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

14
15 CHRISTOPHER MALLOW,
16 individually, and on behalf of all
others similarly situated,

17 Plaintiff,

18 v.

19 TESLA, INC. dba TESLA MOTORS,
20 INC.; TESLA LEASE TRUST; and
TESLA FINANCE LLC,

21 Defendant.

Case No.

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

1 Plaintiff Christopher Mallow, (“Plaintiff”), for himself and on behalf of all
2 others similarly situated, brings this class action against Defendants Tesla, Inc.,
3 dba Tesla Motors, Inc., Tesla Lease Trust, and Tesla Finance LLC (collectively,
4 “Defendants” or “Tesla”). Plaintiff alleges the following based on personal
5 knowledge as to his own acts, and on information and belief and the investigation
6 conducted by his counsel as to all other allegations:

7 **I. NATURE OF THE ACTION**

8 1. Tesla advertises its vehicles as “engineered to be the safest in the
9 world.” In particular, Tesla touts its “Autopilot technology,” claiming that its
10 cars’ “active safety features can help reduce the severity or prevent accidents
11 from happening altogether.”¹ In reality, many of the statements and claims made
12 by Tesla about its advanced driver assistance systems (“ADAS”) technology,
13 which is marketed under various names, including “Autopilot,” “Enhanced
14 Autopilot,” and “Full Self-Driving Capability” (“FSD”), are deceptive and
15 misleading.

16 2. Indeed, Tesla’s untrue and misleading claims about its vehicles
17 equipped with ADAS features are the subject of a complaint filed by the State of
18 California Department of Motor Vehicles. The Complaint in that case alleges:
19 “Tesla advertised ADAS features in written marketing materials primarily on
20 Tesla’s internet website using the product labels and descriptions:

- 21 a. ‘Autopilot’
- 22 b. ‘Full Self-Driving Capability’
- 23 c. The phrase: ‘The system is designed to be able to conduct short
24 and long-distance trips with no action required by the person in
25 the driver’s seat.’
- 26 d. The claims: ‘From Home – All you will need to do is get in and
27 tell your car where to go. If you don’t say anything, your car

28 ¹ <https://www.tesla.com/safety>. (Last accessed Sept. 20, 2022).

1 will look at your calendar and take you there as the assumed
2 destination. Your Tesla will figure out the optimal route,
3 navigating urban streets, complex intersections and freeways.
4 To your Destination – When you arrive at your destination,
5 simply step out at the entrance and your car will enter park seek
6 mode, automatically search for a spot and park itself. A tap on
7 your phone summons it back to you.

8 3. Instead of simply identifying product or brand names, these
9 ‘Autopilot’ and ‘Full Self-Driving Capability’ labels and descriptions represent
10 that vehicles equipped with the ADAS features will operate as an autonomous
11 vehicle, but vehicles equipped with those ADAS features could not at the time of
12 those advertisements, and cannot now, operate as autonomous vehicles. These
13 advertisements are a deceptive practice.” *In re Tesla Inc., dba Tesla Motors Inc.*
14 *(Dealer)*, Case No. 21-02189.

15 4. Yet, in an effort to increase revenue, sales, and investment, Tesla
16 continuously deceived and mislead consumers regarding the abilities of its ADAS
17 technology, knowing that autonomous and semi-autonomous driving technology
18 is highly coveted by consumers.

19 5. “For years, Mr. Musk has said Tesla cars were on the verge of
20 complete autonomy. ‘The basic news is that all Tesla vehicles leaving the factory
21 have all the hardware necessary for Level 5 autonomy,’ he declared in 2016. The
22 Statement surprised and concerned some working on the project, since the
23 Society of Automotive Engineers defines Level 5 as full driving automation.”²

24 6. In another misleading and deceptive 2016 tweet, Elon Musk stated
25 that a Tesla vehicle would complete a fully self-driving trip across the United
26 States by “next year.”

27
28 ² <https://www.nytimes.com/2021/12/06/technology/tesla-autopilot-elon-musk.html>. (Last accessed Sept. 20, 2022).

1 7. Tesla continued to make untrue statements in 2016 on its official blog
2 that "All Tesla Cars Being Produced Now Have Full Self-Driving Hardware." The
3 blog post included the misleading October 2016 video of a Tesla car purportedly
4 driving itself without incident, and suggested that Tesla was on the cusp of
5 bringing to market cars that would be fully "self-driving" and have "full
6 autonomy."³ When Tesla and Musk made these statements, they knew there was
7 no reasonable chance of Tesla being able to meet those promises.

8 8. Tesla continued to deceive and mislead consumers about its "Full Self-
9 Driving Capability" technology throughout 2017-2019. Tesla's website included
10 statements representing that Tesla owners with the FSD version of its ADAS
11 technology would receive cars capable of "full self-driving in almost all
12 circumstances," ...that could "conduct short and long distance trips with no
13 action required by the person in the driver's seat" and with a "probability of
14 safety at least twice as good as the average human driver."

15 9. Tesla's repeated assurances since 2016 continued to promise that the
16 product, the self-driving, fully autonomous vehicle was coming within that year
17 or the next.⁴ Years later, in 2019, Tesla promised consumers that a fully self-
18 driving Tesla car would be available by the end of that year that could deliver a
19 fully automated trip across the country.⁵ Yet, Tesla has not lived up to its
20 repeated promises of a fully self-driving car capable of safely traveling any
21 distance-much less a fully automated three-thousand-mile journey across the
22 country.

23
24 ³ See The Tesla Team, "All Tesla Cars Being Produced Now Have Full Self-Driving Hardware,"
25 <https://www.tesla.com/blog/all-tesla-cars-being-produced-now-have-full-selfdriving-hardware> (Oct.
19, 2016).

26 ⁴ See, e.g., The Dawn Project, "Elon Musk's broken promises,"
27 https://dawnproject.com/wpcontent/uploads/2022/06/The-Dawn-Project-Musk-promises-1min-NA.mp4?_=2 (collecting video
clips of Musk making such promises from 2014 to 2021).

28 ⁵ Elon Musk, <https://twitter.com/elonmusk/status/1126611407984779264> (May 9, 2019, 3:14 pm).

1 10. Tesla's ADAS technology is not what Tesla has represented it to be.
2 Rather than being as advertised, the "Full Self-Driving Capability" Plaintiff and
3 fellow consumers paid for is instead used to generate data for Tesla's software
4 programming. Buyers were guinea pigs, used to test Tesla's technology at the
5 expense of injury and sometimes death.

6 11. Plaintiff Christopher Mallow is a resident of Boca Raton, Florida.
7 Plaintiff purchased a new 2020 Model 3 Tesla Performance Edition and paid an
8 additional \$7,000.00 for the "Full Self-Driving Capability" option on or about
9 November 4, 2019.

10 12. Plaintiff brings this class action lawsuit on behalf of himself and other
11 consumers who purchased or leased a new Tesla vehicle and paid more for
12 Tesla's ADAS technology.

13 13. Had Plaintiff and other Class members known that Tesla's ADAS
14 technology would not result in a fully self-driving car, they would not have paid
15 more for the technology. As a result of their reliance on partial representations
16 and/or omissions by Tesla, Plaintiff and the other Class members have suffered a
17 loss of money and/or loss in value of their vehicles.

18 14. Based on information and belief, Plaintiff alleges that at all times
19 mentioned herein, Defendants and all unknown co-conspirators were an agent,
20 servant, employee and/or joint venture of each other, and were at all times acting
21 within the course and scope of said agency, service, employment, and/or joint
22 venture with full knowledge, permission, and consent of each other. In addition,
23 each of the acts and/or omissions of each Defendant and unknown co-conspirator
24 alleged herein were made known to, and ratified by, Defendants. Plaintiff will
25 seek leave of Court to amend this Complaint to reflect the true names and
26 capacities of the unknown co-conspirators when such identities become known.

27 15. To the extent that there are statutes of limitations applicable to
28 Plaintiff's and Class members' claims, the running of the limitations periods has

1 been tolled by: equitable tolling, the discovery rule, the fraudulent concealment
2 rules, equitable estoppel, the repair rule, and/or class action tolling.

3 **II. JURISDICTION AND VENUE**

4 16. This Court has subject matter jurisdiction over the Magnuson-Moss
5 Warranty Act claim pursuant to 28 U.S.C. § 1331

6 17. This Court also has jurisdiction over this action pursuant to the Class
7 Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The matter in
8 controversy, exclusive of interest and costs, exceeds the sum or value of
9 \$5,000,000 and is a class action in which there are more than 100 members of the
10 Classes, members of the Class are citizens of states different from Defendant, and
11 greater than two-thirds of the members of the Class reside in states other than the
12 states in which Defendant is a citizen.

13 18. In addition, under 28 U.S.C. § 1367, this Court may exercise
14 supplemental jurisdiction over the state law claims because all the claims are
15 derived from a common nucleus of operative facts are such that Plaintiff would
16 ordinarily expect to try them in one judicial proceeding.

17 19. **Personal Jurisdiction.** This Court has personal jurisdiction over
18 Defendants because they have conducted and continue to conduct substantial
19 business in California, and have sufficient minimum contacts with California in
20 that (1) from the beginning of the Class Period (as defined herein) until December
21 2021, Defendant Tesla, Inc. was headquartered in Palo Alto, California, and thus
22 designed, developed, manufactured, tested, and marketed its vehicles and ADAS
23 technology at issue in this action in California throughout that period; (2)
24 throughout the Class Period, Tesla, Inc. tested and manufactured a substantial
25 percentage of the Class Vehicles (as defined herein) at its factory in Fremont,
26 California; (3) throughout the Class Period, Tesla, Inc. has been the direct or
27 indirect owner and operator of dozens of retail Tesla stores in California
28 (accounting for more than a quarter of Tesla stores nationwide) that market and

1 sell or lease new Tesla vehicles, including a substantial percentage of Class
2 Vehicles; (4) throughout the Class Period, California has been by far the largest
3 U.S. market for sales and leases of new electric vehicles, including sales and
4 leases of new Tesla vehicles and Class Vehicles; (5) throughout the Class Period,
5 Defendants developed the marketing scheme at issue in this action in California
6 and targeted California consumers with that marketing scheme, including
7 deceptive and misleading statements about Tesla's vehicles and ADAS
8 technology on Tesla's website and Musk's Twitter feed; (6) Tesla, Inc. is registered
9 with the California Secretary of State to do business in the State of California, and
10 is licensed by the California Department of Motor Vehicles as a vehicle dealer and
11 a vehicle manufacturer; and (7) Defendant Tesla Finance LLC has its principal
12 place of business in California.

13 20. **Venue.** Venue is proper in the United States District Court for the
14 Northern District of California pursuant to 28 U.S.C. § 1391(b)(1) and (c)(2)
15 because Defendants' contacts are sufficient to subject them to personal
16 jurisdiction in this District, and therefore, Defendants reside in this District for
17 purposes of venue, or under 28 U.S.C. § 1391(b)(2) because certain acts giving rise
18 to the claims at issue in this complaint occurred, among other places, in this
19 District.

20 **III. PARTIES**

21 **A. Plaintiff**

22 21. Plaintiff Christopher Mallow is a resident of Boca Raton, Florida.
23 Plaintiff purchased a new a Model 3 Performance edition in or about November
24 4, 2019, from Tesla Inc. at a Tesla location in Boca Raton, Florida. Plaintiff paid an
25 additional \$7,000.00 for the "Full Self-Driving Capability" option offered by Tesla.

26 22. Prior to purchasing his vehicle, Plaintiff researched, viewed, and
27 relied on Tesla's online and other public statements, including those made by
28

1 Musk, which were disseminated to consumers throughout the State of Florida
2 and the U.S.

3 **B. Defendants**

4 23. **Tesla, Inc.** Defendant Tesla, Inc., dba Tesla Motors, Inc., is a Delaware
5 corporation that was headquartered in Palo Alto, California from approximately
6 2003 to December 1, 2021. Defendant has since moved its principal place of
7 business to Austin, Texas. Tesla, Inc. designs, develops, manufactures, tests,
8 markets, distributes, sells, and leases electric vehicles under the brand name
9 “Tesla.” Tesla, Inc. also offers services related to those vehicles, including
10 designing, developing, and periodically sending over-the-air updates for the
11 ADAS software in Tesla vehicles.

