

1 MONIQUE C. WINKLER (Cal. Bar No. 213031)
BERNARD B. SMYTH (Cal. Bar No. 217741)
2 SmythB@sec.gov
ROBIN ANDREWS (Ill. Bar No. 6285644)
3 AndrewsR@sec.gov
44 Montgomery Street, Suite 700
4 San Francisco, CA 94104
Telephone: (415) 705-2500

5 Attorneys for Applicant Securities and Exchange Commission

6
7 QUINN EMANUEL URQUHART & SULLIVAN, LLP
ALEX SPIRO (*pro hac vice*)
8 alexspiro@quinnemanuel.com
Rachel G. Frank (Cal. Bar No. 330040)
9 rachelfrank@quinnemanuel.com
1300 I Street NW, Suite 900
10 Washington, D.C. 20005
Telephone: (202) 538-8000

11 Attorneys for Respondent Elon Musk

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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**
16

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18 SECURITIES AND EXCHANGE COMMISSION,
19 Applicant,
20 v.
21 ELON MUSK,
22 Respondent.

Case No. 3:23-mc-80253-JSC

**JOINT STATEMENT REGARDING
THE SEC’S REQUEST FOR
SANCTIONS AGAINST RESPONDENT
FOR HIS FAILURE TO APPEAR FOR
COURT-ORDERED TESTIMONY**

1 **I. Statement of Securities and Exchange Commission**

2 **A. Chronology**

3 On May 14, 2024, the Court ordered Respondent Elon Musk (“Musk”) to appear for
 4 investigative testimony before the SEC staff. Dkt. No. 48. On May 29, 2024, the parties agreed to
 5 conduct that testimony on September 19, 2024. Andrews Decl. at ¶ 2. On May 31, 2024, the Court
 6 ordered that, among other things, “The agreed-upon date and time for [Musk’s] testimony may be
 7 rescheduled only upon written consent of the SEC or order of the Court, and [Musk] shall not seek
 8 delay or rescheduling of the testimony absent an emergency that [Musk] did not create and could not
 avoid.” Dkt. No. 53 (“the May 31, 2024 Order”) at 3. In late July 2024, Musk’s counsel sought the
 SEC’s consent to reschedule the September 19 date; the SEC agreed to reschedule the testimony for
 September 10, 2024 at 9 a.m. in the SEC’s Los Angeles office. Andrews Decl. at ¶ 3.

9 On September 9, three SEC counsels flew to Los Angeles for Musk’s testimony: two from
 10 San Francisco, and one from Washington, DC. *Id.* at ¶ 4. Shortly before 6 a.m. on September 10,
 11 Musk’s counsel sent a letter to SEC counsel, notifying the SEC that Musk had traveled to the East
 12 Coast for a SpaceX rocket launch and would not be attending the testimony. *Id.* at ¶ 5. Less than three
 13 hours later, SEC counsel offered to reschedule the testimony for the following day, noting that this
 14 “allows for more than sufficient time for Mr. Musk to return to Los Angeles, given the approximately
 four-hour flight time” from Florida. *Id.* at ¶ 6. The SEC also stated: “If Mr. Musk does not promptly
 agree to appear tomorrow at 9 a.m. at the SEC’s Los Angeles office, we will bring this matter to
 Judge Corley today. Among other things, we may seek sanctions against Mr. Musk.” *Id.*

15 Musk’s counsel rejected September 11 but offered to reschedule the testimony to “dates in the
 16 next month.” *Id.* at ¶¶ 7, 10. SEC counsel sent a letter to Musk’s counsel offering any date in that
 17 timeframe: “We are available to take Mr. Musk’s testimony in the SEC’s San Francisco office on any
 18 date on or before October 11, 2024.” *Id.* at ¶ 10. On September 16, Musk’s counsel declined to agree
 19 to a date “in the next month” as previously offered, instead proposing October 29 or October 30, only
 20 in the SEC’s Los Angeles office, and only if the SEC withdrew its request for a discovery conference
 21 with the Court. *Id.* SEC counsel declined this offer. *Id.*

22 On September 18—only after the Court’s courtroom deputy indicated that the Court would
 23 schedule a discovery hearing on this issue—Musk’s counsel finally offered a testimony date in early
 24 October. *Id.* at ¶ 11. During the September 27, 2024 informal discovery hearing, the Court made clear
 25 to Musk’s counsel that Musk needed to comply with the May 31, 2024 Order and appear on October
 26 3. Musk appeared for testimony on October 3, 2024 at the SEC’s Los Angeles office. *Id.*

