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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17

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

20 Plaintiff,

21 vs.

22 ELON R. MUSK,

23 Defendant.
24

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

**DEFENDANT’S MOTION TO
DECERTIFY CLASS ACTION
PURSUANT TO FED. R. CIV. P. 23(C)**

Hon. Judge Charles R. Breyer

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that, on June 11, 2026 at 10:00 a.m. in Courtroom 5 – 17th Floor of the United States Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, the Honorable Charles R. Breyer presiding, Defendant, through his counsel, moves pursuant to Federal Rule of Civil Procedure 23(c)(1)(C) to decertify the class. Following the jury’s verdict, Plaintiffs can no longer meet the predominance and superiority requirements for class certification pursuant to Federal Rule of Civil Procedure 23(b)(3) because the general verdict gives no indication whether Plaintiffs proved only individual reliance or established the fraud-on-the-market presumption, as is required to satisfy Rule 23 in a Rule 10b-5 action.

This motion is based on the Memorandum of Points and Authorities below, the arguments of counsel, and any other matters properly before this Court. Pursuant to Local Rule 7-2(c) and Paragraph I.C of the Court’s Civil Standing Order – General, Defendant also submits herewith a proposed order.

ISSUES TO BE DECIDED

1. Should the Court decertify the class in this action and require members of the class to proceed as individual plaintiffs?

DATED: May 1, 2026

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By /s/ Ellyde R. Thompson

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SUMMARY OF ARGUMENT

1
2 The Court should decertify the class because the jury made no finding that Plaintiffs proved the
3 fraud-on-the-market presumption necessary to establish class-wide reliance.

4 Rule 10b-5 plaintiffs must prove reliance either by proving their individual reliance on the alleged
5 misrepresentation or via the fraud-on-the-market presumption. Where such plaintiffs seek to represent a
6 class, the only way to prove that absent class members relied on the alleged misrepresentation is to prove
7 the fraud-on-the-market presumption—which the defendant may rebut. *Halliburton Co. v. Erica P. John*
8 *Fund, Inc.*, 573 U.S. 258, 267–69 (2014) (*Halliburton II*). Accordingly, “[a]bsent the fraud-on-the-market
9 theory, the requirement that Rule 10b-5 plaintiffs establish reliance would ordinarily preclude certification
10 of a class action seeking money damages because individual reliance issues would overwhelm questions
11 common to the class.” *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 462–63 (2013)
12 (“*Amgen I*”).

13 As this Court recognized, securities fraud plaintiffs seeking to represent a class must establish the
14 fraud-on-the-market presumption twice—on a preliminary basis at the class certification stage and again
15 at trial. *See* Dkt. No. 106 at 7–8. If they fail to do so at either stage—or if the presumption is rebutted—
16 the case is “inappropriate for a class proceeding.” *Connecticut Ret. Plans & Tr. Funds v. Amgen Inc.*, 660
17 F.3d 1170, 1175 (9th Cir. 2011) (“*Amgen I*”). The Court must therefore re-examine whether the case
18 meets Rule 23’s requirements throughout the litigation, particularly after trial. *See Basic Inc. v. Levinson*,
19 485 U.S. 224, 249 n. 29 (1988) (noting “the District Court retains the authority to amend the certification
20 order as may be appropriate” if plaintiff fails to establish the fraud-on-the-market presumption at trial);
21 *Sonneveldt v. Mazda Motor of Am., Inc.*, 2023 WL 1812157, at *2 (C.D. Cal. Jan. 25, 2023) (“Therefore,
22 a district court retains the flexibility to address problems with a certified class as they arise, including the
23 ability to decertify A district court’s order granting certification is inherently tentative, and actual,
24 not presumed, conformance with Rule 23(a) remains indispensable.” (quotations omitted and alterations
25 adopted)); *see also Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 160 (1982) (“Even after a
26 certification order is entered, the judge remains free to modify it in light of subsequent developments in
27 the litigation.”); *United Steel, Paper & Forestry, Rubber, Mfg. Energies, Allied Indus. & Service Workers*
28 *Int’l Union, AFL-CIO, CLC v. ConocoPhillips Co.*, 593 F.3d 802, 809–10 (9th Cir. 2010) (similar).

1 Here, for the jury’s verdict to apply class-wide, Plaintiffs had to prove the fraud-on-the-market
2 presumption at trial. But there is no way to tell whether Plaintiffs succeeded. The jury returned a general
3 verdict that provides no indication whether the jury found individual reliance or the fraud-on-the-market
4 presumption. And the Court cannot assume the verdict rested on one reliance theory over another. *See*
5 *Hesse v. Air France*, 1990 WL 58237, at *2 (9th Cir. 1990) (“The general rule in this circuit is that a
6 general jury verdict will be upheld only if each and every theory of liability submitted to the jury is not
7 legally defective.”); *Niles v. United States*, 520 F. Supp. 808, 812 (N.D. Cal. 1981) (“[W]here a matter is
8 tried on alternate theories of recovery and a general verdict rendered, appellate courts will not speculate
9 on what particular ground the jury may have found” (alteration adopted and quotation omitted)), *aff’d*
10 *sub nom. Niles By & Through Niles v. United States*, 710 F.2d 1391 (9th Cir. 1983).