12 24. Tesla’s business is fully vertically integrated. Tesla designs, develops,
13 manufacturers, and tests electric vehicles and the ADAS software on those
14 vehicles. This includes all versions of Tesla’s ADAS technology (e.g., Autopilot,
15 Enhanced Autopilot, FSD) designed, developed, manufactured, and tested by
16 Tesla at its Palo Alto offices, Fremont factory, and other California offices and
17 facilities. On information and belief, all or a substantial majority of the Class
18 Vehicles (as defined herein) were manufactured and tested in California.

19 25. Tesla also markets its vehicles on its website, in marketing materials,
20 in its brick-and mortar galleries and showrooms, and through the tweets, media
21 interviews, news conferences, earnings calls, conferences, forums, and other
22 public events and statements by its representatives and agents, including Elon
23 Musk. All of these are designed to generate media coverage and have been
24 successful at doing so.

25 26. Finally, Tesla sells and leases its electric vehicles directly to
26 consumers, including through its website and retail stores, which Tesla owns and
27 operates. Customers cannot buy new Tesla vehicles except directly from Tesla.
28

1 27. **Tesla Lease Trust.** Defendant Tesla Lease Trust is a Delaware
2 statutory trust, and its initial beneficiary is Tesla Finance LLC. Tesla Lease Trust
3 is the title holder to the Tesla vehicles that are leased under a leasing program
4 managed by Tesla Finance LLC.

5 28. **Tesla Finance LLC.** Defendant Tesla Finance LLC is a wholly owned
6 subsidiary of Tesla, Inc., and is the beneficial owner of the leasing assets held in
7 Trust by Tesla Lease Trust. As an agent of the Tesla Lease Trust, Tesla Finance
8 LLC originates, services, administers, and collects leases for Tesla Lease Trust.
9 Tesla Finance LLC is incorporated in Delaware and has its principal place of
10 business in California.

11 **IV. FACTUAL ALLEGATIONS**

12 **A. The Technology of Autonomous Vehicles**

13 29. As the idea of automated or partially automated driving began to
14 manifest in reality, SAE International⁶ published the initial version of SAE J3016
15 Recommended Practice: Taxonomy and Definitions for Terms Related to Driving
16 Automation Systems for On-Road Motor Vehicles, commonly referred to as the
17 SAE Levels of Driving Automation (“SAE Levels”). Following this, SAE
18 International published revised versions of the SAE Levels in 2016, 2018, and
19 2021.⁷

20 30. SAE J3016 addresses motor vehicle driving automation systems that
21 perform part or all of the dynamic driving task on a sustained basis, and features
22 three primary actors in driving: the human user, the driving automation system,
23 and other vehicle systems and components.⁸

24 _____
25 ⁶ SAE International is a global association of more than 128,000 engineers and related technical
experts in the aerospace, automotive and commercial vehicle industries.

26 <https://www.sae.org/>. (Last accessed Sept. 22, 2022).

27 ⁷ See SAE International, “Taxonomy and Definitions for Terms Related to Driving Automation
Systems for On-Road Motor Vehicles” (revised Apr. 30, 2021), [https://www.sae.org/
standards/content/j3016_202104](https://www.sae.org/standards/content/j3016_202104).

28 ⁸⁸ <https://blog.ansi.org/defining-automated-driving-systems-sae-j-3016-2021/#gref>. (Last
accessed Sept. 22, 2022).

1 31. SAE J3016 defines six levels of driving automation and was adopted
2 by the U.S. Department of Transportation. The higher the SAE level, the more the
3 driving tasks become the responsibility of the automation systems. Thus, Level 0
4 corresponds to a conventional automobile that doesn't make use of driving
5 automation technologies, and Level 5 is an automobile where the primary user is
6 a passenger and not a driver.

- 7 a. **Level 0: No Driving Automation.** Manual control. The human
8 driver performs all driving tasks (steering, acceleration, braking,
9 etc.), although vehicles may have safety features like automatic
10 emergency braking and forward collision warning.
- 11 b. **Level 1: Driver Assistance.** The vehicle features a single
12 automated system (e.g., adaptive cruise control, lane-keeping
13 assistance).
- 14 c. **Level 2: Partial Driving Automation.** The vehicle can perform
15 multiple driving tasks (e.g., acceleration, steering) but remains
16 under the human driver's constant supervision, responsibility,
17 and control.
- 18 d. **Level 3: Conditional Driving Automation.** With
19 environmental detection capabilities, the vehicle can perform
20 most driving tasks, but human override is still required.
- 21 e. **Level 4: High Driving Automation.** The vehicle can perform all
22 driving tasks under specific circumstances, but human override
23 is still an option.
- 24 f. **Level 5: Full Driving Automation.** The vehicle can perform all
25 driving tasks under all conditions, with zero human attention or
26 interaction required.

27 32. In 2014, Tesla announced its first version of Autopilot. Six years later,
28 it rolled out its first version of full self-driving beta software. But in spite of Tesla

1 and Musk's continued promises that Tesla's SAE Level 2 ADAS technology
2 (including Autopilot and FSD) would rapidly advance to SAE Level 5 abilities
3 within a year or other short period of time, Tesla's technology is still classified as
4 SAE Level 2.

5 33. Manufacturers, such as Audi, Honda and Mercedes-Benz have
6 successfully designed and developed SAE Level 3 features. Further, Waymo
7 operates limited SAE Level 4 taxi service on public roadways in some areas of
8 Phoenix and San Francisco. While self-driving technology has been successfully
9 incorporated into other vehicles, Tesla is still classified as Level 2.

10 34. The consensus among autonomous vehicle experts is that truly
11 autonomous, self-driving cars cannot be achieved without some reliance on
12 LIDAR technology (3-D laser distance imaging technology), which Tesla has
13 always refused to use because of considerations related to expense and aesthetics.
14 But the successful design and development of safer and more advanced Level 3
15 and 4 systems to date has universally relied on a more robust and expensive
16 combination of cameras, multiple radar units, and one or more LIDAR units.
17 Meanwhile, Tesla's Level 2 technology relies heavily on cameras (with limited
18 assistance from a single forward-facing radar unit).

19 **B. Tesla's Autopilot**

20 35. In 2014, Tesla began equipping its Model S sedan with hardware that
21 was intended to allow vehicles to automate some steering, braking, and
22 acceleration functions. Consistent with widely used industry terminology, Tesla
23 originally called this feature "advanced driver assistance" before Tesla decided to
24 change the name to "Autopilot." Tesla engineers expressed concerns that the
25 name was misleading and suggested less misleading options such as "Copilot,"
26 which Tesla rejected.⁹

27 ⁹ Cade Metz & Neal E. Boudette, "Inside Tesla as Elon Musk Pushed an Unflinching Vision for Self-
28 Driving Cars," *The New York Times* (Dec. 6, 2021), available at <https://www.nytimes.com/>

1 36. In October 2015, Tesla released its version 7.0 software, which enabled
2 Autopilot on Model S vehicles. Evan Nakano, a Tesla Autopilot engineer who
3 had worked on safety features, objected that Autopilot was not ready for release.
4 When Tesla ignored his concerns, Nakano resigned in protest and wrote a
5 resignation letter, circulated widely among Tesla employees, that called
6 Autopilot's development based on "reckless decision making that has potentially
7 put customer lives at risk."¹⁰ Robert Rose, the head of the Autopilot project, also
8 left Tesla shortly before the release.

9 37. By December 2015, Musk was publicly stating that Tesla vehicles
10 would drive themselves within about two years. He told *Fortune* magazine, "I
11 think we have all the pieces, and it's just about refining those pieces, putting them
12 in place, and making sure they work across a huge number of environments –
13 and then we're done. It's a much easier problem than people think it is."¹¹

14 38. In January 2016, Musk announced on a conference call with reporters
15 that Tesla's Autopilot was "probably better" than a human driver. He said that
16 Tesla vehicles would be able to drive significantly better than humans within two
17 to three years, and that within about two years drivers would be able to use
18 Tesla's "Summon" feature – which allows drivers to remotely instruct their
19
20

21
22 2021/12/06/technology/tesla-autopilot-elon-musk.html Tesla, "Tesla Self-Driving
23 Demonstration"

(Nov. 18, 2016), <https://www.tesla.com/videos/autopilot-self-driving-hardware-neighborhood-long>.

24 ¹⁰ Ianthe Jeanne Dugan & Mike Spector, "Tesla's Push to Build a Self-Driving Car Sparked
25 Dissent

Among Its Engineers," *The Wall Street Journal* (Aug. 24, 2017), *available at*

[https://www.wsj.com/articles/teslas-push-to-build-a-self-driving-car-sparks-dissent-among-itsengineers-](https://www.wsj.com/articles/teslas-push-to-build-a-self-driving-car-sparks-dissent-among-itsengineers-1503593742)

[1503593742](https://www.wsj.com/articles/teslas-push-to-build-a-self-driving-car-sparks-dissent-among-itsengineers-1503593742).

27 ¹¹ Kristen Korosec, "Elon Musk Says Tesla Vehicles Will Drive Themselves in Two Years,"
28 *Fortune*

(Dec. 21, 2015), *available at* <https://fortune.com/2015/12/21/elon-musk-interview/>.

1 vehicle to drive to a specified location – to summon a vehicle from the other side
2 of the country.¹²

3 39. Ten days later, 23-year-old Gao Yaning, who had a history of relying
4 on Autopilot to drive, was killed in China on the way home from a family
5 wedding when his Tesla Model S crashed at full highway speed into the back of a
6 large street sweeper. The facts of the crash strongly suggest Autopilot was
7 engaged at the time of the crash.¹³

8 40. In February 2016, Consumer Reports tested Tesla’s new Summon
9 feature. Although Consumer Reports had previously given Tesla vehicles rave
10 reviews (scoring Tesla’s Model S a 99 out of 100 and calling it “the best car we
11 have every tested” in 2013, and scoring another version of the Model S even
12 higher in 2015), this time Consumer Reports’ testing revealed that the Summon
13 feature failed to detect “several large objects that a homeowner might leave in a
14 driveway or on the floor of a garage – such as a duffel bag and bicycle – and the
15 car failed to stop before hitting them.” Consumer Reports’ testers also
16 encountered trouble remotely stopping the car, which resulted in damage to one
17 of the car’s wheels and raised significant safety concerns.¹⁴

18 41. A few months later, Joshua Brown was killed in Florida when the
19 Autopilot on his Tesla Model S failed to recognize a tractor-trailer crossing in
20 front his car. He collided with, and then passed under, the trailer at 74 mph.¹⁵ The
21 top third of Brown’s car was sheared off. Brown was a Tesla enthusiast who had
22

23 ¹² Elon Musk, <https://twitter.com/elonmusk/status/686279251293777920> (Jan. 10, 2016, 12:11
24 pm).

25 ¹³ Neal Boudette, “Autopilot cited in Death of Chinese Tesla Driver,” *The New York Times* (Sept.
26 14, 2016), available at <https://www.nytimes.com/2016/09/15/business/fatal-tesla-crash-in-china-involvedautopilot-government-tv-says.html>.

27 ¹⁴ Jake Fisher, “Tesla to Fix Self-Parking Feature After Consumer Reports Raises Safety
28 Concern,” *Consumer Reports* (Feb. 10, 2016), available at <https://www.consumerreports.org/car-safety/teslafixes-self-parking-feature-after-consumer-reports-raises-safety-concern/>.

¹⁵ NTSB, Investigation No. HWY16FH018, Dkt. No. 2, “Crash Summary Report” (June 19,
2017), available at
[https://data.nts.gov/Docket/Document/docBLOB?ID=40453253&FileExtension
=.PDF&FileName=Crash%20Summary-Master.PDF](https://data.nts.gov/Docket/Document/docBLOB?ID=40453253&FileExtension=.PDF&FileName=Crash%20Summary-Master.PDF).