27 The parties have conferred regarding the SEC’s intent to seek sanctions. *Id.* at ¶ 12. To resolve
 28 this dispute, the SEC asked Musk to stipulate to an order: (1) finding that Musk violated the May 31,
 2024 Order when he failed to appear for his September 10 testimony; and (2) ordering that Musk pay
 the SEC \$2,923.09 to compensate the SEC for its travel costs for the September 10 testimony. *Id.*
 Musk agreed to pay the \$2,923.09, but refused to agree to a finding that he violated the May 31, 2024
 Order. *Id.* The SEC declined this counteroffer. *Id.*

1 **B. The Court Should Find That Musk Violated the May 31, 2024 Order and Impose**
 2 **Sanctions totaling \$2,923.09 for the SEC’s Travel Costs**

3 As the Court has already stated, Musk violated the May 31, 2024 Order. That Order required
 4 that Musk seek “written consent of the SEC or order of the Court” to modify the date of his testimony.
 5 Musk sought neither and did not appear at the scheduled testimony, a direct violation of the Court’s
 6 order. Musk’s excuse itself is not credible: SpaceX had already announced that it was targeting a
 7 Tuesday, September 10 morning launch *two days earlier*. *Id.* at ¶ 9. As the company’s Chief
 8 Technical Officer, Musk surely was already aware by then that SpaceX was targeting the morning of
 9 his SEC testimony for the launch. On Monday, September 9, Musk was interviewed at a conference
 in Los Angeles, during which he discussed the SpaceX launch and stated that if the weather held up,
 “I’m going to leave here to head to Cape Canaveral.” *Id.* Despite this advance knowledge, Musk did
 not notify the SEC of his intent to attend the launch until three hours before his testimony was to
 begin, and after the SEC spent nearly three thousand dollars to fly three attorneys to Los Angeles.

10 Musk ultimately appeared for testimony on October 3—after a September 20 joint filing (Dkt
 No. 55) and the September 27 hearing in which the Court made clear that Musk needed to appear.
 11 Musk’s appearance on October 3, however, does not nullify his violation on September 10. *See*
 12 *Jazwares, LLC v. Perez*, 2022 U.S. Dist. LEXIS 73937, at *6 (N.D. Cal. Apr. 22, 2022) (“Perez did
 eventually sit for his deposition on March 29, approximately seven weeks after the court-ordered date.
 This order finds, however, that this does not render his initial failure to appear a technical violation.
 13 Indeed, Perez thumbed his nose at the process until alerted to the risk he might be held in federal
 custody until he provided testimony.”); *Pac. Coast Surgical Ctr., L.P. v. Scottsdale Ins. Co.*, 2019
 14 U.S. Dist. LEXIS 156070, at *21-22 (C.D. Cal. July 31, 2019) (“Although Soskin ultimately appeared
 for the deposition on June 12, 2019, Soskin has not provided an ‘adequate excuse’ for his failure to
 15 comply with the Subpoena and has failed to demonstrate that he was unable to comply with the
 Subpoena.”). Musk’s violation of the May 31, 2024 Order on September 10 was in no way a
 16 “technical” violation: he cannot show that he was *unable* to comply. *See FTC v. Affordable Media*,
 17 179 F.3d 1228, 1239 (9th Cir. 1999); *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146 (9th Cir. 1983).

18 A finding by this Court that Musk violated the May 31, 2024 Order is important to effect
 19 deterrence against future violations and affirm the authority of the Court. Musk failed to appear before
 the SEC twice in this matter: in September 2023, in defiance of a lawful administrative subpoena, and
 20 in September 2024, in defiance of a clear court order. Only after the SEC sought Court intervention
 (again) and stated its intent to seek sanctions did Musk finally appear. The Court should make clear
 21 that disregard for court orders comes with real consequences. Finding that Musk violated the May 31,
 2024 Order is appropriate and necessary to deter Musk—and others who consider disobeying court
 22 orders to appear for SEC testimony—from future violations of court orders. *Cf. NHL v. Metro.*
 23 *Hockey Club*, 427 U.S. 639, 643 (1976) (one purpose of sanctions is to “deter those who might be
 tempted to such conduct in the absence of such a deterrent”); *Pac. Coast Surgical Ctr., L.P. v.*
 24 *Scottsdale Ins. Co.*, 2019 U.S. Dist. LEXIS 156070, at *12-13 (quoting *Young v. U.S. ex rel. Vuitton*
 25 *et Fils S.A.*, 481 U.S. 787, 796 (1987) (“The ability to punish disobedience to judicial orders is
 regarded as essential to ensuring that the Judiciary has a means to vindicate its own authority without
 26 complete dependence on the other Branches.”)

