

US court to hear contempt case against Tesla's Musk

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A US court will hear arguments Thursday on whether Tesla CEO Elon Musk should be held in contempt for violating a settlement with securities regulators

Elon Musk's messy Twitter habit will get a once-over on Thursday when a federal court weighs whether the controversial Tesla chief executive

should be held in contempt of court.

His attorneys and the US Securities and Exchange Commission are scheduled to appear before US District Judge Alison Nathan, who will hear arguments on the agency's request to crack down on Musk for allegedly violating the terms of a settlement Nathan approved in October.

Musk's removal as CEO is not seen as a very likely result of the latest fight, although a finding of contempt could make such an outcome more likely down the road, analysts said.

A negative ruling could also increase investor pressure on Musk to appoint a chief operating officer to share responsibility for managing a company that has suffered from near-constant turnover.

Tesla representatives did not respond to queries on whether Musk would attend the hearing, which comes as shares of the electric car maker plummeted following disappointing first-quarter deliveries.

The October agreement required Musk to step down as chairman and pay \$20 million to settle charges he defrauded investors with false claims on Twitter in August about a possible go-private transaction that was quickly aborted.

Tesla was also fined \$20 million.

The settlement, which allowed Musk to remain as CEO, required the CEO and other senior officers to obtain pre-approval from Tesla counsel before making written communications "that contain, or reasonably could contain, information material to Tesla or its stockholders."

'Nobody's perfect'

The hearing is the latest event in Musk's running battle with the SEC, which he derided on Twitter as the "Shortseller Enrichment Commission" on October 4, days after the SEC settlement was signed but before it was finalized in court.

Musk also blasted the agency in a December "60 Minutes" interview where he acknowledged his tweets were not being reviewed.

"I guess we might make some mistakes. Who knows?" Musk said.
"Nobody's perfect."

"I want to be clear. I do not respect the SEC," he said. "I do not respect them."



Analysts note Elon Musk owns a large stake in Tesla, which would likely make

him a presence in the company even if he were barred as CEO

The agency took action after Musk tweeted on February 19 that Tesla would make 500,000 cars in 2019—up from the 400,000 that the company had estimated until then, an apparent increase on a benchmark tied to profitability.

Musk corrected himself four hours later, saying that Tesla would indeed produce about 400,000 cars this year: "Meant to say annualized production rate at end of 2019 probably around 500k."

Six days later, the SEC asked Nathan to hold Musk in contempt for violating the settlement, arguing that Musk had not made "a diligent or good-faith effort" to honor the commitment to seek review for a statement that could be "material," or consequential to investors.

Musk "once again published inaccurate and material information about Tesla to his over 24 million Twitter followers, including members of the press, and made this inaccurate information available to anyone with Internet access," the agency said.

In response, Musk's lawyers argued that the production figures were not material and that Musk had shown "diligence" in following the order, cutting his average monthly Tesla-related tweets "nearly in half."

Musk's attorneys also accused the SEC of an "unconstitutional power grab" that flouted Musk's free speech rights and "smacks of retaliation and censorship" over the executive's remarks on "60 Minutes."

Legal experts described the case against Musk as solid but note that the SEC did not ask the court for a specific punishment, such as removing

him as CEO.

Overpromising?

The hearing comes on a bruising day for Tesla shares, which plunged 8.8 percent to \$266.10 after the company said it delivered 63,000 vehicles to customers in the first quarter, 31 percent less than the previous quarter and below the 76,000 units expected by analysts surveyed by FactSet.

A note from JPMorgan Chase said the report was "substantially worse than expected" and that it undermined Musk's defense in the SEC matter, which holds that Musk's February 19 tweet on production numbers was not material in light of other company statements.

The JPMorgan note also pointed to a "clear incongruence" between Tesla's official forecasts and Musk's statements, pointing to company's January 30 earnings report that projected 360,000 to 400,000 deliveries in 2019, a figure reaffirmed Wednesday.

However, Musk in the January 30 conference call discussed Model 3 deliveries of between 350,000 and 500,000, implying much higher overall deliveries.

Musk explained that the gap was due to uncertainty about the progress of a new Shanghai plant that is being built.

But the JPMorgan note said the "choppiness and inconsistency" of the figures are "eroding investor confidence and potentially placing additional pressure on the shares."

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