1 previously made videos of himself using Autopilot, one of which was retweeted
 2 by Elon Musk just a few weeks earlier.¹⁶ Tesla later publicly stated that the
 3 Autopilot software on Brown's car failed to detect the white tractor-trailer
 4 because it could not distinguish it from the bright sky.¹⁷

5 42. Less than a month later, on June 2, 2016, Musk confidently announced
 6 that "autonomous driving" was "basically a solved problem," and that Tesla's
 7 Autopilot software was already safer than a human driver on highways. "I think
 8 we're basically less than two years away from complete autonomy – *complete*,"
 9 Musk said.¹⁸

10 43. On July 14, 2016, Consumer Reports took the unusual step of publicly
 11 calling on Tesla to take certain actions. It urged Tesla to "change the name of the
 12 Autopilot feature because it promotes a potentially dangerous assumption that
 13 the Model S is capable of driving on its own." Instead of using the "misleading"
 14 name Autopilot, Consumer Reports urged Tesla to "name automated features
 15 with descriptive, not exaggerated, titles."¹⁹

16 44. On July 20, 2016, Tesla's official blog published a post by Musk, in
 17 which he misleadingly suggested that lack of regulatory approval was a major

18 _____
 19 ¹⁶ Rachel Abrams & Annalyn Kurtz, "Joshua Brown, Who Died in Self-Driving Accident,
 20 Tested Limits of His Tesla," *The New York Times* (July 1, 2016), available at <https://www.nytimes.com/2016/07/02/business/joshua-brown-technology-enthusiast-tested-the-limits-of-his-tesla.html>.

21 ¹⁷ Neal Boudette, "Elon Musk Says Pending Tesla Updates Could Have Prevented Fatal
 22 Crash," *The New York Times* (Sept. 11, 2016), available at

23 <https://www.nytimes.com/2016/09/12/business/elonmusk-says-pending-tesla-updates-could-have-prevented-fatal-crash.html>.

24 ¹⁸ Recode, "Elon Musk | Full Interview | Code Conference 2016,"
 25 <https://www.youtube.com/watch?v=wsixsRI-Sz4&t=4675s> at 1:17:55–1:21:20 (June 2, 2016).

26 ¹⁹ Consumer Reports, "Consumer Reports Calls on Tesla to Disable and Update Auto Steering
 27 Function, Remove 'Autopilot' Name" (July 14, 2016), available at
 28 <https://www.consumerreports.org/media-room/press-releases/2016/07/consumer-reports-calls-on-tesla-to-disable-and-update-autosteering-function-remove-autopilot-name/>.

1 challenge Tesla was facing in bringing to market fully self-driving vehicles:
 2 “When true self-driving is approved by regulators, it will mean that you will be
 3 able to summon your Tesla from pretty much anywhere. Once it picks you up,
 4 you will be able to sleep, read or do anything else enroute to your destination.
 5 You will also be able to add your car to the Tesla shared fleet just by tapping a
 6 button on the Tesla phone app and have it generate income for you while you’re
 7 at work or on vacation.”²⁰

8 45. In August 2016, after a Tesla driver with Autopilot engaged crashed
 9 into a parked vehicle on a Beijing highway and later stated publicly that Tesla
 10 had misrepresented Autopilot’s capabilities and misled buyers, Tesla removed
 11 from its China website a term that translates as “self driving” and replaced it with
 12 a term that translates as “self-assisted driving.”²¹ Tesla did not make any similar
 13 changes to its U.S. website.

14 46. On or about October 16, 2016, German regulators sent Tesla a formal
 15 letter reading, “In order to prevent misunderstanding and incorrect customers’
 16 expectations, we demand that the misleading term Autopilot is no longer used in
 17 advertising the system.” The German government also reminded Tesla vehicle
 18 owners that Tesla’s ADAS technology required, and could only be safely
 19 operated with, constant driver attention and supervision.²²

20 **C. Tesla’s Release of “Enhanced Autopilot” and “Full-Self-Driving**
 21 **Capability”**

22 47. On October 19, 2016, Tesla released its Autopilot 2.0 software and
 23 announced that all new Tesla cars would come with a new suite of hardware

24 _____
 25 ²⁰ Elon Musk, “Master Plan, Part Deux,” <https://www.tesla.com/blog/master-plan-part-deux>
 (July 20,
 2016).

26 ²¹ Jake Spring & Alexandria Sage, “Tesla removes ‘self-driving’ from China website after
 27 Beijing crash,” *Reuters* (Aug. 15, 2016), <https://www.reuters.com/article/us-tesla-china-crashidUSKCN10Q0L4>.

28 ²² Reuters Staff, “Germany says Tesla should not use ‘Autopilot’ in advertising,” *Reuters* (Oct
 16, 2016), available at <https://www.reuters.com/article/idUSKBN12G0KS>.

1 (called Autopilot Hardware 2) comprising eight cameras, twelve ultrasonic
2 sensors, and a forward-facing radar unit, which Tesla claimed would allow the
3 cars to soon become capable of SAE Level 5 autonomy.²³ To access the hardware,
4 owners would have to pay \$5,000 for an “Enhanced Autopilot” feature and
5 another \$3,000 for the right to activate Tesla’s promised “Full Self-Driving
6 Capability.” The Enhanced Autopilot package provided drivers most or all of the
7 features in the FSD package, except for the right to unlimited access to Tesla’s
8 soon-to-arrive full self-driving technology, and potential early access to FSD Beta
9 updates Tesla might release on its way perfecting that technology.

10 48. As part of the announcement, Tesla published on its official blog a
11 post titled “All Tesla Cars Being Produced Now Have Full Self-Driving
12 Hardware,” stating “[w]e are excited to announce that, as of today, all Tesla
13 vehicles produced in our factory – including Model 3 – will have the hardware
14 needed for full self-driving capability at a safety level substantially greater than
15 that of a human driver.” In the same post, Tesla stated that “[s]elf-driving
16 vehicles will play a crucial role in improving transportation safety and
17 accelerating the world’s transition to a sustainable future,” and that “[f]ull
18 autonomy will enable a Tesla to be substantially safer than a human driver.”²⁴

19 49. The blog post included a video made by Tesla’s Autopilot team in the
20 weeks before the release, which purported to show a Tesla driving itself without
21 any human intervention from the driver. The video begins with a note saying,
22 “The person in the driver’s seat is only there for legal reasons. He is not doing
23 anything. The car is driving itself.” However, multiple Tesla Autopilot employees

24 ²³ See Alex Nishimoto, “All New Tesla Models Will Feature Level 5-Capable Autopilot
25 Hardware,” Motor Trend (Oct. 20, 2016), available at
26 <https://www.motortrend.com/news/new-tesla-models-willfeature-level-5-capable-autopilot-hardware/>.

27 ²⁴ The Tesla Team, “All Tesla Cars Being Produced Now Have Full Self-Driving Hardware,”
28 <https://www.tesla.com/blog/all-tesla-cars-being-produced-now-have-full-selfdriving-hardware> (Oct. 19, 2016).

1 who worked on the video would later report that the route taken by the car had
2 been charted ahead of time by software that created a three-dimensional digital
3 map (a feature unavailable to drivers using the commercial version of Autopilot),
4 and that the video did not accurately show how the car operated during filming.
5 For example, the car kept executing driving tasks poorly and engineers had to
6 run the pre-programmed route over and over again to get video that would make
7 it appear the car capable of driving itself. At one point during filming, the car
8 crashed into a fence while on Autopilot and had to be repaired.²⁵ None of these
9 facts were referenced in the video or otherwise disclosed by Tesla. The deceptive
10 and misleading video was later used to promote Autopilot's purported abilities,
11 and indeed is still featured on the company's website despite having been
12 debunked for years.²⁶

13 50. Also on October 19, 2016, the company held a conference call with
14 reporters, during which Musk stated that all new Tesla cars would now include
15 all the cameras, computing power, and other hardware necessary for "full self-
16 driving" – not a technical term but one that suggests truly autonomous operation.
17 Musk further stated that Tesla would "be able to demonstrate a demonstration
18 drive of our full autonomy all the way from LA to New York. So basically from
19 home in LA to let's say dropping you off in Times Square, NY and then having
20 the car parking itself by the end of next year without the need for a single touch."

21 ²⁷ Musk repeatedly represented that autonomous vehicles were safer than
22 human-driven ones, and even warned journalists that they would be "killing
23
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25 ²⁵ See Metz & Boudette, *supra* note 10.

26 ²⁶ See Tesla, <https://www.tesla.com/autopilot>; Tesla, "Tesla Self-Driving Demonstration,"
27 <https://www.tesla.com/videos/autopilot-self-driving-hardware-neighborhood-long> (Nov. 18, 2016).

28 ²⁷ Xautoworld, "Transcript: Elon Musk's Autopilot 2.0 Conference Call,"
<https://www.xautoworld.com/tesla/transcript-elon-musk-autopilot-2-conference-call/> (Oct.
19, 2016).

1 people” if they wrote negative articles about self-driving technology that
2 dissuaded people from using it.²⁸

3 51. According to reporting by multiple outlets, including The Wall Street
4 Journal and The New York Times, Tesla’s decision to promise the technology
5 would be able to provide “Full Self- Driving” and Musk’s statements at the news
6 conference “took the Tesla engineering team by surprise, and some felt that Musk
7 was promising something that was not possible.” Sterling Anderson, who was the
8 head of Tesla’s Autopilot program at the time, “told Tesla’s sales and marketing
9 teams that they should not refer to the company’s technology as ‘autonomous’ or
10 ‘self-driving’ because this would mislead the public.”²⁹ In a meeting after the
11 October announcement, someone asked Mr. Anderson how Tesla could brand the
12 product “Full Self-Driving,” to which he responded, “This was Elon’s decision.”
13 Two months later, in December 2016, Mr. Anderson resigned.³⁰

14 52. On October 20, 2016, the day after the release of Enhanced Autopilot
15 and FSD, Musk tweeted that Tesla’s “Summon” feature was capable of
16 autonomously driving itself to pick up its owner “even if you are on the other
17 side of the country.”³¹

18 **D. Tesla’s Continued Failure to Deliver on Its Promise of a Fully Self-**
19 **Driving Car**

20 53. In March 2018, Apple engineer Walter Huang was killed when the
21 Autopilot on his Tesla Model X became confused at a fork in the highway and
22 caused the car to veer sharply to the left and crash into a concrete barrier in
23 Mountain View, California.

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26 ²⁸ Kosoff, *supra* note 4; Andrew Batiuk, “Tesla October 19th 2016 Autopilot 2.0 Conference Call
With
Visuals Added,” https://www.youtube.com/watch?v=-vjGEEF_p5E (Oct. 20, 2016).

27 ²⁹ Metz & Boudette, *supra* note 10.

28 ³⁰ Dugan & Spector, *supra* note 12.

³¹ Elon Musk, <https://twitter.com/elonmusk/status/789022017311735808> (Oct. 20, 2016, 1:34
am).

1 54. In the aftermath of that fatal crash, Tesla publicly released crash data
2 and sought to blame Huang for the accident, violating its agreement with NTSB
3 not to comment on crashes during the course of an investigation, and causing
4 NTSB to remove Tesla as a party to its investigation.

5 55. In April 2018, a Tesla with Autopilot engaged struck and killed a
6 pedestrian in Japan.

7 56. In September 2018, Musk made a series of tweets about Tesla's stock
8 price and his purported plans to take the company private, which the U.S.
9 Securities and Exchange Commission labeled "misleading." The SEC filed a
10 lawsuit against Tesla and Musk, who settled two days later. Under the settlement,
11 Tesla and Musk agreed to pay \$40 million in penalties, Tesla agreed to oversee
12 Musk's communications, and Musk was forced to step down as Tesla's chairman
13 (though he would remain as CEO). Musk would later send at least two tweets
14 that violated the terms of the settlement.

