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13 TESLA, INC.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17
18 JI CHANG SON, GHODRAT
19 KHANSARI, MADHUSUDHANA
20 SHASTRULA, ALI JARRAHI, and
21 MICHAEL TOMKO individually and
on behalf of all others similarly situated,
and K.M.S., a minor by and through his
22 *Guardian ad Litem* YUN SOO OH,

23 Plaintiffs,

24 v.

25 TESLA, INC.,

26 Defendant.
27
28

Case No. 8:16-cv-02282-JVS
(KESx)

**NOTICE OF MOTION AND
MOTION; DEFENDANT
TESLA, INC.'S
MEMORANDUM OF
POINTS AND
AUTHORITIES IN
SUPPORT OF MOTION TO
DISMISS AND/OR STRIKE**

Date: May 1, 2017
Time: 1:30 p.m.
Crtrm: 10C

Hon. James V. Selna

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on May 1, 2017, at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 10C of this Court, located at 411 West 4th Street, Santa Ana, California, Defendant Tesla, Inc. (“Tesla”), will and hereby does move this Court for an order dismissing the fourth, sixth, seventh, eighth, thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, twentieth, twenty-third, and twenty-fourth causes of action. Dismissal is warranted, pursuant to Federal Rule of Civil Procedure 12(b)(6), because Plaintiffs fail to state a claim for relief in each of these causes of action.

Tesla also moves for an order, pursuant to Rules 12(b)(6) and 12(f), dismissing and/or striking as immaterial the class allegations associated with Plaintiffs’ claim under the Ohio Consumer Sales Practices Act.

The motion is based upon this Notice; the accompanying Memorandum of Points and Authorities; the pleadings, files, and records in this action; and such additional evidence and arguments as may be presented at the hearing of this motion.

This motion is made following a conference of counsel pursuant to Civil Local Rule 7-3, which took place on March 24, 2017.

March 31, 2017

Respectfully submitted,
MORRISON & FOERSTER LLP

By: /s/ Penelope Preovolos
Penelope Preovolos
Attorneys for Defendant
TESLA, INC.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant Tesla, Inc.’s (“Tesla”) mission is to accelerate the world’s
4 transition to sustainable energy. Among other things, Tesla designs, manufactures,
5 and sells the world’s most advanced zero-emissions, all-electric vehicles, including
6 its Model S sedan, introduced in 2012, and its Model X sports utility vehicle,
7 introduced in 2015.

8 Plaintiffs are purchasers of both models. They allege that *all* Model S and
9 Model X vehicles are susceptible to sudden unintended acceleration (“SUA”),
10 either because one or more vehicle systems are defectively designed or because
11 Tesla did not do what no manufacturer has ever done—“develop and implement
12 computer algorithms that would eliminate the danger of full throttle acceleration
13 into fixed objects” *even if it is caused by human error*. (FAC ¶ 34.) Tesla’s data
14 demonstrates that each of the SUA incidents alleged in the FAC resulted from
15 human error, and Tesla disputes that there is a legal duty to design a failsafe car.
16 However, for purposes of this motion, which requires that the Court assume the
17 truth of Plaintiffs’ allegations, Tesla moves to dismiss 13 of the 27 causes of action
18 in Plaintiffs’ First Amended Complaint (“FAC”) on the ground that they are fatally
19 defective under the laws applicable to those claims.

20 First, all of the Plaintiffs’ express warranty claims should be dismissed
21 because Plaintiffs plainly allege a design defect with respect to Tesla’s entire fleet,
22 not a defect in “materials or workmanship” covered by Tesla’s express Basic
23 Vehicle Limited Warranty. Further, to the extent that Plaintiffs rely on alleged
24 marketing statements by Tesla outside the written warranty to create a separate
25 “express warranty,” those claims also fail because no Plaintiff alleges that he ever
26 read or saw a single one of the alleged statements. The Court thus should dismiss
27 all of Plaintiffs’ claims for breach of express warranty and breach of
28

1 contract/common law warranty.

2 A number of the named Plaintiffs' other claims also suffer from fatal legal
3 flaws and should be dismissed. Plaintiff Michael Tomko's Ohio Deceptive Trade
4 Practices Act claim fails because that Act does not allow lawsuits by a consumer.
5 Further, Tomko's class allegations under the Ohio Consumer Sales Practices Act
6 claim should be dismissed or, in the alternative, stricken, because Plaintiffs do not
7 plead a prior regulation or court ruling finding the specific practice alleged to be
8 unconscionable or deceptive, as the statute requires.

