Q And then did Mr. Al-Rumayyan continue speaking?

2 A Mm-hmm.

3 Q What did he say?

4 A Umm, he, as I recall, he said -- that the only
5 thing that was limiting them at 5 percent was the
6 reporting requirement. And they wished to have a much
7 larger stake, and wanted to help Tesla go private. Wanted
8 to take Tesla private, essentially.

9 Yeah, wanted to help take Tesla -- wanted to make
10 it happen, wanted to make Tesla -- the take private,
11 happen.

12 (b)(4)

13 (b)(4)

14 (b)(4)

15 I had told him I was interested in taking the
16 company private, and he -- but he volunteered that -- he
17 volunteered that he wanted to take -- he wanted to take Tesla
private, and moreover that (b)(4)

18 (b)(4)

19

20

21

22

23

THE COURT REPORTER: (b)(4)

24

THE WITNESS: (b)(4)

25 (b)(4)

1 A And so I was like quite surprised to learn this.
2 And he said that -- yeah, he said that he had always
3 wanted to do this. And I was like, "Really? I thought you
4 delegated it to Masa." And he said "Definitely not." In
5 fact, he would not want to do a take private through Masa,
6 because then they would have to pay a percentage to Masa,
7 and they didn't want to do that.

8 I was like, okay. That was surprising to me,
9 because in prior meetings, which I'm assuming we'll get to in
10 your questioning, I had the mistaken impression that this --
11 they had delegated this responsibility to Masa. I was like,
12 "Okay. Okay." So that's quite -- that's quite exciting.
13 Is there --

14 I said, "Are you sure you want to do this?" He was
15 like, "Definitely."

16 And then I said, "Well, are there any other
17 decision makers needed?" He says, "No, that's the advantage
18 of PIF. I am the decision maker. So long as the Crown
19 Prince supports me, and he does, that's it. It's done." I
20 was like, "Okay. That sounds great. Let's try to pursue
21 this." That sounds like a very exciting thing to pursue.
22 We should at least understand what is possible here. So --

23 Q You said a lot there, and I want to go back
24 and take it in pieces.

25 A Sure.

1 Q Do you recall Mr. Al-Rumayyan using the specific
2 term "take private", or "going private", or some derivation thereof?

3 A "Take private", "going private", this was mentioned
4 several times.

5 Q Did he ever use the term "investment"?

6 A Yes. I mean, he mentioned that he had invested
7 5 percent -- he purchased 5 percent of the company
8 already, just on the open market, and that the only thing
9 that was inhibiting a higher ownership was the reporting
10 requirements, 4.99 percent. And he wanted to go considerably
11 higher but did not want to do that without checking with
12 me. And obviously, this would create a splash because of
13 the reporting requirement.

14 So -- but that's -- their interest was much
15 higher than 5 percent, by a lot.

16 Q So did you have an understanding of whether their
17 interest was to take a larger stake in Tesla --

18 A Yes, definitely.

19 Q -- at some point?

20 A They were extremely explicit that they wanted to
21 have a much larger stake in Tesla, not a slightly larger
22 stake, but a much larger stake.

23 Now this is pretty obvious, because they need to
24 figure out the plan for when oil runs out. And so they need
25 to -- they really wanted to figure out how they can be part

1 of energy in the future, even when it is solar power and
2 batteries and electric cars, and that kind of thing.

3 So this is of fundamental strategic importance to
4 them. From their standpoint, their ideal situation, if
5 they could do it, would be a total acquisition of Tesla.
6 I just --

7 Q How did you know -- I'm sorry to cut you off.
8 I didn't realize you weren't finished.

9 A Obviously --

10 Q How did you know they didn't want simply to
11 purchase another 5 percent, and bring their position up
12 to 10 percent?

13 A This is not -- this sort of investment is not
14 merely a financial investment. This is something that is
15 of a national security importance to them. It's not just
16 a matter of getting some return on investment. They need
17 to figure out what the hell the country is going to do
18 when they run out of oil.

19 Q And you think that having a substantial stake,
20 short of taking Tesla private, would not further those
21 goals?

22 A I mean, I don't want to, you know,
23 guess entirely what's in their minds. It's pretty
24 obvious, if you are in the position of Saudi Arabia, that
25 you need to find a solution for what the hell you're going

1 to do when the oil runs out. Obviously, this is a very big
2 deal.

3 You know, they will run out of money. They're
4 very dependent on oil. This is not a good situation. So
5 they've got to figure out something. And energy --
6 they're currently a big provider of energy in the form of
7 oil and natural gas. So from their standpoint, continuing
8 in the energy business, albeit renewable, seems like a
9 good thing. And there's a wide range of things they could
10 do.

11 They've got a lot of desert, a lot of sun. So they
12 could put a lot of solar panels up, and then transport that
13 energy to ultra high voltage, electrical connections to
14 other parts of the world. They could have an electric car
15 factory or a battery factory. These things are all quite
16 important.

17 Now these things don't come with just a financial
18 investment in a company. You have to really have a much
19 bigger stake in the company for that to be the case.

20 **Q A controlling stake?**

21 **A**Not necessarily controlling but certainly much
22 more influential than 5 percent. But aspirationally, if they
23 had their druthers -- aspirationally, they would like a
24 controlling stake, but this would obviously generate
25 concern on a number of levels.

1 Q What's your basis for saying that they would like
2 a controlling stake, aspirationally?

3 A It's just strategically obvious.

4 Q So based on your knowledge of the situation, not
5 something that they have said to you directly?

6 A They would not say something like that to me
7 directly, but it's strategically obvious.

8 Q Let's get back to the words that Mr. Al-Rumayyan
9 used.

10 Did anyone else -- did anyone else from the PIF speak
11 during the meeting?

12 A No. Hardly at all.

13 Q Do you remember whether Mr. Al-Rumayyan used the
14 term "take private" or the term "go private"?

15 A I think, "take private".

16 Q That was the exact phraseology he used?

17 A I'm not certain, but I think "take private". Like
18 I said, sort of like -- obviously, like, in a typical
19 take private, as you know, the -- there is a very
20 large stake that is acquired by the entity
21 taking things private. For example, in the case of Dell,
22 that was an acquisition of, I think, something on the
23 order of 80 percent of the non-Dell shareholders --
24 something like that. That is a typical take private.

25 So it is an acquisition of a super majority, if

1 not all of the assuming shares of the company. That would
2 be the typical template for a take private.

3 In my mind I was like hell no, I don't want to do
4 that. I want to retain all the shareholders we have right
5 now, up to anyone who doesn't -- as long as they want to be
6 in the company, I want to have them be in the company. It
7 should be a free choice. I don't like this whole squeeze-out
8 thing.

9 So in my mind I was like -- you know, maybe
10 there's 20 to 25 percent of shareholders who would not want be
11 in Tesla as a private company, and then given that -- the
12 template -- the assumed template in a take private would
13 be more on the order of triple that number. Certainly I
14 wouldn't be selling my shares either way. But they were
15 thinking more on the order of potentially 80 percent; that's
16 effectively a 3X coverage of what's necessary to take
17 private. If you have -- effectively you have a threefold
18 over subscription. Assuming all the standard elements of
19 a take private, this is plenty of coverage to make a
20 statement like funding secured.

21 Q So I apologize, Mr. Musk. You lost me a little
22 bit there. You're referencing what was in your mind. Are
23 you talking about what was in your mind during the July 31st
24 meeting?

25 A Yes.

1 Q Okay. So let's talk a little more about what was
2 actually discussed at that meeting.

3 A Certainly.

4 Q Was there any discussion at the meeting of
5 transaction structure in a go private scenario?

6 A I think I -- I think I said that I would like to
7 retain our current shareholder base; that would be
8 preferable to me. As many shareholders as possible, I
9 would like to retain, in a take private.

10 And this would also be something that would
11 obviously make it easier from their standpoint,
12 from a capital standpoint, but that was
13 after they said the take private. I was like basically
14 mitigating the capital needs required for take privates.
15 It's like whereas normally they would think okay, maybe we need to
16 acquire 80 percent of shares, in my opinion, it's probably
17 closer to 20 -- at most 30 percent. Probably something on
18 the order of 25 percent.

19 So, an easier thing than what they --
20 they were advocating something -- in their mind,
21 it would have had to have been a standard
22 take private. And I was trying to say, like, "Actually
23 I think it's going to be considerably easier
24 than what you're talking about, because I don't think we
25 will need to acquire 80 percent of the shares."

1 Q Did they tell you that they were proposing to
2 acquire 80 percent of the shares?

3 A No, they were just talking about a standard take
4 private, which would imply that.

5 Q Did they use the term "standard"?

6 A No, but if you say take private and do not have a
7 modifier, then it's reasonable to assume standard.

8 Q Did anyone from the PIF, at any time during the
9 July 31st meeting, bring up a dollar amount?

10 A No.

11 Q Did you?

12 A Only -- there's an implied dollar amount in the
13 generalities associated with percentage. Percentages.
14 It was an implied dollar amount.

15 Obviously, any take private where you're
16 acquiring a bunch of shares would have to have some
17 reasonable premium associated with it. And it would have --
18 the standard template, in the absence of modifiers,
19 would be acquisition of almost all of the outstanding shares, and
20 have some premium to pay to -- have some acquisition premium
21 essentially.

22 So implicit in that is -- were far higher numbers than
23 what I thought would be necessary in a take private.

24 Q Do you have specific recollection of telling the
25 PIF that you anticipated they would need to purchase a

1 certain percentage of Tesla outstanding common stock,
2 short of 80 percent?

3 (Reporter asks for clarification.)

4 MR. FARINA: Why don't you repeat the question?

5 MR. NEWELL: Strike that question.

6 BY MR. NEWELL:

7 Q Do you have any specific recollection of telling
8 the PIF during the meeting that they would not need to
9 purchase 80 percent of Tesla's common stock, but would
10 instead need to purchase a smaller percent of Tesla's outstanding
11 stock, excuse me, to pursue a going-private transaction?
12

13 A I think I made that comment after he said he wanted
14 to do the take private. And I said the take private is
15 going to be easier than what you realize, because I think
16 most investors will continue on as shareholders.

17 Q Do you recall quoting any percentages to the PIF?

18 A (b)(4)

19 (b)(4). I'm not certain if I said
20 that, but I think I said that. But that was after they
21 said "We want to do a take private," which would have
22 implied 80 percent. And now what I was trying to say was, this
23 take private we're talking about here is easier than you
24 realize, most likely.

25 Q It sounds like you're not sure one way or the other

1 if you did quote a specific percentage to them.

2 A No, I'm pretty sure I said that most existing
3 shareholders would remain with the company. That was my
4 belief at the time. And he had some sort of quite
5 detailed list of shareholders. So he was aware of what
6 "most shareholders" would mean. And he had the whole -- at
7 least the publicly available capitalization table of the
8 company. So he knew what I was talking about.

9 Q What did "most" mean? Did it mean the majority
10 of the shareholders of Tesla's outstanding common stock,
11 setting aside your position?

12 A Yes.

13 Q So over (b)(7)(C) of the roughly (b)(7)(C) of
14 common stock not owned by you, would support the
15 transaction?

16 A Yes. That's what I most thought would be likely,
17 yes.

18 Q By "support the transaction", I mean continue to
19 maintain their positions in a private Tesla.

20 A Yeah.

21 Q What was your basis for the belief that the
22 majority of the current Tesla shareholders would continue
23 on in a private Tesla, at the time of the meeting?

24 A Well, I was aware that Fidelity is
25 an investor in SpaceX.

1 Q At the time of the meeting, did you have any
2 understanding of whether institutions like T. Rowe, Fidelity
3 and Baillie might have restrictions on their ability to
4 invest in private companies?

5 A I was aware that they had --
6 certain funds had restrictions on ownership.

7 I came to learn later, when I spoke to them, that
8 the restrictions were more arduous than I realized,
9 that I could not speak to them without creating a selective
10 disclosure issue. So I had to get -- this news had to be,
11 you know, made broadly. People had to be broadly aware
12 of this news. I could not have conversation
13 with all of these investors, or some of them, and, of
14 course, it would occur sequentially. I could not talk to
15 them all simultaneously.

16 This had to be -- there had to be transparency here,
17 there had to be some awareness of a take private
18 in order for me to have these conversations.

19 So I subsequently --

20 MR. NEWELL: We're getting to that. We're not
21 there yet.

22 THE WITNESS: I subsequently learned that it was
23 much harder for them to maintain an ownership
24 stake in a private company than I had anticipated.

25 MR. NEWELL: We'll get back to that. I want to stay on the

1 July 31st meeting for some more time.

2 BY MR. NEWELL:

3 Q Do you recall anyone at the meeting --
4 you, Mr. Teller, or any of the PIF
5 representatives making reference to
6 an acquisition premium that would be required in a going
7 private transaction?

8 A Not specific numbers.

9 Q What about a percentage premium?

10 A No.

11 Q You don't recall anyone raising that during the
12 meeting?

13 A No, but, of course, in any kind of acquisition
14 like this, a premium is standard, there's going to be a non-zero
15 premium.

16 Q But no discussion of whether that premium would
17 be 15 percent, 20 percent, 25 percent?

18 A I think it's -- no, but I think everyone knows the
19 exact premium is unknowable, until there is a negotiation,
20 but that there is a probable premium on the order of 20
21 percent.

22 Q But there was no discussion of that probable
23 premium during the July 31st meeting?

24 A No. But they would not have been
25 under the assumption that there would be no premium

1 nor that there would be an egregious premium.
2 And so, a reasonable expectation in the absence
3 of a specific number would be 20 percent.

4 Q What's your basis for saying that?

5 A A typical number for, you know, take privates or
6 acquisitions is 20, 20-ish percent.

7 Q At the time of the July 31st meeting, were you
8 aware of the dollar magnitude of the largest prior
9 standard go private transaction that had ever been
10 accomplished?

11 A No.

12 Q And I'm using your phraseology there. I hope
13 that's all right.

14 A Yeah.

15 Q "Standard" go private to refer to a
16 leveraged buyout where all outstanding shares are
17 purchased?

18 A No; well, I wasn't aware of it. I don't really
19 necessarily base things I do on prior precedent.

20 Q Do you recall any discussion at the July 31st
21 meeting regarding potential regulatory requirements to a
22 going private transaction?

23 A Sorry, at that -- the meeting with the PIF?

24 Q With the PIF?

25 A No.

1 Q Are you familiar with the Committee on Foreign
2 Investments --

3 A CFIUS.

4 Q We'll use the term CFIUS to refer to the
5 Committee on Foreign Investments in the United States.
6 Sounds like you're familiar with that acronym?

7 A Yes.

8 Q Rolls off the tongue?

9 A Sounds like a disease, but yes.

10 Q Did CFIUS, during July --

11 A You've got CFIUS? Oh, no, that's tragic.

12 Q Let me ask it again. Did CFIUS come up during
13 the July 31st meeting?

14 A No. I don't think so, the word CFIUS didn't come
15 up, but it's possible -- no, I don't think so. I don't
16 think any restrictions -- the notion of restrictions on
17 percentage of ownership came up during that meeting.

18 Q Did the topic of Tesla establishing a physical
19 presence in Saudi Arabia come up during the meeting?

20 A Yes.

21 Q Who brought that up?

22 A Yasir.

23 Q Do you remember roughly when in the meeting he
24 raised that?

25 A I mean -- towards the -- maybe towards the end, I

1 think.

2 Q Sometime in the later part of the meeting?

3 A Yeah.

4 Q Do you remember what he said specifically?

5 A He would be interested in establishing a
6 strategic relationship between Tesla and Saudi Arabia possibly
7 relating to a factory or some large Tesla presence of
8 some kind in Saudi Arabia.

9 Q Did Mr. Al-Rumayyan indicate that the PIF support
10 of a going private transaction was subject to Tesla
11 establishing a presence in Saudi Arabia?

12 A No.

13 Q At the time of the July 31st meeting, had you
14 decided whether in any scenario you would be interested in
15 establishing a physical presence in Saudi Arabia?

16 A (b)(4)

17 (b)(4)

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1 (b)(4)
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6 MR. NEWELL: So we're getting close to lunch. I
7 have about ten more minutes of questions, and I think that
8 would be a good time to take a break.

9 Is that all right with everyone?

10 A Sure.

11 BY MR. NEWELL:

12 Q I asked what was in your mind at the time of the
13 meeting about a potential physical presence in Saudi Arabia.
14 What did you say in response to Mr. Al-Rumayyan raising that
15 prospect?

16 A I'm not sure what I said exactly. I would have
17 probably said something along the lines of what I just
18 said, which is that we're open to doing something,
19 provided the time frame is not in the near term.

20 MR. BUCHHOLZ: Did you get the sense from Mr.
21 Al-Rumayyan that that was something they wanted to discuss
22 further down the road?

23 THE WITNESS: (b)(4)

24 (b)(4)
25

(b)(4)

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22 And then I thought, well, there's going to be --
23 I thought the vast majority of existing investors would
24 want to retain their stake, and then we would find a vehicle
25 for small investors to participate. That latter part was

1 a fundamental misunderstanding that I just did not know --
2 I thought there would be some way to retain small
3 investors, but there isn't.

4 And, you know, this is not part of today's
5 testimony, but I do think that some mechanism for this
6 would be advisable in the regulatory structure. But I
7 think something where they're protected by a fiduciary,
8 like there's -- like a lot of the wealth creation that
9 occurs, occurs when companies are private. And, but smaller
10 investors are only able to access that when the companies
11 are public. And by that time, most of the wealth creation
12 has occurred.

13 And this is exacerbating the wealth divide. This
14 is not good.

15 I certainly understand the intentions behind the
16 original regulations. We do not want swindling. This is
17 like anti-swindling regulations; these are good. We don't
18 want people being conned out of their money. This is bad.

19 I think if there's perhaps a trusted fiduciary
20 like a Fidelity or something like that, and very plain
21 language disclosures, then I think -- like, private company
22 money should be more accessible to investors who are
23 not already wealthy. That million dollar limit is tricky.

24 Sorry to digress. My apologies.

25 BY MR. BUCHHOLZ:

1 Q That's all right. We'll come back to that.

2 A Yes.

3 MR. BUCHHOLZ: Circling back to the July 31st meeting,
4 and just connecting up -- a lot of that was your thought process,
5 just to be clear, right? You weren't discussing that at
6 the time, in that level of detail, with Mr. Al-Rumayyan?

7 MR. FARINA: Which part?

8 THE WITNESS: He was just saying like, he wants
9 to take the company private, let's do it. Let's go. So, I mean,
10 and it was clear to me, like, he had been like
11 yearning for this for two years. I was like, "Really?
12 Well, okay. I thought you delegated it to Masa."

13 Like, "No, we wanted to do it. We have
14 always wanted to do it, and can we just do it?"

15 I'm like, "Okay, we can investigate it."

16 BY MR. BUCHHOLZ:

17 Q Right. But returning to the percentages; you said
18 earlier that you don't believe you talked about specific
19 percentages that would be needed to acquire, correct?

20 A No, not specific percentages. But he was well
21 aware of the cap table; because he had it in front of him.

22 Q Right. And -- yeah, I don't want
23 to get back into the testimony you already did --

24 A Sure.

25 Q -- on that topic. I just wanted to clarify.

1 Did they ever mention percentages, PIF?

2 A No. But, for sure, it is implicit, like a take
3 private -- they are not assuming that all those people are
4 going to -- they were -- it was clear that they were not
5 under the assumption that the other investors
6 would participate. They were not under the assumption.
7 Or that they were under the assumption that most of the other
8 investors would not participate.

9 BY MR. NEWELL:

10 Q And your expectation at the time was that
11 most of the investors would participate, though?

12 A Yes.

13 MR. FARINA: And by "participate,"
14 would that be referring to staying with
15 Tesla as a private company?

16 MR. NEWELL: Staying with Tesla as a private
17 company.

18 THE WITNESS: Yes, that's correct.

19 BY MR. NEWELL:

20 Q Fair to say that your perspectives were not
21 aligned with the PIF's in that respect at that time
22 of the meeting?

23 A Yes. I -- my own understanding
24 or impression was that they thought there would be
25 much more capital required, and they were

1 prepared to provide it, than was actually needed in my
2 mind. I thought that they thought a lot of capital would
3 be needed, and they would provide it. Much more than I
4 thought the capital would be needed.

5 And that was why, in my mind, they
6 effectively oversubscribed the deal in order to take Tesla
7 private, is what -- they were prepared to put a lot more
8 money in than I thought was actually necessary.

9 **Q But they never referenced a specific dollar**
10 **amount or a range of dollar amounts, right?**

11 A No. But in the absence of that, one would assume
12 that their template would be a standard take private,
13 which would certainly imply buying out those investors.

14 **Q And again, there was no reference to any specific**
15 **number for a premium that would be associated with the deal,**
16 **right?**

17 A No specific premium. But they were also aware
18 that there would be a premium.

19 BY MR. BUCHHOLZ:

20 **Q Was there discussion about the level of control**
21 **or influence that they would have?**

22 A No.

23 **Q Was there any discussion about --**

24 A They were pretty clear that they wanted me to
25 stay running the company. Yeah.

1 Q So the concept you testified about with different
2 levels of ownership, and potentially more requirements or
3 strong --

4 A Yeah. I mean, they were
5 definitely going to leverage a larger investment
6 into more insistence on doing things in Saudi
7 Arabia. That was clear.

8 Q Yeah. That's what I want
9 to be specific, as specific as you can,
10 about how much discussion was there about that?

