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Musk, Tesla Board Sued Over CEO's 'Erratic Behavior'

By [Tom McParland \(/author/profile/Tom-McParland/\)](/author/profile/Tom-McParland/) | October 18, 2018 at 03:02 PM

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Elon Musk. Photo Credit: Steve Jurvetson via Wikimedia Commons

A Tesla shareholder has sued Elon Musk in the Delaware Court of Chancery over his recent pattern of “erratic behavior” and accused the company’s directors of “gross mismanagement” for failing to monitor the outspoken CEO’s statements on Twitter.

The **derivative suit**

([https://images.law.com/contrib/content/uploads/documents/394/3397/Musk-](https://images.law.com/contrib/content/uploads/documents/394/3397/Musk-Derivative-Complaint.pdf)

Derivative-Complaint.pdf), filed Wednesday, is the first in Delaware to target Musk and the company’s board after Musk in August tweeted to his 22 million followers that he had “funding secured” to take the Palo Alto, California-based carmaker private at \$420 per share. Musk and Tesla have

since settled a lawsuit from the U.S. Securities and Exchange Commission stemming from the tweet, after press reports revealed that Musk did not in fact have funding in place to support the deal.

However, the complaint also cited a string of public missteps from Musk, and it seeks to hold the company's board liable for the proclamations that he makes on social media.

"Despite being put on notice of Musk's propensity for erratic public communications that have harmed the company and its stockholders, the board consciously disregarded his actions and failed to do anything," attorneys from Faruqi & Faruqi and the Grabar Law Office alleged in the 55-page filing. "The board put their loyalties to Musk ahead of their fiduciary duties to the company and its shareholders."

Plaintiff Zachary Elton pointed to a series of "outrageous and false" public statements from Musk in the past year, including tweets in which he accused a British diver working to rescue a trapped youth soccer team of pedophilia and joked that Tesla was bankrupt. The tweets, Elton said, damaged Tesla's credibility and corporate image, as it has scrambled to manage the fallout.

The suit seeks to recover "significant sums of money" that Tesla has spent responding to the controversies, and it asks for an order forcing a shareholder vote to appoint a board-level committee and executive officer to oversee Musk.

The filing comes just weeks after Musk settled the SEC action, which accused Musk of misleading investors and causing a huge spike in Tesla's stock price with his go-private tweet on Aug. 7. Under the settlement, Musk and Tesla agreed to pay a combined \$40 million in penalties and committed to corporate governance and other reforms. Musk, who did not admit guilt, was barred from serving as Tesla's chairman for a period of three years.

Tesla is currently facing nine securities class actions in California federal court over the tweet and its effect on the company's stock.

But Musk's problems have extended beyond the realm of social media. Elton's complaint also cited Musk's recent appearance on talk show host Joe Rogan's podcast, where the executive appeared to smoke marijuana, and it noted comments Musk made to The New York Times about taking Ambien to deal with the stress of running Tesla.

Meanwhile, the complaint said, Tesla's board members had breached their duties of due care, loyalty and oversight by failing to implement a system to ensure that Musk's statements comply with state and federal regulations. Elton, who did not make a presuit demand that the directors pursue their own litigation against Musk, said the board lacked independence from Musk, due to a web of business and personal relationships.

The case, captioned *Elton v. Musk*, has not yet been assigned to a judge.

Elton is represented by Michael Van Gorder of Faruqi & Faruqi's Wilmington office and Stuart J. Guber and Alex B. Heller from the firm's Philadelphia office. Joshua H. Grabar of the Grabar Law Office in Philadelphia is also listed as counsel for the plaintiffs.

An online docket-tracking service on Thursday did not list attorneys for Musk and the rest of Tesla's directors.

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Tom McParland

Tom McParland of Delaware Law Weekly can be contacted at 215-557-2485 or at tmcparland@alm.com. Follow him on Twitter @TMcParlandTLI.



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