9 Similarly, three of plaintiff Madhusudhana Shastrula's Georgia-law claims
10 (in addition to his express warranty-based claims) are legally defective and should
11 be dismissed. His Georgia Uniform Deceptive Trade Practices Act claim fails
12 because the Act is limited to claims for injunctive relief for future injury; it does not
13 permit claims based upon the past purchase of an allegedly defective product (even
14 under the theory that it might one day inflict future harm). Shastrula's Georgia Fair
15 Business Practices Act claim is also defective because he has failed to provide (and
16 plead) 30 days' pre-suit written notice, which cannot be cured by amendment and
17 requires dismissal with prejudice. Finally, his unjust enrichment claim fails
18 because Georgia law prohibits such a claim where, as here, a plaintiff has adequate
19 remedies at law or alleges an enforceable contract.

20 For these reasons, Tesla respectfully asks that the Court dismiss Plaintiffs'
21 fourth, sixth, seventh, eighth, thirteenth, fourteenth, fifteenth, seventeenth,
22 eighteenth, twentieth, twenty-third, and twenty-fourth causes of action, and dismiss
23 and/or strike the class allegations from the twenty-second cause of action.

24 **II. BACKGROUND**

25 Plaintiffs Ji Chang Son and his minor son, K.M.S., filed this putative class
26 action on December 30, 2016. (ECF No. 1.) The original Complaint asserted
27 claims related only to the Model X, under California and federal law. The First
28 Amended Complaint ("FAC"), filed on March 1, 2017, added four named

1 plaintiffs—Ali Jarrahi, Ghodrat Khansari, Madhusudhana Shastrula, and Michael
2 Tomko; claims related to the Model S; and claims under Georgia, North Carolina,
3 and Ohio law. (ECF No. 25.)

4 Every claim in the FAC arises out of the allegation that the Model S and
5 Model X are defective because they are prone to sudden, unintended acceleration.
6 Plaintiffs speculate about possible design defects in various vehicle systems that
7 could have caused such acceleration, but contend that, even if such acceleration
8 resulted from human error, Tesla should have developed a failsafe system to
9 prevent it. Based on this central allegation, Plaintiffs assert 27 claims for violations
10 of consumer protection statutes, breaches of warranty and contract, and product
11 liability.

12 **III. LEGAL STANDARD**

13 **A. Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6)**

14 Under Rule 12(b)(6), a complaint must contain “more than labels and
15 conclusions” or “a formulaic recitation of the elements of a cause of action.” *Bell*
16 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A “complaint must allege
17 sufficient facts to state the elements of” each cause of action to survive dismissal.
18 *Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1122 (9th Cir. 2008). A
19 court is “not bound to accept as true a legal conclusion couched as a factual
20 allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

21 **B. Motion to Strike Under Fed. R. Civ. P. 12(f)**

22 Under Rule 12(f), the Court may “strike from a pleading . . . any redundant,
23 *immaterial*, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f) (emphasis
24 added). “Immaterial” means “that which has no essential or important relationship
25 to the claim for relief or the defenses being plead.” *Whittlestone, Inc. v. Handi-*
26 *Craft Co.*, 618 F.3d 970, 974 (9th Cir. 2010) (citation omitted). This includes
27 improper class allegations, which the Court has “the authority to strike . . . prior to
28 discovery if the complaint demonstrates that a class action cannot be maintained.”

1 *Tietsworth v. Sears, Roebuck & Co.*, 720 F. Supp. 2d 1123, 1146 (N.D. Cal. 2010);
 2 *see also Collins v. GameStop Corp.*, No. C10-1210 TEH, 2010 U.S. Dist. LEXIS
 3 88878, at *5 (N.D. Cal. Aug. 6, 2010) (same); *Castaneda v. Fila USA, Inc.*, No. 11-
 4 CV-1033-H (BGS), 2011 WL 7719013, at *2 (S.D. Cal. Aug. 10, 2011) (partly
 5 granting motion to strike after finding class definition “overly broad”); *Gen. Tel. Co.*
 6 *of Sw. v. Falcon*, 457 U.S. 147, 160 (1982) (“[s]ometimes the issues are plain
 7 enough from the pleadings to determine whether” class claims are proper).

