

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**GIUSEPPE PAMPENA, individually
and on behalf of all others similarly
situated,**

Plaintiff,

vs.

ELON MUSK,

Defendant.

Case No. 22-cv-05937-CRB

DECLARATION OF DAVID I. TABAK, PH.D.

1. My name is David I. Tabak. I testified as an expert witness at trial in this case on March 12 and 13, 2026. I have been asked by counsel for Plaintiffs to opine on whether the first-in, first-out, or “FIFO” methodology is a valid and widely accepted methodology for matching purchases and sales of a security.¹ I have also been asked to provide information on a limitation on damages from the Private Securities Litigation Reform Act (“PLSRA”), often referred to as the 90-day “lookback” or “bounceback” period.

2. *First*, FIFO is indeed a valid and widely accepted method for matching purchases and sales of a security. For example, Generally Accepted Accounting Principles (or “GAAP”) states, “Cost for inventory purposes may be determined under any one of

¹ I understand that Plaintiffs have proposed a FIFO methodology as part of their proposed plan of allocation. I provide no opinion on whether there are any legal requirements for matching in a plan of allocation in a securities-fraud case.

several assumptions as to the flow of cost factors, such as first-in first-out (FIFO), average, and last-in first-out (LIFO).”²

3. The Internal Revenue Service (“IRS”) not only allows for FIFO to be used for matching, but further instructs individual taxpayers to use FIFO as a matching methodology if they are uncertain of which specific shares were sold. See, for example, IRS Frequently Asked Questions, Stocks (Options, Splits, Traders) (“Determine the basis by using the first-in first-out (FIFO) rule if you can’t specifically identify which shares you sold.”³).

4. Thus, the FIFO methodology is not only valid and widely accepted, but it is even treated as the default methodology (when there is uncertainty about which specific securities were sold) by the IRS.

5. *Second*, the PSLRA provides the following cap or limitation on damages:

(1) IN GENERAL

Except as provided in paragraph (2), in any private action arising under this chapter in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.

(2) EXCEPTION

In any private action arising under this chapter in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff’s damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the

² Financial Accounting Standards Board (“FASB”), Determination of Inventory Costs, Accounting Standards Codification (“ASC”) 330-10-30-9.

³ <https://www.irs.gov/faqs/capital-gains-losses-and-sale-of-home/stocks-options-splits-traders/stocks-options-splits-traders-3>.

misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.

(3) “MEAN TRADING PRICE” DEFINED

For purposes of this subsection, the “mean trading price” of a security shall be an average of the daily trading price of that security, determined as of the close of the market each day during the 90-day period referred to in paragraph (1).

6. Exhibit 1 to this declaration provides the relevant figures for Twitter’s stock for the period after the end of the Class Period through the last day on which Twitter traded before being acquired by Mr. Musk (which occurred before the end of the 90-day period). Because there are numerous options, each with their own set of prices over this period, as I have seen done in plans of allocation in other matters, I have provided counsel for Plaintiffs with the relevant figures electronically. Those figures can be placed on a website accessible to potential claimants as part of the claims-administration process.

7. I also note that the standard practice in implementing the PSLRA limitation in purchaser cases is that damages for purchases that are associated with a sale by the end of the class period are not affected by the PSLRA limitation, which effectively acts as a hypothetical sale for purchases not matched with an actual sale for such shares. In this case, a seller case for shares, the corresponding result would be that for Twitter stock, only short sales that are not covered (i.e., for which there is no corresponding purchase) by the end of the Class Period would be affected by the PSLRA limitation.⁴



David I. Tabak
April 17, 2026

⁴ From an economic perspective, call options are treated like shares in this matter (i.e., only short positions that are not closed by the end of the Class Period are affected by the PSLRA limitation on damages) while put options are treated like shares in a purchaser class (i.e., only long positions that are not closed by the end of the Class Period are affected by the PSLRA limitation on damages).

Exhibit 1

Exhibit 1

Date	Closing Price	Average Closing Price Between October 4, 2022 and Date Shown
(1)	(2)	(3)
10/4/2022	\$ 52.00	\$ 52.00
10/5/2022	51.30	51.65
10/6/2022	49.39	50.90
10/7/2022	49.18	50.47
10/10/2022	50.36	50.45
10/11/2022	50.07	50.38
10/12/2022	49.94	50.32
10/13/2022	50.34	50.32
10/14/2022	50.45	50.34
10/17/2022	50.74	50.38
10/18/2022	51.78	50.50
10/19/2022	51.83	50.62
10/20/2022	52.44	50.76
10/21/2022	49.89	50.69
10/24/2022	51.52	50.75
10/25/2022	52.78	50.88
10/26/2022	53.35	51.02
10/27/2022	53.70	51.17