11 A You know, they weren't hard-edged about it. It
12 wasn't like "You must do this" or "You must do that." And
13 they were very -- I would say they were like, pretty clear
14 that they wanted me to stay in control of the company and
15 run the company, and that was very important to them.
16 They wouldn't do anything -- wouldn't do anything
17 where I would leave the company.

18 They were very flattering of me personally, and
19 they said like, they really wouldn't want to do this if I was
20 not very enthusiastic about it, saying lots of nice things.

21 So -- and then I -- I, like I said -- okay, so
22 look, I think it's actually going to take less money than you
23 realize, because I think most of these investors are going
24 to stay with the company. And they were like, "Okay.
25 That's cool."

1 They were just pretty much cool with anything.
2 Well, as far as I could gather. They were just looking for help
3 transitioning their country to a different economy, you
4 know.

5 MS. CRUMPTON: You articulated your understanding
6 about what the expectations would be from PIF, based on if it's
7 5 or 15 percent investment versus a 40 percent investment.
8 Was any of that in fact --

9 THE WITNESS: It's sort of guess --
10 no, it's just sort of guess work.
11 I mean, this is implicit. This is implicit.
12 You know, like if -- because they clearly said
13 it's very important for them to have -- like, they
14 articulated the strategic rationale, that is very, very
15 obvious, that they need -- they need to
16 to transition to something beyond oil.

17 They articulated that many times in prior
18 meetings. You know, I think that's obvious.

19 So they were just like -- they wanted help in making
20 that transition.

21 And I mean it's like, you know, they
22 said they really want the factory in Saudi Arabia.

23 And so we get to the dinner -- the
24 dinner with Masa afterwards. There were some
25 funny things in that dinner.

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Because Masa was insisting

(b)(7)(C)

(b)(7)(C)

You know, he couldn't -- Masa wouldn't --
I don't know if he just had like a
dinner with Modi or somebody.

And he was like, "No, you've got to put
a factory in India."

I'm like, "Your investors want me to put a

(b)(4)

MR. BUCHHOLZ: And just to be clear,
you're referring to -- you're referring to
March of 2017?

THE WITNESS: Yeah, yeah, yeah.

MR. FARINA: All right.

So -- why don't we -- we've been
going quite a bit. It's ten of 1:00. Why don't we take our
lunch break?

MR. NEWELL: That's fine. I think -- I think we can take
a lunch break now. Let's go off the record.

1 VIDEO OPERATOR: Going off the record. The time
2 is 12:49.

3 (Lunch recess taken.)

4 A F T E R N O O N S E S S I O N

5 VIDEO OPERATOR: The time is 1:48. We're back on
6 the record.

7 BY MR. NEWELL:

8 Q Mr. Musk, during the lunch break did you have any
9 substantive discussions with the SEC staff?

10 A No.

11 Q You told us that you obtained a Red Bull during
12 the break, but other than that --

13 A I was given a Red Bull.

14 Q On the --

15 A Sorry.

16 Q On the topic of your July 31st meeting with the
17 PIF, we have a few more questions.

18 A Sure.

19 Q Do you recall the topic of the PIF's available
20 liquid capital coming up at any time during the meeting?

21 A No.

22 Q Did Deepak Ahuja join the meeting at some point?

23 A Yes.

24 Q Do you recall at what point in the meeting Mr.
25 Ahuja joined?

1 A I think maybe a third to half the way through,
2 or something like that. I'm not sure exactly.

3 Q Do you recall what was being discussed at the
4 time Mr. Ahuja joined the meeting?

5 A No. I can't pin the exact timing -- I suspect he
6 would be able to answer that more precisely, but -- I
7 cannot recall the exact point at which -- it wasn't
8 towards the very end and it wasn't towards the very
9 beginning.

10 Q Do you recall whether it was before Mr.
11 Al-Rumayyan first raised the topic of taking Tesla
12 private?

13 A I don't recall, no.

14 Q Did you request that Mr. Ahuja join the meeting?

15 A I'm not sure. I might have. I'm not sure. I
16 don't recall doing so but it's possible.

17 Q Do you know why he ended up attending?

18 A Well, I think -- I'm not sure if I asked that he
19 join or not, as the reason that he joined, but I would
20 have certainly at some point asked that he join once the
21 subject of investment came up.

22 Q Once the subject of the -- PIF's public
23 position -- if you'd let me finish.

24 A Sorry.

25 Q You would have asked but you don't have a

1 specific recollection of asking Mr. Ahuja to attend
2 because the PIF had disclosed they were a big
3 investor in Tesla?

4 A I think that would have probably been -- if he
5 wasn't there already I would have requested that he join
6 upon learning that the PIF had made a multimillion dollar
7 investment into Tesla already.

8 Q It sounds like you don't have a specific
9 recollection whether or not you
10 reached out to him or had Mr. Teller reach out to him?

11 A That's correct.

12 Q Do you remember if Mr. Ahuja had anything with
13 him when he joined the meeting?

14 A I think he perhaps would have had his phone, but
15 I don't think anything else.

16 Q Were you ever, from the time that you greeted the
17 PIF to the time they left Tesla's offices in Fremont,
18 alone with any members of the PIF?

19 A I think I was briefly with Yasir alone as he was
20 leaving the conference room, I think. But just for like
21 ten seconds or something like that.

22 Q Do you recall Mr. Teller ever stepping out of the
23 conference room at any point during the meeting before Mr.
24 Ahuja had joined?

25 A I did not notice it.

1 Q It may have happened, but you don't have a specific
2 recollection?

3 A Yeah.

4 MR. BUCHHOLZ: Did you, Mr. Ahuja or Mr. Teller
5 take notes during the meeting?

6 THE WITNESS: No. I didn't, I don't know if they
7 did.

8 MR. BUCHHOLZ: You didn't notice them doing it?

9 THE WITNESS: I didn't notice them doing it, if they did.

10 MR. BUCHHOLZ: About how long did it last?

11 MR. FARINA: The entire meeting?

12 MR. BUCHHOLZ: Yes.

13 THE WITNESS: I think about 40 minutes-ish.

14 BY MR. NEWELL:

15 Q Did the PIF give you anything in writing, a
16 physical copy of anything during the course of the
17 meeting?

18 A No. Well -- I don't think so. I don't think so.
19 I don't recall getting anything.

20 Q Looked like maybe you weren't sure, you had some
21 recollection of something?

22 A Well, every now and again people give me things
23 but -- I usually just put them on my desk and don't read
24 them. Usually it's like some sort of generic document.
25 He didn't give me anything that was like -- I don't think

1 he gave me anything and -- but I'm quite sure he did not
2 give me anything that was highly sensitive.

3 Q May have given you a business card?

4 A No, I have his business card -- so, no.

5 Q You don't have any specific recollection of any
6 physical document being handed to you by the PIF during
7 the meeting?

8 A No.

9 Q What about from you, Mr. Teller or Mr. Ahuja? Do
10 you remember anyone giving anything in writing to the PIF
11 during the meeting?

12 A No.

13 Q Did you send anyone from the PIF any documents
14 via electronic means during the meeting?

15 A No.

16 Q Didn't agree --

17 A During the meeting?

18 Q Didn't agree to exchange information?

19 "Can you send me this?"

20 "Sure, let me email that to you"?

21 A No.

22 Q And likewise going the other direction, PIF
23 didn't send you anything electronically during the
24 meeting?

25 A I don't think so.

1 Q Did you have any discussion with the PIF about
2 keeping your discussions about a going private transaction
3 involving Tesla confidential?

4 MR. FARINA: At any point in time?
5 Or during that meeting?

6 BY MR. NEWELL:

7 Q During that meeting.

8 A Not during that meeting.

9 Q Let's situate ourselves towards the end of the
10 meeting. Walk us through what you recall about how the
11 meeting closed.

12 A Sure. I mean, from what I recall, essentially as
13 I mentioned, was that they disclosed that they had made a
14 multi-billion dollar investment in Tesla up to the limit
15 of 5 percent. This was new information to me.

16 And that the only reason they had not gone above
17 the 5 percent was the disclosure constraint. And they
18 obviously had done this without any written agreements or
19 without any requirements or anything at all.

20 And they had done this -- they had at one point,
21 I think in prior meetings, said that they would invest in
22 Tesla. And I was like, hum, okay. And they said, okay.
23 They did what they said they would do. Okay. These are
24 people where you can take their word, they say they're
25 going to do something they are going to do it.

1 So they were extremely clear that they wanted to
2 take Tesla private; that I could set the terms,
3 essentially any reasonable terms I could set; that they
4 had been interested in taking Tesla private for two years.
5 They corrected my misunderstanding that this had been
6 delegated to Masa, and said for two years they had
7 wanted to take Tesla private.

8 They had invested billions of dollars with no
9 written agreement, no agreement of any kind, just as a
10 good faith gesture to show that they're serious.

11 And if I just say what I wanted to do they
12 would do it. So there was no question in my mind
13 whatsoever that the funding was secure for this deal.

14 **Q So let's go back to my question. I asked if you**
15 **could walk through the close of the meetings.**

16 A Right. That was the closing sentiment.

17 **Q Step away from sentiment. What do you recall**
18 **being discussed specifically at the end of the meeting?**

19 A I recall that they wanted -- they were
20 unequivocal in their desire to take Tesla private; that
21 they were willing to take essentially whatever terms I
22 asked for within the bounds of reason, that a larger
23 investment would require a larger strategic involvement,
24 meaning factories and that kind of thing. And so it's
25 really just a question of what do you want to -- they were

1 saying like, how do you want us to proceed? We want to do
2 it, let's do it.

3 MR. BUCHHOLZ: When you say "they", do you
4 mean Mr. Al-Rumayyan?

5 THE WITNESS: Yes.

6 MR. BUCHHOLZ: He was the only one speaking for
7 PIF?

8 THE WITNESS: That's correct.

9 BY MR. NEWELL:

10 Q Did Mr. Al-Rumayyan use the phrase whatever terms
11 to -- using your phrasing?

12 A He said just -- he said, tell me how you want to
13 do it, and we'll do it. So not whatever terms, but, tell
14 me how you want to do it. I think he had some language,
15 provided they're reasonable we will be fine with it.

16 So there's no -- obviously it can't be like,
17 let's go public(sic) at \$8,000 a share, that's not reasonable.
18 That would not be reasonable, but within the bounds of a
19 reasonable take private transaction they were extremely certain they
20 wanted to do it, and moreover had been certain for two
21 years. There was no question.

22 MR. FARINA: I think in the beginning of your
23 answer -- I don't know whether you said take public or
24 take private.

25 THE WITNESS: Sorry. Take private.

1 MR. FARINA: Take private.

2 THE WITNESS: Yeah. So you know, obviously here
3 you have an extremely wealthy -- quite arguably the
4 wealthiest fund in the world. They had with no conditions,
5 no effort at all: Made a multibillion dollar investment
6 up to the 5 percent point, explicitly constrained
7 only by the reporting requirement.

8 There was nothing else holding them back
9 from investing more.

10 So this was really -- it was up to me, do I want
11 to do this take private? If I want to do it, they will
12 support it.

13 BY MR. NEWELL:

14 Q Did you discuss any specific next steps with the
15 PIF at the close of the meeting?

16 A Umm, they -- the onus was on me to say how I
17 wanted to do this deal. So I just needed to tell them
18 what -- what they needed to do, and they would do it.

19 Q That's what they said to you explicitly, or is
20 that a paraphrasing on your part?

21 A That is -- that is almost explicit, I would say.
22 Meaning it's like -- I don't know that I can say the exact
23 words, but that is the exact meaning.

24 MR. BUCHHOLZ: He used the word reasonable to
25 describe reasonable terms. Was that Mr. Al-Rumayyan's

1 term?

2 THE WITNESS: I believe so. It was something
3 like that, yes. Just that it's -- it can't be like \$8,000
4 a share, it can't be, you know, something completely crazy
5 and outside the bounds of a normal take private.

6 MR. BUCHHOLZ: To the best of your ability, can
7 you describe what Mr. Al-Rumayyan said when he used the
8 term reasonable terms?

9 THE WITNESS: He said like, tell me how you want
10 to do it and we'll do it. And there was like just some --
11 I think it was reasonable but may have been -- it may have
12 been a synonym of reasonable, but it was like tell me how
13 you want to do it and as long as the terms are
14 reasonable -- I don't know if it was exactly the word
15 reasonable. If not it was something of an equivalent
16 meaning and we'll do it.

17 MR. BUCHHOLZ: Did you have any more discussion
18 about what that meant, what reasonable meant?

19 THE WITNESS: No. No.

20 BY MR. NEWELL:

21 Q Was there any discussion of what you would do as
22 a next step if you elected to continue speaking with the
23 PIF about a potential transaction?

24 A The next step would be for me to tell them what
25 terms I wanted.

1 Q None of those terms had been ironed out during
2 the meeting?

3 A No, but they were very clear that it was up to me
4 to -- it was very clear to me, this deal is done. Tell us
5 what terms you want, and this deal is done on your terms,
6 provided those terms are not outrageous, in another way of
7 saying. Doesn't use the word outrageous, if the terms are
8 not out of bed with what a normal take private would be, this
9 is a done deal.

10 MR. BUCHHOLZ: And they would if it was
11 reasonable?

12 THE WITNESS: Yes, but they were pretty clear
13 that that was not some narrow definition of reasonable.
14 As long as they didn't feel like they were getting ripped
15 off they would be fine with it.

16 MR. BUCHHOLZ: So in that sense it was going
17 to be a negotiation with parties on both sides, right?

18 THE WITNESS: No. No. It would just be --
19 unless these terms are unreasonable. It's not like some
20 fancy definition of reasonable -- as long as the terms are
21 not a rip off and are fair, and under the normal,
22 structure of -- as long as they're not out of bounds of a
23 a normal take private, this is a done deal.

24 MR. BUCHHOLZ: Right. But the PIF would get to
25 decide that and make the final decision.

1 THE WITNESS: No. They were telling me
2 explicitly in the meeting I could have whatever terms I
3 wanted provided they're not crazy.

4 BY MR. NEWELL:

5 Q Did you have any concern that there was no
6 context discussed about what was and what wasn't a
7 crazy term?

8 A No. No. I mean it was very clear that they
9 wanted this to happen. The only thing that would inhibit
10 this is if I demanded crazy terms or unreasonable terms,
11 otherwise it's a done deal, case closed.

12 Q Do you have any understanding at the time of the
13 meeting of whether the PIF had ever taken a publicly
14 traded U.S. company private in the past?

15 A No.

16 Q Didn't know one way or the other?

17 A No. It's important to bear in mind that they had
18 already invested billions of dollars. They spoke with
19 their money, okay? And if somebody invests billions of
20 dollars up to the 5 percent point and the only thing
21 stopping them is the reporting number, not anything else,
22 and obviously there wasn't even a verbal or written deal,
23 they just did it. These people mean what they say. They
24 have the resources, you can take them at their word.
25 They're going to do it. They really wanted to increase

1 their investment in Tesla by whatever means necessary.

2 MR. BUCHHOLZ: So just to be clear, is it your
3 testimony that you did not believe that PIF would be able
4 to assess the terms that you decided on and decide if they
5 were reasonable?

6 MR. FARINA: Can you repeat the question?

7 MR. BUCHHOLZ: Did you understand the question?

8 MR. FARINA: I would like to hear the question
9 again. I'm not sure I understood it.

10 MR. BUCHHOLZ: Is it your testimony that you did
11 not believe at the end of the July 31st meeting that PIF
12 would not be able to assess the terms that you came back
13 with and decide if they were reasonable and wanted to go
14 through with the deal?

15 MR. FARINA: I honestly don't understand the
16 question. There's two negatives in there and I'm not sure
17 what -- can you try and rephrase it?

18 MR. BUCHHOLZ: Sure. I can try.

19 Did you believe at the end of the July 31st
20 meeting that PIF would assess the terms that you came back
21 with and decide if they were reasonable?

22 MR. FARINA: Thank you.

23 THE WITNESS: Umm, I mean -- I think the right
24 way to view this is that this was unequivocally a done
25 deal provided I did not come back with outrageous terms.

1 MR. BUCHHOLZ: Right. And that's the provision
2 that I'm asking about.

3 THE WITNESS: Yes. So as long as I didn't demand
4 like something egregious, it was a done deal.

5 MS. CRUMPTON: Who would decide whether
6 something you demanded was egregious?

7 THE WITNESS: Presumably they would decide. But
8 I mean there's a natural framework for whether a take
9 private is egregious in the price premium or not. I mean,
10 really -- if I say, for example, demanded all shares
11 must be -- I must own all shares, they may have objected
12 to that. That's not something that I would have required,
13 but that could have been an inhibitor.

14 If I had said that that's, you know, there must
15 be like some huge sum of money that comes to me personally
16 as a result of that, that would be egregious.

17 If I had said instead of a typical premium on a
18 take private acquisition that instead of 20 percent it was
19 200 percent, that would be egregious. But anything within
20 the framework of an ordinary take private would not be
21 considered egregious.

22 MS. CRUMPTON: Are any of these examples you
23 gave examples that you discussed with PIF?

24 THE WITNESS: No.

25 BY MR. NEWELL:

1 Q What about if you had come back to the PIF and
2 told them that the structure you wanted was for them to
3 take a total hypothetically ten percent stake in Tesla and
4 be part of a group taking Tesla private, what is your
5 understanding of whether or not that would constitute an
6 egregious term that they could have rejected?

7 A No, they were fine with that. They already had 5
8 percent. They have 5 percent of the public markets with
9 no terms or conditions at all. And they were explicit that
10 that 5 percent limit was just due to reporting
11 requirements, not due to anything else.

12 So let's say for reporting requirements in the
13 U.S. started at, probably ten percent, they would have
14 acquired ten percent in the public markets --

15 Q Was there --

16 A Something on that order.

17 Q Sorry to break in. Were you finished with your
18 answer?

19 A Yes.

20 Q Do you know whether there's a minimum amount of
21 ownership in Tesla that they would have required to move
22 forward with the going private transaction at the time of
23 the July 31st meeting?

24 A I do not believe there was any minimum.

25 Q What's your basis for that?

1 A They already had -- spoken with their funds and
2 invested 5 percent.

3 Q Do you think they might have had reason to want a
4 larger stake in Tesla and that a smaller stake would have
5 been less attractive to them?

6 A I think no, because they already had a smaller
7 stake in Tesla, and that the only thing that inhibited
8 their stake from being more than 5 percent, was the
9 reporting requirement. So they were clearly willing to
10 have a larger stake in the company but -- it just happens
11 that U.S. reporting requirements start at 5 percent.

12 So that's what they would -- they were clearly
13 happy to have 5 percent with no terms and conditions or
14 requirements, nothing.

15 Q So from your perspective it would not have been
16 an egregious term to them for you to come back and propose
17 anything from 6 percent of Tesla up to and including the
18 entire market cap of Tesla?

19 A Umm, yes.

20 Q Did you show Mr. Al-Rumayyan and his PIF
21 colleagues out of the Tesla factory after you left the
22 (b)(4) conference room?

23 A No. I think I spoke to Yasir for maybe ten
24 seconds as he was leaving the conference room, and the
25 substance of that conversation was just, more repeating,

1 let us know how you want to do this. We want to do this.
2 Something to that effect.

3 Q That's what he said?

4 A Yes.

5 Q What did you respond?

6 A I said, I'll get back to you.

7 Q Did you pick a specific timeframe during which you'd
8 get back to him?

9 A No.

10 Q Do you remember any specific timeframe for you
11 getting back to the PIF being discussed at any point
12 during the July 31st meeting?

13 A No.

14 Q Do you recall if Mr. Ahuja showed the PIF
15 representatives out of Tesla facilities?

16 A Umm -- I think he did.

17 Q Did he subsequently relay to you any
18 conversations he'd had with them as he walked them out?

19 A I don't think so.

20 MR. BUCHHOLZ: Did he tell you how long he spent
21 with them?

22 THE WITNESS: No.

23 MR. BUCHHOLZ: Did you learn at some point that
24 they had toured part of the facility?

25 THE WITNESS: Yeah. I heard they saw -- I had

1 heard that -- yeah, that -- at some point that they had --
2 he had given them a tour, yeah.

3 MR. BUCHHOLZ: Did he tell you that, Mr. Ahuja?

4 THE WITNESS: No.

5 MR. BUCHHOLZ: Who did?

6 THE WITNESS: I think counsel, counsel told me.

7 MR. BUCHHOLZ: So you didn't have any
8 discussions though with Mr. Ahuja about the details of
9 what happened?

10 THE WITNESS: I don't recall any discussions, no.

11 BY MR. NEWELL:

12 Q Did you have any further communications with Mr.
13 Teller or Mr. Ahuja on the night of July 31st about the
14 going private transaction or the PIF?

15 A I don't recall. I think I may have had some
16 brief conversations. I don't recall right now what those
17 conversations were. I might have had some but -- I
18 probably had some, but I do not call the substance of
19 them.

20 Q Fair to say it's a pretty big deal to be
21 considering taking the company private?

22 A Yeah, of course.

23 Q So it sounds like you may have had some
24 conversations in that vein with Mr. Teller and Mr. Ahuja,
25 but you're not sure?

1 A Yeah. I mean I do not recall anything
2 substantive. I think we most certainly had conversations
3 of some sort, but I don't recall anything substantive
4 apart from the obvious.

5 Q The obvious -- sorry. I didn't follow you.

6 A (b)(4)

7 (b)(4)

8
9 Q You recall discussing that with Mr. Teller or Mr.
10 Ahuja on the night of July 31st?