8 “The essential function of a Fed. R. Civ. P. 12(f) motion is to avoid the
 9 expenditure of time and money that must arise from litigating spurious issues.”
 10 *Susilo v. Wells Fargo Bank, N.A.*, 796 F. Supp. 2d 1177, 1196 (C.D. Cal. 2011)
 11 (citation omitted).

12 **IV. ARGUMENT**

13 **A. The Court Should Dismiss Plaintiffs’ Claims for Breach of Express** 14 **Warranty and Breach of Contract/Common Law Warranty** 15 **(Claims 4, 6, 7, 8, 15, 17, 20, and 24)**

16 As Plaintiffs admit in the FAC, Tesla’s express “Basic Vehicle Limited
 17 Warranty” extends only to “defects in the materials or workmanship of any parts
 18 manufactured or supplied by Tesla.” (FAC ¶ 142.) Courts have routinely held that
 19 such warranties do not cover design defects. Plaintiffs speculate about potential
 20 defects in various vehicle systems, including that Tesla did not create a “fail-safe”
 21 mechanism to prevent *all* SUA incidents, even if they were caused by driver
 22 negligence. Under any of these theories, Plaintiffs are unquestionably alleging that
 23 *all* Model S and Model X vehicles have a uniform *design* defect, a claim not
 24 covered by Tesla’s Basic Vehicle Limited Warranty. Moreover, Plaintiffs cannot
 25 avoid this result by relying on their boilerplate incantations of “manufacturing,”
 26 “materials,” or “workmanship” defects. Courts reject the use of such conclusory
 27 allegations to end-run the scope of an express warranty.

28 Further, to the extent Plaintiffs seek to treat other marketing statements by
 Tesla as express warranties, their claims still fail. To state a claim based on

1 statements outside an express written warranty, Plaintiffs must allege that they
 2 actually saw the statements; none of the Plaintiffs does so. Accordingly, Plaintiffs’
 3 eight express warranty claims—including their claims for breach of express
 4 warranty and breach of contract/common law warranty¹—should be dismissed.

5 **1. Plaintiffs Fail to State a Claim Based Tesla’s Express Basic**
 6 **Vehicle Limited Warranty**

7 **a. Because Tesla’s Basic Vehicle Limited Warranty**
 8 **Covers Only Materials or Workmanship Defects, It**
 9 **Does Not Cover Design Defects**

10 “A manufacturer’s liability for breach of an express warranty derives from,
 11 and is measured by, the terms of that warranty.” *Cipollone v. Liggett Grp., Inc.*,
 12 505 U.S. 504, 525 (1992). Where a warranty covers only defects in “materials” and
 13 “workmanship,” courts applying the laws of California, Georgia, North Carolina,
 14 and Ohio have consistently held that a design defect does not breach that warranty,
 15 and that a claim based on such a design defect should be dismissed. *See, e.g.*,
 16 *Apodaca v. Whirlpool Corp.*, No. SACV 13-00725 JVS (ANx), 2013 U.S. Dist.
 17 LEXIS 176363, at *25 (C.D. Cal. Nov. 8, 2013) (Selna, J.) (“an express written
 18 warranty covering ‘materials and workmanship’ does not include design defects”)
 19 (citation omitted); *Davidson v. Apple, Inc.*, No. 16-CV-04942-LHK, 2017 U.S. Dist.
 20 LEXIS 36524, at *34 (N.D. Cal. Mar. 14, 2017) (same); *Clark v. LG Elecs., U.S.A.,*
 21 *Inc.*, No. 13-cv-485 JM (JMA), 2013 U.S. Dist. LEXIS 155179, at *23-25 (S.D.
 22 Cal. Oct. 29, 2013) (written warranty covering “materials and workmanship” does
 23 not cover design defects); *Rice v. Sunbeam Prods.*, No. CV 12-7923-CAS (AJWx),
 24

25 _____
 26 ¹ The claims are: statutory breach of express warranty under California,
 27 Georgia, and Ohio law (claims 4, 15, and 24); breach of written warranty under the
 28 Magnuson-Moss Warranty Act (claim 6); breach of express warranty under the
 California Song-Beverly Act (claim 8); and breach of contract/common law
 warranty under California, Georgia, and North Carolina law (claims 7, 17, and 20).