11 Notably, Plaintiffs did not move for judgment in their favor on the question of the fraud-on-the-
12 market presumption, so the Court cannot make such a determination now. And the Court adopted the
13 general verdict form at Plaintiffs’ request and over Defendant’s objection, such that Plaintiffs invited the
14 error that now precludes a judgment of class-wide liability. *See, e.g., In re Oracle Corp. Sec. Litig.*, 627
15 F.3d 376, 386 (9th Cir. 2010) (a party may not “invite the district court to err and then complain of that
16 very error” (citing *United States v. Reyes-Alvarado*, 963 F.2d 1184, 1187 (9th Cir. 1992))); *Logtale, Ltd.*
17 *v. IKOR, Inc.*, 2016 WL 7743408, at *4 (N.D. Cal. Aug. 16, 2016) (“[U]nder the ‘invited error’ doctrine,
18 a party waives any ability to later challenge a jury instruction or verdict form when the party invites the
19 error of which it later complains.”), *aff’d in part, rev’d in part, dismissed in part on other grounds*, 728 F.
20 App’x 665 (9th Cir. 2018).

21 The Court may not rely on its preliminary class certification findings at this stage. And the
22 evidence at trial contradicted Plaintiffs’ efficient market theory—a prerequisite for a the fraud-on-the-
23 market presumption. *See Halliburton II*, 573 U.S. at 268. Specifically, an efficient market requires that
24 the market respond “immediately” to all available information. *See* Dkt No. 524 at 23–24; Ninth Circuit
25 Civil Model Instruction 18.7 (citing *Miller v. Thane Int’l, Inc.*, 615 F.3d 1095, 1102–03 (9th Cir. 2010));
26 *see also Cammer v. Bloom*, 711 F. Supp. 1264, 1287 (D.N.J. 1989) (explaining that the “cause and effect
27 relationship between unexpected corporate events. . . and an *immediate response* in the stock price” is
28 “the essence of an efficient market and the foundation for the fraud on the market theory” (emphasis

1 added)). But Plaintiffs’ expert testified at trial that the market did not immediately respond to all
2 information; instead, according to Dr. Tabak, several days passed before the market fully incorporated the
3 effect of Defendant’s May 13 tweet, one of the alleged misrepresentations for which the jury found
4 liability. Trial Tr. at 1891:9–1893:13 (Tabak).

5 Because the jury’s verdict provides no basis to conclude that Plaintiffs proved the fraud-on-the-
6 market presumption, there is no basis to conclude that Plaintiffs proved class-wide reliance and thus the
7 verdict cannot be applied class-wide. *See Amgen I*, 660 F.3d at 1175 (“Thus, if the plaintiffs failed to
8 prove those elements, they could not use the fraud-on-the-market presumption,” and though “their claims
9 would not be dead on arrival [because] they could seek to prove reliance individually,” that “would be
10 inappropriate for a class proceeding.”). Without any reason to believe that the jury found class-wide
11 reliance, each person seeking to recover must affirmatively prove individualized reliance in order to
12 establish liability. Individual issues thus necessarily predominate, and the class must be decertified. *See*
13 *Weigele v. FedEx Ground Package Sys., Inc.*, 267 F.R.D. 614, 620, 622 (S.D. Cal. 2010) (“Put another
14 way, the question is whether issues subject to generalized proof predominate over those issues that are
15 subject to individualized proof.” (alteration adopted and quotation omitted)); *Westways World Travel, Inc.*
16 *v. AMR Corp.*, 265 F. App’x 472, 476 (9th Cir. 2008) (affirming decertification where “[t]he district court
17 concluded that maintenance of the class action pursuant to Fed. R. Civ. P. 23(b)(3) was inappropriate
18 because the Travel Agents’ RICO, contract, and unjust enrichment claims would require individualized
19 inquiries into American Airlines’s legal and contractual relationship with each class member, and these
20 individual inquiries would predominate over common questions of law and fact”). Likewise, “given all
21 of the individual issues that must be litigated in this matter,” a class action is not a “superior” vehicle for
22 resolution. *Weigele*, 267 F.R.D. at 623–24.

23 Indeed, to hold otherwise would violate procedural due process. “Due process concerns require
24 that class certification meet rigorous standards in securities cases.” *Miller v. Thane Intern., Inc.*, 615 F.3d
25 1095, 1103 (9th Cir. 2010). Because this issue implicates “procedural due process concerns,” the court is
26 required to give “exacting” scrutiny to the “vague jury verdict,” and must resolve “vagueness in a general
27 verdict . . . against [the] prevailing plaintiff.” *UniRAM Tech., Inc. v. Taiwan Semiconductor Mfg. Co.*,
28 2008 WL 11515597, at *5 (N.D. Cal. Apr. 17, 2008). These standards apply, in particular, to the market

1 efficiency determination that is a prerequisite to establishing the fraud-on-the-market presumption.
2 *Miller*, 615 F.3d at 1103. Just as procedural due process principles dictate that a general verdict cannot
3 “give rise to collateral estoppel,” because it is not “clear that the jury necessarily decided a particular issue
4 in the course of reaching its verdict,” *Finjan, Inc. v. Sophos, Inc.*, 2016 WL 2988834, at *19 (N.D. Cal.
5 May 24, 2016) (quoting *United Access Techs., LLC v. Centurytel Broadband Servs. LLC*, 778 F.3d 1327,
6 1331 (Fed. Cir. 2015)), the same principle means that the verdict here cannot support judgment on a
7 class--wide basis.

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1 Garrett, and Nancy Price in their individual capacities.