11 A I recall something to that effect.

12 Q Remember any discussion of potential --

13 A (b)(4)

14 (b)(4)

15 Q Recall discussing the going private transaction
16 or the PIF, setting aside Mr. Ahuja or Mr. Teller, after the
17 meeting concluded?

18 A Yes, with Egon Durban on Monday night, I think it
19 would have been, before the Tuesday tweet.

20 Q Okay.

21 MR. FARINA: So your question was on the 31st,
22 did he discuss his meeting with the Saudis with anyone
23 other than Sam and Deepak?

24 MR. NEWELL: It may have been a bad question. I
25 don't know. We don't need to do a read back, let's just

1 ask another question, and we'll go to his conversation
2 with Mr. Durban.

3 Q I'll ask the question that Mr. Farina asked, if I
4 didn't ask it originally.

5 Setting aside Mr. Ahuja and Mr. Teller, do you
6 recall having communications of any kind with anyone on
7 the night of July 31st after the meeting that had concluded
8 regarding the PIF or a going private transaction?

9 A I recall having some brief conversations with
10 Sam, maybe Deepak briefly, pretty brief. Just, you
11 know -- (b)(4)

12 (b)(4)

13

14

15

16 BY MR. NEWELL:

17 Q Those conversations you're referencing,
18 you recall being with Mr. Ahuja and/or Mr. Teller?

19 A I think both of them, I'm not sure.

20 Q Anyone else at Tesla or otherwise you recall
21 discussing the PIF or a going private transaction with after
22 the meeting concluded on July 31st?

23 A No. On that night?

24 Q Yeah, post July 31st meeting, the night of
25 July 31st or evening of July 31st.

1 A Well, there was -- a call with Steve Rosenblum --
2 are you talking about at any point subsequent -- to be precise,
3 what date are you referring to?

4 MR. FARINA: I think all he's trying to do is
5 exhaust July 31st, and then he's going to get into between
6 July 31st and August 7 who did you talk to? I think some of
7 the folks you're mentioning are in that period, but he
8 wants to know is there anyone else on July 31st that you
9 spoke with. Is that fair?

10 BY MR. NEWELL:

11 Q That's correct.

12 A I don't think so. It's possible, but I don't
13 recall.

14 Q Let's now step forward -- strike that. Sorry.
15 One more question about the July 31st meeting with the
16 PIF.

17 Do you recall anyone at any time during the
18 meeting discussing the board approval process at Tesla?

19 A I don't recall that, no.

20 Q Okay. We're now past July 31st. Let's now
21 situate ourselves in the period from August 1st 2018
22 through the morning of August 7th 2018 at about 9:00 a.m.
23 Pacific time. Okay. Follow me so far?

24 A Sorry. Which date?

25 Q It's a long period, it's about a week, but I

1 think it's going to be more effective if we do it this way,
2 and we can show you documents --

3 A That would be helpful. If there's some documents
4 that would help anchor specific dates that would be
5 helpful.

6 Q Okay. Why don't we do a couple of things here.
7 Let's, if we could, Mr. Musk, before we start showing you
8 documents, you had referenced that you have some recollection
9 of discussing the PIF or a going private transaction with
10 some individuals at some time. Do you recall discussing
11 those topics with anyone in the period from August 1st,
12 2018 through the morning of August 7, 2018?

13 A My recollections are, my conversation with Steve
14 Rosenblum, a conversation with -- which is on the
15 Saturday, I believe, a conversation with Egon Durban on
16 the Monday before the tweet. I think I talked to Michael
17 Dell on Saturday, as well, but did not mention anything
18 specific about the Saudis -- I was really asking him about, did he
19 find being private was good. Like -- did he think that --
20 did he regret going private? Did he thinks it was a good
21 idea? Yeah.

22 MR. FARINA: You've already asked about the board
23 meeting, so the board would obviously be included in that
24 time period?

25 MR. NEWELL: Let's set aside the board meetings

1 for now. That's a good carve out, and I appreciate it.
2 Let's set aside anyone on Tesla's board, individual
3 communications or official board communications. We're
4 still in that period from August 1st, 2018 through the
5 morning of August 7, 2018, when you published the tweets
6 we've been discussing today.

7 Q Do you recall having a conversation with Steve
8 Rosenblum -- and for the record can you refresh us on who
9 Mr. Rosenblum is?

10 A He was the legal counsel that Michael Dell used
11 in the take private.

12 Q Do you recall having communications with Egon
13 Durban right?

14 A Yes.

15 Q Where does Mr. Durban work?

16 A Silver Lake.

17 Q You recall having conversations or communications
18 with Michael Dell?

19 A Just a conversation.

20 Q A phone conversation?

21 A Yes.

22 Q Anyone else you recall, setting aside individual
23 members of Tesla's board or board meetings or groups of
24 Tesla's board having discussions with -- strike that.

25 Did you have discussions during the period from

1 August 1st, same period we've been discussing, through the
2 morning of August 7, 2018, with Mr. Teller about a going
3 private transaction with PIF?

4 A I probably had a few conversations with Sam
5 discussing the pros and cons of a take private and a
6 larger Saudi investment.

7 Q What about Mr. Ahuja, same period?

8 A I don't recall having any conversations but --
9 there might have been a few. I don't recall anything
10 substantive.

11 Q Do you recall having any conversations during
12 that period about a going private transaction with the PIF

13 (b)(6); (b)(7)(C)

14 A No.

15 Q Anyone else you remember talking to during that
16 period in any form, emails, texts, phone calls, in person
17 conversations about a going private transaction with PIF?

18 A No.

19 Q Did you have any further communications of any
20 kind with Mr. Al-Rumayyan or other representatives of the PIF
21 from the time the July 31st meeting closed through the
22 time you first tweeted on the morning of August 7, 2018?

23 A It's possible that there was some texting; he sent me
24 a text or something, but I don't think
25 I had a phone call. I do not recall certainly

1 anything substantive.

2 Q You're not sure if he texted you during that
3 period?

4 A It's possible he may have, but I do not think it
5 was substantive. I don't think so.

6 Q Do you know if anyone else at Tesla had any
7 communications with representatives of the PIF during that
8 same period? And I'll specify again, I apologize for
9 making this so back and forth, but I do want to take now
10 the period from the time that the July 31st meeting closed
11 through the time on August 7, 2018, when you first tweeted
12 that morning.

13 Are you aware of any other conversations that
14 anyone from Tesla had with representatives of PIF during
15 that period?

16 A No.

17 Q Same answer with respect to anyone who is
18 affiliated in any way with any of your companies?

19 A No.

20 Q Taking that same period, did you retain any
21 advisors to help you with the potential going private
22 transaction?

23 A Sorry. At what period of time?

24 Q Sorry. I know it's ponderous and I'll just try
25 and define it every time, I think it will be easier.

1 From the time the July 31st meeting ended
2 through the morning of August 7th, when you first tweeted
3 about a going private transaction, did you retain any advisors
4 to assist you with the going private transaction?

5 A No.

6 Q Let's talk a little bit about your conversation
7 with Egon Durban.

8 Sounds like your recollection is that
9 conversation took place the Monday before August 7th?

10 A Yes.

11 MR. FARINA: I think there's an entry in the
12 phone log that does pin it down.

13 MR. NEWELL: Please mark this as EM Exhibit 10
14 (SEC Exhibit No. 10 was
15 marked for identification.)

16 BY MR. NEWELL:

17 Q Mr. Musk, we're handing you a document that's
18 been marked as EM Exhibit 10. It is an exhibit, a multi
19 page printout of a spread sheet that was produced to the
20 SEC in this matter bearing Bates number ERM underscore SEC, AVG 7
21 underscore, series of zeroes and then 6. I'll represent to you
22 that's the same Bates number associated with the entire
23 document. We've not altered it but we've blown it up for
24 purposes of today's testimony.

25 A Sorry. The second page --

1 MR. NEWELL: No page yet, just some throat clearing at
2 the outset.

3 MR. FARINA: This is not something Mr. Musk would
4 have seen in this form obviously.

5 This was something prepared by us
6 on Mr. Musk's behalf to produce the text related to these
7 issues. And this has the same issue with the times being
8 set to UTC.

9 MR. NEWELL: Thank you. So we'll be doing some
10 ongoing math here and subtracting seven hours again.

11 Q Mr. Musk, recognizing you may not have seen this
12 exact document, do these appear to be text messages that
13 you sent and received?

14 A Yeah. I've not seen this format before, but yes.

15 Q The substance of the text is familiar to you?

16 A Yes.

17 Q Let's turn to Page 3 of the exhibit and I want to
18 direct your attention down there toward the bottom of the
19 page, looks like there's a series of texts between you
20 and contact Egon. Do you see those?

21 A Yes.

22 Q Is that Egon Durban that you've been referencing?

23 A Yes.

24 Q Is this series of text exchanges to schedule the
25 call that you were just referencing?

1 A Yes.

2 Q Did you have any calls with Mr. Durban about a
3 going private transaction before August 6, 2018?

4 A Pardon? What? Sorry.

5 Q So it appears from this document, let me know if
6 you're reading it differently, that there's communications
7 here between you and Mr. Durban to set up a conversation.
8 Am I reading that right, high level?

9 A Yes, of course.

10 Q Did that conversation ultimately take place on
11 August 6th?

12 A Yes.

13 Q Before we get into what you discussed, did you
14 have any prior conversations with Mr. Durban before
15 August 6th about a going private transaction?

16 A Yes.

17 Q What's the first time you recall discussing a going
18 private transaction with Mr. Durban?

19 A This was some months earlier this year, I think.
20 We met at SpaceX and I said, you know, I've always wanted
21 to consider taking Tesla private. That was it pretty
22 much.

23 And he said, well, if you're ever thinking about
24 doing that seriously you should give me a call.

25 Q Anything else you remember about that

1 **conversation with Mr. Durban?**

2 A Yeah. I mean, he said a bunch of nice things
3 about the me and the companies and that's it. And he told
4 me a little about his prior experience with take
5 privates and like -- I should give him a call if I ever
6 think about this seriously.

7 Q **Did you ask him to prepare any analysis for**
8 **you coming out of that meeting or that conversation?**

9 A Umm -- I think in that meeting, that first
10 meeting that I had with him earlier this year he gave me
11 some kind of like document that was like, these are people
12 who would be interested in, I think, in a take private --
13 somewhat generic, here's a bunch of people with money that
14 he knows that would be interested in a potential take
15 private and something that -- he would be happy to support
16 if we wanted to go in that direction.

17 Q **Not specific to Tesla?**

18 A No, it was specific to Tesla.

19 Q **He had prepared it for the purposes of the**
20 **meeting to give to you?**

21 A Yes. I really didn't consider it to be
22 especially -- I mean it's like here are bunch of people I
23 know with tons of money and would be interested, he
24 thinks, would be interested in a take private situation. I don't
25 consider that to be of particular note, because, sure, I

1 kind of already knew that.

2 MR. BUCHHOLZ: Did he ask them before giving you
3 the list if they would be interested?

4 THE WITNESS: No. That was his opinion.

5 BY MR. NEWELL:

6 Q Any other communications of any kind, text
7 messages, emails, calls, in-person conversations you can
8 recall with Mr. Durban between that conversation at SpaceX
9 you just relayed to us and the conversation you had here
10 on August 6, 2018?

11 A No in-person meetings. I don't think there were
12 any calls. It's possible there were kind of like some
13 touch base texts or emails sent but nothing substantive.

14 Q Sounds like you're not sure if there were the
15 touch base emails or text sent. It could have happened, it may
16 not have happened?

17 A Yeah.

18 Q What about this call on August 6th? Looks like
19 you proposed -- how about 7? And trying to subtract on
20 the fly here I believe that message was sent by you, based
21 on this document at around 3:38 Pacific time on
22 August 6th. Is my math right there?

23 A Yeah, that's about right.

24 Q Did you end up having that call with Mr. Durban
25 around 7:00 that night?

1 A I did.

2 **Q What did you tell him?**

3 A I told him about the -- that the Saudis wanted to
4 take Tesla private; that they were super supportive, like
5 they wanted to do this deal, that I could pretty much
6 dictate the terms and -- but I did say that my preference
7 would be to have a broader investor base, and not have too
8 much -- not have the Saudis be too large of a shareholder,
9 you know, and I think I actually did say like, I think,
10 maybe something on the order of 15 percent, maybe up to 20
11 percent would be okay. But from my standpoint -- not from
12 theirs, purely from my standpoint, and that -- but I told
13 Egon, look, I think most of our investors are going to
14 remain in the company, and so what does he think about
15 bringing other investors in to have a more diversified
16 investor base, so there wouldn't be excessive influence
17 from any one investor.

18 **Q And what did he say in response?**

19 A He said absolutely, there's a lot of interest,
20 and he's confident that there's many others that would step up
21 and join this take private.

22 **Q Do you know whether he had communications with**
23 **any other potential investors at the time of your call?**

24 A I don't. I don't think so but -- he did not
25 mention it. So he was going -- I think he was going

1 entirely on the basis of the people that he knew, and that
2 had been, say part of the Dell take private and other
3 transactions that he had been involved in. So he -- I
4 don't know if he had conversations with them about it, but
5 he did not convey that he had.

6 He did convey that he was confident that there
7 would be many other investors who would be interested in
8 participating in a take private and that was later borne
9 out when they were asked -- when those investors were
10 asked, I believe every one of them said yes.

11 **Q Anything else you remember about that August 6th**
12 **call with Mr. Durban?**

13 A No. He was just very supportive and like I
14 said -- like this is up to me if I want this done it will
15 be done.

16 **Q Did you execute a nondisclosure or**
17 **confidentiality agreement with Mr. Durban at that time?**

18 A No, it's possible he signed something before the
19 meeting that we had at SpaceX, but I did not know -- there
20 was no -- I didn't personally sign anything with him, but

21 (b)(4)

22
23 But obviously he's someone whose confidence can be
24 trusted.

25 MR. BUCHHOLZ: Did you have any discussion with

1 Mr. Durban about the structure of the transaction?

2 THE WITNESS: Yeah, I actually did. That's a
3 good question because his initial assumption was more
4 along the lines of the Dell deal, which is -- essentially
5 his assumption was more along the standard template of a
6 take private, where all of the investors besides me or
7 almost all would be bought out. And I took pains to
8 emphasize this is not what I wanted.

9 In fact he said something to the extent, well,
10 they will be a squeeze out of small investors.

11 I do not want a squeeze out. I don't want anyone
12 being forced to sell. This is not what I want. I was just
13 trying to find a way to execute better. This is not about
14 trying to increase my ownership in the company. I don't
15 care if there's zero change in my ownership, but I need to
16 build cars and to scale this company and do so with a
17 minimum distraction and this seems like this might be
18 a good way to do that.

19 So he was a bit, I think, taken aback by that,
20 sort of surprising. I think he said, well, that's a noble
21 principle. I was like, well, just trying to get things
22 done here, trying to be useful. And I said I can put the
23 situation with SpaceX, which is very little overhead --
24 this does not involve lots of difficult short-term
25 optimization pressure and that kind of thing. And, you

1 know, we don't have all these like class action lawsuits.
2 Like every time the stock moves they -- they assume
3 correlation is causation and then file a bloody lawsuit,

4 (b)(4)
5
6
7
8
9
10

11 Q Do you recall Mr. Durban, during that August 6th
12 discussion, expressing any uncertainties as to whether
13 small retail investors would be able to continue on in a
14 private Tesla?

15 A No.

16 Q Do you recall expressing any other concerns
17 about -- strike that.

18 Do you recall him expressing any concerns about
19 your proposed transaction strategy?

20 A No. He, actually was, as I recall he said, well
21 that's going to make it a lot easier yes, if lots of
22 investors remain, that's going to be a lot easier than what
23 was done with Dell. And he said, it actually means that
24 you may actually need less capital than Dell, ironically
25 despite being a more valuable company than was required in

1 the Dell transaction.

2 I told him, I believe, most, if not all of our
3 major investors would retain their ownership. And I
4 thought that most -- most investors, not even the large
5 ones, but the small ones too would retain their ownership.
6 And he said, in that case, this is really going to be --
7 even though it is nominally a very large take private on a
8 dollar value, the actual amount of capital needed to take
9 it private may be relatively small compared to other
10 deals.

11 BY MR. NEWELL:

12 Q Based on the assumption that particularly large
13 shareholders would continue on in a go-private scenario?

14 A Large and -- shareholders in general. The
15 concern -- the concern of like, can non-high net worth
16 small retail investors remain with the company was not
17 raised. This was -- you know, in terms of -- you know, my
18 counsels advise me, don't get into mistakes and
19 everything -- but like a fundamental misunderstanding that
20 I had was that there would be some means of retaining the
21 small shareholders. That was a fundamental
22 misunderstanding on my part.

23 Q No one ever, setting aside the conversation with
24 Mr. Durban, no one ever conveyed to you from the time of
25 the July 31st meeting to the time you sent your tweets on

1 August 7th, that there might be some issue with the
2 ability of the small retail investors to remain in a
3 private Tesla?

4 A No.

5 Q Did the topic of short sellers come up in your
6 call with Mr. Durban on August 6th?

7 A No.

8 Q You referenced a conversation with Steve
9 Rosenblum. Do you remember when that one took place?

10 A I don't want to mis-remember this, but I think
11 it was the Saturday before the Tuesday tweet, if I am
12 not -- is that correct? I'm not sure exactly.

13 Q Was Mr. Rosenblum your attorney at the time you
14 reached out to him?

15 MR. FARINA: Hang on. The conversation is -- I
16 am going to assert a privilege over that conversation. He
17 was reaching out to him for purposes of ultimately
18 engaging him as his legal counsel. He did engage him as
19 his legal counsel. So any communications with Mr.
20 Rosenblum are privileged.

21 MR. NEWELL: Okay.

22 Q So you were reaching out to Mr. Rosenblum for the
23 purpose of seeking legal advice?

24 A Yes, as -- as a lead or co-lead counsel on a potential
25 take private, on the advice of Michael Dell. I had actually

1 talked to Steve Rosenblum I think almost two years ago. I
2 had a brief conversation with him then.

3 Q Mr. Dell advised you in the conversation you had
4 with him that you referenced a few minutes ago to talk to
5 Mr. Rosenblum?

6 A He did.

7 Q During this same time period -- strike that.

8 At what point -- let me ask you this, Mr. Musk.
9 At the time the August -- strike that.

10 At the time the July 31st meeting with the PIF
11 concluded had you made a decision one way or the other as
12 to whether you were going to make an offer to Tesla's
13 board to take the company private?

14 A I'm sorry. The first part of that -- can you
15 repeat?

16 Q Absolutely.

17 At the time that the PIF left Tesla on the
18 evening of July 31st, had you made a decision as to
19 whether you were going to make an offer to Tesla's board
20 to take Tesla private?

21 A No.

22 Q When did you decide to make that offer?

23 A On Friday when I wrote the email. I think it was
24 a Friday.

25 Q Before we get to Friday --

1 MR. BUCHHOLZ: Do you mean August 2nd?

2 THE WITNESS: I'm not sure -- actually, maybe it
3 was a Wednesday instead.

4 MR. FARINA: He can show you the email.

5 THE WITNESS: Yeah. Essentially the point at
6 which I decided to make the offer was when I sent the email --
7 I make a decision and then I take action.

8 BY MR. NEWELL:

9 Q So when was Tesla's -- strike that.
10 Did Tesla hold an earnings call on August -- let
11 me start over.

12 Did Tesla hold an earnings call on August 1st,
13 2018?

14 A I believe so.

15 Q You participated in that earnings call as Tesla's
16 CEO?

17 A Yes.

18 Q At the time of that earnings call had you made a
19 decision one way or the other as to whether you were going
20 to make an offer to take Tesla private?

21 A No.

22 Q You didn't make that final determination any time
23 on August 1st?

24 A No.

25 Q At what point in the day, you can pinpoint it on

1 **August 2nd, did you make that decision?**

2 MR. FARINA: Can you show him the email?

3 THE WITNESS: Oh, yeah.

4 MR. NEWELL: I'd just like to ask for Mr. Musk's
5 recollection and then we'll bring the email and let him
6 take a look.

7 THE WITNESS: Part of what would inform my
8 decision for any potential take private would be the
9 results of how the market would react to the earnings
10 call. If the price went stratospheric then a take private
11 would not be feasible.

12 It did increase quite a lot, but not to the
13 degree it would make a take private, you know, impossible
14 or at like some crazy price.

15 BY MR. NEWELL:

16 **Q Why did you think that a substantial increase in**
17 **Tesla's share price in the wake of the earnings call would**
18 **put a take private transaction out of reach?**

19 A Well, if there was a very big spike in the stock,
20 I don't know. Like let's say the stock went to \$500 or
21 something crazy -- or went into like just a very steep day
22 over day change, then it's -- there's -- not realistic to
23 do any kind of take private transaction, because people
24 would want to see, is this -- where does this steep
25 increase level off? Where does it stop? How, you know --

1 like we couldn't be at -- there are times in Tesla's
2 history where we've had these quite big spikes in the value of
3 the company, including times when I thought the value of
4 the company was -- the serial price was way too high, and
5 I said that publicly. And I thought this could be one of
6 those times.

7 And it's -- it wouldn't be reasonable to expect a
8 take private to take place -- if there was
9 a premium on a spike, like if the stock
10 spiked and on top of that you had a premium. Then you've
11 got like -- that wouldn't be feasible.

12 Q Do you think that wouldn't be feasible from the
13 perspective of the PIF?

14 A Or anyone really. Like -- it would exceed the
15 bounds of reasonability. If the stock had spiked say 50
16 percent instead of 15 percent then it would not have been,
17 I think, viable to consider take private.