1 Musk has agreed to pay the SEC \$2,923.09: the total cost of its attorneys’ travel for the
2 September 10 testimony. Such sanctions are appropriate and routinely ordered. *See Gen. Signal Corp.*
3 *v. Donallco, Inc.*, 787 F.2d 1376, 1380 (9th Cir. 1986) (“Sanctions for civil contempt may be imposed
4 to coerce obedience to a court order, or to compensate the party pursuing the contempt action for
5 injuries resulting from the contemptuous behavior, or both.”) (citing *United States v. United Mine*
Workers of Am., 330 U.S. 258, 303-04 (1947)); *Jazwares, LLC*, 2022 U.S. Dist. LEXIS 73937, at *5-
6 7 (awarding attorneys’ fees and costs when witness failed to appear for his deposition); *Societe Civile*
Succession Richard Guino v. Renoir, 305 Fed. Appx. 334, 338 (9th Cir. 2008) (same).

6 But only ordering reimbursement of travel costs would not serve as a real deterrent for many
7 individuals considering violating a court order—much less someone of Musk’s extraordinary means.
8 Reimbursement of the SEC’s travel costs is inadequate because it does not fully address Musk’s
9 conduct and is inconsequential to him. A finding that Musk violated the May 31, 2024 Order,
10 however, would make clear that Musk’s failure to appear was not a trivial matter, and appropriately
11 tether the monetary sanction to his misconduct. The SEC thus asks this Court to hold Musk
12 accountable and find that he violated the May 31, 2024 Order, in addition to ordering reimbursement
13 of the SEC’s travel costs.

12 Dated: October 25, 2024

Respectfully submitted,

13 /s/ Robin Andrews

14 ROBIN ANDREWS

15 *Attorney for Securities and Exchange Commission*

1 **II. Statement of Respondent Elon Musk**

2 Mr. Musk appeared for and provided testimony to the SEC on October 3—as required by
3 this Court’s order (Dkt. 53) and as he committed to do after rescheduling the September 10 testimony
4 due to an emergency. Oct. 25, 2024 Spiro Decl. ¶ 5. Mr. Musk then offered to fully reimburse the
5 SEC for the costs of its attorneys’ travel for the September 10 testimony. *Id.* ¶ 6. Rather than take
6 yes for an answer and move on with its investigation, the SEC has indicated that it will ask this Court
7 to enter a sanction finding that Mr. Musk violated the Court’s order and compelling him to provide
8 the same relief that he has offered voluntarily. The SEC’s position is inexplicable by any valid
9 reason, and this Court should reject it.

10 As a threshold matter, there is no need for this Court to decide whether Mr. Musk violated
11 its order. The object of that order—and indeed this entire proceeding—was to require a third round
12 of testimony from Mr. Musk in the SEC’s underlying investigation. Mr. Musk provided that
13 testimony on October 3, testifying for roughly four hours in Los Angeles. Oct. 25, 2024 Spiro Decl.
14 ¶ 5. The SEC suggested that Mr. Musk was cooperative, *id.*, and has not contended that his testimony
15 was in any way insufficient. The SEC has accordingly accomplished what it came to this Court to
16 do. Any request for a sanction to ensure Mr. Musk’s compliance with the Court’s order would be
17 moot, because Mr. Musk has complied with that order by providing the required testimony. *See,*
18 *e.g., SEC v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003) (dispute over coercive sanctions moot
19 because defendant “purge[d] himself of contempt by making the required payments”).