1 2013 U.S. Dist. LEXIS 7467, at *37-38 (C.D. Cal. Jan. 7, 2013) (same).²

2 In *Troup v. Toyota Motor Corp.*, 545 F. App'x 668 (9th Cir. 2013), the Ninth
 3 Circuit affirmed the dismissal of an express warranty claim where the warranty
 4 covered only “defects in materials or workmanship.” *Id.* at 668-69. Although the
 5 complaint contained “scattered” references to defects in “materials,” the Ninth
 6 Circuit found these allegations inadequate because the “gravamen” of the complaint
 7 suggested a design defect. *Id.* at 669. Courts applying Georgia, North Carolina,
 8 and Ohio law have reached similar results. See *Garcia v. Chrysler Grp.*, 127 F.
 9 Supp. 3d 212, 225-27 (S.D.N.Y. 2015) (dismissing Georgia plaintiffs’ claim for
 10 breach of materials and workmanship warranty because complaint made only
 11 “offhand references to manufacturing defects,” and the allegations generally
 12 suggested design defect); *Hansen v. Freedom Mobility, Inc.*, No. 5:08-CV-131-
 13 DCK, 2010 U.S. Dist. LEXIS 101882, at *2, *14-15 (W.D.N.C. Sept. 24, 2010)
 14 (granting summary judgment in favor of North Carolina defendant where
 15 unsupported allegation that wheelchair was improperly “manufactured” did not
 16 show breach of materials and workmanship warranty); *Whitt v. Mazda Motor of*
 17 *Am., Inc.*, 2011-Ohio-3097 at ¶¶ 20-24 (affirming summary judgment in favor of
 18 Ohio defendant where plaintiff alleged design defect that warranty did not cover).

19 Accordingly, because Tesla’s Basic Vehicle Limited Warranty covers only
 20 “materials or workmanship” defects, design defects are excluded.

21 **b. Courts Clearly Differentiate Between Manufacturing**
 22 **and Design Defects**

23 The law draws a clear distinction between manufacturing defects (including

24
 25 ² See also *Gertz v. Toyota Motor Corp.*, No. CV 10-1089 PSG, 2011 U.S.
 26 Dist. LEXIS 94183, at *10-11 (C.D. Cal. Aug. 22, 2011) (same); *Tait v. BSH Home*
 27 *Appliances Corp.*, No. SACV 10-711 DOC, 2011 U.S. Dist. LEXIS 54456, at *9-10
 28 (C.D. Cal. May 12, 2011) (same); *Brothers v. Hewlett-Packard Co.*, No. C-06-
 02254, 2007 U.S. Dist. LEXIS 13155, at *14 (N.D. Cal. Feb. 12, 2007) (same).

1 defects in materials or workmanship) and design defects.

2 A manufacturing defect exists when a specific unit in a product line “is
3 produced in a substandard condition” and “perform[s] differently from other
4 ostensibly identical units of the same product line.” *McCabe v. Am. Honda Motor*
5 *Co.*, 100 Cal. App. 4th 1111, 1120 (2002); *see also Banks v. ICI Ams.*, 264 Ga. 732,
6 733 (1994) (under Georgia law, existence of “manufacturing defect” can be
7 determined by “simply comparing [an item in the product line] to a properly
8 manufactured item from the same product line”); *Sparks v. Oxy-Health, LLC*, 134
9 F. Supp. 3d 961, 986 (E.D.N.C. 2016) (in North Carolina, “manufacturing defect”
10 is defined by Third Restatement of Torts, which requires that the “product depart[]
11 from its intended design”); *Miller v. ALZA Corp.*, 759 F. Supp. 2d 929, 941 (S.D.
12 Ohio 2010) (under Ohio law, manufacturing defect exists when product “deviated
13 in a material way from the design specifications, formula, or performance standards
14 of the manufacturer, or from otherwise identical units”).