18 Q Your recollection is that Tesla's price, stock
19 price ultimately increased by something on the order of 15
20 percent on the trading day after the earnings call?

21 A Yes.

22 Q Did you contact anyone at the PIF to determine
23 whether in light of the increase in Tesla share price they
24 were still interested in the going private transaction?

25 A No.

1 Q It sounds like -- and let me know if I'm not
2 characterizing this correctly -- I'm just trying to understand
3 your testimony.

4 At the time of the August 1st earnings call you
5 hadn't made a decision one way or the other whether you
6 would make the decision to take Tesla private; is that
7 right?

8 A Correct.

9 Q You were considering it but you hadn't reached a
10 final resting place?

11 A That's correct.

12 Q Was the only thing that you were waiting to see
13 before making your final decision was how the Tesla stock price
14 performed on the next trading day after the earnings call?

15 A That was the biggest factor. I mean, there's
16 just generally -- I think it's good to sort of sleep on
17 these decisions, you know. And it's hard to say like --
18 like in sort of -- in our minds kind of -- the kind of
19 neuro network that is our brain, what feels like the right
20 decision, what seems like the right judgments. And there
21 are many -- often many small factors that weigh into
22 ultimately a decision, and it's difficult to say exactly
23 what led to that decision. Therein lies judgment.

24 Q A substantial factor in your evaluation of
25 whether it made sense to make an offer or not was how

1 **Tesla stock performed on August 2nd, right?**

2 A Yes. Yes, definitely. I mean, as I said, if
3 there's -- if there had been some massive jump it would
4 have not been realistic or at least at that time. It would
5 have at least -- it's not to say there wouldn't -- that a
6 take private was off the table, but we would have to wait
7 for the spike to subside.

8 MR. BUCHHOLZ: And understanding that it may be
9 difficult to come up with all the others, are there other
10 factors that you can describe in addition to the stock
11 price?

12 THE WITNESS: Umm -- well, I think certainly what
13 level of -- since I had not done a take private before, I
14 mean it's sort of -- I knew there would be some
15 overhead -- there would be necessarily a short-term spike
16 in overhead of managing a take private.

17 And that was a factor in like how risky is -- how
18 much is it going to affect our short-term performance, and
19 will it be too much of a distraction such that, you know,
20 we would not achieve our targets of being cash flow
21 positive and at least slightly profitable in Q-3 and Q-4. That
22 was a big concern.

23 So I certainly thought that this is something we
24 need to decide quickly or not at all or -- quickly or
25 postpone to some point past the next few quarters, which

1 are of pivotal importance.

2 MR. FARINA: Can we -- are we at a breaking
3 point?

4 MR. NEWELL: Sure, I think that's --

5 MR. BUCHHOLZ: Just -- are there any other
6 factors?

7 THE WITNESS: I had that Red Bull, so -- I've got
8 a lot of energy.

9 MR. BUCHHOLZ: I just want to make sure we've
10 finished this line.

11 THE WITNESS: Sure.

12 MR. BUCHHOLZ: Any other factors you can
13 enunciate at that time before the August 2nd offer?

14 THE WITNESS: No. I think those -- I'm really
15 trying to think hard about it and give you an accurate
16 answer as possible. I think it's important to
17 emphasize -- and I describe this in the blog pieces,
18 really, it's like the point of Tesla is to advance the
19 sustainable transportable energy and so -- my mental
20 framework, was, you know, (b)(4); (b)(7)(C)

21 (b)(4); (b)(7)(C)

22 (b)(4); (b)(7)(C) It's very arduous running two
23 companies. And so what is the area under the curve of
24 the least pain? Because there would certainly be
25 something on the order of months to maybe a year of

1 significantly increased pain, but then presumably
2 decreased for the following four years. So, you know
3 what's the net present value of pain, if you will, and
4 on ahead? And lastly that was like very difficult to
5 know.

6 So I tried to put some uncertainty bounds
7 around that and -- this was definitely uncharted territory for
8 me. So -- well, it's charted in the sense that obviously
9 I know what SpaceX is like, but it's not charted in like
10 how do we get from Tesla to a SpaceX scenario. How
11 feasible is that? You know, will the -- will a set of
12 private investors even post-deal make onerous demands?
13 Even if your deal is clean but you have a board that's
14 maybe is -- has strategic -- has like motivations are
15 nonfinancial. I had this experience with my first
16 company, and it was a difficult situation. We had
17 Knight Ridder Hearst --

18 (Reporter seeks clarification.)

19 What we had as investors for my first company
20 that I created, Zip2 -- terrible name -- worse name
21 every -- but we did do the first maps and directions on
22 the Internet among other things --

23 (Reporter seeks clarification.)

24 A My first company that I created was Zip2 -- such
25 a bad name.

1 That's what happens when you let advertising
2 agencies choose your name. It's brutal. We had Knight Ridder --
3 (Reporter seeks clarification.)

4 THE WITNESS: -- and Hearst and the New York Times
5 Company. And we did do the first maps and directions on
6 the Internet, which was cool. First white pages, first
7 yellow pages and we helped to bring a lot of smaller
8 newspapers on line. We helped enhance the websites of the
9 major newspapers, but we did have those -- we had Knight
10 Ridders and Hearst, Hearst and New York Times company
11 board members --

12 So they did have these the strategic objectives
13 which were not necessarily aligned with -- Zip2
14 -- and I felt -- we had this incredible technology but
15 wasn't effectively applied.

16 So I had some concern. I didn't want to be in
17 that situation again. And although SpaceX is private we

18 (b)(4)
19
20

21 (b)(4) -- Google's an investor in SpaceX (b)(4)

22 (b)(4)

23 rockets and space craft and make them better and -- we
24 don't really worry whether something is on one side or the
25 other of the quarterly boundary or like a rocket blows

1 up -- God be with me that doesn't happen again -- we don't like
2 having some class action lawsuit saying that we should
3 have known that our rocket would blow up. If we had known
4 would we really have launched the thing? This is crazy.

5 So, okay like much less headache. Can we get
6 there with Tesla? I don't know.

7 So there's a lot of uncertainty, but it was worth
8 investigating.

9 (b)(4)

10 (b)(4)

11 So the calculus changed and I was like,
12 okay, we're going to stay public. Not ideal but
13 nonetheless on balance probably the right move. Hopefully you
14 guys don't torture me too much.

15 MR. NEWELL: We'll give you a break. Off the
16 record.

17 VIDEO OPERATOR: Off the record. The time is
18 2:58.

19 (Recess taken.)

20 VIDEO OPERATOR: We're back on the record. The
21 time is 3:19.

22 MR. NEWELL: Please mark this as EM Exhibit 11.

23 (SEC Exhibit No. 11 was
24 marked for identification.)

25 BY MR. NEWELL:

1 Q I'm handing you, Mr. Musk, a document we marked as
2 EM Exhibit 11 and it appears to be an email that you sent
3 bearing Bates number 59230.

4 Let me know when you've had a chance to look at
5 that.

6 A Got it.

7 Q Is this the offer that you sent to the Board of
8 Directors that we've been discussing during today's
9 testimony?

10 A Yes.

11 Q Prior to the time you sent this email had you
12 discussed with any individual board members, or groups of
13 board members, the possibility that you might make an
14 offer to take Tesla private?

15 A I think I may have had a conversation with
16 (b)(6);(b)(7)(C) in this regard, I think.

17 Certainly not the whole board
18 but I may have had conversations with some of the board
19 members, yeah.

20 Q Do you remember anyone else, setting aside (b)(6);(b)(7)(C)
21 (b)(6);(b)(7)(C) that you discussed the going private transaction
22 with before you sent this email?

23 A I do not recall.

24 Q What did you tell (b)(6);(b)(7)(C) in that
25 conversation about the going private transaction?

1 A I think I said -- I think I said that we should
2 investigate going private now, and I think I conveyed to
3 him the Saudi interest. I think he, as I recall the
4 conversation, he was not -- he was reluctant to
5 investigate a take private, as I recall from the
6 conversation, or at least he was certainly not
7 enthusiastic about doing it. That was my take away from
8 the conversation. So it wasn't a no, but he wasn't
9 opposed to it, but he was like, didn't think it was like
10 the greatest idea.

11 Q Do you remember roughly when that conversation
12 took place?

13 A I don't know. I think Wednesday night or
14 Thursday morning. I'm not sure exactly when. We could
15 look at the call records to confirm, I suspect.

16 Q It was a phone call?

17 A I think so. I do not recall him being there, but
18 he has been at Tesla to help out many times.

19 Q It wasn't a written discussion?

20 A I don't think so.

21 Q Did you just have that one conversation with
22 (b)(6);(b)(7)(C) in the July or August 2018 time
23 period about a going private transaction or --

24 MR. FARINA: Before the email?

25 MR. NEWELL: Thank you.

1 Q Before sending this email, did you have a single
2 conversation with (b)(6);(b)(7)(C) about going private
3 transaction or did you have multiple conversations?

4 A Over the course of the years I've had many
5 conversations with (b)(6);(b)(7)(C) members of the board
6 individually, and even members of the board collectively
7 about going private.

8 Q I'm sorry. I dropped the ball on my question.
9 Let me try it one more time.

10 A Before you sent this email, did you have any
11 conversations, apart from the one we've been discussing
12 with (b)(6);(b)(7)(C) about a going private transaction in
13 July or August of 2018?

14 A Not that I can recall.

15 A It's possible I might have, but I don't -- there
16 was a lot going on.

17 MR. BUCHHOLZ: You don't have a specific
18 recollection, as you sit here today?

19 THE WITNESS: No. I mean, I remember having a
20 conversation with (b)(6);(b)(7)(C) about wanting to investigate the
21 take private at this time -- I had many conversations in
22 months and years past, of course, with (b)(6);(b)(7)(C) and many
23 other members of the board with potentially going private.
24 But, you know, just so you know -- there's so much going
25 on. I'm trying my best to remember it's not like I --

1 MR. BUCHHOLZ: That's fine. I'm not saying you should
2 remember more than you're remembering.

3 MR. FARINA: We do have obviously and I'm not
4 confining this to this specific subject, we do have the text
5 log, which often references phone calls, as we do have the
6 phone log, which we've given you. And I
7 haven't gone back and studied it and neither has he. So
8 all this is based on what he remembers sitting here today.
9 There are documents available that might be able to
10 refresh his recollection.

11 Again, I'm not referring to anything specific.

12 THE WITNESS: You know, in fact, if there is
13 something like a call log or something that would jog my
14 memory -- that I would -- really, I want to answer your
15 question, and if there's something that would jog my
16 memory that would help.

17 MR. BUCHHOLZ: Okay. During the conversation
18 you recall on either the night of the first or the morning
19 of the second, where (b)(6),(b)(7)(C) was not enthusiastic, did
20 he say why?

21 THE WITNESS: He thought this would just be a
22 very arduous process. So -- he certainly had no question
23 with respect to whether funding was available. That was
24 not a factor. But he thought that we would see vigorous
25 opposition from shareholders and just generally class

1 action lawsuits and that kind of thing, pretty much
2 guaranteed in these transactions. And he was concerned
3 that we would see so much -- that there would be so much
4 overhead and drama associated with a take private that in
5 his opinion it probably would not be wise.

6 Now in retrospect he was correct. Yeah. So I
7 concede to the wisdom of his opinion in retrospect. And
8 he, by the way, has reminded me that in the future I
9 should increase the weight of his opinion, and I agree.

10 BY MR. NEWELL:

11 Q Prior to sending this email in Exhibit 11, do you
12 remember telling anyone that you planned to offer a 20
13 percent premium in a going private offer?

14 A No.

15 Q Do you remember discussing the 420 number, in the
16 context of the going private transaction, before you sent this
17 email?

18 A Okay. This is going to be a bit embarrassing,
19 but I did mention it to my girlfriend.

20 Q When did you have that conversation?

21 A I had that conversation shortly before writing
22 this email. Actually wait, shortly -- no, after writing
23 this email. Actually not before -- it wouldn't have been
24 before. I just thought she would find it funny, which
25 admittedly is not a great reason to pick a price. But 20

1 percent premium was 419 and I thought it's very close to 420,
2 might as well make it 420.

3 Q To make sure what time of day we're at,
4 I'll represent to you, it's our
5 understanding that you -- this is not a UTC email and this
6 is Pacific daylight time you're looking at there,
7 3:27:p.m.

8 Does that track with your recollection of
9 when you sent this email?

10 A It does. I thought it was Friday. This is
11 Thursday afternoon.

12 Q Do you know roughly -- strike that.

13 Do you know when normal trading hours close for
14 Tesla stock on NASDAQ, on Pacific time?

15 A Is it 4:30 or 5:00? - Pacific time, 1:30 or 2
16 ish. 2?

17 MR. BUCHHOLZ: I think it's 1:00, 4:00 Eastern.

18 BY MR. NEWELL:

19 Q We'll represent to you that we understand it's
20 4:00 Eastern. Looks like this -- so 1:00 Pacific time.
21 SO looks like this email was sent around 3:27 Pacific
22 time; is that right?

23 A Yeah.

24 Q When you calculated this 420 price, were you
25 using Tesla's closing price at the end of the trading day

1 on August 2nd?

2 A Yes, I believe so.

3 Q And you testified earlier that Tesla's share
4 price had trended upward in response to the August 1st
5 earnings call, right?

6 A Yes.

7 Q Over the course of the trading day on August 2nd
8 there was a substantial increase in Tesla price?

9 A Yes.

10 Q Walk us through your process in putting together
11 this 420 per share offer.

12 A As I recall, the share price ended at around 348
13 and 20 percent of that would have been around 419 and I
14 rounded up to 420.

15 Q And you did that sometime after the market closed
16 on August 2nd?

17 A Yeah.

18 Q Seems like you find the number 420 somewhat
19 humorous; is that fair to say?

20 A Yes.

21 Q Have you joked on Twitter in the past about 420,
22 setting aside July and August 2018?

23 A I think I made some minor comment about 420, yes.

24 Q What specifically about 420 is humorous?

25 A Well, it is -- I learned this recently -- so I'm

1 not exactly super with it here. But it's a euphemism for
2 weed. I actually looked up the etymology of it. The
3 etymology is not what people think it is. People think
4 it's like the police code for weed, but it is not. It's the
5 time at which three high school students gathered at the
6 statue of Louis Pasteur after school and and smoked weed
7 at the statue. And then they would -- they would say like
8 4:20, because that would be the meeting time, at least that's
9 what Wikipedia says, if you believe Wikipedia, and that
10 got picked up in High Times and the Grateful Dead picked
11 it up and it went viral from there.

12 Q So when you were sitting -- where were you when
13 you sent this email on August 2nd, do you remember?

14 A Oh, I was at the Gigafactory in Nevada working on
15 production issues for the battery pack and drive unit.

16 Q Was anyone with you when you were drafting the
17 email?

18 A Yeah. (b)(6);(b)(7)(C) -- I think (b)(6);(b)(7)(C) one of my
19 (b)(6);(b)(7)(C) was with me. And then in the Gigafactory was a ton
20 of people like -- 20 or more people.

21 Q Did you make any reference to anyone that you
22 were in the process of sending out this consequential email?

23 A No.

24 Q You were alone drafting and you sent it to the
25 board, as we see here in Exhibit 11?

1 A Well, I had (b)(6);(b)(7)(C) with me; he was
2 driving the car.

3 And then I had a bunch of meetings -- I was walking a
4 production line at the Gigafactory.

5 Q Were you in transit to a location at the time you
6 wrote this email?

7 A While I was drafting it -- I was drafting it on
8 the way to the Gigafactory. So from the airport to the
9 Gigafactory and then I sent it at some point after arriving
10 there.

11 Q So the share price of 420 that you include in the
12 offer was just a funny coincidence from your
13 perspective?

14 A Yes.

15 Q Fair to say?

16 A Yes. I mean, I basically did a mental
17 calculation of 20 percent on the closing price and
18 realized it was quite close to 420 and made it 420. So it
19 was funny, but I wouldn't say it was like -- an especially
20 material change to what would have otherwise been the
21 case. I rounded up to funny.

22 Q Looking at the second to the last paragraph in
23 your offer, you wrote: "This offer expires in 30 days."

24 Why did you include that provision?

25 A Well, I didn't want the board to -- I didn't take

1 this as some protracted exercise, so it's sort of
2 like, we're going to decide this soon and basically --
3 investigate it fast, make a decision fast, and either go
4 through the pain and difficulty of the take private or
5 stay public. But whatever it is, we could not afford an
6 extended distraction as to whether we would do a take
7 private. That would be a poor use of time.

8 **Q** **At the time you sent the offer, did you have any**
9 **personal opinion as to the likelihood that a go private**
10 **would ultimately be consummated?**

11 **A** If you'd asked me at the time what was the
12 likelihood, I would have said to first approximation, 50
13 percent.

14 But, in general, if you ask me something about
15 anything that -- where I have a lack of information, or
16 don't have that much information, a generally good guess
17 is going to be 50 percent.

18 **MR. BUCHHOLZ:** Was there a process for
19 determining the 30-day window you chose?

20 **THE WITNESS:** Not especially, no. I just wanted
21 it to be not so short that it was impossible, and not so
22 long that they could waffle.

23 **MR. BUCHHOLZ:** "They" being --

24 **THE WITNESS:** The board.

25 **MR. BUCHHOLZ:** You also didn't mention a board

1 vote. You mentioned a shareholder vote. Why is that?

2 THE WITNESS: I'm actually -- I am asking for a
3 board vote because I'm asking that this matter be put to a
4 shareholder vote. That's the request for a board vote.

5 MR. BUCHHOLZ: That's what you were thinking
6 when you wrote the email?

7 THE WITNESS: Yes. It was a little naive at this
8 point because I was -- I was under the impression of like,
9 well, you know, let's see if we want to do this and
10 like figure out something we can put to a shareholder vote
11 as quickly as possible. And I wasn't aware quite, you
12 know, of the Special Committee thing and the -- you know, the
13 complexity of the Special Committee process was not obvious to
14 me at the time.

15 BY MR. NEWELL:

16 Q You'd been through a recent public company merger
17 process before this, right?

18 A Yes.

19 Q And did that inform your understanding of what you
20 might expect going forward in a potential going private
21 transaction involving Tesla?

22 A Partly. The reason that -- with respect to the
23 Solar City situation, I thought it was important to do
24 this kind of -- the sort of Special Committee and all that
25 was because the company was founded and run by two cousins

1 of mine, and I didn't want the perception of nepotism.
2 From my perspective this wasn't so much as what is legally,
3 required, but really what is required to minimize the perception and
4 reality of nepotism.

5 In this case this does not strike me as a case of
6 nepotism, and I thought it's not constrained to the same degree.

7 Q What about from the perspective of difficulty in
8 getting to the end of the road and completing the
9 transaction? Was the Solar City transaction, from a process and
10 timing perspective, a difficult process, in your
11 experience?

12 A Yes. It was very difficult.

13 Q Did you think the Tesla go private would be easier?

14 A Yes.

15 Q Why is that?

16 A I didn't think -- like I said, I didn't think we
17 had the -- you know, Solar City we had a lot of -- holders
18 of -- we had close coincidence of holders of Tesla stock
19 and Solar City stock, but not an exact coincidence, and
20 sort of figuring out how do you do the right thing when
21 the shareholder base is approximately the same but not
22 exactly the same, how do you avoid the perception and
23 reality of nepotism? These struck me not so much as
24 fundamental legal obstacles, but rather how do we do this
25 process in the best way possible, given the circumstances.

1 So the, you know, that was the main -- my main
2 thing with the Solar City deal. Let's make sure that this
3 is the cleanest possible process given the complexities
4 involved. Whereas I did not see quite those -- there
5 wasn't really a nepotism perception, at least from my
6 standpoint. There wasn't, you know. I really wanted
7 people -- the existing shareholders to remain as
8 shareholders. This was not a -- this struck me as a
9 situation with far fewer conflicts or perceptions of
10 conflict.

11 MR. NEWELL: Let's mark as EM Exhibit 12.

12 (SEC Exhibit No. 12 was
13 marked for identification.)

14 BY MR. NEWELL:

15 Q Handing you, Mr. Musk, a document that's been
16 marked as EM Exhibit 12.

17 It bears Bates number ERM_SECAUG07_ and numerous zeros
18 and number 1, every page, and I'll represent to you that
19 we understand this to be derived from your phone records.

20 A Encrypted blog. Sorry.

21 MR. FARINA: Can we turn the fan off? It's a
22 little noisy.

23 MR. NEWELL: Sure.

24 THE WITNESS: That's better.

25 BY MR. NEWELL:

1 Q Have you ever seen this document before?

2 A No.

3 Q Any reason to doubt these are representations
4 of your phone records?

5 A No.

6 Q Are these all numbers that you communicate with
7 listed here?

8 A I mean, it is weird that (b)(6),(b)(7)(C) keeps
9 accidentally FaceTiming me. He's the (b)(6),(b)(7)(C)

10 Q So I'll represent to you also that this -- we
11 understand was produced in UTC time zones, so we're going
12 to be subtracting seven hours again.

13 You send your offer to the board on or about 3:27
14 Pacific time on August 2nd. Do you recall any
15 conversations that you had --

16 A Should I go through to that date or --

17 Q Sure. If you would like to go to that date, we
18 want to put this in front of you to help orient yourself
19 and any recollection of any conversations.

20 A Sure.

21 Q You can also keep your text messages handy I know
22 they're somewhere floating there, maybe we'll refer to
23 both.