2 BACKGROUND

3 Plaintiffs' First Amended Complaint alleges that that they intended to prove class-wide reliance
4 based "in part, upon the presumption of reliance established by the fraud-on-the-market doctrine." Dkt.
5 No. 31 at ¶ 182. At class certification, Plaintiffs again invoked the fraud-on-the-market presumption to
6 argue that individual issues of reliance would not predominate over common issues in violation of Rule
7 23(b)(3)'s predominance requirement. Dkt. No. 76 at 10–11 (citing *Basic Inc. v. Levinson*, 485 U.S. 224,
8 242 (1988)).

9 To satisfy Rule 23(b)(3) on the element of reliance at class certification, Plaintiffs were required
10 to show: "(1) that the alleged misrepresentations were publicly known, (2) that they were material, (3) that
11 the stock traded in an efficient market, and (4) that the plaintiff traded the stock between the time the
12 misrepresentations were made and when the truth was revealed." *Halliburton Co. v. Erica P. John Fund,*
13 *Inc.*, 573 U.S. 258, 268 (2014) ("*Halliburton II*") (cited at Dkt. No. 76 at 11). With respect to the third
14 element—that Twitter's stock traded in an efficient market—Plaintiffs and their expert Dr. Tabak
15 purported to demonstrate that the market for Twitter's securities satisfied the five factors from *Cammer v.*
16 *Bloom*, 711 F. Supp. 1264, 1287 (D.N.J. 1989), including that news of "unexpected corporate events"
17 were accompanied by an "immediate response in the stock price." Dkt. No. 76 at 12, 14. Dr. Tabak
18 conducted an event study that analyzed whether Twitter's stock had a statistically significant price
19 movement on the same day that certain news about the company was released. Dkt. No. 76-1 at 19–25.
20 Dr. Tabak's class certification report did not state or suggest that an "immediate response" in an "efficient
21 market" might include a stock price reaction that took several days for the market to incorporate.

22 Defendant opposed class certification, arguing *inter alia*, that Plaintiffs' theory of liability was
23 inconsistent and incompatible with an efficient market, that their theory of liability—which at the time
24 turned on whether Defendant misstated his rights under the public Merger Agreement—necessarily
25 required individualized reliance inquiries, and that the lack of price impact of the alleged misstatements
26 rebutted the presumption of reliance. Dkt. No. 99 at 9–18. Defendant also challenged each of the four
27 proposed Class Representatives as atypical. *Id.* at 19–20.

28 The Court granted class certification. It held that Plaintiffs had "adequately allege[d] an efficient

1 market,” and Defendant “d[id] not contest” that Plaintiffs had established “the other prerequisites to
2 establish the Basic presumption of reliance at the class certification stage.” Dkt. No. 106 at 7. Critically,
3 however, the Court implicitly acknowledged that the presumption of reliance did not apply universally to
4 all class members or even all class representatives, finding that Class Representative Steve Garrett could
5 not avail himself of the fraud-on-the-market presumption (nor establish direct reliance on Defendant’s
6 alleged misstatements). *Id.* at 9–10.

7 But that was not the end of the class certification inquiry. Plaintiffs had the burden to prove their
8 reliance allegations, like all of their other allegations, at trial. The Court correctly instructed the jury that
9 Plaintiffs were required to prove that they “justifiably relied on the alleged untrue statements of material
10 fact or alleged fraudulent conduct.” Dkt. No. 524 at 18. The Court made clear that the jury could find the
11 reliance element satisfied if Plaintiffs proved *either* that they individually relied on the alleged
12 misstatement *or* if they proved fraud-on-the-market. *Id.* at 23. The Court’s instruction began by
13 explaining that “a plaintiff must prove by a preponderance of the evidence reliance on the alleged material
14 misrepresentation and/or fraudulent acts, and that the plaintiff was justified in doing so,” *i.e.*, individual
15 reliance. *Id.* The instruction then explained, in the alternative, that Plaintiffs could prove reliance without
16 the need to prove individual reliance by demonstrating “by a preponderance of the evidence the
17 requirements for invoking . . . the ‘fraud-on-the-market’ presumption.” *Id.* Finally, the instruction made
18 clear that the presumption could be rebutted, in which case “the plaintiffs must then prove that *they*
19 *justifiably relied directly on the misrepresentation* and/or fraudulent acts.” *Id.* at 23–24 (emphasis
20 added). Thus, the jury was presented with two avenues to find the reliance element satisfied: individual
21 reliance or class-wide fraud-on-the-market. *Id.*

22 At trial, and consistent with the Court’s instructions, Plaintiffs sought to prove reliance both
23 individually—calling Plaintiffs Brian Belgrave and Nancy Price to testify about their purchases and sales
24 of Twitter stock—and on a class-wide basis. Trial Tr. 2214:7–23 (Plaintiffs’ Closing).

25 Defendant contested that Plaintiffs could prove reliance under either theory, but in particular
26 challenged Plaintiffs’ attempt to prove the fraud-on-the-market presumption. Trial Tr. 2271:24–2272:13
27 (Defendant’s Closing). Specifically, Defendant contrasted the Court’s instruction that the presumption
28 applies only in an efficient market where the stock price “immediately” reflects all publicly available

1 information with Plaintiff’s expert’s testimony that the market did not incorporate the information in
2 Defendant’s May 13 tweet “immediately,” but rather slowly incorporated the information over the course
3 of three days, May 13 to May 16, during which period the stock declined, rebounded, stabilized, and then
4 declined some more. *Id.*; compare Dkt. No. 524 at 23 with Trial Tr. 1891:9–1893:13 (Dr. Tabak’s
5 testimony). The jury could easily have concluded that Dr. Tabak’s testimony and Plaintiffs’ loss causation
6 and damages theory—which posits that Twitter’s stock dropped *twice* in response to the May 13 tweet,
7 the first right after the tweet posted and the second *three days later*, after the price remained stable for the
8 last six hours of trading on May 13, Trial Tr. 1891:9–1893:13—was incompatible with the notion that
9 Twitter securities traded on an efficient market.