15 By contrast, a design defect exists when “the product is built in accordance
16 with its intended specifications, but the design itself is inherently defective.”
17 *McCabe*, 100 Cal. App. 4th at 1120. In *Gertz v. Toyota Motor Corp.*, No. CV 10-
18 1089 PSG (VBKx), 2011 U.S. Dist. LEXIS 94183 (C.D. Cal. Aug. 22, 2011), the
19 court held that the plaintiffs had alleged a design defect where their “pleadings
20 [made] clear that the alleged . . . defects . . . exist[ed] with respect to *all* of Toyota’s
21 2004-2009 Prius vehicles, not merely the particular vehicle owned by [plaintiffs].”
22 *Id.* at *10 (rejecting argument that plaintiffs alleged materials or workmanship
23 defect falling within Toyota’s express warranty). Similarly, the plaintiffs in *Sater v.*
24 *Chrysler Grp., LLC*, No. EDCV 14-00700-VAP (DTBx), 2015 WL 736273 (C.D.
25 Cal. Feb. 20, 2015), pled a design defect where the complaint alleged a “uniform”
26 defect and the plaintiffs “define[d] the class as *all* purchasers . . . indicating the
27 trucks were built in the manner Chrysler intended (but the intended manner was
28 faulty.” *Id.* at *4 (Chrysler’s express warranty covering defects in “material,

1 workmanship or factory preparation” did not cover this alleged design defect);
2 *Garcia*, 127 F. Supp. 3d at 227 (Georgia plaintiff’s complaint alleged design defect
3 because plaintiff alleged all vehicles were defective and sought to represent class of
4 “all persons” who purchased such vehicles).

5 **c. Plaintiffs’ Express Warranty Claims Fail Because**
6 **Plaintiffs Allege Only a Design Defect**

7 The various theories in the FAC allege *only* a defect in design. Although
8 Plaintiffs invoke the words “manufacturing,” “materials,” and “workmanship,”
9 these boilerplate and conclusory allegations cannot survive a motion to dismiss.

10 According to Plaintiffs, the purported defect is that Tesla’s vehicles are
11 allegedly prone to sudden, unintended acceleration. Plaintiffs allege that the sudden
12 acceleration may be caused by defects in various vehicle systems or by driver
13 negligence, but that, in any event, Tesla should have designed a failsafe system to
14 prevent it. Tesla contends that each sudden acceleration incident alleged in the FAC
15 was the result of driver error, denies that its cars are defective in any way, and
16 disputes that there is a legal duty to design a failsafe car. But for purposes of this
17 motion, it is clear that all Plaintiffs’ theories postulate a *design* defect that applies to
18 *all* Model S and Model X vehicles.

19 For instance, Plaintiffs allege: “What has become evident . . . is that Tesla
20 vehicles are susceptible to sudden unintended acceleration.” (FAC ¶ 20.) Plaintiffs
21 similarly allege that “[t]he Model S and Model X . . . are defective in that they are
22 vulnerable to incidents of sudden full power unintended acceleration.” (*Id.* ¶ 84).
23 These are the hallmarks of a design defect claim. Indeed, the section of the FAC
24 that purports to set forth the “Defects in the Model S and Model X” (*id.* ¶¶ 84-86)
25 unequivocally alleges that all Model S and Model X vehicles are defectively
26 designed. *See, e.g., McCabe*, 100 Cal. App. 4th at 1120; *Gertz*, 2011 U.S. Dist.
27 LEXIS 94183, at *10; *Tait*, 2011 U.S. Dist. LEXIS 54456, at *9. Plaintiffs also
28 seek to represent a purported class of “[a]ll persons or entities . . . who are current

1 owners and/or lessees of a Tesla Model S or Model X,” which further confirms that
2 their claims are predicated on an alleged fleet-wide design defect. (FAC ¶ 91
3 (emphasis added).) *See Sater*, 2015 WL 736273, at *4.

4 In contrast, nothing in the FAC suggests that Plaintiffs are alleging a defect
5 in “manufacturing” or “materials and workmanship,” and Plaintiffs do not allege a
6 single fact or theory that suggests such a defect. Plaintiffs do not allege that Tesla
7 assembled particular vehicles improperly, or that certain vehicles “perform
8 differently from other ostensibly identical units of the same product line,” *McCabe*,
9 100 Cal. App. 4th at 1120. They do not even *refer* to the materials used to build the
10 Model S or Model X, let alone point to any issues with such materials. And
11 although Plaintiffs recite the words “manufacturing,” “materials,” and
12 “workmanship,” courts regularly reject such conclusory allegations as the basis for
13 shoehorning design claims into a “materials and workmanship” express warranty.