24 Just want to ask briefly: Do you remember having
25 conversations with any individual members of the board of

1 Tesla or Tesla employees after you sent your offer to the
2 board on August 2nd?

3 A On this one, it's UTC is it?

4 Q Yes, it is UTC.

5 A Minus seven?

6 Q Yes. We don't need to be slaves to the document,
7 so if there's any conversations that leap to mind on the
8 afternoon or evening of August 2nd, please let us know and
9 we can start there.

10 A It doesn't look like I had any phone calls
11 actually prior to this, from this record at least. Am I
12 reading this correctly, unless I'm getting UTC time wrong.

13 Q Looks like -- let's look at the sixth page of
14 the --

15 A I'm on Page 6.

16 Q On the call log on August 2nd at 22:57 UTC time
17 looks like there's a call between you and Kimbal Musk.
18 Do you see that?

19 A Yes.

20 Q So if we subtract 7 from 10:57 we get to 3:57
21 right?

22 A Yes. That looks like shortly after this email.

23 Q Do you remember anything about that call?

24 A Nothing substantive. It may have been just -- I
25 think maybe Kimbal called and said holy cow, just got

1 that email, or something like.

2 Q Some general expression?

3 A Yeah, yeah.

4 Q Excitement about the general transaction?

5 A Yeah, I think he was actually pretty -- I think
6 he was sort of relatively positive about the notion of
7 going private, as I recall.

8 MR. FARINA: There's a text that's one
9 minute before this phone call.

10 THE WITNESS: Yeah, there you go.

11 MR. FARINA: If you look at the first page of the
12 text log.

13 THE WITNESS: That's consistent with the
14 conversation. Yeah, he was quite positive about going
15 private.

16 BY MR. NEWELL:

17 Q Looks like, moving down the list a little bit
18 there 8-3-18, 4:08, call out to Todd Maron. Subtract our
19 seven hours and that gets us to about 9:08 Pacific
20 daylight time. Does that sound right to you, on
21 August 2nd? We're looking at the entry that's August 3rd,
22 '18, 4:08 -- the next day, we subtract our seven hours to
23 the night of August 2nd.

24 A Right. Right.

25 Q Do you see that entry there?

1 A Yeah.

2 Q Are you with me?

3 A Yes.

4 Q Is that call to Mr. Maron for the purpose of
5 seeking legal advice?

6 MR. FARINA: I'm going to warn you not to
7 disclose the substance of any calls with attorneys. I'm
8 going to give the company the opportunity to assert privilege, if
9 they so choose.

10 MR. BONDI: Any conversations with Mr. Maron
11 concerning anything -- legal advice, that may relate to
12 the companies' attorney-client privilege, we assert
13 privilege over that communication.

14 MR. NEWELL: Are you instructing the witness not
15 to answer whether the communication concerned legal
16 advice?

17 (Clarification by reporter.)

18 MR. BONDI: No.

19 BY MR. NEWELL:

20 Q You can answer.

21 A Oh. I mean, I think this was just to touch base
22 on, you know, what are the next steps type of thing.
23 But I don't recall anything in particular substantive in
24 this. It was okay, now what do we do? That's basically
25 it. We've got to go figure out things and engage advisors

1 and that kind of thing.

2 Q Do you recall sending any messages (b)(6); (b)(7)(C) to
3 anyone at Tesla, Tesla employees or members of the Tesla
4 board on August 2nd, after you sent your email off to the
5 board?

6 A No.

7 Q What about on August 3rd?

8 A No.

9 Q Did Tesla schedule a board meeting to your
10 knowledge in response to the offer that you sent on
11 August 2nd?

12 A I think there was some email, generic email of
13 like, you know, "offer received and acknowledged", or
14 something like that.

15 Q Was a board meeting to discuss your offer with
16 you scheduled sometime --

17 A Yes.

18 Q -- going forward?

19 A Yes.

20 Q Do you remember when that board meeting was held?

21 A I believe on the Friday.

22 Q August 3rd?

23 A Yeah.

24 Q Any other conversations you can specifically
25 recall between the time you sent your offer on August 2nd

1 until the time that board meeting on August 3rd commenced with the
2 individual members of the board or groups of members of the board?

3 A Sorry. From what period of time to what period
4 of time?

5 Q From the time you sent your offer on August 2nd
6 right up to the time that the board meeting began on
7 August 3rd. Any discussions with individual board members
8 or groups of board members about a going private transaction
9 that we haven't already covered?

10 A I don't think there was anything substantive, no.

11 Q And let's just take a quick look at Page 3 of the
12 text message exhibit -- which is Exhibit 10.

13 Just look at Page 3 very briefly. The top of
14 Page 3 looks like there's a couple of communications
15 between you and James Murdoch?

16 A Uh-huh.

17 Q And then you and (b)(6);(b)(7)(C) do you see those?

18 A Yes.

19 Q Looks like those communications were in the
20 afternoon of August 3rd. And when we subtract our seven
21 hours, does that sound right to you?

22 A Yes.

23 Q Does that refresh your recollection about any
24 conversations you had with (b)(6);(b)(7)(C) or Mr. Murdoch on
25 August 3rd about going private transaction outside the

1 **official board process?**

2 A With Mr. Murdoch I didn't have any
3 discussions at all. It was specifically not a topic of
4 discussion. So that's purely personal.

5 With Antonio, I don't recall the exact -- what
6 exactly was discussed. I think it was sort of general
7 advice about, like we need to now engage. We need to form
8 a special committee. There needs to be counsel for the
9 special committee. We need to engage, you know. Everyone
10 needs to engage financial advisors, that kind of thing.

11 Q Do you remember roughly what time of day the
12 August 3rd board call was held?

13 A Umm, I think it was late afternoon.

14 Q Sorry for memory testing.

15 A Exactly.

16 Q We can show you a document. I'm just trying to
17 move things along rather than -- so sometime later in the day on
18 August 3rd?

19 A Yeah, not in the morning. Evening or afternoon.

20 Q Who do you remember being present on that call?
21 It was a call?

22 A It was a call.

23 Q Who do you remember being present on the call?

24 A I think everyone was -- I think all board members
25 were present and Todd.

1 Q What about Mr. Ahuja?

2 A I think he was there. I think he was there, but
3 I'm not certain.

4 Q What did you tell the members of the Tesla board
5 on that call about funding for your proposed transaction?

6 A My recollection is that, oh, okay. I'll get back
7 to -- there's something I should add, although I'm not
8 supposed to add anything -- but maybe this is worth adding.
9 I do need to check my memory though.

10 On that call I said the Saudis wanted to fund the
11 take private. I believe I also mentioned that Silver Lake
12 was interested in supporting it and had confidence that
13 this could be done on terms that we would like, most
14 likely. And that -- mostly like, look, let's, just -- we
15 need to move this along rapidly and figure out if it makes
16 sense or not.

17 But the one thing I didn't want to do was have
18 some very laboriously long consideration process. I
19 think I thought that could be too damaging to the execution
20 of the company.

21 Q What did you tell the board members the nature of
22 the PIF's commitment?

23 A I said they wanted to do it.

24 Q Anyone ask any questions about whether you had
25 anything from the PIF in writing?

1 A I don't think so. I don't recall. I don't think
2 so.

3 Q Anyone ask you if you discussed with PIF the
4 anticipated size of their investment, might be in a range
5 of dollar amounts?

6 A I think that did come up and -- we're really
7 going on best efforts recall here. But I think there was
8 some concern expressed about them having too large of a
9 stake in the company, and effectively having a de facto
10 control position or de facto extremely influential position.

11 And I think I said that in a take private we would
12 limit their ownership to approximately 15 to 20 percent.

13 Q Do you recall using that range with the board, 15
14 to 20 percent ownership for the PIF?

15 A That's my best recollection, yes.

16 Q Do you recall discussing with the board your
17 desire that any Tesla shareholders who wanted to do so
18 could continue in a private Tesla?

19 A Yes. In fact -- I really do want to be careful
20 about conflating one memory with another. So -- but -- so
21 I'm doing my best here to not have like one memory
22 combined with another memory or something.

23 Human memory is just -- man, it's hard to
24 remember if you meet someone at a party, or what you had
25 for lunch last week. So it's tricky, compared to

1 computers. Computers are very good at memory.

2 So I did -- I think I clarified on that call that
3 this was not going to be an LBO. So I want to really
4 frame that -- there's a lot of, "I think", like I'm not
5 certain. I think I said, this is not going to be like an
6 LBO, where there's a massive amount of leverage against
7 the company, where 80 percent of the company is bought
8 out.

9 I said it was not going to be -- the initial
10 assumption was, even by Antonio, this was some sort of --
11 like the Dell take private. I wanted to clarify that and
12 I wanted all investors to remain with the company.

13 And I think they brought up like this is going to
14 be really difficult for small investors. And I said,
15 well, yes, but Fidelity is a shareholder in SpaceX and
16 that seems to work quite well. So and I know Baillie and T.
17 Rowe want to be in SpaceX. Presumably the three of them
18 would also want to be in a private Tesla.

19 And that if they serve as a fiduciary then
20 perhaps all investors can remain. Yeah.

21 **Q Do you remember anyone from the board reacting to**
22 **that?**

23 A I think there was some skepticism on the board as
24 to whether that could -- on the board call as to whether
25 that could be achieved. But -- what -- what was not

1 brought up on the board call because I only discovered it and
2 sort of figured this out later -- was the 15
3 percent limitation on an illiquid security in a mutual fund.
4 So that was not brought up on the board call.

5 Q Setting aside the specific ownership percentage
6 that you seem to recall raising at the board meeting, do
7 you remember any other discussion of dollar amounts of
8 investment that might be made by entities other than the
9 PIF in a potential going private transaction?

10 A Of new investors, you mean? I guess technically there
11 would be -- but with a significant increase to their stake.

12 Q That's a good distinction, let me draw it out in
13 a question so we have a clear record.

14 Any discussion during the board meeting of
15 magnitude of investment from either existing investors who
16 would add to their stake in a private Tesla, or new
17 investors buying into a private Tesla?

18 A My apologies for prefacing all of these with "I
19 think". It's just trying to recall a back-and-forth conversation.
20 I think I said probably we would only -- we would need to buy out
21 20 to 25 percent of investors.

22 Q Did you unpack that in any more detail as to why
23 you thought that?

24 A I think I said that certainly I and employee
25 insiders would retain shares, and that I thought most

1 institutionals would retain their shares. At the time I
2 thought I thought -- 20 to 25 percent at the most would
3 want to sell their shares. Because I thought the
4 institutionals would actually retain their entire holding.
5 I thought that was the most likely outcome, which I
6 subsequently discovered was not the case.

7 So I thought it would be at the outside a 20 to
8 25 percent would want to be bought out and not participate
9 in the private company.

10 **Q Do you recall regulatory approvals of any kind coming**
11 **up during the board call?**

12 A I think the CFIUS issue may have been raised and
13 I said that we would ensure that any single foreign entity
14 did not come too close to the CFIUS limits, meaning that
15 they would not be in a control, or de facto control
16 position.

17 **Q Do you know what the CFIUS -- strike that.**
18 **Are you familiar with the CFIUS safe harbor**
19 **provision?**

20 A No.

21 **Q Do you remember any discussion during the**
22 **August 3rd board call about potential physical Tesla**
23 **presence in Saudi Arabia?**

24 A (b)(4)

25 (b)(4)

1 (b)(4)

2

3

4 Q Did you position that as a condition of the deal
5 or just something that the board should consider generally
6 speaking?

7

A

(b)(4)

8

(b)(4)

9

10

11

12

13

Q

(b)(4)

14

(b)(4)

15

16

17

A

(b)(4)

18

(b)(4)

19

20

21

22

23

24 Q Fair to say that was your take away from the
25 meeting, (b)(4)

1 level of investment to the concreteness of a Tesla
2 presence in Saudi Arabia that was made by anyone at the
3 PIF?

4 A Yes. They never -- they were really quite
5 careful not to link it explicitly. It was linked
6 implicitly. Like they didn't want to force me to do
7 something that I really didn't want to do. They just
8 essentially seemed to want my help in transitioning their
9 economy. That was what they -- and so -- obviously, if I

10 (b)(4)

11

12

13 Q At the board meeting on August 3rd, did the board
14 agree or authorize you to contact Tesla's existing
15 shareholders to discuss a going private transaction?

16 A That was my understanding, yes.

17 Q How did that agreement or approval manifest at
18 the board meeting?

19 A My recollection is that it simply came as a natural
20 consequence, the next step is, okay, let's see who wants
21 to stay with the company if we go private. And like,
22 okay, then I'm going to need to go talk to investors and make
23 sure to avoid any selective disclosure.

24 So obviously there would need to be some kind of
25 public document -- we need to basically -- just

1 basically -- something would need to happen to make it
2 clear that there is a take private under consideration.

3 Q Was there an official board vote on that topic?

4 A I don't think so.

5 Q Did you poll the board members and did each
6 indicate their assent, or was there a general impression
7 that they assented?

8 A I had a general impression that this was a
9 natural next step.

10 MR. BUCHHOLZ: As of that board meeting on
11 August 3rd, what was your understanding of the term
12 selective disclosure?

13 THE WITNESS: Just you know, I mean, I'm familiar
14 with Reg FD because it's been public for eight years.
15 So -- I always have to be like, remind people of this a
16 lot, especially with Tesla. Yeah, so obviously a take
17 private particularly with a premium, this is very big information.

18 So, you know, so it's something that needs to be
19 disclosed to the public so that everyone has the same
20 information and there's a fair playing field. People can
21 make their own assessment about whether there would be a
22 take private at a premium or not and -- but it wouldn't be
23 obviously. It would not be fair if just some investors
24 knew about it and others did not.

25 MR. BUCHHOLZ: Are you familiar with the concept

1 of a nondisclosure agreement?

2 THE WITNESS: Never, never. Never heard of it.

3 MR. BUCHHOLZ: Was there any discussion at that
4 time more specifically with the board about potentially
5 using NDAs?

6 THE WITNESS: No. I don't trust NDA's, to be
7 totally frank. You know, it's just -- especially with
8 Tesla. News is too leaky, just too leaky. It drives me
9 crazy actually, the leakiness of the whole situation.

10 MR. BUCHHOLZ: Okay. So you didn't think it was
11 feasible and there was no discussion with the board?

12 THE WITNESS: I don't think anyone thought it was
13 realistic that I could talk to a whole bunch of investors and sign
14 an NDA and actually have it not leak.

15 It would also just be problematic for
16 investors -- like a lot of them just wouldn't want to sign an
17 NDA. Now I can't trade on your stock, so now I'm locked in.
18 This isn't going to be acceptable.

19 MR. BUCHHOLZ: Did you consider a smaller group
20 of investors that you might be able to do that with?

21 THE WITNESS: Well, it would have to be probably be
22 at least the top five besides me and -- I thought -- there's just
23 like I said, two issues there. Actually keeping a secret.
24 I think they would have trouble with. A lot of them --
25 there's like a whole bunch of funds -- there might be like

1 six fund managers and then like sort of assistants and --
2 basically the whole office is going to know and like in
3 2018, man, I'm not sure what's a secret. It's crazy.

4 So this -- and then if we did ask them to -- if
5 you sign an NDA and say, if you sign this NDA you can't trade
6 in the stock. You've necessarily violated the NDA. So it
7 does not seem realistic.

8 BY MR. NEWELL:

9 Q What about strategic investors like Tencent who
10 weren't in and out of the stock every day, essentially?

11 A Yeah, there's some like that. PIF, obviously they
12 could know and you're not going to sell the stock, you're
13 not going to buy the stock. For those that were -- it's a
14 given that they're going to -- they're not going to change
15 their holdings -- and it's only a few, that could be okay.
16 But let's say when you get to three or four, forget it.

17 Q You testified earlier that you would have
18 needed to -- paraphrasing -- if you had gone out with
19 NDA's, which I remember in your testimony that you didn't
20 believe that was feasible at the time and it wouldn't have
21 worked, but that you would have had to pick a pool of four
22 or five investors.

23 Did I hear that correctly?

24 A I think the problem is like the institutionals,
25 like Fidelity, Baillie, T. Rowe, Ions, Capital Group, they

1 trade the stock all the time.

2 So that's impossible, because you can not talk to
3 them effectively -- without saying like, sign this NDA and
4 after this NDA, you cannot trade this stock. Oh really? That's
5 interesting, I wonder why? That wouldn't be good.

6 Q At the time of that board call on August 3rd, did
7 you believe that the support of some or all of that group
8 institutional investors, T. Rowe, Fidelity, Baillie
9 Gifford, Capital Group or others would be necessary to
10 accomplish a going private transaction?

11 MR. FARINA: Repeat the question.

12 THE WITNESS: I got it. Do you --

13 MR. FARINA: I just want to know what you mean by
14 "necessary", whether their support was something that he
15 felt that he wanted to do this, or was absolutely a
16 prerequisite in order for anything to be done.

17 BY MR. NEWELL:

18 Q Happy for to you make any distinctions within the
19 frame of the question. We can ask different questions but
20 I'm going to leave the question as it stands. Sounds like
21 you understood the question.

22 A I think so. If I encountered vigorous
23 opposition -- which at the time I did not expect strong
24 to encounter, which I actually at the
25 time did not expect to encounter, but then subsequently

1 did. If I encountered strong position I would not want
2 to do the deal; not that it couldn't be done but I
3 wouldn't want to do the deal.

4 Q The deal in your view could have been done
5 because the PIF would have filled in any necessary funding
6 gap?

7 A The PIF would have filled in any necessary funding gap
8 and I think it also would have been quite easy to bring in
9 other investors, and that also turned out to be true.

10 So my guess that the existing large
11 institutionals would retain their full stake and perhaps
12 increase was wrong. That was incorrect.

13 My guess that there would be many other
14 strategics and sovereigns who would be interested was
15 correct.

16 Q Did you, before the morning of August 7th, short
17 of contacting those institutional investors, directly do
18 anything to assess whether they might be 100 percent in on
19 a going private Tesla transaction?

20 A Institutionals like private -- you mean like
21 Fidelity, T. Rowe, Baillie and all that?

22 Q Using the term referring to the institutional
23 investors previous stakes in Tesla, T. Rowe, Fidelity,
24 Baillie Gifford, Capital Group and other like entities?

25 A No.

1 Q Did ask you anyone to conduct that analysis at
2 any time prior to your August 7th tweets?

3 A (b)(4) I think that -- this is extremely sensitive
4 information, so I would not want to -- I mean, I'm not
5 sure how one could really arrive at that well without
6 letting the cat out of the bag.

7 As I said -- Fidelity was already an investor in
8 SpaceX and the parent company. T. Rowe was interested,
9 Baillie was interested, others were also interested. T.
10 Rowe was a big investor -- is a big investor, and Uber as
11 a private company, it has a valuation above Tesla's.

12 I think Fidelity is also an investor and Uber as
13 a private company. These all struck me, okay, clearly
14 they are willing to have big stakes in not only SpaceX but
15 also in companies like Uber. In my view we had better technology than
16 Uber so they -- I expected -- I expected them to be like,
17 of course, like not a problem. And I'm not sure it would
18 have been that easy to get -- I'm not sure how you would
19 get the opinion, the real opinion. Because who would you
20 ask at those companies, you know? So it's sort of tricky.
21 It's tricky and then, why are you asking, you know.

22 Q My question was a little bit different. Did you
23 consider doing anything separate from contacting folks at
24 those companies with the prospect of a going private
25 transaction to assess the feasibility of their

1 **participation in a going private transaction?**

2 A No. I assumed that the -- no, I assumed that
3 they would be comfortable withholding their shares in
4 Tesla as a private company because as I mentioned Fidelity
5 is an investor in SpaceX. Baillie and T. Rowe want to be
6 investors in SpaceX. There's others that also
7 want to be. Fidelity and T. Rowe are significant
8 investors in Uber, which is also a private company and in
9 the transport business.

10 I thought these facts were clearly indicated, a
11 high comfort level withholding shares in a private
12 company.

13 Q When you discussed with the board that you would
14 go forward and speak to existing Tesla investors about the
15 prospect of a going private transaction, was there any
16 discussion of the manner in which you would have those
17 discussions with existing investors?

18 A No. No. I think I said I would call them. And
19 we would have to figure out some way to disclose that a take
20 private is under consideration. I mean, I can say -- I know
21 you're getting to it, of course. But the -- in the normal
22 course of business what I would have done -- I may be
23 preempting your question, but perhaps helpful.

24 In the normal course of business we would have
25 done an after-hours disclosure of a take private. And I

1 actually intended to do that on the Tuesday night of the
2 tweet. So that would have been approximately -- if not
3 the Tuesday night certainly the Wednesday night.

4 It served as a disclosure of the salient facts
5 that I was investigating a take private at \$420 and that
6 in my opinion, funding was secured for this.

7 Then on Tuesday morning the news of the Saudi
8 investment broke and I saw that -- I first got an email
9 Tuesday morning from Tesla Communications saying that
10 Financial Times has an inquiry about the Saudi investment,
11 which like rang a huge alarm bell in my head. This is
12 like, whoa, how is this information getting out there?

13 And then I saw that the news, the Financial Times
14 published this information, and then the stock started
15 rising quite rapidly after the news of the Saudi 5 percent
16 investment.

17 My thought was, this is -- this is very
18 problematic. I thought that most likely if the Saudi news
19 investment had leaked then probably the take private news
20 is also leaking, or at least is at great risk of leaking.

21 And so it was like, okay. This is going to make
22 sure there's a fair playing field here. And so I --
23 there's a few facts that need to be out there. And that
24 is that I am considering taking Tesla private. In my view
25 funding is secured. And the price that I proposed to the

1 board was \$420. These seemed like critical facts for a
2 level playing field for investors.