15 57. In March 2019, Jeremy Banner was killed when his 2018 Tesla Model 3
16 with Autopilot engaged drove under a tractor-trailer in Florida. The Banner
17 accident was eerily similar to the 2016 accident that killed Joshua Brown when his
18 car drove under a tractor-trailer, and that led Tesla to announce in September
19 2016 that the company was confident it had fixed the issue by increasing the
20 software's reliance on radar. The Banner accident demonstrated that Tesla had
21 not fixed this significant flaw in its ADAS technology in September 2016, and still
22 had not done so two-and-a-half years later.

23 58. In April 2019, at an event in Palo Alto, California, that Tesla dubbed
24 "Autonomy Day," Musk took to the stage and announced that Tesla vehicles
25 would be capable of full self-driving and autonomously navigating dense urban
26 areas like San Francisco and New York by the end of 2019, and that in two years
27
28

1 the company would be making cars without steering wheels or pedals.³² Musk
 2 also stated, “If you fast forward a year, maybe a year and three months, but next
 3 year for sure, we will have over a million robo-taxis on the road,” and “I feel very
 4 confident predicting autonomous robo-taxis for Tesla next year. ... I’m confident
 5 we’ll have at least regulatory approval somewhere, literally next year.” Musk
 6 stated the robo-taxis would be a way for Tesla owners to make money when they
 7 aren’t using their vehicles, with Tesla taking 25 or 30 percent of the revenue and
 8 allowing the company to compete with popular ride-hailing services like Uber
 9 and Lyft.³³ A few months later, Musk doubled-down on the robo-taxi prediction,
 10 tweeting that Tesla would “have a million robotaxis by end of 2020.”³⁴ Tesla has
 11 never developed a robo-taxi and is nowhere near doing so.

12 59. In May 2019, Tesla released an update to its ADAS “Navigate”
 13 feature, which automates some lane-change functions. When Consumer Reports
 14 tested the feature, it found that it cut off other cars without leaving enough space,
 15 failed to pass in the correct lane, and sometimes struggled to merge into traffic.³⁵

16 60. In October 2019, Consumer Reports tested Tesla’s “Smart Summon”
 17 feature, which Tesla claimed would allow owners to use a smartphone app to
 18 “summon” their Tesla vehicle to drive itself across a parking lot without any
 19 occupants inside the vehicle. Consumer Reports’ testing revealed that the feature
 20 had difficulty negotiating a parking lot, with the summoned car crossing lane

21 _____
 22 ³² R. Baldwin, “Tesla promises ‘one million robo-taxis’ in 2020,”
[https://www.engadget.com/2019-04-](https://www.engadget.com/2019-04-22-tesla-elon-musk-self-driving-robo-taxi.html)
[22-tesla-elon-musk-self-driving-robo-taxi.html](https://www.engadget.com/2019-04-22-tesla-elon-musk-self-driving-robo-taxi.html) (Apr. 22, 2019).

23 ³³ Insider, “Watch Elon Musk Unveil Plans For A Tesla Ride-Hailing App,”
<https://www.youtube.com/watch?v=YiWbdZ8ItRs> (Apr. 22, 2019); Matt McFarland, “Elon
 24 Musk says Tesla will have robo-taxis operating next year,” *CNN Business*,
[https://www.cnn.com/2019/04/22/](https://www.cnn.com/2019/04/22/tech/tesla-robotaxis)
 25 [tech/tesla-robotaxis](https://www.cnn.com/2019/04/22/tech/tesla-robotaxis) (Apr. 22, 2019).

26 ³⁴ Elon Musk, <https://twitter.com/elonmusk/status/1148070210412265473> (July 7, 2019, 8:24
 pm).

27 ³⁵ See Keith Barry, “Tesla’s Updated Navigate on Autopilot Requires Significant Driver
 Intervention,”

28 *Consumer Reports* (May 22, 2019), available at
[https://www.consumerreports.org/autonomousdriving/](https://www.consumerreports.org/autonomousdriving/tesla-navigate-on-autopilot-automatic-lane-change-requires-significant-driver-intervention/)
[tesla-navigate-on-autopilot-automatic-lane-change-requires-significant-driver-intervention/](https://www.consumerreports.org/autonomousdriving/tesla-navigate-on-autopilot-automatic-lane-change-requires-significant-driver-intervention/).

1 lines and wandering erratically “like a drunken or distracted driver.”³⁶ This was
2 nearly four years after Musk’s January 2016 tweet that Tesla was two years away
3 from its customers being able to use Summon to have their car come to them even
4 if it was thousands of miles away.³⁷

5 61. In December 2019, Jenna Monet was killed when the Model 3 she was
6 in crashed into the back of a parked fire truck in Indiana while Autopilot was
7 engaged.

8 62. In February 2020, the NTSB called on NHTSA to set stricter standards
9 on Autopilot, citing the high number of Autopilot-related collisions and deaths.

10 63. In August 2020, a couple was killed in Saratoga, California, after their
11 Tesla veered off a highway while Autopilot was active.

12 64. In September 2020, Consumer Reports published the first in a series of
13 evaluations of Tesla’s “Full Self-Driving Capability” technology, finding that the
14 technology caused vehicles to engage in unusual and unsafe behavior, such as
15 stopping at green lights, driving through stop signs, slamming on the brakes for
16 yield signs when the merge was clear, and stopping at every exit while going
17 around a traffic circle.³⁸

18 65. On November 20, 2020, Tesla attorneys sent the California
19 Department of Motor Vehicles (“DMV”) a letter (later released via a Public
20 Records Act request) in response to the DMV’s questions about the FSD “City
21 Streets” feature that was about to be released to some Tesla owners in a software
22 update. Tesla’s legal counsel wrote, “For context, as we’ve previously discussed,
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24 ³⁶ Jeff Plungis, “Tesla’s Smart Summon Performance Doesn’t Match Marketing Hype,”
25 Consumer Reports (Oct. 8, 2019), available at <https://www.consumerreports.org/automotive-technology/teslassmart-summon-performance-doesnt-match-marketing-hype/>.

26 ³⁷ Musk, *supra* notes 14, 33.

27 ³⁸ See Mike Monticello & Keith Barry, “Tesla’s ‘Full Self-Driving Capability’ Falls Short of Its
28 Name: The pricey option doesn’t make the car self-driving, and now Tesla’s promises are under scrutiny by state regulators in California,” Consumer Reports (Sept. 4, 2020) (last updated May 19, 2021), available at <https://www.consumerreports.org/autonomous-driving/tesla-full-self-driving-capabilityreview-falls-short-of-its-name-a1224795690/>.

1 City Streets continues to firmly root the vehicle in SAE Level 2 capability.” The
 2 letter goes on to explain in detail FSD’s limitations and to admit that the system is
 3 nowhere near being fully autonomous or fully self-driving:

4 City Streets’ capabilities with respect to the object and
 5 event detection and response (OEDR) sub-task are limited,
 6 as there are circumstances and events to which the system
 7 is not capable of recognizing or responding. These include
 8 static objects and road debris, emergency vehicles,
 9 construction zones, large uncontrolled intersections with
 10 multiple incoming ways, occlusions, adverse weather,
 11 complicated or adversarial vehicles in the driving path,
 12 unmapped roads. As a result, the driver maintains
 13 responsibility for this part of the dynamic driving task
 14 (DDT). In addition, the driver must supervise the system,
 15 monitoring both the driving environment and the
 16 functioning of City Streets, and he is responsible for
 17 responding to inappropriate actions taken by the system.
 18 The feature is not designed such that a driver can rely on
 19 an alert to draw his attention to a situation requiring
 20 response. There are scenarios or situations where an
 21 intervention from the driver is required but the system
 22 will not alert the driver. In the case of City Streets (and all
 23 other existing FSD features), because the vehicle is not
 24 capable of performing the entire ³⁹

25
 26 66. On December 14, 2020, in another letter to the California DMV
 27 (released via a Public Records Act request), Tesla’s legal counsel reiterated that
 28 any final release of the FSD City Streets feature to the Tesla customer fleet “will
 continue to be an SAE Level 2, advanced driver-assistance feature” that, like all
 other FSD features, “do[es] not make the vehicle autonomous” and is “intended
 for use only with a fully attentive driver who has his or her hands on the wheel
 and is prepared to take over at any moment.” Tesla’s counsel continued, “Please
 note that Tesla’s development of true autonomous features (SAE Levels 3+) ...

³⁹ Letter from Eric Williams (Tesla) to Miguel Acosta (DMV) Re: City Streets – Pilot Release at
 1 (Nov. 20, 2020), available at <https://www.plainsite.org/documents/242a2g/california-dmv-teslarobotaxi-ADAS-emails/>.

1 will not be released to the general public until we have fully validated them and
2 received any required regulatory permits or approvals.”⁴⁰

3 67. On December 28, 2020, in another letter to the California DMV
4 (released via a Public Records Act request), Tesla’s legal counsel again reiterated
5 the SAE Level 2 nature and limitations of Tesla’s FSD technology:

6 Full Self-Driving (FSD) Capability is an additional
7 optional suite of features that builds from Autopilot and is
8 also representative of SAE L2. Features that comprise FSD
9 Capability are Navigate on Autopilot, Auto Lane Change,
10 Autopark, Summon, Smart Summon, Traffic and Stop
11 Sign Control, and, upcoming, Autosteer on City Streets
12 (City Streets). While we designed these features to become
13 more capable over time through over-the-air software
14 updates, currently neither Autopilot nor FSD Capability is
15 an autonomous system, and currently no comprising
16 feature, whether singularly or collectively, is autonomous
17 or makes our vehicles autonomous. This includes the
18 limited pilot release of City Streets.⁴¹

19 68. During the same month that Tesla’s legal team was assuring
20 California regulators that the most advanced version of its ADAS technology was
21 still at SAE Level 2 and suggesting it was likely to remain at Level 2 for the
22 foreseeable future, Elon Musk gave an interview to Business Insider in which he
23 promised that Tesla would achieve Level 5 before the end of the following year,
24 stating “I’m extremely confident that Tesla will have level five next year,
25 extremely confident, 100%.”⁴²

26 ⁴⁰ Letter from Eric Williams (Tesla) to Miguel Acosta (DMV) Re: City Streets – Pilot Release at
27 2-3 (Dec. 14, 2020), *available at* <https://www.plainsite.org/documents/242a2g/california-dmv-teslarobotaxi-ADAS-emails/>.

28 ⁴¹ Letter from Eric Williams (Tesla) to Miguel Acosta (DMV) Re: Autonomous Mode
Disengagements for Reporting Year 2020 at 1-2 (Dec. 14, 2020), *available at*
<https://www.plainsite.org/documents/242a2g/california-dmv-tesla-robotaxi-ADAS-emails/>; *see also* David Silver, “Tesla Emails To
The California DMV Emphasize Continued Reliance On Maps,” *Forbes* (Mar. 9, 2021), *available at*
<https://www.forbes.com/sites/davidsilver/2021/03/09/tesla-emails-to-the-california-dmv-emphasizecontinued-reliance-on-maps/?sh=2c0884c957e6>.