20 The SEC’s request for a sanction is presumably aimed at securing reimbursement for the
21 costs of the rescheduled September 10 testimony. But this Court’s intervention is not necessary for
22 that purpose either, because Mr. Musk has offered to provide all of the compensation the SEC has
23 requested. Oct. 25, 2024 Spiro Decl. ¶ 6. The only reason the SEC has not already obtained that
24 relief is that it rejected Mr. Musk’s proposal. *Id.* ¶ 7. As a jurisdictional matter, it is dubious whether
25 the Court can consider a request for sanctions given Mr. Musk’s agreement to provide the relief the
26 SEC seeks; “federal courts exist to resolve real disputes, not to rule on a plaintiff’s entitlement to
27 relief already there for the taking.” *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 175 (2016)
28 (Roberts, C.J., dissenting); *see also Deutsche Bank Nat. Tr. Co. v. FDIC*, 744 F.3d 1124, 1135 (9th
Cir. 2014) (the “doctrine of prudential mootness permits a court to” to dismiss a case “not technically
moot if circumstances have changed since the beginning of litigation that forestall any occasion for
meaningful relief” (cleaned up)). As a practical matter, the answer is straightforward: there is no
sound reason to decide whether Mr. Musk violated the Court’s order given that he has now complied
with that order and offered all of the compensation the SEC seeks. And it is a “cardinal principle of
judicial restraint” that “if it is not necessary to decide more, it is necessary not to decide more.” *PDK
Labs. Inc. v. DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring
in the judgment).

24 Finally, a sanction is unwarranted because Mr. Musk did not violate the Court’s order. The
25 order provided in relevant part that “[t]he agreed-upon date and time may be rescheduled only upon
26 written consent of the SEC or order of the Court, and [Mr. Musk] shall not seek delay or rescheduling
27 of the testimony absent an emergency that [he] did not create and could not avoid.” Dkt. 53 at 2.
28 Here, the testimony was rescheduled from September 10 to October 3 “upon written consent of the
SEC.” *Id.*; *see* Oct. 25, 2024 Spiro Decl. ¶ 4. And Mr. Musk did not “seek delay or rescheduling of
the testimony absent an emergency that [he] did not create and could not avoid.” Dkt. 53 at 2. He
sought rescheduling of the September 10 testimony only because his presence was required for the

1 Polaris Dawn launch in Cape Canaveral, Florida—the timing of which was dependent on shifting
2 weather conditions that could only be determined with certainty very close to the launch time. *See*
3 Oct. 25, 2024 Spiro Decl. ¶ 3; Keech Decl., Dkt. No. 55-4, ¶¶ 5-7.

4 The SEC does not dispute that it provided written consent to the rescheduling of the
5 September 10 testimony or that Mr. Musk sought the rescheduling because of an emergency beyond
6 his control. The SEC’s contention that Mr. Musk violated the order instead seems to turn on the
7 premise that Mr. Musk should have provided greater advance notice of the potential emergency. But
8 the Court’s order does not contain a notice requirement, so failing to provide notice cannot be the
9 basis for finding a violation of the order. Moreover, it is unclear what notice the SEC believes Mr.
10 Musk should have provided. As of September 8, two days before the scheduled testimony, “there
11 was only a 10% chance that the weather would be appropriate to allow for the mission to proceed
12 on September 10.” Keech Decl., Dkt. No. 55-4, ¶ 7. Conceivably, Mr. Musk could have informed
13 the SEC on September 8 that there was a 10% chance he would not be able to appear on September
14 10 because of the Polaris Dawn launch. But nothing in the Court’s order suggests that such forecasts
15 are required, and it is not evident how such information would have been helpful to the SEC if Mr.
16 Musk had provided it. *See id.* (explaining that the Polaris Dawn launch had been rescheduled
17 multiple times since its initial target date of August 26).

18 At the very least, Mr. Musk has advanced a good-faith interpretation of an ambiguity in the
19 order (the proper mechanism for addressing a potential-but-uncertain emergency), and a sanction for
20 any arguable violation of the order is unwarranted—particularly given that Mr. Musk promptly
21 rescheduled the testimony and complied with the order. *See, e.g., Vertex Distrib., Inc. v. Falcon*
22 *Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982) (“if a defendant’s action appears to be based
23 on a good faith and reasonable interpretation of (the court’s order), he should not be held in
24 contempt”) (cleaned up); *SEC v. Volkswagen Aktiengesellschaft*, 19-cv-01391-CRB (AGT), Dkt.
25 No. 124, (N.D. Cal. Apr. 21, 2023) (Tse, J.) (denying adverse inference sanction for failing to
26 produce employee for deposition because defendant did not act in bad faith); *Caouette v. OfficeMax,*
27 *Inc.*, 352 F. Supp. 2d 134, 137 (D.N.H. 2005) (sanctions not appropriate when deposition was
28 rescheduled due to a family medical emergency). The Court should accordingly deny the SEC’s
request for a sanction and end this satellite litigation.

Dated: October 25, 2024

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By: /s/ Alex Spiro
Alex Spiro

Attorney for Elon Musk