3 Like I said, it would otherwise if not for the
4 Saudi news leaking would have been through a standard
5 disclosure form after hours.

6 But I was like, hum, better get those facts out
7 there. So that was my thinking. I'm preempting some of
8 your questions, but this may be helpful.

9 MR. BUCHHOLZ: Before sending the first tweet
10 did you consult with anyone else at Tesla?

11 THE WITNESS: No.

12 MR. BUCHHOLZ: So no one else reviewed the
13 content of the first tweet before it went out?

14 THE WITNESS: No, since -- I would be essentially
15 the bidder. It didn't make sense -- seems like -- in the
16 multi hat scenario, if I'm the bidder it doesn't make
17 sense to consult with the bidee. Sorry.

18 So, you know, and I had not had time to formally
19 engage advisors, and whatnot. So, you know, it was
20 like -- this very important information of the Saudi
21 investment is leaking. Well, they're the ones that want
22 to help the take private, help make the take private happen.
23 Good chance that news is out there too, but selectively, so
24 let's put all the cards on the table right now.

25 MR. BUCHHOLZ: And is it also the case that for the

1 rest of the tweets on August 7 about a potential going private
2 transaction, no one else from Tesla reviewed or approved
3 the content?

4 THE WITNESS: They did not -- certainly did not
5 review and approve. They might have gotten some like "what
6 the heck is going on" emails or something like that, but I
7 didn't run it by anyone. I actually thought that I was
8 not supposed to run it by. It wasn't like I thought I was
9 supposed to run it by Tesla and I didn't. I thought I
10 wasn't supposed to because I have the other hat on, you
11 know.

12 MR. BUCHHOLZ: Okay. And what about timing?
13 Did you consult --

14 THE WITNESS: I was trying to do the right thing
15 to be clear. Ill-advised, perhaps. Or ill-unadvised.

16 I'm not saying this was the smartest
17 move in the world here, but I was really
18 trying to do the right thing here, at least in my opinion.

19 And I was like, hum, better get this out there.

20 MR. BUCHHOLZ: Did you consult with anyone at
21 Tesla about the timing of any of the tweets on August 7th?

22 THE WITNESS: No. No I just saw the Saudi
23 investment news hit. Stocks started going ballistic. This sounds
24 pretty suspect, I better get that information out there
25 and make sure there's a level playing field.

1 MR. BUCHHOLZ: Where you when you learned about
2 the likely article on the Saudi investment?

3 THE WITNESS: The email from Tesla PR came in --
4 I was at home when I got the email. But before we really
5 had a chance to respond or do anything, the news hit
6 FT, and then it was all over the national press. And I was
7 getting in my car to go to the Gigafactory, (b)(4)

8 (b)(4)

9 That's where I'm going after this meeting. So back to the
10 factory.

11 (b)(4)

12
13
14
15
16 MR. FARINA: Why don't we take a break. We've
17 been going for awhile.

18 MR. NEWELL: That's fine. Let's go off the
19 record.

20 VIDEO OPERATOR: Going off the record. The time
21 is 4:24.

22 (Recess taken.)

23 VIDEO OPERATOR: We're back on the record. The
24 time is 4:39.

25 BY MR. NEWELL:

1 Q Any substantive conversations with
2 the SEC staff during the break, Mr. Musk?

3 A No.

4 MR. NEWELL: Please mark this as Exhibit EM 13.
5 (SEC Exhibit No. 13 was
6 marked for identification.)

7 BY MR. NEWELL:

8 Q Do you recognize that document?

9 A Yes.

10 Q I'll represent for the record that EM Exhibit 13
11 appears to be a printout of August 7th tweet published
12 around 9:48 a.m.

13 Do you know if that was 9:48 a.m. Pacific Time?

14 A Yes.

15 Just to be clear, I was not giving away 5,000 Ethereum.

16 Q We understand that's a representation -- I'll
17 represent for the record on the exhibit, of a fake account that was
18 not Mr. Musk's Twitter account. That is our misunderstanding.

19 A That is correct.

20 Q Let's go through -- let me ask you this first,
21 Mr. Musk. You may have seen publicly available reports
22 concerning circumstances under which you issued this
23 tweet. (b)(6); (b)(7)(C)

24 (b)(6); (b)(7)(C)

25 A (b)(6); (b)(7)(C)

1 Q Where were you when you published the tweet?

2 A I was -- well, there are several tweets here.

3 MR. FARINA: Asking about the first one.

4 MR. NEWELL: The initial tweet in the chain

5 there.

6 THE WITNESS: I think I was either in my car in
7 my garage about to drive to the airport or at the airport.
8 I was actually trying to think when exactly did this occur
9 but it was sometime between -- it wasn't in my house. But it was
10 somewhere between me being in my car in my garage and
11 being in my car at the airport. And there are various streets
12 and stop lights along the way so -- it would have either
13 been just before -- I definitely was in the
14 car, either just before I left for the airport, possibly
15 at the airport.

16 Q (b)(6); (b)(7)(C)

17 (b)(6); (b)(7)(C)

18
19 A (b)(6); (b)(7)(C)

20 Q You wrote, "funding secured." Do you see that?

21 A Yes.

22 Q Did you intend for the phrase, "funding secured"
23 to refer to the commitment that you understood the PIF to
24 have made at the July 31st meeting at Tesla?

25 A Yes.

1 Q Is there anything else you were referring to when
2 you wrote "funding secured"?

3 A I had other funding sources in mind, but I felt
4 like that effectively we were -- I was subscribed based on
5 the PIF desire to take Tesla private alone. Even if that
6 was the only thing, that I felt was strong enough to say
7 "funding secured". But I was confident there would be
8 many others as well.

9 Q Did you consider those other potential sources of
10 funding to be secured at the time that you wrote this
11 tweet?

12 A Essentially, in my mind, yes. Something that's
13 perhaps important to know is Google or Alphabet now
14 has long been interested in acquiring Tesla and that
15 interest -- they've always been interested -- well, at
16 least for the last four years -- maybe five years.

17 Q So you're --

18 A It's a standing interest.

19 Q You were also referencing Google's standing interest in
20 acquiring an interest when you wrote "funding secured"?

21 A Yes.

22 Q Did you have any discussions with anyone at
23 Google in July or August of 2018 about a going private transaction
24 involving Tesla?

25 A No.

1 Q Anything else that you were intending to
2 reference when you wrote, "funding secured"?

3 A I also thought that SpaceX -- I was confident
4 SpaceX could be a significant participant in this
5 transaction, but from my standpoint I thought -- the
6 Saudis alone were some, at least two arguably three X over
7 subscription on what I thought was likely necessary to
8 take the company private. And then you factor in a SpaceX
9 participation factor in Google's interest in
10 acquiring Tesla, this was -- I mean -- many, many times
11 over subscribed, in my mind.

12 Q Were you referring in your comment "funding
13 secured" to any communications you'd had with the PIF,
14 apart from the July 31st meeting?

15 A No.

16 Q Any historical communications with the PIF before
17 that July 31st meeting that factored into your thinking when
18 you wrote "funding secured"?

19 A Well, since that expressed interest in taking
20 Tesla private for two years, and in that July 31st meeting
21 had corrected my impression -- I thought for some
22 intermediary period of time they had delegated that
23 responsibility to Masa, but they corrected me that, no,
24 their interest was direct and unwavering through that
25 entire period of time. This was not some sort of flight

1 or fancy and moreover they had already demonstrated their
2 interest in the company with a multibillion dollar
3 investment.

4 So this was not academic; they were putting their
5 money where their mouth was.

6 Q So that's a yes?

7 A Yes.

8 Q You were considering the historical arc of the
9 PIF interest in Tesla in the context of writing your
10 "funding secured" tweet?

11 A Yes. In my mind, the funding for
12 the take private was certain, certain.

13 Q Going back to the first communication you had
14 with the PIF, anyone from the PIF to your recollection
15 ever submitted a written offer to purchase any stake in
16 Tesla to you?

17 A No. But this is not the nature of how they work.

18 Q Do you recall any historical discussion
19 at any time between you and representatives of the PIF
20 where specific size of an investment was addressed in an
21 exact dollar amount?

22 A Not in an exact dollar amount, but, as I said
23 earlier, implicit in a take private -- and they were well
24 aware of the shareholder list. Their view of a take
25 private would have been a much larger buyout than what I

1 had in mind. So they would have in mind -- sort of a
2 take private meant something in the order of 80 percent
3 buyout and what I had in mind was only about a 25 percent
4 buyout. So from a purely financial standpoint or a
5 funding standpoint this implied from even a single
6 investor we were threefold over subscribed in a take
7 private from a funding standpoint. That is not to say
8 that I would want to do the take private which is why I
9 said considering.

10 MR. BUCHHOLZ: I think maybe the question
11 Walker is getting at is, were there any
12 more specific conversations with PIF
13 representatives that you had or was the July 31st
14 conversation the most specific you had gotten?

15 THE WITNESS: The July 31st was the most
16 specific, yeah.

17 MR. BUCHHOLZ: And you didn't have any more
18 conversations before the August 7 tweets,
19 correct, with PIF?

20 THE WITNESS: Correct.

21 BY MR. NEWELL:

22 Q Anything else that you were intending to convey
23 in writing "funding secured"? So far we have the PIF
24 conversation. We have Google's interest, potential for
25 SpaceX to participate. Anything else?

1 A Those were the -- oh, the -- Yasir had said the
2 UAU would also be very interested, the UAU fund, that they
3 wanted to be part of it as well.

4 Q **When did Mr. Al-Rumayyan say that?**

5 A At the July 31st meeting.

6 Q **You didn't recall that conversation at the
7 July 31st meeting when we were discussing it earlier.**

8 A No. It just -- it was like an offhand comment he
9 said the UAU would definitely want to be part of it as well,
10 they would be interested.

11 It should also be said that subsequently when we
12 did with Silver Lake and Goldman, Canvas, Google, PIF and
13 UAE and others. They all said yes. So my judgment in
14 this regard was accurate.

15 Q **Anything else -- now we have the conversation
16 with PIF, the historical Google interest, possibility
17 of involving SpaceX, Mr. Al-Rumayyan's reference to
18 other than sovereign wealth funds, potential interest,
19 anything else that you were intending to convey when you
20 wrote "funding secured"?**

21 A I thought funding was secured many times over for
22 the transaction that I had in mind.

23 So, if something is like -- at least in my
24 judgment very strongly over subscribed that is a secure
25 situation.

1 Q Everything we've just discussed with respect to
2 your bases for writing "funding secured" were based on
3 historical conversations that you had that were nonpublic,
4 right?

5 A Correct.

6 Q Do you think the term "funding secured" made
7 clear to readers of your tweet who weren't privy to those
8 conversations that that's what you meant?

9 A I think it's very clear that funding is not an
10 obstacle. That's exactly what I intended to convey, it
11 was definitely not.

12 Q Why didn't you write funding is not an obstacle
13 rather than "funding secured"?

14 A Well, because generally -- like "funding secured"
15 is a shorter way of saying that.

16 Q So was is it based on the exigencies of Twitter and
17 the character limit?

18 A Well, we're not approaching the character limit
19 but things on Twitter are not -- if there's two choices
20 and one less verbose you'd go with the one that's less
21 verbose.

22 MR. BUCHHOLZ: So is it correct you understood
23 when you wrote this that there was no documentation of any
24 funding with a deal price or the \$420 price?

25 THE WITNESS: No, there was no -- there was

1 nothing with explicitly, a 420 deal price document.

2 MR. BUCHHOLZ: And you knew that when you wrote
3 the tweet, right?

4 MR. FARINA: Hang on. You're referring to
5 anything with the Saudis at 420. Because we know the email to the
6 board says 420.

7 MR. BUCHHOLZ: Right. But your own offer.
8 So other than your own offer to the board there was no
9 documentation at 420, correct?

10 THE WITNESS: Correct.

11 MR. BUCHHOLZ: Did you think that readers would
12 understand that from your tweet?

13 THE WITNESS: I think the -- if the question is
14 like should people be of the mindset that funding is
15 uncertain or certain that they should be of the latter.
16 The funding is certain. Funding is certain and that was
17 proven when we talked to investors, this was confirmed.
18 It was certain. There was zero -- and oversubscribed
19 exactly as expected.

20 But I do say considering. So of the things that
21 are important in a take private situation, one of those
22 things is funding, but that is not enough to go private.

23 BY MR. NEWELL:

24 Q Were you using the term secured as a synonym for
25 certain?

1 A Yes.

2 Q Did you consider providing more specificity in
3 your tweet about sources of funding?

4 A I did. At the time I did not want to. I thought
5 if I said the Saudis without checking with them they would
6 be pretty upset. So I thought I would not mention their
7 name but, you know, but the FT article had come out with
8 the big news "Saudi Multiple Million Dollar Investment."
9 So a lot of people put two and two together.

10 Q And why not just issue a tweet that says, "I'm
11 considering taking Tesla private at 420"? Why was the
12 "funding secured" piece necessary in your mind?

13 A I thought it was an important piece of
14 information that the public should be aware of.

15 Q Is that from a fairness perspective?

16 A Yes.

17 Q Do you think you needed to disclose that
18 information specifically in order to go to existing Tesla
19 investors and assess their interest in a potential deal?

20 A Yes. I mean there would be really two questions
21 that would be quite critical in talking to investors. Is
22 the money available? And then at what price? And so I
23 felt like -- this is what I strongly believed to be the
24 case that funding was certain and that the reasonable
25 price to do this at was \$420. So it wasn't, you know,

1 \$350, it wasn't \$500, which was something in the sort of
2 reasonableness range. And it was the number that I
3 conveyed to the board.

4 So it just seems as though there were three
5 salient points that were necessary for all cards to be on
6 the table. "Funding secured", the price conveyed to the
7 board and that I'm -- obviously I'm considering taking the
8 company private. But those were the most salient points.

9 Q Let's turn back to EM Exhibit 10 which is text
10 messages, bearing Bates number 0006. And I direct your
11 attention to Page 4 of the exhibit. Let me know when
12 you're there. You don't need to review the whole thing.
13 I'm just going to ask a few quick questions.

14 A Right. Yeah.

15 Q Do you see the communication subtracting seven
16 hours, 10:23 Pacific time from Mr. Ahuja to you?

17 A "Broader communication on your rationale and structure?"

18 Q Right. That text message, do you see that one?

19 A Yes.

20 Q The second text message down on Page 4 of
21 the exhibit for the record.

22 At the time that you received that text do you
23 think that additional information needed to be conveyed on
24 top of what you'd already tweeted?

25 MR. FARINA: Sorry. Can you repeat the question?

1 BY MR. NEWELL:

2 Q At the time that you received that text did you
3 think that additional information needed to be publicly
4 conveyed on top of your tweets?

5 A Yeah, I thought that would be helpful.

6 Q Why did you think it would be helpful?

7 A I thought people would be curious about what's
8 going on. Some would be anxious and this could -- this
9 could address their concerns and questions.

10 Q Were you aware in the time immediately following
11 when you published the first tweet on August 7th that we
12 just reviewed referencing "funding secured" that there
13 was some confusion about whether the tweets were real or
14 your account had been hacked?

15 A I don't think there was serious concern about
16 that. I don't think there was serious concern about my
17 twitter account being hacked.

18 MR. BUCHHOLZ: Did anyone from the company
19 indicate to you they were getting questions about whether
20 your account had been hacked?

21 THE WITNESS: They might have mentioned that.
22 They have many questions. There were a lot of
23 questions. The question -- just because there's a
24 question -- I mean, it's like we get a lot of questions.
25 That wasn't necessarily a question -- that was -- on many,

1 people's minds it wasn't clear. I don't think that
2 was a serious -- I don't think people seriously thought my
3 account was hacked. I did not think that.

4 MR. BUCHHOLZ: Did you confirm to somebody at
5 the company after the initial tweet that it was really you
6 sending the tweet?

7 THE WITNESS: Might have. I might have. This
8 wouldn't have -- yeah, wouldn't have come as a total
9 shock to say -- Todd Maron -- or Deepak Ahuja, it wouldn't
10 come as a surprise to them -- potentially the timing came as a
11 surprise but not the content because this had been a prior
12 discussion. If someone did hack my account they also would
13 have had to have access to my email and all sorts of
14 things like not just my Twitter account.

15 BY MR. NEWELL:

16 Q Setting aside the timing, was anyone aware that
17 you planned to announce potential going private
18 transaction publicly via Twitter as opposed to via
19 another medium?

20 A No, but I've made many announcements through
21 Twitter. The medium wouldn't necessarily be -- I think
22 that would not come as a great surprise to people.

23 Q Let's look down in Exhibit 10 on the same page
24 Page 4. Do you see an exchange between you and James
25 Murdoch around 11:25 and 11:29 a.m.?

1 A Yeah, sure. Yeah.

2 Q I'll just --

3 A You mean, "Way to just light the torch paper!"?

4 Q Let me quote the document so we're not guessing.

5 Way to torch the torch paper, Mr. Murdoch

6 wrote. Would love five minutes to talk before next

7 official board discussion/ETC. You responded: Everything

8 is better with fire.

9 What did you mean by "everything is better with
10 fire"?

11 A Oh, it's just a catch phrase I use.

12 Q In what context prior to this?

13 A It's just -- many contexts. I mean -- like
14 rockets. Rockets have a lot of fire. So sort of flame
15 throwers which are really just a roofing torch around an air rifle case
16 through Boring Company. Flame throwers but not really.
17 You know, fireplaces, I like fireplaces. I just think --
18 I just think I like things -- I don't think things are
19 better on fire. I just mean things are better -- you
20 know, it's nice to have a fire in a fireplace or -- come
21 to appreciate the value of candles.

22 Q Where is the fire here?

23 A Flattering lighting.

24 Q I'm sorry. I didn't mean to cut you off.

25 Anything more? Sorry to break in.

1 A No. Just candles, fireplace, flame throwers,
2 rockets.

3 Q What about in this context, where was the fire?

4 A Where was the fire? I mean, this is just -- I
5 mean this is a comical reference to, you know -- him
6 saying way to just light the torch by paper. And then I
7 say this is my catch phrase I use. Doesn't mean anything.

8 Q We talked about the concept of a short burn
9 earlier today --

10 A Oh, no.

11 Q Was that on your mind at all when you wrote this
12 tweet?

13 A Oh, no. No. I just say that a lot.

14 MR. NEWELL: Please mark this as EM exhibit 14.

15 (SEC Exhibit No. 14 was
16 marked for identification.)

17 BY MR. NEWELL:

18 Q I'll represent for the record that
19 EM Exhibit 14 appears to be a printout of
20 another tweet on August 7, 2018. Do you
21 recognize this document, Mr. Musk?

22 A Yes. I can't believe this one is also giving
23 away 5,000 ethereum.

24 Q We'll disregard the (b)(6)(b)(7)(C) at the
25 bottom of the page, and I just want to direct your

1 attention to the @elonmusk tweets at the top of the page.

2 Looks like you wrote in response to a tweet from
3 someone named (b)(6)(b)(7)(C) at around 10:40. "I don't have
4 a controlling vote now & wouldn't expect any shareholder
5 to have one if we go private. I won't be selling in
6 either scenario." Did you write that?

7 A Yes.

8 Q Why did you issue that tweet around 10:40 a.m.?

9 A It was in response to the question. The question
10 was: Can you confirm you'll retain control of the company
11 and that it wouldn't be an outright sale. And so I confirmed
12 that -- first I corrected the misimpression that I have a
13 controlling vote. And I wouldn't expect to have one if
14 we go private and I wouldn't expect to sell in either
15 scenario. You know, I try to be very literal, except
16 with "everything is better with fire."

17 MR. NEWELL: Exhibit 15, please.

18 (SEC Exhibit No. 15 was
19 marked for identification.)

20 MR. NEWELL: I just handed you a document, Mr.
21 Musk, designated Exhibit EM 15.

22 Appears to be another printout of a tweet on
23 August 7, 2018. Just want to direct your attention to the
24 tweet. Appears to be from @elonmusk, the biggest tweet on
25 the page of the exhibit. I'm just going to quote it: My

1 hope is all current investors remain with Tesla. Would
2 create special purpose fund enabling anyone to stay with
3 Tesla. Already do this with Fidelity's SpaceX investment.

4 A Uh-huh.

5 Q Did you write that tweet around 11 a.m. on August 7th?

6 A I did.

7 Q And why did you want to convey that information
8 publicly at that time?

9 A Well, a number of investors, particularly small
10 investors, were concerned that they would not be able to
11 remain as shareholders. At the time I -- at the time I
12 thought that I would be able to retain all investors and
13 there was one structure that would allow us to do that but
14 it's not strictly speaking -- it wouldn't be publicly
15 traded but virtually public -- it we wouldn't be publicly
16 traded but we would be public, if we simply delisted.

17 Q Did you discuss the possibility of delisting at
18 the August 3rd board meeting as distinct from a general
19 going private transaction?

20 A No, but I did discuss it in the week following
21 this tweet as one of the paths to achieve -- to retain all
22 shareholders.

23 Q Did you discuss the prospect of delisting as
24 distinct from a to going private transaction
25 with anyone prior to sending these tweets?

1 A No.

2 Q What's your understanding, if any, Mr. Musk, of
3 what happened to Tesla's stock price in the hours
4 following your initial tweet on August 7th around 9:48 a.m.?