10 But Plaintiffs inexplicably insisted on using a verdict form that prevented the jury from conveying
11 its specific findings on reliance. In advance of trial, in order to ascertain whether Plaintiffs proved the
12 fraud-on-the-market presumption, Defendant proposed a special verdict form that would have required
13 the jury to make specific findings on this critical element of Plaintiffs’ claims. *See* Dkt. No. 360 at 5–10.
14 Defendant explained that “[t]he jury is required to determine . . . justifiable reliance or whether Plaintiffs
15 have proven the fraud-on-the-market presumption,” and that a general verdict form “does not ask if
16 Plaintiff proved any of these elements and therefore does not allow the jury to address each of the factual
17 issues essential to judgment.” Dkt. No. 367 at 1. Over Defendant’s objection, *see* Trial Tr. 2137:23–
18 2138:6, the Court adopted Plaintiffs’ proposed general verdict form, Dkt. No. 538.

19 As a consequence, the jury’s verdict indicates only that Plaintiffs proved *a* theory of reliance; it
20 does not indicate *which* theory Plaintiffs proved. Since the fraud-on-the-market theory of reliance is
21 essential to the absent class members’ claims, and there is no basis to conclude Plaintiffs proved that
22 theory, the class must be decertified and the verdict—should it stand—may be applied only to the Plaintiffs
23 individual claims.

24 LEGAL STANDARD

25 Rule 23(c) authorizes a court to alter a certification order at any time before final judgment. Fed.
26 R. Civ. P. 23(c)(1)(C). This is because “[a] district court’s order respecting class certification is inherently
27 tentative prior to final judgment on the merits. Thus, if the Court determines that a class was not properly
28 certified it may modify or decertify that class.” *Weigele*, 267 F.R.D. at 617; *see also Basic*, 485 U.S. at

1 249 n. 29 (“the District Court retains the authority to amend the certification order as may be appropriate”
2 if plaintiff fails to establish the fraud-on-the-market presumption at trial); *Gen. Tel. Co. of the Sw. v.*
3 *Falcon*, 457 U.S. 147, 160 (1982) (court can modify the class certification decision “in the light of
4 subsequent developments in the litigation”); *United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied*
5 *Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v. ConocoPhillips Co.*, 593 F.3d 802, 809 (9th Cir.
6 2010) (similar); *Arizona State Carpenters Pension Tr. Fund v. Miller*, 938 F.2d 1038, 1039–40 (9th Cir.
7 1991) (final judgment “end[s] the litigation on the merits and leaves nothing for the court to do but execute
8 the judgment”).

9 “In reviewing whether certification remains proper, the Court again applies the requirements of
10 Federal Rule of Civil Procedure 23. That is, the classes must meet all four requirements set forth in Rule
11 23(a) and at least one subdivision of Rule 23(b).” *Weigele*, 267 F.R.D. at 617 (quotation omitted); *In re*
12 *Methionine Antitrust Litig.*, 2003 WL 22048232 at *5 (N.D. Cal. Aug. 26, 2003) (decertifying class where
13 it became clear predominance requirement of Rule 23(b) was no longer met). “The standard used by the
14 courts in reviewing a motion to decertify is the same as the standard used in evaluating a motion to certify.”
15 *O’Connor v. Boeing N. Am., Inc.*, 197 F.R.D. 404, 410 (C.D. Cal. 2000). Thus, “[o]n a motion for
16 decertification, the burden remains on the plaintiffs to demonstrate ‘that the requirements of Rules 23(a)
17 and (b) are met.’” *Ries v. Ariz. Bevs. USA LLC*, 2013 WL 1287416 at *3 (N.D. Cal. Mar. 28, 2013)
18 (quoting *Marlo v. United Parcel Service, Inc.*, 639 F.3d 942, 947 (9th Cir. 2011)). Plaintiffs must show:
19 “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law
20 or fact common to the class; (3) the claims or defenses of the representative parties are typical of the
21 claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the
22 interests of the class,” and that “questions of law or fact common to class members predominate over any
23 questions affecting only individual members, and that a class action is superior to other available methods
24 for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(a)-(b).

ARGUMENT

I. THE CLASS MUST BE DECERTIFIED BECAUSE PLAINTIFFS DID NOT PROVE CLASS-WIDE RELIANCE AT TRIAL

Plaintiffs’ ability to pursue their securities fraud claim on a class-wide basis rises and falls on establishing the fraud-on-the-market presumption. Here, however, the Court has no basis to conclude that Plaintiffs proved reliance on a class-wide—as opposed to individual—basis at trial. Accordingly, the class must be decertified.

A. The Law Required Plaintiffs To Prove The Fraud-On-The-Market Presumption At Trial To Establish Class-Wide Reliance

To pursue a class-wide securities fraud claim, plaintiffs must establish the fraud-on-the-market presumption. *See Amgen II*, 568 U.S. at 462–63. As the Supreme Court has explained, “[a]bsent the fraud-on-the-market theory, the requirement that Rule 10b-5 plaintiffs establish reliance would ordinarily preclude certification of a class action seeking money damages because individual reliance issues would overwhelm questions common to the class.” *Id.* Plaintiffs must establish the fraud-on-the-market theory of reliance both on a preliminary basis at the certification stage and at trial. *Basic*, 485 U.S. at 249 n. 29; Dkt. No. 524 at 23.