⁴² Mathias Döpfner, “Elon Musk reveals Tesla’s plan to be at the forefront of a self-driving-car
revolution,” *Business Insider*, <https://www.businessinsider.com/elon-musk-interview-axel-springertesla->

1 69. In January 2021, Tesla reported \$721 million in profit in 2020, its first
2 profitable year. This was a dramatic turnaround in the company's financial
3 condition from prior years. As recently as 2018, Tesla had been burning through
4 cash, was in danger of running out of money, and at one point was
5 approximately only one month away from having to declare bankruptcy.⁴³

6 70. In a January 2021 earnings call, Musk stated that the company had
7 made "massive progress on Full Self-Driving," and that it "will become obvious
8 later this year" that "Tesla Autopilot is capable of full self-driving." Musk also
9 stated, "I'm highly confident the car will drive itself for the reliability in excess of
10 a human this year. This is a very big deal." When a financial analyst asked Musk
11 why he was confident Tesla would achieve SAE Level 5 autonomy in 2021, Musk
12 responded, "I'm confident based on my understanding of the technical roadmap
13 and the progress that we're making between each beta iteration."⁴⁴

14 71. Six weeks later, on a phone call with California DMV regulators,
15 Tesla's director of Autopilot software, CJ Moore, contradicted Musk. According
16 to an internal DMV memo memorializing the call (released via a Public Records
17 Act request), "DMV asked CJ to address, from an engineering perspective, Elon's
18 messaging about L5 [Level 5] capability by the end of the year. Elon's tweet does
19 not match engineering reality per CJ." (It appears that the DMV tried but failed to
20 redact that last sentence.) In response to a question from DMV regulators about
21 "how Tesla evaluates the potential advancement of levels of autonomy," Tesla
22 representatives "indicated they are still firmly in L2 [Level 2]." Tesla further told
23

24 _____
accelerate-advent-of-sustainable-energy (Dec. 5, 2020).

25 ⁴³ See Chris Isidore, "Tesla just proved all its haters wrong. Here's how," *CNN Business*,
<https://www.cnn.com/2020/01/31/investing/tesla-cash-crunch/index.html> (Jan. 31, 2020);
Chris

26 Isidore, "Elon Musk: Tesla was month away from bankruptcy," *CNN Business*,
[https://www.cnn.com/](https://www.cnn.com/2020/11/04/tech/elon-musk-tesla-once-got-near-bankruptcy/index.html)
27 [2020/11/04/tech/elon-musk-tesla-once-got-near-bankruptcy/index.html](https://www.cnn.com/2020/11/04/tech/elon-musk-tesla-once-got-near-bankruptcy/index.html) (Nov. 4, 2020).

28 ⁴⁴ Tesla (TSLA) Q4 2020 Earnings Call Transcript (Jan. 27, 2021), *available at*
[https://www.fool.com/earnings/call-transcripts/2021/01/27/tesla-tsla-q4-2020-earnings-call-](https://www.fool.com/earnings/call-transcripts/2021/01/27/tesla-tsla-q4-2020-earnings-call-transcript/)
[transcript/](https://www.fool.com/earnings/call-transcripts/2021/01/27/tesla-tsla-q4-2020-earnings-call-transcript/).

1 the DMV that “[t]he ratio of driver interaction would need to be in the magnitude
2 of 1 or 2 million miles per driver interaction to move into higher levels of
3 automation [i.e., Level 3 and higher].”⁴⁵ In other words, drivers would need to
4 intervene only once per 1 to 2 million miles before Tesla would proceed to Level 3
5 software. Tesla’s ADAS software, which routinely makes mistakes, is not even
6 remotely close to this level of reliability.

7 72. Following up on the March 9, 2021 phone call, the California DMV
8 wrote to Tesla: “Notwithstanding other public messaging from Tesla about
9 developing vehicles capable of full driving automation, Tesla reiterated that the
10 City Streets feature is currently a Society of Automotive Engineers (SAE) level
11 two (2) Advanced Driver-Assistance feature and that Tesla will continue to
12 monitor how participants interact with the feature and make improvements. As
13 mentioned in your [prior] correspondence and per California regulations, should
14 Tesla develop technology features characterized as SAE level 3 or higher, Tesla
15 will seek the appropriate regulatory permitting from the DMV before
16 autonomous vehicles are operated on public roads.”⁴⁶

17 73. In May 2021, under pressure from the Transportation Committee of
18 the California Senate, the California Department of Motor Vehicles launched an
19 investigation into whether Tesla is deceptively marketing its ADAS technology as
20 making its cars capable of autonomous driving.⁴⁷

21 74. In June 2021, in what was widely seen as a response to motor vehicle
22 collisions involving Tesla’s ADAS technology, NHTSA issued an unprecedented

23 ⁴⁵ Memorandum to File by Miguel Acosta (DMV) Re: Tesla AP City Streets Update (Mar. 9,
24 2021),
25 available at <https://www.plainsite.org/documents/28jcs0/california-dmv-tesla-robotaxi-ADAS-notes/>.

26 ⁴⁶ Letter from Miguel Acosta (DMV) to Eric Williams (Tesla) (Apr. 21, 2021), available at
27 <https://www.plainsite.org/documents/28jcs0/california-dmv-tesla-robotaxi-ADAS-notes/>.

28 ⁴⁷ See Russ Mitchell, “DMV probing whether Tesla violates state regulations with self-driving claims,” *Los Angeles Times* (May 17, 2021), available at <https://www.latimes.com/business/story/2021-05-17/dmv-tesla-california-ADAS-autopilot-safety>.

1 order requiring automobile manufacturers to report any crash involving an
2 injury, fatality, or property damage that happens while or immediately after a
3 vehicle is automating some driving tasks.

4 75. In early July 2021, Tesla released the FSD Beta 9 version of its FSD
5 software to certain Tesla vehicle owners. Following the release, Tesla owners took
6 videos of the software in action that show vehicles missing turns, scraping
7 against bushes, and veering toward parked cars.

8 76. On July 26, 2021, on a quarterly earnings call, Musk told investors and
9 reporters that he was confident FSD-equipped Tesla vehicles would soon “be able
10 to drive themselves with the safety levels substantially greater than that of the
11 average person.”

12 77. In August 2021, NHTSA opened a preliminary safety defect
13 investigation into Autopilot, and two U.S. Senators called for the Federal Trade
14 Commission to investigate what they referred to as Tesla’s potentially deceptive
15 marketing practices surrounding its FSD technology, including Tesla’s use of the
16 phrase “full self-driving” to describe and market a feature that does not make the
17 vehicle fully self-driving.

18 78. On August 31, 2021, NHTSA ordered Tesla to produce documents
19 and information about the design of its FSD technology, crashes involving that
20 technology, and marketing materials that make representations about that
21 technology. Tesla submitted only a partial response to NHTSA, claiming that the
22 documents and information it had requested was confidential business
23 information.

24 79. On October 12, 2021, NHTSA asked Tesla about its practice of asking
25 FSD Beta users to sign nondisclosure agreements prohibiting users from sharing
26 negative information about their experiences using the FSD Beta software.

27 80. On October 24, 2021, Tesla pulled back the release of version 10.3 of
28 its ADAS software, which the company had already made available for drivers to

1 use on public roads, because of problems the software was having making left
2 turns at traffic lights.

3 81. In October 2021, an update to the FSD Beta software caused a major
4 increase in “phantom braking” incidents, in which the software identifies a non-
5 existent threat that triggers the vehicle’s emergency braking system. The result is
6 that Tesla vehicles, traveling at various speeds, were suddenly slamming on the
7 brakes for no apparent reason. Tesla initially claimed it had identified the source
8 of the problem and fixed it with a software update released on October 25, 2021,
9 but subsequently issued a formal recall over the issue for the more than 11,000
10 vehicles using the FSD Beta software in a reported effort to head off adverse
11 action by U.S. regulators.⁴⁸ Tesla’s claims of having fixed the problem, however,
12 turned out to be false, as driver complaints about “phantom braking” issues
13 soared to 107 NHTSA complaints in the three-month period of November 2021
14 through January 2022 (compared with only 34 such complaints in the preceding
15 22 months). Owner complaints to NHTSA included everything from phantom
16 braking incidents that were “happening with NOTHING present in front of my
17 vehicle, and sometimes with nothing around me at all,” to an incident where
18 Tesla software slammed on the brakes in response to a plastic bag.⁴⁷⁴⁹

19 82. On November 18, 2021, CNN Business reported that it spent a
20 morning testing Tesla’s FSD technology on the streets of New York City and
21 “watched the software nearly crash into a construction site, try to turn into a
22 stopped truck and attempt to drive down the wrong side of the road.” The FSD
23 software reportedly “needed plenty of human interventions to protect us and
24 everyone else on the road,” including a driver intervention “every couple of
25

26 ⁴⁸ Tom Krisher, “Tesla software recall may head off fight with US regulators,” *Associated Press*
(Nov. 2, 2021), available at <https://apnews.com/article/technology-business-software3e2107435f432fd9b36ba14898166a0>.

27 ⁴⁹ Faiz Siddiqui & Jeremy B. Merrill, “Tesla drivers report a surge in ‘phantom braking,’” *The*
28 *Washington Post* (Feb. 2, 2022), available at <https://www.washingtonpost.com/technology/2022/02/02/tesla-phantom-braking/>.

1 blocks or so” and multiple instances in which the driver “quickly jerked the
2 wheel to avoid a crash.”⁴⁸⁵⁰

3 83. On December 6, 2021, The New York Times published an article about
4 its investigation into the failures of Tesla’s ADAS technology based on interviews
5 with 19 Tesla employees who had worked on designing, developing, and testing
6 that technology at Tesla over the prior decade. The article reported that
7 interviews with the employees indicated that Musk “repeatedly misled buyers”
8 about the abilities of Tesla’s ADAS technology.⁵¹

9 84. In January 2022, Musk stated on an earnings call, “My personal guess
10 is that we’ll achieve Full Self-Driving this year. I would be shocked if we do not
11 achieve Full Self-Driving safer than a human this year. I would be shocked.”

12 85. On July 13, 2022, the Dawn Project, an organization dedicated to
13 increasing the software safety, published a paper regarding its testing of a Tesla
14 Model 3 equipped with FSD Beta 10.12.2 (released on June 1, 2022) on a closed
15 racetrack. The purpose of the testing was to determine the FSD software’s safety
16 in terms of its ability to detect and avoid hitting small children. The testing was
17 performed on a closed racetrack with the Tesla driving itself between a long row
18 of cones with a child-sized mannequin placed in plain view at the end of the
19 row – i.e., conditions significantly less complex and more favorable to the FSD
20 software than those that would be encountered in the real world. Nevertheless,
21 the testing found that Tesla’s FSD software consistently failed to detect the
22 stationary child-size mannequins and “d[id] not avoid the child or even slow
23
24

25 ⁵⁰ Matt McFarland, “We tried Tesla’s ‘full self-driving.’ Here’s what happened,” *CNN Business*,
26 <https://www.cnn.com/2021/11/18/cars/tesla-full-self-driving-brooklyn/index.html> (Nov.
18, 2021);

27 *CNN*, “CNN tests a ‘full self-driving’ Tesla,”
<https://www.youtube.com/watch?v=2PMu7MD9GvI>
(Nov. 18, 2021).

28 ⁵¹ Metz & Boudette, *supra* note 10; Tesla, “Tesla Self-Driving Demonstration” (Nov. 18, 2016),
<https://www.tesla.com/videos/autopilot-self-driving-hardware-neighborhood-long>

1 down,” but instead “repeatedly struck the child mannequin in a manner that
2 would be fatal to an actual child.”⁵²

3 86. On July 14, 2022, the editor-in-chief of Electrek, a website that covers
4 electric vehicles, published an article reviewing his experience of using Tesla’s
5 FSD Beta software over the course of two months. His ultimate conclusion was
6 that, despite years of development and updates by Tesla, FSD Beta’s “decision-
7 making is still the equivalent of a 14-year-old who has been learning to drive for
8 the last week and sometimes appears to consume hard drugs.”⁵³

9 **E. California DMV Files Complaint Against Tesla For Engaging in**
10 **Untrue, Misleading, and Deceptive Marketing of its “Autopilot”**
11 **and “Full Self-Driving” Technology**

12 87. On July 28, 2022, following a year-long investigation, the California
13 DMV brought two related administrative enforcement actions against Tesla for
14 “untrue,” “misleading,” and “deceptive” marketing of its Autopilot and FSD
15 technology. The DMV specifically alleged that Tesla’s use of the product labels
16 “Autopilot” and “Full Self-Driving Capability,” as well as statements about those
17 technologies that have appeared on Tesla’s website in 2022, “represent that
18 vehicles equipped with those ADAS [advanced driver assistance system] features
19 will operate as an autonomous vehicle, but vehicles equipped with those ADAS
20 features could not at the time of those advertisements, and cannot now, operate
21 as autonomous a vehicles.” The DMV seeks restitution and the revocation or
22 suspension of Tesla’s California vehicle manufacturer license and vehicle dealer
23 license. *See In the Matter of the Accusation Against Tesla Inc. dba Tesla Motors, Inc., a*
24 *Vehicle Manufacturer, Case No. 21-02188, Accusation (July 28, 2022); In the Matter*

25 ⁵² The Dawn Project, In Scientific Test, Tesla “Full Self-Driving” Technology Consistently
26 Strikes

27 Child-Sized Mannequins (July 13, 2022), available at
28 https://dawnproject.com/wpcontent/uploads/2022/08/The_Dawn_Project_Tesla_ADAS_Test_8_.pdf.