5 MR. FARINA: For the rest of the trading day?

6 MR. NEWELL: Let's take in the two or three hours
7 approximately, and I'll represent for the record it's our
8 understanding that eventually trading in Tesla stock was
9 halted for a certain period on August 7th. So let's take
10 from the time of your initial tweet up until the time trading
11 was halted.

12 Q What was your understanding of what happened to
13 Tesla stock during that period?

14 A I think it rose. I'm not sure exactly think what
15 the delta was. It had already risen because of the leak of the
16 Saudi investment. And it did continue to rise after my
17 tweet, although I'm not sure to what degree that was --
18 that would have continued or -- it's difficult to say. It
19 was rising because of the Saudi investment news quite a
20 bit already.

21 So, okay better get the rest of the information
22 out there. And then NASDAQ halted the trading at some
23 point and then resumed trading.

24 MR. BUCHHOLZ: You said that you were aware the price was
25 rising after the news came out about the Saudi investment,

1 correct?

2 THE WITNESS: Yes, the stock rose quite a bit
3 after the Saudi news broke.

4 MR. BUCHHOLZ: Do you follow the stock price
5 closely?

6 THE WITNESS: Not normally that closely, but because
7 the news had broken on my phone -- I was looking at the
8 news and sort of -- Apple kind of stock thing. And it was
9 like Saudi news -- multi-million dollar
10 Saudi investment breaking -- stock is
11 going up very strongly. It was okay. Like sounds like
12 the cat's out of the bag here. Better make sure everybody
13 knows what's going on.

14 BY MR. NEWELL:

15 Q Do you recall whether \$420 a share was still a
16 significant premium to where the stock price was trading
17 at the time that you first published on August 7th tweet?

18 MR. FARINA: I'm sorry. Can you repeat that
19 question?

20 MR. NEWELL: Sure.

21 Q At the time you sent your first August 7th tweet
22 that we've been discussing that included the phrasing
23 "funding secured" and the dollar amount 420, do you know
24 roughly where Tesla stock price was trading?

25 A On that morning --

1 MR. FARINA: Asking if he knew that at the time?

2 MR. NEWELL: At the time of the tweet.

3 THE WITNESS: I don't recall the exact number. I
4 just remember it was rising rapidly as a result of the
5 Saudi news.

6 BY MR. NEWELL:

7 Q Do you have recollection of whether it was
8 substantially lower than \$420 a share?

9 A I think it was in the high 300s or something --
10 but less than 420. I don't know. Maybe it was ten or 15
11 percent below 420.

12 Q Has Tesla's share price ever traded above 400 a
13 share?

14 A I don't think so. It's traded pretty close to it
15 but not past it.

16 Q Did you have any --

17 A Excuse me. It's traded to within, I think, to
18 the high 300's. So that's only -- sort of maybe 6 or 7
19 percent below 420. It's not a big difference from 420.

20 Q What was your expectation, if any at the time you
21 wrote the "funding secured" tweet as to what would happen
22 to Tesla's share price in reaction to your tweet?

23 A I thought -- well, I thought probably this
24 probably would cause some rise in the Tesla stock price.
25 Because necessarily this is -- whenever news breaks of any

1 kind of potential takeover or take private, or whatever, the
2 stock always rises.

3 Now usually this jump occurs from close of
4 trading to start of trading but the jump still occurs.
5 So -- some kind of jump would occur, if we've done
6 something -- if we say done an after hours disclosure
7 there still would have been a steep change in the stock
8 price the next day.

9 Q We discussed your recollection that stock price
10 did increase from the time that you sent the "funding
11 secured" tweet to the time trading was halted, right?

12 A Yeah.

13 Q What was your reaction to learning that trading
14 in Tesla had been halted?

15 A Umm, I mean -- my reaction was that NASDAQ had
16 panicked and should not have panicked.

17 Q You thought trading should have remained open?

18 A Yes. And they then reversed themselves and went
19 back to trading, so that I think probably I was correct.

20 Q Trading didn't resume until after the August 7th
21 blog post that we've been reviewing today was published,
22 right?

23 A Pardon?

24 Q We can refer back to the exhibit.

25 A The trading resumed the same day. What are you

1 talking about?

2 MR. BUCHHOLZ: There was an August 7 blog post.
3 We looked at two blog posts, one that came
4 out that afternoon.

5 THE WITNESS: Okay.

6 MR. NEWELL: Let's pull out Exhibit 7, if you
7 would. That's the August 7 blog post.

8 MR. BUCHHOLZ: The question is about the blog
9 post. I wanted to ask a few more questions about the trading
10 halt before we leave that topic.

11 So did you take any steps to contact the exchange
12 or notify them that you were going to be tweeting?

13 THE WITNESS: No.

14 MR. BUCHHOLZ: Were you aware of any process for
15 doing that that was in place at the company?

16 THE WITNESS: No. My understanding was that the
17 Exchange was well aware that I would make tweets and that some
18 of these would be market moving tweets and that it was
19 something that had occurred before. And moreover, was in
20 part was there in our disclosures as a company in our
21 corporate disclosures.

22 MR. BUCHHOLZ: You're referring to the previous
23 10-Q reference in 2013?

24 THE WITNESS: Yes, and the fact that people knew
25 that I did tweet quite frequently, including about

1 products and -- things that were quite significant, yeah.
2 I mean, at one point we had quite a big jump in the stock
3 price because of an April fool's joke about a Model W,
4 which is a fake watch and -- you know, had like a Big Ben
5 on a wrist, which is obviously not a real thing.

6 MR. BUCHHOLZ: Okay. Sounds like you were aware
7 of specific communications with someone at NASDAQ though
8 about the fact that you might be tweeting. Was I
9 understanding your answer correctly?

10 THE WITNESS: No, actually. If there is I'm not
11 aware of that of that occurring.

12 MR. BUCHHOLZ: Did you believe that NASDAQ was
13 generally aware that you might tweet material information
14 and --

15 THE WITNESS: Yes.

16 MR. BUCHHOLZ: That it should not halt trading as
17 a result?

18 THE WITNESS: Yes.

19 MR. BUCHHOLZ: What was the basis for your
20 belief?

21 THE WITNESS: We had the 10-Q disclosure from
22 years past, and many, many tweets in the time since. Many
23 of which were market moving tweets and I never talked to
24 NASDAQ before then.

25 MR. BUCHHOLZ: As of the tweets on August 7,

1 were you familiar with the term "news pending halt"?

2 THE WITNESS: No.

3 MR. BUCHHOLZ: And you weren't aware of any
4 processes that Tesla related to news pending halts for
5 trading in the company stocks; is that correct?

6 THE WITNESS: Correct.

7 BY MR. NEWELL:

8 Q So let's keep Exhibit 7 out now. That's the
9 August 7th blog post. I'll represent to you that it's
10 staff's understanding, and counsel should feel free to
11 correct us if I'm getting this wrong that this was made
12 public some time around, in the ball park,
13 not exactly 12:30 Pacific Daylight
14 Time on August 7th.

15 Does that generally sound right to you, Mr. Musk,
16 or do you have any recollection when this was
17 posted on Tesla's website?

18 A Yeah, yeah, that was on that day, yeah.

19 Q I just want to direct you to a couple of portions
20 of the blog post. You were involved in drafting this
21 document, right?

22 A Yes.

23 Q I think you testified earlier that most of the
24 words in here are yours; is that a fair characterization?

25 A Yes.

1 Q Look at the second to the last paragraph. You
2 see the phrase "Where there is as little change for all of
3 our investors including all of our employees as possible."

4 Did you see that?

5 A Sorry. Which --

6 MR. FARINA: The paragraph that begins --
7 "Basically I'm trying to accomplish an outcome where Tesla
8 can operate at its best," et cetera.

9 THE WITNESS: That is correct.

10 BY MR. NEWELL:

11 Q How are you using the term "investors" in that
12 paragraph?

13 A Shareholders, like all shareholders.

14 MR. NEWELL: Please mark this as EM Exhibit 16.
15 (SEC Exhibit No. 16 was
16 marked for identification.)

17 MR. NEWELL: You've just been handed something
18 that's been marked EM Exhibit 16.

19 THE WITNESS: Bloody Ethereum.

20 Q Mr. Musk, I'll represent that it appears to be
21 another August 7th tweet. The tweet at the top of the
22 page sent at about 12:36 p.m.

23 A Yes.

24 Q You recognize this tweet?

25 A Yes.

1 Q Did you write this and publish it on Twitter
2 around 12:36 Pacific Time?

3 A Yes.

4 Q What did you mean by -- strike that.

5 Looks like you linked to the August 7th blog that
6 we've been discussing; is that right?

7 A Yes.

8 Q Why did you do that?

9 A Well, I thought it was important to get this blog
10 out there; certainly one could just do a retweet or
11 retweet with comment and so this was a retweet with
12 comment. But of course this should be read in the context
13 of the tweets that precede it. It's not something all by
14 itself.

15 Q The tweet, you mean, should be read in the context
16 of the previous tweets --

17 A With the stream of tweets, the connected tweets.

18 Q Did you also intend the tweet be read in the
19 context of the blog?

20 A Yes.

21 Q What did you mean by "investor support is
22 confirmed"?

23 A Essentially this was somewhat synonymous --
24 synonymous with "funding secured". I felt like there was
25 sufficient -- in fact, more than sufficient investor

1 support to take the company private and that we would
2 be -- as I said -- quite dramatically over subscribed in a
3 take private scenario.

4 Q And we just looked at an incidence in the
5 August 7th blog post where you use the term investors.
6 Here it sounds like you're using the term investor to
7 refer to the PIF; is that right?

8 A Yes. This is a different context of investor.

9 Q How would a reader of this tweet know that?

10 A I think if they read the full set of tweets it
11 would be clear.

12 Q What aspect of the full set of tweets would make
13 it clear?

14 A That "investor support" is confirmed is
15 consistent with "funding secured".

16 Q Your intention was that's effectively conveying
17 the same message as "funding secured"?

18 A Yeah.

19 Q Why did you feel a need to reiterate that point?

20 A I thought it was important that the stock -- that
21 the blog not convey uncertainty with respect to there
22 being sufficient investment to take the company private.
23 Yeah.

24 Q Why not include that --

25 A As you read this it is the case that in the blog and

1 in the tweet I mean different things. In the tweet -- in
2 the blog when I say investors I mean shareholders, current
3 shareholders. In this tweet when I say investors I
4 mean -- I mean funding, funding to take the company
5 private.

6 **Q Why not include the reference to investor support**
7 **in the text of the blog itself?**

8 A I'm not sure. This was a pretty rapidly -- this
9 was written quite quickly. Yeah, I mean -- I think in
10 reading through the blog like what the blog does not
11 clarify is that funding is secured. And I wanted to not have
12 people think that this blog was walking back the "funding
13 secured" comment. That was my intention with the
14 "investor support is confirmed."

15 I mean, in this long blog in the second to the last
16 paragraph, it was true investors is used in a different
17 context than the tweet. With the benefit of hindsight I
18 would probably have said, simply would have said: Funding
19 is secure -- to be clear, funding is secure, as opposed to
20 investor support is confirmed.

21 At the time I thought I was just making sure
22 people didn't think I was reversing my earlier tweet.

23 **Q You testified earlier that the phrase "funding**
24 **secured" referred to your understanding of conversations**
25 **that you had had historically with a variety of entities,**

1 including the PIF, along with other expectations that you
2 had at the time including the possibility of SpaceX's
3 involvement in a going private transaction, right?

4 A Uh-huh.

5 Q Were you conveying that same meaning here with
6 the phrase "investor support is confirmed"?

7 A Yes.

8 Q So that "investor support is confirmed" included
9 in your mind when you wrote it, Google's historical
10 interest in being involved in Tesla?

11 A Acquiring Tesla, to be precise. Google has wanted
12 to acquire Tesla for a while, actually.

13 Q What was the Sovereign Wealth Fund that Mr.
14 Al-Rymayyan referenced at the July 31st meeting distinct from
15 the PIF?

16 A The UAE. I think it's Mubadala, but he didn't
17 use the word Mubadala, he just used UAE.

18 Q Were you also making reference to the UA
19 Sovereign Wealth Fund in writing "investor support is
20 confirmed"?

21 A Yes, although they were not really necessary but
22 yes. Among investors that I thought were very likely UAE
23 would be one of the them -- yeah, very likely to virtually
24 certain.

25 I'd given a talk at the UAE in Dubai and they had

1 expressed a very strong interest in investing in Tesla.

2 Q Let's look at the second sentence in this tweet
3 in Exhibit 16. I'll just quote it: "Only reason why this
4 is not certain is that it's contingent on a shareholder
5 vote."

6 What did you mean by that?

7 A Well, first of all, this cannot be read
8 in isolation -- it must be read as a series of tweets, as
9 far as one cannot take a single sentence from a whole
10 thing -- from a whole blog and outside of the context of
11 whence it came.

12 You know, in my mind, essentially if shareholders
13 were -- if existing shareholders were in favor of going
14 private we would go private. And if they are in favor of
15 going private they also would vote to go private. These
16 two are the same thing, like -- I suppose at a certain
17 price they could conceivably be bought out.
18 Essentially what I was saying here is if shareholders --
19 if the existing shareholders want to go private --
20 excluding myself -- when I say -- if most "non me"
21 shareholders or most un-affiliated shareholders want to go private
22 we'll go private.

23 Q Did you intend for this sentence that
24 we've been discussing -- starts with the only reason this
25 is not certain, to be read in context with your initial

1 **August 7th tweet that referenced \$420 share price?**

2 A Yes. I assumed the stream of related tweets that
3 they would be read together.

4 Q **Did you consider including any other potential**
5 **uncertainties in writing this tweet?**

6 A I thought really only to -- I'd said "I'm
7 considering taking Tesla private." So therefore if you
8 understand I have not decided to do that, whether or not to
9 do that, otherwise I would not have said considering.

10 Then even if I had not said considering and said
11 I am going to take Tesla private. People also know that
12 that is not a certainty. There are many companies who
13 attempt to go private who do not succeed, yeah.

14 Q **So you didn't intend the language only reason to**
15 **exclude other reasons apart from a shareholder vote?**

16 A I think there's a lot wrapped up in this
17 shareholder vote. If the shareholders were overwhelmingly
18 in favor of going private we would definitely go private.

19 Q **You referenced earlier a conversation you had**
20 **with Mr. Gracias, who is on the Board of Directors at**
21 **Tesla, where he expressed, I think, loosely characterizing**
22 **some reservations about a going private transaction; is that**
23 **fair?**

24 A Yes.

25 Q **Do you have any concerns at this time that the**

1 **Board of Directors would support a going private**
2 **transaction?**

3 A Right now?

4 MR. BUCHHOLZ: At the time of the tweet.

5 BY MR. NEWELL:

6 **Q At the time of the tweet.**

7 A I thought it was extremely likely that the board
8 would at least put -- extremely likely verging on
9 certainty that the board would at least put a take private
10 to a shareholder vote provided that the shareholder
11 response in canvassing them was very positive. So
12 essentially if we had polled shareholders and they had
13 strongly supported -- been strongly interested in a take
14 private, I think the board would really have no choice but
15 to put that to their vote, that would be inappropriate to
16 do otherwise.

17 **Q In writing "shareholder vote" did you intend to**
18 **refer to the process of approving or disapproving a**
19 **transaction, or were you referring to investors' decision**
20 **as to whether or not to roll over their shares into a**
21 **private Tesla?**

22 A I really just meant that if we talk to
23 shareholders and they were all very much in favor of going
24 private, then it would obviously be inappropriate for the
25 board to block that; that would be contrary to

1 shareholders' interests. They would be breaching their
2 fiduciary duty.

3 So if shareholders were very much in favor of
4 going private, based on our conversations with them, the
5 board really wouldn't have any choice but to put that to a
6 shareholder vote because that's what they're supposed to
7 do.

8 Now when I did canvass them the response was much
9 more negative than I expected, and so we decided not to do it.
10 It's pretty straightforward.

11 MR. BUCHHOLZ: Sorry. Go ahead. Were you done?

12 THE WITNESS: Yes.

13 MR. BUCHHOLZ: When you wrote the tweet you did
14 understand there would need to be a board vote or special
15 committee vote of some kind, right?

16 THE WITNESS: I did but, you know, by the same
17 token if we canvass shareholders and there's a very strong
18 desire to go public, the board would be breaching their
19 fiduciary duty if they did not give shareholders the
20 opportunity to do that. It's is not like the shareholders
21 really have a choice. It's not like directors can just go
22 wholesale against the desire of shareholders.

23 MR. BUCHHOLZ: Right. Did you -- were you
24 planning to participate in that vote?

25 THE WITNESS: No. As with prior votes this would

1 be -- would exclude my vote and any affiliates, if you
2 will.

3 MR. FARINA: So to be clear, can we just clarify?
4 Are you asking the board vote or a shareholder vote or
5 both, in terms of his participation.

6 MR. BUCHHOLZ: The board vote.

7 MR. FARINA: Thank you.

8 MR. BUCHHOLZ: I think you answered the
9 question.

10 THE WITNESS: Yeah. The board would be -- if
11 shareholders -- if canvassing after canvassing
12 shareholders they strongly wanted to go private, it would
13 be a breach of fiduciary duty for the board not to at
14 least put that to a shareholder vote. They cannot
15 whimsically decide not to do so.

16 MR. BUCHHOLZ: Did you believe as of August 7
17 that there would be a process of putting together the
18 details of the formal proposal?

19 THE WITNESS: I knew that there would be some
20 complex process. It was more complex than I expected, but
21 I knew that this would not be a trivial exercise.

22 BY MR. NEWELL:

23 Q We discussed your overarching level of certainty
24 about whether or not a going private transaction would
25 ultimately be consummated at a previous moment in time.

1 Same question here. What was your level of certainty that
2 the transaction would be consummated at the time that you
3 wrote this tweet?

4 A I mean, probably roughly 50 percent. Maybe a
5 little -- maybe a little higher than 50 percent, but
6 something close to that. At the time I would have
7 probably said more likely than not but, you know. Like I
8 wasn't sure if I would even want to finalize a proposal to
9 the board. That's why I said considering. If I said I'm
10 going to put -- I didn't say I was going to give some like
11 final proposals to the board, I was considering it, it's a
12 lot to consider. Especially the opinions of long-time
13 shareholders.

14 So that's really, that's it. It was really --
15 it's pretty straightforward.

16 It was like, I wonder what people think
17 about going private? And, like I said, with the benefit of
18 hindsight of course -- if I had a hindsight machine that
19 would be really great. That would be like --

20 MR. HEALY: Your next project?

21 THE WITNESS: Yes, a hindsight machine
22 would be really helpful. But --
23 but with the benefit of hindsight, I was wrong about the
24 desire of -- or the interest in the existing shareholders
25 to go private. That was incorrect. They were about --

1 they were lukewarm. They weren't super against it, but
2 they were lukewarm. Some were very against it; some were
3 like "it's great." But on average, I would characterize their
4 support as around the 50 to 60 percent interest level
5 on average.

6 Because I asked them without attribution or not
7 holding them to anything. For their firm as a whole, what
8 would their holdings look like in a private situation?
9 Generally, the answer I got was 40 to 60 percent. One
10 major investor said a hundred, which is cool, and one said
11 maybe ten percent, but most were in the 40 to 60 percent
12 range.

13 MR. FARINA: You don't want to get ahead of
14 yourself on this. They were still talking about where you were
15 as of this August 7th time period. So you're talking
16 about later. So just hold off on that until he gets to
17 questioning you on that.

18 THE WITNESS: Okay.

19 MR. FARINA: There is no question pending.

20 THE WITNESS: Sure. But yeah, just -- there's
21 like -- certainly you were right about the funding. That
22 was proven -- that was unequivocal. The funding was
23 there, no question, funding was definitely there. Times a
24 lot. But I was wrong about the level of enthusiasm that
25 existing shareholders would have for going private. That

1 was incorrect. That's with the benefit of hindsight.

2 MR. BUCHHOLZ: At the time of the tweets on
3 August 7 were you aware that there would also likely be
4 regulatory approvals like CFIUS, or at least scrutiny?

5 THE WITNESS: Yeah. I didn't anticipate a CFIUS
6 block because I thought we would do this with -- would
7 not, you know I would want to do that with a broad
8 shareholder base, where we're not hitting CFIUS limits or
9 having undue foreign influence, which is the fundamental
10 premise of the CFIUS laws.

11 So I didn't anticipate CFIUS being an issue and,
12 yeah, so that didn't seem like an issue. Of course there
13 would be a process to follow from regulatory standpoint
14 but you know if you have overwhelming shareholder support
15 it may take time, but it's not a question of if but rather when.

16 MR. BUCHHOLZ: With regard -- were you done?
17 Sorry.

18 THE WITNESS: Yes.

19 MR. BUCHHOLZ: With regard to the CFIUS
20 question, you did understand that the likelihood of issues
21 would increase with the size of the Saudi investment,
22 correct.

23 THE WITNESS: Yes.

24 MR. BUCHHOLZ: That hadn't been determined at
25 the time, correct?

1 THE WITNESS: Correct. In the back of my mind I
2 was thinking probably best to have the Saudi investment be
3 at around 15 percent, maybe 20, but not above 20. And
4 once you start to get to the 20 percent level that's where
5 CFIUS starts to get a little dodgy, yeah.

6 MR. FARINA: Why don't we take a break. It's
7 quarter to 6.

8 MR. NEWELL: Let's go off the record.

9 VIDEO OPERATOR: Going off the record. The time
10 is 5:43.

11 (Recess taken.)