As the Court recognized in its class certification order, Plaintiffs only satisfied the “prerequisites to establish the Basic presumption of reliance at the class certification stage.” Dkt. No. 106 at 7. Plaintiffs had to clear additional hurdles to prove that class-wide reliance at trial. *Id.* The Court was explicit that Defendant’s arguments in opposition to class certification were “premature” at the time and raised “matter[s] for trial, not for class certification.” *Id.* (internal quotation omitted). It thus provisionally presumed class reliance until trial, where the jury would determine whether Plaintiffs met their burden.

Now that trial is over, the Court must re-assess whether Plaintiffs met that burden. “[D]istrict courts must ensure that a certified class satisfies Rule 23 throughout the litigation” and must “alter or decertify the class if that is no longer the case” where “a previously satisfied requirement of Rule 23 is now lacking.” *Jin v. Shanghai Original, Inc.*, 990 F.3d 251, 262 (2d Cir. 2021); *Sonneveldt v. Mazda Motor of Am., Inc.*, 2023 WL 1812157, at *3 (C.D. Cal. Jan. 25, 2023) (citing *Jin* for the same proposition). The Court is “required to reassess” its initial ruling on class certification based on the developments at

1 trial. *Barnes v. Am. Tobacco Co.*, 161 F.3d 127, 140 (3d Cir. 1998); *see also Falcon*, 457 U.S. at 160
2 (court can modify the class certification decision “in the light of subsequent developments in the
3 litigation”); *United Steel*, 593 F.3d at 809.

4 **B. The Court May Not Conclude The Jury Found The Presumption Proven At Trial**

5 The question of reliance—whether established through the fraud-on-the-market presumption or on
6 an individualized basis—is one for the jury. *See In re U. S. Fin. Sec. Litig.*, 609 F.2d 411, 422–23 (9th
7 Cir. 1979) (it is “too obvious to be doubted that the constitutional right to a jury trial attaches” to 10b-5
8 class actions). Plaintiffs thus had the burden to prove the fraud-on-the-market presumption at trial to
9 obtain a class-wide judgment. But the general verdict does not establish that Plaintiffs proved this specific
10 theory of reliance because the verdict form did not require the jury to determine whether Plaintiffs proved
11 *class-wide* reliance as opposed to any other theory of reliance. And the law does not permit the Court to
12 simply assume the jury found Plaintiffs proved one theory of reliance or another.

13 To establish liability, Plaintiffs were required to prove “reliance”—“that there is a proper
14 connection between a defendant’s misrepresentation and a plaintiff’s injury.” *Halliburton II*, 573 U.S. at
15 267. Reliance under Rule 10b-5 can be proven either individually or class-wide. Individual reliance, the
16 “traditional (and most direct way),” is established when a shareholder “show[s] that he was aware of a
17 company’s statement and engaged in a relevant transaction—*e.g.*, purchasing common stock—based on
18 that specific misrepresentation.” *Id.* The second method, class-wide reliance, is established through the
19 “fraud-on-the-market” presumption, which requires a plaintiff to both prove its elements—a public and
20 material misstatement, stock traded on an efficient market that “immediately” reflects all available
21 information, and trades made between the alleged fraud and revelation of the truth—and to survive a
22 defendant’s attempt to rebut the presumption on a class-wide basis. *Id.* at 268; *see also Cammer*, 711
23 F. Supp. at 1287. And if a defendant does rebut the presumption class-wide, an individual plaintiff may
24 still prevail by reverting to proof of actual individual reliance on the alleged fraud.

25 Here too, the jury instructions allowed the jury to find the reliance element met through either
26 individual reliance or fraud-on-the-market. Dkt. No. 524 at 23–24. But the general verdict gives no
27 indication which of these alternative theories of reliance the jury adopted in concluding that Defendant
28 was liable. The Court is prohibited from simply assuming that the jury found that Plaintiffs proved fraud-

1 on-the-market reliance. Where there are two independent bases for a general verdict, courts cannot
2 presume that the verdict rests on any particular theory. *E.g., Niles v. United States*, 520 F. Supp. 808, 812
3 (N.D. Cal. 1981), *aff'd sub nom. Niles By & Through Niles v. United States*, 710 F.2d 1391 (9th Cir. 1983)
4 (“For example, where a matter is tried on alternate theories of recovery and a general verdict rendered,
5 appellate courts will not speculate on what particular ground the jury may have found against the plaintiff.”
6 (alteration adopted and quotation omitted)); *Hesse v. Air France*, 1990 WL 58237, at *2 (9th Cir. 1990)
7 (“The general rule in this circuit is that a general jury verdict will be upheld only if each and every theory
8 of liability submitted to the jury is not legally defective.”). The Court presented the jury with two
9 permissible theories upon which it could find reliance established, but provided jurors with a verdict form
10 that did not allow them to identify which theory was satisfied. The verdict thus provides no answer, and
11 it would be impermissible to speculate.