⁵³ Fred Lambert, “Elon Musk does the impossible and manages expectations on Tesla’s next
Full Self-Driving update,” *Electrek* (July 14, 2022), <https://electrek.co/2022/07/14/elon-musk-managesexpectations-tesla-next-big-full-self-driving-update/>.

1 of the Accusation Against Tesla Inc. dba Tesla Motors, Inc., a Vehicle Dealer, Case No.
2 21-02189, Accusation (July 28, 2022).

3 **V. CLASS ACTION ALLEGATIONS**

4 88. Plaintiff brings this action individually and on behalf of a Nationwide
5 Class and a Florida Subclass (collectively, the "Class") pursuant to Federal Rule
6 of Civil Procedure 23, defined as follows:

7 **Nationwide Class:** All persons who, from January 1, 2016,
8 to the present (the "Class Period"), purchased or leased
9 from Tesla, Inc. (or any entity it directly or indirectly owns
10 or controls, including Tesla Lease Trust and Tesla Finance
11 LLC) a new Tesla vehicle with "Autopilot," "Enhanced
12 Autopilot," or "Full Self-Driving Capability" (the "Class
13 Vehicles").

14 **Florida Subclass:** All persons who, from January 1, 2016,
15 to the present (the "Class Period"), purchased or leased
16 from Tesla, Inc. (or any entity it directly or indirectly owns
17 or controls, including Tesla Lease Trust and Tesla Finance
18 LLC) a new Tesla vehicle with "Autopilot," "Enhanced
19 Autopilot," or "Full Self-Driving Capability" (the "Class
20 Vehicles") and who either purchased or leased that
21 vehicle in Florida or who currently reside in Florida.

22 Excluded from the Class are: Defendants, any entity in which Defendants
23 directly or indirectly have a controlling interest, is a parent or subsidiary, or
24 which is controlled by Defendants, as well as the officers, directors, affiliates,
25 legal representatives, heirs, predecessors, successors, and assigns of Defendants,
26 and judicial officers to whom this case is assigned and their immediate family
27 members.

28 89. Certification of Plaintiff's claims for class-wide treatment is
appropriate because Plaintiff can prove the elements of his claim on a class-wide
basis using the same evidence as would be used to prove those elements in
individual actions alleging the same claims.

90. Plaintiff reserves the right to re-define the Class definition after
conducting discovery.

1 91. **Numerosity**. Although the exact number of Class Members is
2 uncertain and can only be ascertained through appropriate discovery, the number
3 is great enough such that joinder is impracticable. The disposition of the claims of
4 these Class Members in a single action will provide substantial benefits to all
5 parties and to the Court. The Class Members are readily identifiable from
6 information and records in Defendants' possession, custody, or control, as well as
7 from records kept by the Department of Motor Vehicles.

8 92. **Commonality**. There are numerous questions of law and fact that are
9 common to Plaintiff and the Class that predominate over any question affecting
10 only individual Class members. These common legal and factual questions
11 include, but are not limited to:

- 12 i. Whether Defendants and their agents (collectively, "Defendants")
13 engaged in the conduct alleged herein;
- 14 ii. Whether Defendants' use of the terms "Autopilot," "Enhanced
15 Autopilot," "Full Self-Driving," and "Full Self-Driving Capability"
16 to describe their ADAS technology was false, deceptive, or
17 misleading;
- 18 iii. Whether Defendants knew or should have known that their public
19 statements and omissions about when Tesla vehicles would be, or
20 would likely be, fully self-driving were false, deceptive, or
21 misleading;
- 22 iv. Whether Defendants knew or should have known that their prior
23 public statements about when Tesla vehicles would be, or would
24 likely be, fully self-driving were false, deceptive, or misleading, but
25 failed to take steps adequate to correct those prior statements;
- 26 v. Whether Defendants knowingly concealed from consumers
27 information that would cause a reasonable consumer to conclude
28 or develop material doubts that Defendants' public statements and

1 omissions about when Tesla vehicles would be, or would likely be,
2 fully self-driving were false, deceptive, or misleading;

3 vi. Whether Defendants' conduct alleged herein violates consumer
4 protection laws;

5 vii. Whether Defendants' conduct alleged herein violates warranty
6 laws;

7 viii. Whether Defendants' conduct alleged herein violates any other
8 laws set forth below in the Claims for Relief;

9 ix. Whether Defendants' conduct alleged herein actually and
10 proximately caused Plaintiff and Class members to suffer legally
11 cognizable harm; and

12 x. Whether Plaintiff and Class members are entitled to declaratory
13 relief, injunctive relief, restitution, damages, or any other relief
14 requested herein.

15 93. **Typicality.** Plaintiff's claims are typical of the other Class members'
16 claims because Defendants' wrongful acts and omissions alleged herein were
17 substantially the same with respect to Plaintiff and all other Class members,
18 Defendants' wrongful acts and omissions alleged herein caused Plaintiff and all
19 other Class members comparable injury, Plaintiff is advancing the same claims
20 and legal theories on behalf of himself and all other Class members, and there are
21 no defenses that are unique to Plaintiff.

22 94. **Adequacy of Representation.** Plaintiff is an adequate representative
23 of the Class because his interests do not conflict with the interests of the other
24 Class members. Additionally, Plaintiff has retained counsel competent and
25 experienced in complex class action litigation. As such, Class members' interests
26 will be fairly and adequately protected by Plaintiff and his counsel.

27 95. This action is properly maintained as a class action under Federal
28 Rule of Civil Procedure 23 for the following reasons:

1 a. **Class Action Status:** Class action status is appropriate under
2 Federal Rule of Civil Procedure 23(b)(1)(A) because prosecution of separate
3 actions by each of the thousands of Class members would create a risk of
4 establishing incompatible standards of conduct for Defendants and inconsistent
5 results for Class members. Class action status is also appropriate under Federal
6 Rule of Civil Procedure 23(b)(1)(B) because prosecution of separate actions by
7 Class members would create a risk of adjudication with respect to individual
8 Class members that, as a practical matter, would be dispositive of other Class
9 members' interests or would substantially impair or impede their ability to
10 protect their interests.

11 b. **Declaratory and Injunctive Relief:** Certification under Federal
12 Rule of Civil Procedure 23(b)(2) is appropriate because Defendants have acted or
13 refused to act on grounds that apply generally to the Class, thereby making
14 appropriate final injunctive, declaratory, or other appropriate equitable relief
15 with respect to the Class as a whole.

16 c. **Predominance and Superiority:** Certification under Federal
17 Rule of Civil Procedure 23(b)(3) is appropriate because questions of law and fact
18 common to the Class predominate over the questions affecting only individual
19 Class members. A class action is superior to any other available means for the
20 fair and efficient adjudication of this controversy, and no unusual difficulties are
21 likely to be encountered in the management of this matter as a class action. The
22 damages, harm, or other financial detriment suffered individually by Plaintiff
23 and the other Class members are relatively small compared to the burden and
24 expense that would be required to litigate their claims on an individual basis
25 against Defendants, making it impracticable for Class members to individually
26 seek redress for Defendants' wrongful conduct. Even if Class members could
27 afford individual litigation, the court system should not be forced to shoulder
28 such inefficiency. Individualized litigation would create a potential for

1 inconsistent or contradictory judgments and increase the delay and expense to all
 2 parties and the court system. By contrast, the class action device presents far
 3 fewer management difficulties and provides the benefits of single adjudication,
 4 economies of scale and comprehensive supervision by a single court.

5 **96. Issue Certification:** Certification of particular issues in this action,
 6 including issues of liability and relief sought, is appropriate under Federal Rule
 7 of Civil Procedure 23(c)(4) because these issues are common to all Class members,
 8 and because resolution of these common issues on a class-wide basis will
 9 materially advance the disposition of the litigation as a whole.

10 **97.** The Class is ascertainable from Defendants' own records, and there is
 11 a well-defined community of interest in the questions of law and fact alleged
 12 herein since the rights of each Class member were infringed or violated by
 13 Defendants in the same or similar fashion.

CLAIMS FOR RELIEF

FIRST CLAIM

Violation of the California Unfair Competition Law Cal. Bus. & Prof. Code § 17200, *et seq.*

17 **98.** Plaintiff re-alleges and incorporates by reference each and every
 18 allegation set forth above, as though fully set forth in this Claim for Relief.

19 **99.** California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code
 20 § 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business act or
 21 practice, including any act or practice that constitutes deception, fraud,
 22 misrepresentation, or the concealment, suppression, or omission of a material fact
 23 in a consumer transaction, or that is likely to deceive the consuming public.

24 **100.** Defendants' wrongful acts and omissions alleged herein were and are
 25 unlawful, unfair, and fraudulent business acts and practices in violation of the
 26 UCL. Defendants' wrongful acts and omissions alleged herein were and are likely
 27 to deceive the consuming public in California and throughout the U.S. about the
 28 abilities, limitations, and value of Tesla's ADAS packages and technology.

1 Defendants' wrongful acts and omissions alleged herein also constitute
2 deception, fraud, and misrepresentation, and concealment, suppression, and
3 omission of material facts in the context of consumer transactions with Plaintiff
4 and Class members.

5 101. Defendants knew or should have known that their wrongful acts and
6 omissions alleged herein were likely to deceive the consuming public in
7 California and the rest of the U.S., and Defendants committed those acts and
8 omissions anyway for their own financial gain, including by shoring up and
9 otherwise improving their financial condition, avoiding bankruptcy, increasing
10 the likelihood of receiving new capital from investors, increasing their revenue
11 and profits, and increasing the value of Tesla (including by increasing its share
12 price).

13 102. Defendants' "unfair" business acts and practices under the UCL
14 include, among other things, Defendants': (a) marketing and referring to Tesla's
15 ADAS packages and technology as "Autopilot," "Full Self-Driving," and "Full
16 Self-Driving Capability"; (b) providing information about the capabilities,
17 limitations, and value of Tesla's ADAS packages and technology to the
18 consuming public that is materially different from the information Defendants
19 contemporaneously provided to regulators, especially when provided in a non-
20 public way or in a way not contemporaneously available to the public (*e.g.*, a
21 FOIA or Public Records Act request is required to obtain the information); (c)
22 marketing Tesla's ADAS packages and technology in a way that largely or
23 entirely focuses on its actual or purported abilities in forums likely to generate
24 significant public attention or otherwise reach a relatively large number of
25 relevant consumers (*e.g.*, Musk's Twitter feed, interviews with high-distribution
26 or otherwise influential media, news conferences and other public events likely to
27 generate media coverage, pages on the Tesla website that potential Tesla
28 customers are more likely to visit than other pages on the website and have a

1 relatively high number of views compared to other pages on the website), while
2 relegating information about the ADAS packages and technology's flaws and
3 limitations to forums likely to generate little public attention or otherwise reach a
4 relatively small number of relevant consumers (*e.g.*, pages on the Tesla website
5 that potential Tesla customers are unlikely to visit relative to other pages on the
6 website, vehicle user manuals, regulatory filings); (d) misrepresenting or
7 otherwise providing information likely to deceive the public regarding the then-
8 existing abilities and limitations of Tesla's ADAS packages and technology,
9 including versions of that technology then available to some or all eligible Tesla
10 owners, as well as versions of that technology represented as being in the
11 possession of Defendants but not yet available to some or all eligible Tesla
12 owners; (e) misrepresenting or otherwise providing information likely to deceive
13 the public regarding misrepresenting the likely future abilities and limitations of
14 Tesla's ADAS packages and technology and the time periods in which those
15 future abilities would likely be achieved and the future limitations likely reduced
16 or eliminated; and (f) otherwise disseminating, not disseminating, or causing to
17 be disseminated or not be disseminated to the consuming public information
18 likely to deceive the consuming public in California and the rest of the U.S.