12 VIDEO OPERATOR: We're back on the record. The
13 time is 5:54.

14 BY MR. NEWELL:

15 Q Same question I've asked after every break. Mr.
16 Musk, have you had any substantial conversations with the SEC
17 staff while we were off the record?

18 A No.

19 Q Do you recall having a conversation with (b)(6),(b)(7)(
20 (b)(6),(b)(7)(C) after you sent the August 7 tweets about your
21 tweeting generally?

22 A Yes.

23 Q Do you remember roughly when that conversation
24 took place?

25 A I think Tuesday afternoon.

1 Q What do you remember about that conversation?

2 A (b)(6),(b)(7)(C) asked if in the future the board could
3 get a heads up on tweets of this nature and he was just in
4 general not a fan of tweeting and wished that I would --
5 I'm not sure if he said that in that conversation, but
6 certainly on a few occasions he said: You should really
7 think about deleting your Twitter account.

8 Q Did you tell (b)(6),(b)(7)(C) that you would do
9 anything different going forward during that August 8th
10 conversation?

11 A Yes. I said I would consider tweeting -- you
12 know, put a lot more thought -- think about tweeting a lot
13 more and make sure the board had a heads up before
14 tweeting.

15 Q Tweeting in certain contexts or any context?

16 A Related to material Tesla information.

17 Q Did you have any discussion with (b)(6),(b)(7)(C)
18 about what areas of information would warrant notice to
19 the board before you went ahead with a tweet?

20 A Anything that would be of potentially market
21 moving nature.

22 Q I'm going to direct your attention back to
23 Exhibit 10. It's the list of text messages, the one in
24 front of you. You've been looking at it throughout the
25 day today.

1 A Uh-huh.

2 Q Let's look at Page 9 of Exhibit 10.

3 You see the text message in the middle of the
4 page that includes what appears to be a reference to an
5 image JPEG that you sent to Yasir around 12:55 p.m.
6 Pacific time on August 10th?

7 A Yes.

8 Q Do you remember what that image was?

9 A Do you have that image or --

10 Q For the sake of time I'm just hoping -- I can
11 represent to you it's our understanding that it was an
12 article relating to PIF interest.

13 A Oh, yeah, yeah. The media was misrepresenting --
14 I think especially some Reuters articles -- may have been
15 a Reuters article, in this case, that PIF had no interest
16 in a Tesla take private. Obviously a total
17 misrepresentation of the situation. And I was asking Yasir to clarify
18 that this Reuters article was not true and a bunch of the
19 press was untrue.

20 Q From the time that you sent your first August 7th
21 tweet "funding secured" to the time you sent this text on
22 August 10th, had you had any communications with anyone
23 from the PIF?

24 A I don't think so, but it's been a long day, but
25 I don't think so.

1 Q Okay. You wrote in your next text around 12:56
2 p.m., "This is a major problem. It is extremely important
3 that you confirm that you are in discussions with me
4 regarding the take private transaction. Nothing more
5 needs to be said. If this is not said we'll never speak
6 again, never."

7 A Yes.

8 Q You wrote that text. And then let's move on to
9 page 10 of the exhibit. And I just want to direct your
10 attention to the text at the top of that page. Was that a
11 text that you received from Mr. Al-Rumayyan in response to
12 preceding text that we just read?

13 A (b)(4)

14 (b)(4)

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20 Q Were you also concerned that he didn't reference
21 going private transaction specifically anywhere in his
22 reply?

23 A (b)(4)

24 (b)(4)

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(b)(4)

Q What normal text are you referring to that this is inconsistent with?

A (b)(4)

(b)(4)

Q Is Mr. Al-Rumayyan a native English speaker?

A No.

Q He's fluent in English?

A Yes, not perfect, but yes.

Q Quoting from the middle of his text: "We would like to explore investing in Tesla, subject to being able to create a Tesla production hub in the kingdom of Saudi Arabia," and then it goes on from there.

Is that, to your understanding when you read this text, a reference to discussions you had with the PIF during the July 31st meeting?

A Yes.

Q You think that statement that the PIF would like to explore investing in Tesla subject to being able to create a Tesla production hub was an inaccurate summary of the July 31st meeting?

1 A Yes.

2 Q Why is that?

3 A He was unequivocal about supporting the take
4 private. He had said he wanted to do this for two years.

5 (b)(4)
6

7 what he said to me in person.

8 Apart from the -- apart from the manufacturing --
9 the production and manufacturing being something that
10 would be important in any large Saudi investment, that's
11 the only part of this that's accurate.

12 Q (b)(4)
13 (b)(4)

14 A (b)(4)
15 (b)(4)

16 Q (b)(4)
17 (b)(4)

18 A (b)(4)
19 (b)(4)
20

21 Q (b)(4)
22 (b)(4)

23 A (b)(4)

24 MS. CRUMPTON: When you say "they" did not like
25 this, who did not?

1 THE WITNESS: The Saudis. I mean, you know, the
2 fundamental optimization here is --

3 MR. BUCHHOLZ: She's just trying to confirm the
4 actual word you said.

5 THE WITNESS: Optimizational concern is -- don't

6 (b)(6); (b)(7)(C)
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12 Q What about the reference to -- at the bottom of
13 Mr. Al-Rumayyan's tweet: "Start working together in a
14 confidential manner to explore a potential transaction."

15 Did you take any issue with that as a reflection
16 of what you discussed on July 31st?

17 A I didn't -- I certainly didn't take it as the
18 money might not be there. The money is definitely there.
19 But the degree of investment would -- a large investment
20 would require a large strategic commitment to Saudi
21 Arabia. That's essentially what's at play here, but not
22 whether the money is there, but just what is the -- what
23 is the magnitude of the investment in Saudi Arabia of
24 Tesla's sort of factory essentially -- really comes down
25 to one thing, what factory would you put there, when and

1 how big. And that's really the only thing in question
2 here.

3 BY MR. NEWELL:

4 Q Let me try a slightly different question. Do you
5 agree with the statement in this text that there had been
6 discussion of working together in a confidential manner,
7 that is Tesla and the PIF to explore a potential
8 transaction?

9 A Well, the confidential part is related to the
10 fact that the Crown Prince does not like press. He's
11 like, "Can you please make the press stop?" essentially.

12 And so that's like -- the key element there. The
13 transaction is -- as I said, it is a 100 percent done deal
14 if we are willing to agree to the damn factory. If we said a
15 factory immediately, a large factory will begin construction
16 next year, 100 percent done deal right now -- "How much money
17 do you want?"

18 Q What's your basis for saying the Crown Prince
19 doesn't like the press?

20 A I mean nobody likes negative press. (b)(6); (b)(7)(C)

21 (b)(6); (b)(7)(C)

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1 MR. BUCHHOLZ: Did Mr. Al-Rumayyan make any
2 comments about that during the July 31st meeting?

3 THE WITNESS: No. I don't think he would be --

4 (b)(6); (b)(7)(C)

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10 BY MR. NEWELL:

11 Q Did you have any concerns at the time that you
12 wrote any of the August 7th tweets that publication of the
13 tweets would adversely impact the PIF's desire to move
14 forward with a potential transaction?

15 A I thought that -- it would not change the
16 fundamental outcome, because the -- yes, press is --
17 negative press is bad, but this does not outweigh the
18 strategic value of a transition to a sustainable energy
19 future and sustainable economy for Saudi Arabia. From a
20 geopolitical standpoint -- (b)(6); (b)(7)(C)

21 (b)(6); (b)(7)(C)

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1 MR. BUCHHOLZ: When Mr. Al-Rumayyan talked about
2 the production facility in the meeting did he say anything
3 about what the Crown Prince wanted?

4 THE WITNESS: Yes.

5 MR. BUCHHOLZ: What did he say?

6 THE WITNESS: Oh, he was -- this is -- to be
7 clear, the interest here in Tesla is coming from the
8 Crown Prince -- Yasir is the emissary of the Crown
9 Prince.

10 MR. BUCHHOLZ: So the message about the
11 production facility and wanting to get that done was from
12 the Crown Prince, to your understanding.

13 THE WITNESS: Absolutely. (b)(6); (b)(7)(C)

14 (b)(6); (b)(7)(C)

15

16

17

18 (b)(6); (b)(7)(C)

19 You know, the Crown Prince has got the
20 city he wants to build called Neon. I don't know if you
21 know about it, he wants to build this city of the future.

22 And you know Tesla Gigafactory would
23 be a crown jewel in that city of the future.

24 That's what he wants. Makes sense. I would
25 want it if I were him.

MR. BUCHHOLZ: Did Mr. Al-Rumayyan communicate

1 that to you, or is that something you put together?

2 THE WITNESS: Yeah.

3 BY MR. NEWELL:

4 Q He communicated that to you at the July 31st meeting?

5 A And at prior meetings. I mean, he's sort of very
6 delicate when mentioning anything to do with the Crown
7 Prince, but yeah.

8 MR. BUCHHOLZ: You said and prior meetings.
9 Which meetings do you mean?

10 THE WITNESS: We met like -- I don't know --
11 three or four times before that. And he was always very
12 clear -- the meeting was always really about how do we get
13 a Tesla production facility factory in Saudi Arabia. And
14 then have you heard about this great city of the future
15 that is being built? That's sort of where we would like
16 that kind of thing, you know.

17 MR. BUCHHOLZ: I want to be sure I'm not missing
18 anything. I thought you had said at the March 17 dinner
19 meeting the discussion was primarily focused on India,
20 with Mr. Masayoshi Son?

21 THE WITNESS: (b)(4)

22 (b)(4)

23 MR. BUCHHOLZ: Okay. So which other meetings do you
24 remember specifically with Mr. Al-Rumayyan about a facility in Saudi
25 Arabia before July of 2018?

1 THE WITNESS: I think it's come up in
2 every meeting. We had one earlier in -- beginning of last
3 year and then --

4 MR. BUCHHOLZ: Last year 2017 or 2018?

5 THE WITNESS: Sorry, 2017. Yeah, I think -- I
6 met with him -- how many times? Three times I think maybe
7 before this meeting. Something like that.

8 MR. BUCHHOLZ: Including the dinner --

9 THE WITNESS: He wasn't at the dinner. You mean
10 the dinner with Masa --

11 MR. BUCHHOLZ: Yes.

12 THE WITNESS: He was not at that dinner.
13 At least, I don't recall him being at that
14 dinner. You mean the one at (b)(6);(b)(7)(C) house?

15 MR. BUCHHOLZ: Yes.

16 MR. FARINA: No, you don't mean the one at (b)(6);(b)(7)(C)
17 (b)(6);(b)(7)(C)

18 MS. CRUMPTON: The one at the factory.

19 MR. BUCHHOLZ: The one at the factory in March
20 of 2017. Thank you. That's the one I mean.

21 MR. BONDI: Steve, I think you have a document
22 on this that shows the attendance at that dinner.
23 You used it yesterday.

24 THE WITNESS: I thought it was just Masa and (b)(6);(b)(7)(C)

25 MR. FARINA: I think you may have been thinking

1 of two different things.

2 THE WITNESS: I'm not sure I've ever had dinner, actual
3 dinner with Yasir.

4 MR. FARINA: Why don't you stop talking? If
5 they're interested in this, they'll show you a document.
6 There's the attendance.

7 MS. CRUMPTON: While they're pulling that
8 document, you said you met had with him you thought three
9 times before this meeting. What is this meeting? Are you
10 referring to the July 31st?

11 THE WITNESS: Yes.

12 MS. CRUMPTON: Okay.

13 THE WITNESS: He had wanted to meet much more frequently
14 than that --

15 MR. FARINA: Why don't we just wait until
16 they're ready.

17 VIDEO OPERATOR: Going off the record at --

18 MR. NEWELL: Let's go off the record, and if I
19 could ask everyone to not discuss this exhibit while we're off
20 the record.

21 VIDEO OPERATOR: Going off the record. The time
22 is 6:16.

23 (Off the record.)

24 MR. NEWELL: Let's go back on the record.

25 VIDEO OPERATOR: We're back on the record. The

1 time is 6:16.

2 MR. NEWELL: Please mark this as EM Exhibit 17.
3 (SEC Exhibit No. 17 was
4 marked for identification.)

5 BY MR. NEWELL:

6 Q Mr. Musk, you've been handed an exhibit
7 that's been marked as EM Exhibit 17.

8 It bears Bates number 59268. Appears to be a
9 calendar invitation, dated March 8, 2017.

10 A Oh yeah.

11 MR. FARINA: So again the March 8th, that's seven
12 hours ahead. I think if you look this is reflecting a
13 dinner that was to take place on the 7th, so I think you
14 got to back out seven hours.

15 MR. NEWELL: Right.

16 OTHER SPEAKER: This document says
17 Tuesday, 3-7 --

18 THE WITNESS: I think that's correct.

19 MR. FARINA: P.M. He said 3-8. All right.

20 MR. BUCHHOLZ: So this document indicates
21 guests, Elon, (b)(6); (b)(7)(C) Deepak, (b)(6); (b)(7)(C) Masa, Yasir. Does that
22 refresh your recollection as to who attended that dinner
23 or meeting?

24 MR. FARINA: By that question he is being
25 literal. Do you now remember Yasir being at that

1 meeting, or do you still not have a memory one way or the
2 other?

3 THE WITNESS: Yes, he was at the meeting but he
4 didn't say much at all. He said very little.

5 MR. BUCHHOLZ: Do you believe this was the
6 meeting where there were some discussions about Mr. Son
7 about a potential facility in India?

8 THE WITNESS: No. The India one was the one with
9 (b)(6),(b)(7)(C) and Masa at (b)(6),(b)(7)(C) house.

10 MR. BUCHHOLZ: Do you believe that was before or
11 after this March 17 dinner meeting?

12 THE WITNESS: I think the second dinner was
13 later.

14 MR. BUCHHOLZ: Can you give an approximate
15 month?

16 THE WITNESS: We can look -- it's got to be on
17 record. Do you have that record or not?

18 MR. FARINA: I don't have that one either.

19 MR. BUCHHOLZ: As you sit here you don't recall?

20 THE WITNESS: I think it was a month later, or
21 something like that. But it was at (b)(6),(b)(7)(C) house.

22 MR. BUCHHOLZ: And there was no one from PIF at
23 that meeting?

24 THE WITNESS: (b)(4)

25 (b)(4)

1 BY MR. BUCHHOLZ:

2 Q Let's go forward in time then. What is the next time
3 you remember meeting with Mr. Al-Rumayyan or anyone from
4 PIF?

5 THE WITNESS: I don't remember the exact dates.
6 I just remember there were approximately three meetings.
7 I guess this is one of them.

8 One would have been just with Yasir and his team
9 I think earlier last year; i guess one was this dinner.
10 And I think one later after this, I think. Yeah.

11 MR. BUCHHOLZ: Were any of those in 2018 do you think?

12 THE WITNESS: Could have been 2018.

13 MR. BUCHHOLZ: But significantly earlier than
14 July 2018?

15 THE WITNESS: Yes. They basically went radio
16 silent for many months, and then out of the blue told me --
17 came in and met me and told me about the investment.

18 MR. BUCHHOLZ: I think your testimony earlier
19 was that none of those meetings had any more specific
20 discussion about a potential investment or transaction
21 than the July 31st meeting, correct?

22 MR. FARINA: Let's make sure the question was
23 clear.

24 There was nothing that was more specific than what was at
25 the -- what was discussed in July 31st?

1 MR. BUCHHOLZ: Yes.

2 THE WITNESS: From the very beginning, the very
3 first interaction was about a take private with Yasir,
4 which is the reason I got connected with him. That would
5 have been -- you know -- approaching two years ago. Like
6 20 months ago or something like that.

7 So that was the whole premise for connecting with
8 him, and contacting with him is the whole -- there wasn't
9 any other reason. And yeah, so really every meeting was
10 about take private and every meeting included interest in

11 (b)(4)

12
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14 And then -- so a longstanding interest in taking
15 Tesla private; then, in that July 31st meeting he said he
16 has always wanted to do this. He clarified that he
17 at no point actually wanted to delegate this
18 to Masa, which was my mistaken impression
19 that he did. And just said, "Tell us how you want to do
20 it. We want to do it."

21 MR. BUCHHOLZ: Right. And that was as specific
22 as it had gotten in any of the meetings?

23 THE WITNESS: Pretty much. That's -- you know --

24 (b)(4)

25

1 (b)(4)

2 (b)(4)

And Yasir

3 clarified no, this entire time, they wanted to take us private.
4 And the first meeting they had been consistent, wanted to
5 do that from the first meeting to the July 31st meeting, and
6 they just wanted to make it happen. "Just tell us how we
7 can do it."

8 And then they said, you know, even if we've now
9 invested 4 or 5 percent of the company and the only thing that's
10 holding us back for more is this 5 percent disclosure requirement,
11 obviously they didn't require any promises of anything to do
12 the five percent. This is not just like some offhand
13 interest, you know. You don't invest billions of dollars
14 in a company if it's a casual consideration.

15 MR. BUCHHOLZ: Okay. And do you recall any
16 specifics of that nature from prior meetings that were
17 different?

18 THE WITNESS: No. Actually -- really in every
19 meeting Yasir had been, we want to help you take the

20 (b)(4)

23 (b)(4)

So -- but I didn't

24 realize that their interest had been unwavering through
25 this entire period of time, and he only clarified that in the July

1 31 meeting.

2 MR. FARINA: I think we have covered this ground, and
3 it's getting rather late.

4 MR. BUCHHOLZ: So to be clear, what changed for
5 you in the July 31st meeting was that he said they would be
6 prepared to potentially proceed without Mr. Son; is that
7 correct?

8 THE WITNESS: Not potentially. It's like they
9 said -- we absolutely don't want you to have Masa Son in the deal.

10 MR. BUCHHOLZ: Okay.

11 THE WITNESS: That was -- not only did they not
12 potentially proceed without him, absolutely not, which
13 is weird.

14 MR. BUCHHOLZ: That was a change from earlier --

15 THE WITNESS: It was a change in my perception.

16 MR. FARINA: And they made the investment, that
17 was the other new information.

18 THE WITNESS: That's a pretty -- they were voting
19 with a large -- billions of dollars to say that they
20 wanted to invest in Tesla. It was clearly, you know, not
21 casual interest.

22 They put their money where their mouth
23 was and billions of dollars and the only thing holding me
24 back is the 5 percent limit, tell us what you want to do
25 and we'll do it. Basically.

1 MR. FARINA: Okay. Let's take stock of where we are.
2 Why don't you take another minute?

3 Do you want to move on to
4 another subject or are you done with this? I just want to
5 figure out where we are, because it's almost 6:30 and we
6 haven't had air conditioning for the last 45 minutes.

7 THE WITNESS: It's fine by me. I don't mind, actually,
8 to be clear --

9 MR. FARINA: Just -- just stop talking and let's
10 see what they want to do.

11 MS. CRUMPTON: Would you like us to turn the fan back on?

12 THE WITNESS: You know, the fan would be great.
13 Does oxygen come into this room? Or are we slowly going to get
14 CO2 buildup?

15 MR. NEWELL: Let's go off the record briefly.

16 VIDEO OPERATOR: Going off the record.
17 The time is 6:25.

18 (Off the record.)

19 VIDEO OPERATOR: Back on the record. The time is
20 6:29.

21 MR. NEWELL: Mr. Musk, we have no further
22 questions at this time. We may however call you again to
23 testify in this investigation. Should this be necessary
24 we will contact your counsel.

25 THE WITNESS: Thank you.

1 MR. NEWELL: Do you wish to clarify anything or
2 add anything to the statements you made today?

3 MR. FARINA: I just have a couple of questions
4 that I'd like to ask Mr. Musk.

5 Mr. Musk, you said a little bit earlier that the
6 timing of your initial tweet, the one at 9:48, might have
7 been ill-advised. What did you mean by that?

8 THE WITNESS: Well, at the time I absolutely
9 felt I was doing the right thing.

10 With the benefit of hindsight, it would
11 have been less distraction to tweet after hours. I wish I
12 had a hindsight machine, yes.

13 MR. FARINA: Okay. Thank you.

14 THE WITNESS: Is there anything else?

15 MR. FARINA: No, thank you. Thank you, guys.

16 MR. NEWELL: Let's go off the record.

17 VIDEO OPERATOR: This concludes the testimony of
18 Elon Musk in the investigation regarding Tesla Motors, Inc.

19 The number of DVDs used are nine. The original
20 DVDs will be retained by Behmke Reporting and Video, Inc.,
21 160 Spear Street, San Francisco, California.

22 Going off the record. The time is 6:30.

23 (Whereupon, at 6:30 p.m., the examination
24 was concluded.)

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PROOFREADER'S CERTIFICATE

In the Matter of: TESLA MOTORS, INC.
Witness: Elon Musk
File Number: SF-04082-A
Date: Wednesday, August 29, 2018
Location: San Francisco, California

This is to certify that I, (b)(6);(b)(7)(C)
(the undersigned) do hereby swear and affirm that the
attached proceedings before the U.S. Securities and
Exchange Commission were held according to the record,
and that this is the original, complete, true and
accurate transcript, which has been compared with the
reporting or recording accomplished at the hearing.

(b)(6);(b)(7)(C)

(Proofreader's Name)

8-30-18

(Date)

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STATE OF CALIFORNIA)
) ss
COUNTY OF SAN FRANCISCO)

I hereby certify that the investigative hearing was reported by me in the within-entitled cause; that said hearing was taken at the time and place herein named; that the hearing is a true record of the witness' testimony as reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not interested in the outcome of the said action, nor connected with, nor related to any of the parties in said action, nor to their respective counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of August, 2018.

(b)(6),(b)(7)(C)

STATE OF CALIFORNIA