12 Nor may the Court rely upon its preliminary finding at this stage. The law requires—and the Court
13 instructed at trial—that a market for securities must “immediately” respond to and reflect all available
14 information to be considered efficient and eligible for class-wide treatment. Dkt. No. 524 at 24; Ninth
15 Circuit Civil Model Instruction 18.7 (citing *Miller v. Thane Int’l, Inc.*, 615 F.3d 1095, 1102–03 (9th Cir.
16 2010)). The “cause and effect relationship between unexpected corporate events . . . and an *immediate*
17 *response* in the stock price” is “the essence of an efficient market and the foundation for the fraud on the
18 market theory.” *Cammer*, 711 F. Supp. at 1287 (emphasis added). Even Dr. Tabak acknowledged that
19 immediacy is the “factor that most directly tests market efficiency.” Dkt. No. 76-1 at 21.

20 The evidence that Plaintiffs presented at trial on loss causation and damages theory is inconsistent
21 with an efficient market for Twitter’s securities, the prerequisite to establish the presumption. *Halliburton*
22 *II*, 573 U.S. at 268. At trial, Plaintiffs presented expert testimony that the market did *not* immediately
23 respond to the May 13 tweet. Instead, Dr. Tabak testified that Twitter’s stock price had a delayed reaction
24 to Defendant’s May 13 post, such that it took *days* for the market to digest the information contained
25 in the tweet. Trial Tr. at 1891:9-11 (testifying that his opinion is “that Mr. Musk’s May 13 tweet caused
26 the stock decline on May 13 and May 16”). The jury adopted Dr. Tabak’s damages calculations, but those
27
28

1 calculations reflected and depended on the market’s *delayed* reaction to the tweet, thereby refuting the
2 possibility that the jury found the market for Twitter’s securities was efficient.¹

3 The Ninth Circuit has recognized the potential for a jury to find securities fraud liability without
4 finding an efficient market or the fraud-on-the-market presumption. Indeed, it has expressly held that the
5 requirements to prove an “efficient market” and establish the presumption are, by necessity, far more
6 rigorous than those to establish securities fraud liability on an individual basis. *Miller*, 615 F.3d at 1102-
7 03. As explained in *Miller*, the authority cited by the Model Instructions for the requirement that an
8 efficient market “immediately reflect all public information,” market efficiency “by definition, exists
9 when the release of financial information results in an ‘immediate response’ by the market,” “[b]ut an
10 *immediate* response is not required for loss causation.” *Miller*, 615 F.3d at 1103 (emphasis in original).
11 The general verdict does not indicate that the jury found that any of the fraud-on-the-market elements
12 were satisfied or which alternative theory of reliance supported liability. Nor does it communicate whether
13 the jury found that Defendant rebutted the presumption—an issue the Court expressly found could not be
14 adjudicated until trial, Dkt. No. 106 at 7 (noting that Defendant’s price impact arguments were “‘a matter
15 for trial,’ not for class certification”)—but nonetheless concluded, consistent with the Court’s instruction,
16 that plaintiffs proved they “justifiably relied directly on the misrepresentation,” *see* Dkt. 524 at 23-24.

17 And the Court cannot now act as a super juror to impose class-wide securities fraud liability. *See*
18 *Miller*, 615 F.3d at 1103 (emphasizing heightened due process concerns with imposing class-wide
19 securities fraud liability). Plaintiffs made a strategic choice to propose a general verdict form. Dkt. Nos.
20 360, 409. Defendant, by contrast, proposed a verdict form that would have allowed the jury to answer the
21 critical question of whether Plaintiffs had proved the presumption by a preponderance of the evidence,
22 and whether it had been rebutted. Dkt. No. 360. Permitting the Court to instead fill that fact-finding role
23 would usurp the role of the jury and violate the Seventh Amendment. *E.g., Mattison v. Dallas Carrier*
24 *Corp.*, 947 F.2d 95, 108 (4th Cir. 1991). Moreover, because Plaintiffs did not file a Rule 50(a) motion,
25 the Court cannot now hold as a matter of law that Plaintiffs proved the elements of the fraud-on-the-market
26 presumption because that would constitute a *sua sponte* judgment under Rule 50(b), which is plainly

27
28 ¹ As set forth in Defendant’s Rule 50(a) motion, Plaintiffs in fact failed to present sufficient evidence to establish reliance as a matter of law under any theory.

1 prohibited. *E.g., Murphy v. City of Long Beach*, 914 F.2d 183, 186 (9th Cir. 1990) (“[A] district court
2 may not enter a JNOV on grounds not asserted in a party’s motion for directed verdict.”).

3 Plaintiffs cannot be heard to complain that this outcome is unfair. They knew well that they had
4 to prove each element and yet insisted—over Defendant’s objection—on using a general verdict despite
5 understanding that the jury’s verdict on each element would have enormous class-wide ramifications.
6 They made a strategic decision and in turn invited this problem. They are thus barred from asking the
7 Court to remedy their error through an improper construction or interpretation of the verdict after the fact.
8 *See, e.g., In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 386 (9th Cir. 2010) (a party may not “invite the
9 district court to err and then complain of that very error”); *Logtale, Ltd. v. IKOR, Inc.*, 2016 WL 7743408,
10 at *4 (N.D. Cal. Aug. 16, 2016) (“[U]nder the ‘invited error’ doctrine, a party waives any ability to later
11 challenge a jury instruction or verdict form when the party invites the error of which it later complains.”),
12 *aff’d in part, rev’d in part, dismissed in part on other grounds*, 728 F. App’x 665 (9th Cir. 2018).

13 The jury’s verdict offers no way to identify whether the jury found that Plaintiffs proved reliance
14 through the class-wide presumption or based on the fact that the individual Plaintiffs “justifiably relied
15 directly on the misrepresentations and/or fraudulent acts.” *Compare* Dkt. No. 538 at 2, 4 *with* Dkt. No.
16 524 at 23–24. It thus offers no basis to conclude that Plaintiffs proved class-wide reliance.