19 103. Defendants' acts, omissions, and conduct alleged herein were and are
20 "unfair" under the UCL because they are offensive to public policy and constitute
21 immoral, unethical, oppressive, and unscrupulous activities that caused and
22 continue to cause substantial injury to the consuming public, including Plaintiff
23 and Class members. The harm caused by Defendants' conduct greatly outweighs
24 any countervailing benefits to consumers or competition.

25 104. Defendants have engaged in "unlawful" business acts and practices
26 by, as set forth in this Complaint, violating the Magnuson-Moss Warranty Act, 15
27 U.S.C. § 2301, *et seq.*; violating the California False Advertising Law, Cal. Bus. &
28 Prof. Code § 17500, *et seq.*; and violating their common law obligations.

1 105. Defendants have further engaged in “unlawful” business acts and
2 practices by (a) committing “unfair or deceptive acts or practices in or affecting
3 commerce” in violation of 15 U.S.C. § 45; (b) “mak[ing] or disseminat[ing], or
4 caus[ing] to be made or disseminated, before the public in this state ... a
5 statement that is untrue or misleading and that is known, or that by the exercise
6 of reasonable care should be known, to be untrue or misleading,” in violation of
7 Cal. Vehicle Code § 11713(a); (c) “mak[ing] or disseminat[ing], or caus[ing] to be
8 so disseminated, a statement as part of a plan or scheme with the intent not to sell
9 a vehicle or service ... as so advertised,” in violation of Cal. Vehicle Code
10 § 11713(a); (d) making “advertised statements, representations, or offers [] in
11 connection with the sale or attempted sale of any vehicle(s)” that is not “clearly
12 set forth,” “based on facts,” or otherwise violates the Vehicle Code or Title 13,
13 Division 1, Chapter 1 of the California Code of Regulations, in violation of 13 Cal.
14 Code Regs. § 260.00; (e) violating other “provision[s] of Article 1 (commencing
15 with Section 11700) of, or Article 1.1 (commencing with Section 11750) of, Chapter
16 4 of Division 5 or any rule or regulation adopted pursuant thereto,” as referenced
17 in Cal. Vehicle Code § 11705(a)(10); and (f) causing Plaintiff and all other Class
18 members to suffer “loss or damage by reason of any fraud or deceit practiced on
19 that person or fraudulent representations made to that person” within the
20 meaning of Cal. Vehicle Code § 11705(a)(14).

21 106. Defendants have engaged in “fraudulent” business acts and practices
22 for all the same reasons set forth in Plaintiff’s Claim for Relief for Fraud and
23 Deceit set forth herein, each and every allegation of which Plaintiff hereby re-
24 alleges and incorporates by reference, as though fully set forth in this Claim for
25 Relief.

26 107. Defendants’ wrongful conduct and the harm it has caused, and
27 continues to cause, was and is not reasonably avoidable by Plaintiff, Class
28 members, or the consuming public. At all relevant times, Defendants knew or

1 should have known that Plaintiff and Class members would not have reasonably
2 known or discovered that so many of Defendants' misrepresentations regarding
3 the capabilities, limitations, and value of Tesla's ADAS packages and technology
4 were false, deceptive, or misleading.

5 108. Defendants' false, deceptive, or misleading representations about the
6 capabilities, limitations, and value of Tesla's ADAS packages and technology
7 were material, and Plaintiff's and Class members' reasonable reliance on the truth
8 and accuracy of those material misrepresentations was a substantial factor in
9 influencing Plaintiff and Class members to purchase or lease Class Vehicles and
10 ADAS packages from Defendants.

11 109. As a direct and proximate result of Defendants' wrongful conduct,
12 Defendants (a) have received and will continue to receive revenue, profits, and
13 other benefits that it would not have received if it had not engaged in conduct
14 violating the UCL as alleged herein, and (b) have obtained, and will continue to
15 obtain, an unfair advantage over similar businesses that represent their goods
16 and services in a manner that either does not violate the UCL, or that violates the
17 UCL to a lesser extent than Defendants.

18 110. As a direct and proximate cause of Defendants' UCL violations,
19 Plaintiff and other Class members have each suffered a monetary injury because
20 they each paid Tesla money for a good or service (*i.e.*, a vehicle with full self-
21 driving capability) that Tesla has never provided, and Defendants have and
22 continue to wrongfully retain those monies paid by Plaintiff and Class members.

23 111. Unless Defendants are enjoined from engaging in conduct alleged
24 herein that violates the UCL, members of the consuming public will be further
25 harmed by that conduct.

26 112. As a result of Defendants' UCL violations and the harm caused
27 thereby, Plaintiff and Class members seek and are entitled to (a) injunctive relief
28 to protect the consuming public by prohibiting Defendants from engaging in their

1 past and ongoing acts, omissions, and conduct that violate the UCL; (b)
 2 restitution of the full value of all monies and other consideration that Plaintiff and
 3 Class members paid Defendants to add ADAS packages to their Class Vehicle
 4 and that Defendants continue to wrongfully retain, including any diminished
 5 value of Plaintiff's and Class members' Class Vehicles and ADAS packages and
 6 disgorgement of the profits Defendants derived from their wrongful conduct; (c)
 7 an award of reasonable attorneys' fees under Cal. Civ. Proc. Code § 1021.5 and
 8 any other applicable law; and (d) all other relief prayed for below.

9
 10 **SECOND CLAIM**
Violation of the California False Advertising Law
Cal. Bus. & Prof. Code § 17500, *et seq.*

11 113. Plaintiff re-alleges and incorporates by reference each and every
 12 allegation set forth above, as though full set forth in this Claim for Relief.

13 114. Defendants' conduct alleged herein violates California's False
 14 Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, *et seq.*, which makes it
 15 unlawful for a business to make, disseminate, or cause to be made or
 16 disseminated to the public "any statement, concerning ... personal property ...
 17 which is untrue or misleading, and which is known, or which by the exercise of
 18 reasonable care should be known, to be untrue or misleading." *Id.* § 17500.

19 115. The Class Vehicles and ADAS packages (including all ADAS
 20 hardware, software, and rights to receive updates and use the same) are
 21 "personal property" within the meaning of the FAL.

22 116. Any express or implied representation, material omission of
 23 information, or failure to correct a past material misrepresentation or omission
 24 regarding the abilities, limitations, or value of the Class Vehicles and ADAS
 25 packages and technology is a "statement[]" concerning personal property" within
 26 the meaning of the FAL.

27 117. Defendants violated the FAL by making, disseminating, and causing
 28 to be made or disseminated to the public statements about the abilities,

1 limitations, flaws, and value of Tesla’s ADAS packages and technology that were
2 “untrue or misleading” within the meaning of the FAL.

3 118. Defendants made, disseminated, or caused to be made or
4 disseminated such public statements in numerous forums, including Tesla’s blog
5 and website, Musk’s Twitter account, earnings calls and other public statements
6 to investors, conferences and other public events, television, radio, podcasts, and
7 other publicly available media (whether print, video, audio, or other format) that
8 republished such representations and omissions.

9 119. Defendants knew or, by the exercise of reasonable care, should have
10 known about each of those statements at or near the time they were made or
11 disseminated, and at all times thereafter.

12 120. Defendants knew or, by the exercise of reasonable care, should have
13 known that each of those statements was untrue, misleading, and likely to
14 deceive the public at or near the time it was made or disseminated, and at all
15 times thereafter.

16 121. Unless Defendants are enjoined from engaging in the conduct alleged
17 herein that violates the FAL, members of the consuming public will be further
18 harmed by that conduct.

19 122. As result of Defendants’ FAL violations and the harm caused thereby,
20 Plaintiff and Class members are entitled to and seek (a) injunctive relief to protect
21 the consuming public by prohibiting Tesla from engaging in its past and ongoing
22 acts, omissions, and conduct that violate the FAL; (b) restitution of the full value
23 of all monies and other consideration that Plaintiff and Class members paid
24 Defendants for the purchase or lease of Class Vehicles and ADAS packages,
25 which Defendants continue to wrongfully retain, including any diminished value
26 of Plaintiff’s and Class members’ Class Vehicles and ADAS packages and
27 disgorgement of the profits Defendants derived from their wrongful conduct; (c)
28

1 an award of reasonable attorneys' fees under Cal. Civ. Proc. Code § 1021.5 and
2 any other applicable law; and (d) all other available relief prayed for below.

3 **THIRD CLAIM**
4 **Violation of the Magnuson-Moss Warranty Act**
5 **15 U.S.C. § 2301, et seq.**

6 123. Plaintiff re-alleges and incorporates by reference each and every
7 allegation set forth above, as though fully set forth in this Claim for Relief.

8 124. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, provides
9 a cause of action for any consumer damaged by the failures of a warrantor to
10 comply with a written or implied warranty. *See* 15 U.S.C. § 2310(d)(1).

11 125. The Class Vehicles and the ADAS packages on those vehicles are
12 "consumer products" within the meaning of the Magnuson-Moss Warranty Act,
13 15 U.S.C. § 2301(1).

14 126. Plaintiff and Class members are "consumers" within the meaning of
15 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

16 127. Defendants are each a "supplier" and a "warrantor" within the
17 meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

18 128. Under 15 U.S.C. § 2310(e), Plaintiff and the Class are not required to
19 provide Defendants notice of this class action and an opportunity to cure until the
20 time the Court determines the representative capacity of Plaintiff under Rule 23.

21 129. Defendants and their representatives and agents' representations on
22 Tesla's website, Twitter, Tesla marketing materials, and various other media that
23 the Class Vehicles already were or would soon become fully self-driving cars are
24 each written warranties within the meaning of the Magnuson-Moss Warranty
25 Act, 15 U.S.C. § 2301(6).

26 130. Through written and implied warranties, Defendants warranted that
27 the Class Vehicles and the ADAS packages and technology on those vehicles
28 (both as sold or leased, and as periodically updated thereafter) are free from
defects, of merchantable quality, and fit for their ordinary and represented use.

1 131. Defendants breached their written and implied warranties as
2 described herein. Plaintiff and Class members were lured into purchasing or
3 leasing Class Vehicles with ADAS packages and technology by Tesla's
4 misrepresentations that it already had developed, or would soon complete its
5 development of, ADAS packages and technology capable of making the Class
6 Vehicles fully self-driving. Instead, the Class Vehicles and ADAS packages and
7 technology purchased or leased by Plaintiff and Class members do not perform as
8 promised, are not free of defects, are not of merchantability quality, and are unfit
9 for their ordinary and represented use.

10 132. Defendants knew or should have known that they were making
11 express and implied warranties that they would not be able to keep regarding the
12 current and future near-term abilities, limitations, and value of Tesla's ADAS
13 packages and technology, and knew or should have known that Tesla's ADAS
14 packages and technology would not perform as promised, were not free of
15 defects, were not of merchantability quality, and were unfit for their ordinary and
16 represented use. Nevertheless, Defendants repeatedly promised in highly public
17 and sensational ways intended to attract media attention and consumer interest
18 in Tesla's vehicles and ADAS packages and technology that its vehicles already
19 were or would very shortly be fully self-driving.

20 133. Plaintiff and Class members were damaged as a result of Defendants'
21 breaches of their warranties because they received Class Vehicles and ADAS
22 packages incapable of performing as Defendants represented, rendering the Class
23 Vehicles and ADAS packages significantly less valuable than represented.