17 **C. Absent A Specific Fraud-On-The-Market Finding, Decertification Is Required For**
18 **Failure To Meet The Requirements Of Rule 23**

19 Plaintiffs’ failure to obtain a verdict that the fraud-on-the-market presumption of class-wide
20 reliance applied—and their waiver of their ability to seek judgment as a matter of law on that theory—
21 means that Plaintiffs failed to establish that Rule 23’s requirements are met. *See Ries*, 2013 WL 1287416
22 at *3 (explaining that court may decertify a class based on “subsequent developments in the litigation,”
23 and that “[o]n a motion for decertification, the burden remains on the plaintiffs to demonstrate that the
24 requirements of Rules 23(a) and (b) are met” (quotations omitted)); *Marlo v. United Parcel Service, Inc.*,
25 639 F.3d 942, 947 (9th Cir. 2011) (similar).

26 Plaintiffs filed this case as a putative class action under Rule 23(b)(3), which requires that
27 “questions of law or fact common to class members predominate over any questions affecting only
28 individual members, and that a class action is superior to other available methods for fairly and efficiently

1 adjudicating the controversy.” Dkt. No. 31 at ¶¶ 180–181; Fed. R. Civ. P. 23(b)(3). “The main concern
2 of the predominance inquiry under Rule 23(b)(3) is ‘the balance between individual and common issues.’”
3 *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 545–46 (9th Cir. 2013) (citation omitted). “By its nature,
4 reliance is an individualized inquiry that demands individualized proof unless a presumption of reliance
5 applies.” *Colman v. Theranos, Inc.*, 325 F.R.D. 629, 641 (N.D. Cal. 2018). Applying this rule in the
6 securities fraud context, the Supreme Court has instructed that “[a]bsent the fraud-on-the-market theory,
7 the requirement that Rule 10b-5 plaintiffs establish reliance would ordinarily preclude certification of a
8 class action seeking money damages because individual reliance issues would overwhelm questions
9 common to the class.” *Amgen II*, 568 U.S. at 462–63. “Thus, if the plaintiffs failed to prove those
10 elements, they could not use the fraud-on-the-market presumption,” and though “their claims would not
11 be dead on arrival [because] they could seek to prove reliance individually,” that “would be inappropriate
12 for a class proceeding.” *Amgen I*, 660 F.3d at 1175.

13 Here, because no means exist to conclude that the jury found Plaintiffs proved the fraud-on-the-
14 market presumption at trial, individualized issues of reliance abound, and there is no basis to conclude
15 that “issues subject to generalized proof predominate over those issues that are subject only to
16 individualized proof.” *Weigele*, 267 F.R.D. at 620, 622 (alteration adopted and quotation omitted); *see*
17 *also Westways World Travel, Inc. v. AMR Corp.*, 265 F. App’x 472, 476 (9th Cir. 2008) (affirming
18 decertification where “[t]he district court concluded that maintenance of the class action pursuant to Fed.
19 R. Civ. P. 23(b)(3) was inappropriate because the Travel Agents’ RICO, contract, and unjust enrichment
20 claims would require individualized inquiries into American Airlines’s legal and contractual relationship
21 with each class member, and these individual inquiries would predominate over common questions of law
22 and fact”). Plaintiffs have no basis from the general verdict or any other procedural mechanism to
23 establish that they proved the fraud-on-the-market elements—as opposed to the Class Representatives’
24 individual reliance—at trial. Thus, individual issues of reliance “overwhelm questions common to the
25 class,” *Amgen II*, 568 U.S. at 462–63, defeating predominance.

26 Nor can Plaintiffs establish Rule 23(b)(3)’s superiority requirement. A class action is not
27 “superior” if, “given all of the individual issues that must be litigated in this matter, trial administration
28 would be overwhelming.” *Weigele*, 267 F.R.D. at 623–24. This is true even when “it would be far more

1 costly and time consuming for each individual putative class member” to proceed individually. *Id.* Absent
2 a class-wide presumption of reliance, no individual class member can recover at all without carrying their
3 burden to establish reliance. This requires a far more fulsome individualized process than the typical
4 Phase II procedures for rebutting individual reliance contemplated in other securities fraud class actions;
5 instead, the starting point is that there is *no* reliance and therefore no liability for every single absent class
6 member. *Compare Amgen I*, 660 F.3d at 1175 (“Thus, if the plaintiffs failed to prove those elements, they
7 could not use the fraud-on-the-market presumption,” and though “their claims would not be dead on arrival
8 [because] they could seek to prove reliance individually,” that “would be inappropriate for a class
9 proceeding.”) *with Halliburton II*, 573 U.S. at 276 (“That the defendant might attempt to pick off the
10 occasional class member here or there through individualized rebuttal” in Phase II “does not cause
11 individual questions to predominate.”).

12 In sum, the only basis for the Court’s decision to certify a class—the *Basic* presumption—no
13 longer supports certification. Thus, the class should be decertified and post-verdict proceedings should
14 go forward only as to the Class Representatives.

15 **II. IMPOSING CLASS-WIDE LIABILITY WOULD VIOLATE PROCEDURAL DUE** 16 **PROCESS**

17 Imposing class-wide liability despite the lack of any jury finding that Plaintiffs proved the fraud-
18 on-the-market presumption would violate procedural due process.

19 “Due process concerns require that class certification meet rigorous standards in securities cases.”
20 *Miller*, 615 F.3d at 1103. Indeed, the Rule 23 requirements exist “[i]n part because of the due process
21 concerns inherent in such a proceeding.” *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1105 (9th Cir.
22 2018). The Ninth Circuit has made clear that these standards apply, in particular, to the determination of
23 the elements necessary to establish the fraud-on-the-market presumption. *Miller*, 615 F.3d at 1003–04.
24 And courts are required to give “exacting” scrutiny to “vague jury verdict[s]” when the judgment
25 implicates “procedural due process concerns.” *UniRAM Tech., Inc. v. Taiwan Semiconductor Mfg. Co.*,
26 2008 WL 11515597, at *5 (N.D. Cal. Apr. 17, 2008).

27 Allowing this case to proceed on a class-wide basis, where the jury’s verdict provides no basis to
28 conclude that the jury found market efficiency and the fraud-on-the-market presumption, would run afoul

1 of these principles. The law requires that a securities class-action plaintiff prove that it is entitled to the
2 fraud-on-the-market presumption twice and to two separate fact finders: the Court on a preliminary basis
3 during class certification and the jury at trial. *Halliburton II*, 573 U.S. at 267; Dkt. 524 at 23. Courts have
4 constructed “rigorous standards,” *Miller*, 615 F.3d at 1103, to satisfy the heightened due process concerns
5 present in securities cases. The only manner to confirm whether these standards were satisfied at trial—
6 absent a Rule 50 judgment (which Plaintiffs waived)—is a jury verdict unambiguously so finding, either
7 by necessity (*i.e.*, where the jury instructions directed the jury to find liability only if those standards were
8 satisfied; not the case here) or special interrogatory. *Cf. Finjan, Inc. v. Sophos, Inc.*, 2016 WL 2988834,
9 at *19 (N.D. Cal. May 24, 2016) (“[A] general jury verdict can give rise to collateral estoppel only if it is
10 clear that the jury necessarily decided a particular issue in the course of reaching its verdict.” (quotation
11 omitted)).

12 To hold otherwise would be to provide less protection than due process requires. For instance, to
13 protect due process rights, “vagueness in a general verdict” is “***resolved against a prevailing plaintiff***” in
14 the context of collateral estoppel. *UniRAM Tech., Inc.*, 2008 WL 11515597, at *5 (emphasis added). In
15 such circumstances, “a general jury verdict can give rise to collateral estoppel only if it is clear that the
16 jury necessarily decided a particular issue in the course of reaching its verdict.” *Finjan*, 2016 WL
17 2988834, at *19 (quoting *United Access Techs., LLC v. Centurytel Broadband Servs. LLC*, 778 F.3d 1327,
18 1331 (Fed. Cir. 2015)). But “[w]hen there are several possible grounds on which a jury could have based
19 its general verdict and the record does not make clear which ground the jury relied on, collateral estoppel
20 does not attach to any of the possible theories.” *Id.*

21 Heightened due process concerns exist here because the fraud-on-the-market presumption gives
22 rise to the ability to proceed on a class-wide basis in a securities case. Absent a finding that Plaintiffs
23 established the presumption, due process and securities law require that each investor seeking damages
24 individually prove they relied on the alleged misrepresentations, defeating Plaintiffs’ ability to satisfy
25 Rule 23 and rendering class certification inappropriate. *See Amgen I*, 660 F.3d at 1175 (“Thus, if the
26 plaintiffs failed to prove these elements, they could not use the fraud-on-the-market presumption, but their
27 claims would not be dead on arrival; they could seek to prove reliance individually. That scenario,
28 however, would be inappropriate for a class proceeding.”). The Court thus must—at a minimum—apply

1 the same standard that applies to collateral estoppel to satisfy the “rigorous standards in securities cases.”
2 *Miller*, 615 F.3d at 1103. As a result, due process demands that the ambiguity in the jury’s verdict be
3 resolved against Plaintiffs. *Finjan*, 2016 WL 2988834, at *19.

4 Procedural due process, therefore, prevents Plaintiffs from maintaining the class and the Court
5 should order decertification.

6 **CONCLUSION**

7 For the foregoing reasons, Defendant respectfully requests that the Court grant this Motion and
8 decertify the Class.

9
10 DATED: May 1, 2026

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all counsel of record electronically or by another manner authorized under FED. R. CIV. P. 5(b) on Friday, May 1, 2026.

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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ATTESTATION

Pursuant to Civil L.R. 5-1, I attest under penalty of perjury that concurrence in the filing of this document has been obtained from the other signatories herein.

By /s/ Alex Bergjans

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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16

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

19 Plaintiff,

20 vs.

21 ELON R. MUSK,

22 Defendant.
 23

Case No. 3:22-CV-05937-CRB

**[PROPOSED] ORDER GRANTING
 DEFENDANT’S MOTION TO
 DECERTIFY CLASS ACTION
 PURSUANT TO FED. R. CIV. P. 23(C)**

Judge: Hon. Charles R. Breyer

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[PROPOSED] ORDER

Before the Court is Defendant Elon Musk’s Motion to Decertify Class Action Pursuant to Fed. R. Civ. P. 23(c). Having considered the Motion, the record at trial and verdict, all associated pleadings, briefing, and exhibits, and any arguments of counsel, the Court rules as follows:

The Court hereby GRANTS Defendant’s Motion.

IT IS SO ORDERED

Date: _____

Hon. Charles R. Breyer
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all counsel of record electronically or by another manner authorized under FED. R. CIV. P. 5(b) on this the *** day of May, 2026.

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