24 134. For relief, Plaintiff and the Class are entitled to and seek (a) damages
25 caused by Defendants' breaches of the warranties, including economic damages
26 (based on the return of the price that Plaintiff and Class members paid
27 Defendants for ADAS packages and/or the difference between the price paid for
28 the Class Vehicles as warranted and the actual value of the Class Vehicles as

1 delivered) and all other available damages; (b) reasonable attorneys' fees and
2 costs, and (c) all other available relief sought herein.

3 **FOURTH CLAIM**
4 **Breach of Express Warranty**
5 **Cal. Civ. Code §§ 1791.2(a), 1794**

6 135. Plaintiff re-alleges and incorporates by reference each and every
7 allegation set forth above, as though fully set forth in this Claim for Relief.

8 136. Defendants expressly warranted to Plaintiff and Class members
9 through written statements within the meaning of Cal. Civ. Code § 1791.2(a)(1)
10 (including but not limited to statements that Defendants made or caused to be
11 made on Tesla's website, in Tesla marketing materials, on Musk's Twitter
12 account, in various print media, and other written forums) that the Class Vehicles
13 were fully self-driving, or that they would be fully self-driving within a
14 reasonable time after Plaintiff and Class members purchased or leased their
15 respective Class Vehicles and ADAS packages.

16 137. Defendants also expressly warranted to Plaintiff and Class members
17 through use of the samples and models within the meaning of Cal. Civ. Code
18 § 1791.2(a)(2) (including but not limited to videos Defendants produced
19 purporting to show Tesla vehicles driving themselves) that the Class Vehicles
20 were fully self-driving, or that they would be fully self-driving within a
21 reasonable time after Plaintiff and Class members purchased or leased their
22 respective Class Vehicles and ADAS packages.

23 138. The Class Vehicles and ADAS packages that Plaintiff and Class
24 members purchased or leased: were not as warranted when they left Tesla's
25 factories, reached Plaintiff and Class members without substantial change in the
26 condition in which they were sold or leased, and did not perform as warranted.

27 139. Defendants breached their warranties by knowingly selling or leasing
28 Class Vehicles equipped with ADAS packages and technology that had abilities,
limitations, flaws, and value that were different from what Defendants had

1 represented and warranted. Defendants' breaches were "willful" within the
2 meaning of Cal. Civ. Code § 1794(c).

3 140. As a direct and proximate result of these breaches, Plaintiff and Class
4 members have suffered various injuries and economic losses, including but not
5 limited to (1) purchasing or leasing Class Vehicles and ADAS packages they
6 would not otherwise have purchased or leased; (2) purchasing or leasing an
7 inferior product whose nature and characteristics render it of lesser value than
8 represented; (3) incurring monetary harm from the diminution in the Class
9 Vehicles' and ADAS packages' value and resale value; and (4) purchasing or
10 leasing Class Vehicles and ADAS packages that pose a danger to the health and
11 safety of Plaintiff, Class members, and the public.

12 141. The failure of the Class Vehicles and ADAS packages to be as
13 warranted was a substantial factor in causing Plaintiff's and Class members'
14 harm, which includes the difference between the prices they paid for their
15 respective Class Vehicles and ADAS packages as warranted and the actual value
16 of their Class Vehicles and ADAS packages as delivered.

17 142. Plaintiff and the Class are entitled to and seek (a) an injunction
18 prohibiting Defendants from sending or transmitting false, deceptive, or
19 misleading statements to the public regarding the abilities, limitations, flaws, and
20 value of Tesla's ADAS packages and technology; (b) damages caused by
21 Defendants' breaches of the warranties, including economic damages (based on
22 the return of the price that Plaintiff and Class members paid for their respective
23 Class Vehicles and ADAS packages and/or the difference between the price paid
24 for the Class Vehicles and ADAS packages as warranted and their actual value as
25 delivered); (c) consequential and incidental damages; (d) a civil penalty of two
26 times the amount of damages under Cal. Civ. Code § 1794; (d) reasonable
27 attorneys' fees and costs under Cal. Civ. Code § 1794 and any other applicable
28 law; and (e) all other available relief sought herein.

FIFTH CLAIM
Breach of Implied Warranties
Cal. Civ. Code §§ 1791.1, 1792, 1794

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2
3 143. Plaintiff re-alleges and incorporates by reference each and every
4 allegation set forth above, as though full set forth in this Claim for Relief.

5 144. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code
6 § 1790, *et seq.*, every sale or lease of consumer goods to a retail buyer is
7 accompanied by an implied warranty of merchantability from both the
8 manufacturer and the retail seller or lessor, and some such sales and leases may
9 also be accompanied by an implied warranty of fitness from both the
10 manufacturer and the retail seller or lessor. *Id.* § 1792-1792.2.

11 145. The durations of these implied warranties are coextensive with the
12 duration of the Defendants' express warranty, provided the duration of the
13 express warranty is reasonable, except that the duration of the implied warranties
14 cannot have a duration of less than 60 days or more than one year. *Id.* § 1791.1(c).

15 146. Defendants' sale or lease of Class Vehicles and ADAS packages to
16 Plaintiff and Class members was accompanied by Defendants' implied warranty
17 of merchantability, both in their capacities as manufacturer and as retail seller or
18 lessor. *Id.* § 1792.

19 147. Defendants' implied warranties of merchantability include warranties
20 that the Class Vehicles and ADAS packages (1) will pass without objection in the
21 trade under the contract description, (2) are fit for the ordinary purposes for
22 which such goods are used; (3) are adequately contained, packaged, and labelled,
23 and (4) will conform to the promises or affirmations of fact made on the container
24 or label. *Id.* § 1791.1(a).

25 148. At the time of purchase or lease, or within one year thereafter, the
26 Class Vehicles and ADAS packages and technology failed to conform with
27 Defendants' implied warranty of merchantability because they (1) did not pass
28 without objection in the trade under the contract description, (2) were not fit for

1 the ordinary purposes for which such goods are used, (3) were not adequately
2 contained, packaged, and labelled, and (4) did not conform to the promises or
3 affirmations of fact made on the container or label. Among other things, the Class
4 Vehicles and ADAS packages did not conform to the promises contained in the
5 labels “Autopilot,” “Enhanced Autopilot,” and “Full Self-Driving Capability.”

6 149. Defendants’ sale or lease of Class Vehicles and ADAS packages to
7 Plaintiff and Class members was also accompanied by Defendants’ implied
8 warranty of fitness, both in their capacities as manufacturer and as retail seller or
9 lessor. *Id.* § 1792.

10 150. At the time that Plaintiff and Class members purchased or leased their
11 Class Vehicles and ADAS packages from Defendants, Defendants were in the
12 business of designing, developing, testing, manufacturing, selling, and leasing
13 electric vehicles and ADAS technology in general, and the Class Vehicles and
14 Tesla’s ADAS packages and technologies in particular.

15 151. Defendants held themselves out as having special knowledge or skill
16 regarding all these general and particular subject matters. Further, Defendants
17 knew or had reason to know that Plaintiffs and Class members required the Class
18 Vehicles and ADAS packages for a particular purpose, and that Plaintiff and
19 Class members were relying on Defendants’ skill and judgment to furnish goods
20 suitable for that purpose.

21 152. Defendants breached the implied warranty of fitness because they
22 failed to deliver Class Vehicles and ADAS packages that were suited to Plaintiff’s
23 and Class members’ purpose of purchasing or leasing a fully self-driving car.

24 153. Defendants breached their warranties by knowingly selling or leasing
25 Class Vehicles equipped with ADAS packages and technology that had abilities,
26 limitations, flaws, and value that were different from what Defendants had
27 represented and warranted. Defendants’ breaches were “willful” within the
28 meaning of Cal. Civ. Code § 1794(c).

1 154. As a direct and proximate result of these breaches, Plaintiff and Class
2 members have suffered various injuries and economic losses, including but not
3 limited to (1) purchasing or leasing Class Vehicles and ADAS packages they
4 would not otherwise have purchased or leased; (2) purchasing or leasing an
5 inferior product whose nature and characteristics render it of lesser value than
6 warranted; (3) incurring monetary harm from the diminution in the Class
7 Vehicles' and ADAS packages' value and resale value; and (4) purchasing or
8 leasing Class Vehicles and ADAS packages that pose a danger to the health and
9 safety of Plaintiff, Class members, and the public.

10 155. The failure of the Class Vehicles and ADAS packages to be as
11 warranted was a substantial factor in causing Plaintiff's and Class members'
12 harm, which includes the difference between the prices they paid for their
13 respective Class Vehicles and ADAS packages as warranted and the actual value
14 of their Class Vehicles and ADAS packages as delivered.

15 156. For relief, Plaintiff and the Class are entitled to and seek (a) an
16 injunction prohibiting Defendants from sending or transmitting false, deceptive,
17 or misleading statements to the public regarding the abilities, limitations, flaws,
18 and value of Tesla's ADAS packages and technology; (b) damages caused by
19 Defendants' breaches of the warranties, including economic damages (based on
20 the return of the price that Plaintiff and Class members paid for their respective
21 Class Vehicles and ADAS packages and/or the difference between the price paid
22 for the Class Vehicles and ADAS packages as warranted and their actual value as
23 delivered); (c) consequential and incidental damages; (d) a civil penalty of two
24 times the amount of damages under Cal. Civ. Code § 1794; (e) reasonable
25 attorneys' fees and costs under Cal. Civ. Code § 1794 and any other applicable
26 law; and (f) all other available relief sought herein.

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SIXTH CLAIM
Fraud and Deceit
Cal. Civ. Code §§ 1572, 1573, 1710

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3 157. Plaintiff re-alleges and incorporates by reference each and every
4 allegation set forth above, as though full set forth in this Claim for Relief.

5 158. Based on Defendants' conduct alleged in this Complaint, Defendants
6 have engaged in fraud and deceit as set forth in Cal. Civ. Code §§ 1572, 1573, and
7 1710.

8 159. Defendants overstated the utility and safety of Class Vehicles by
9 marketing the Class Vehicles and ADAS packages in a manner that Defendants
10 knew was false and deceptive.

11 160. Defendants engaged in misrepresentations, nondisclosure, and
12 concealment of material facts to Plaintiff and Class members, Defendants'
13 conduct was materially false or deceptive, Defendants knew or through
14 reasonable care should have known their conduct was false or deceptive, and
15 Defendants engaged in the conduct with the intent to mislead Plaintiff and Class
16 members.

17 161. Plaintiff and the Class members reasonably relied on Defendants'
18 misrepresentations, nondisclosure, and concealment, and were induced by
19 Defendants' wrongful conduct to purchase or lease the Class Vehicles and ADAS
20 packages, which they would not otherwise have purchased or leased.

21 162. As a result of Defendants' conduct, Plaintiff and Class members have
22 been harmed. Plaintiff and Class members' reliance was a substantial factor in
23 causing their harm because they were required to stop using Class Vehicles and
24 fear immediate catastrophic injury to themselves and passengers of the Class
25 Vehicles, and people and property surrounding the Class Vehicle.

26 163. Plaintiff and Class members have reasonably relied on the material
27 misrepresentations and omissions made by Defendants and have been damaged
28 thereby.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all other Class members, prays for judgment against Defendants and the following relief:

1. An order certifying that this action may be maintained as a class action, appointing Plaintiff and his counsel of record to represent the Class, and requiring Defendants to pay the costs of all Class notice and administration of Class relief;
2. Declaratory and preliminary and permanent injunctive relief prohibiting Defendants from continuing to engage in acts, omissions, and conduct alleged herein that violate any law for which injunctive relief is available, including the California FAL and UCL;
3. An award of all recoverable damages, actual, general, special, incidental, compensatory, consequential, statutory, and punitive damages, in favor of Plaintiff and the Class, in an amount to be determined at trial;
4. An order awarding Plaintiff and the Class restitution and disgorgement in an amount to be determined at trial;
5. An award of reasonable attorneys' fees and costs under Cal. Civ. Proc. Code § 1021.5, Cal. Civ. Code § 780(e), and any other applicable law;
6. Plaintiff's and the Class's costs of suit;
7. Pre- and post-judgment interest at the maximum rate provided by law; and
8. Such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable.