14 *Garcia* illustrates this point. In *Garcia*, the court held that the plaintiffs
15 failed to allege a manufacturing defect where “[t]he only allegations relating to
16 manufacturing defects [were] the repetitive statements that the [power module] in
17 each plaintiff’s vehicle was ‘defective because of design defects, manufacturing
18 defects, or both.’” 127 F. Supp. 3d at 227. These “offhand references” did not
19 suffice. *Id.* at 226-27. Similarly, the *Troup* court rejected “scattered” references to
20 “materials” where the thrust of the complaint suggested a design defect. 545
21 F. App’x at 669; *see also Rice*, 2013 U.S. Dist. LEXIS 7467, at *38-39 (holding
22 that, despite alleging that the defect arose from “design *and/or manufacturing*”
23 issues, plaintiff did not allege manufacturing defect). Plaintiffs’ bare allegations of
24 a “manufacturing” or “materials and workmanship” defect are no different here.³

25
26
27 ³ That discovery has not begun does not excuse Plaintiffs from alleging
28 specific facts. *See Clark*, 2013 U.S. Dist. LEXIS 155179, at *23 (rejecting
argument that plaintiff “is not required to prove whether these problems are design

1 Because Plaintiffs do not allege a defect covered by Tesla’s express Basic
2 Vehicle Limited Warranty, they fail to state a claim for breach of that warranty.

3 **2. Tesla’s Marketing Statements Cannot Support Plaintiffs’**
4 **Express Warranty Claims**

5 For three of their claims, Plaintiffs argue that alleged marketing statements
6 by Tesla outside the Basic Vehicle Limited Warranty create a separate “express
7 warranty.” (See FAC ¶¶ 19, 51, 55, 57, and 59.)⁴ They fare no better. A plaintiff
8 claiming that such statements create an express warranty must specifically allege
9 that he or she saw the statements before the purchase. See, e.g., *In re Toyota Motor*
10 *Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, 754
11 F. Supp. 2d 1145, 1182 (C.D. Cal. 2010). Plaintiffs have not done so here.

12 In *Toyota*, this Court dismissed the claim that Toyota breached warranties
13 made in its advertisements because the plaintiffs did not specifically allege that they
14 saw the advertisements. *Id.* As the Court explained, “Plaintiffs cannot base a claim
15 on [representations in advertisements] in the absence of allegations that they were
16 exposed to them.” *Id.* (applying California law). Such allegations are necessary to
17 establish that the statements were “part of the basis of the bargain” between the
18 parties. *Resnick v. Hyundai Motor Am., Inc.*, No. 16-00593-BRO (PJWx), 2016
19 U.S. Dist. LEXIS 160179, at *30 (C.D. Cal. Nov. 14, 2016) (citation omitted)
20 (same).

21 The same rule applies to express warranty claims under the laws of Georgia,
22 North Carolina, and Ohio. See *Grieco v. Tecumseh Prods. Co.*, No. 4:12-cv-195,
23 2013 U.S. Dist. LEXIS 152405, at *17 (S.D. Ga. Oct. 23, 2013) (express warranty
24

25 defects or problems with materials and workmanship at this stage in the
26 litigation . . . without access to [defendant’s] discoverable information”).

27 ⁴ Plaintiffs cite such statements as the basis for the express warranty claims
28 in only the eighth, fifteenth, twenty-fourth causes of action. (See FAC ¶¶ 184, 251,
and 317.)

1 only created “under Georgia law when [seller] makes . . . an affirmation [that]
2 becomes part of the basis of the bargain”) (citing Ga. Code Ann. § 11-2-313(1)(a));
3 *Pake v. Byrd*, 55 N.C. App. 551, 553 (1982) (“the essential ingredient for this
4 determination” of whether a statement constitutes a warranty “is whether the
5 seller’s affirmation became the basis of the bargain”; court must consider “whether
6 the buyer knew of the seller’s statements” before time of sale); *Young v. Carrier*
7 *Corp.*, No. 4:14CV0974, 2014 U.S. Dist. LEXIS 163451, at *10 (N.D. Ohio Nov.
8 21, 2014) (report prepared by seller, but not seen by buyer before purchase, could
9 not be part of basis of bargain).

10 Plaintiffs fail to meet this standard here. Out of the five named plaintiffs
11 who bought Tesla vehicles, *not a single one* alleges that he saw any of the specific
12 representations alleged in the FAC. Thus, Plaintiffs fail to plead facts suggesting
13 that any of the statements were “part of the basis of the bargain.” *Resnick*, 2016
14 U.S. Dist. LEXIS 160179, at *30 (citation omitted). These “warranty” statements
15 cannot support the express warranty claims.

16 **B. The Court Should Dismiss the Ohio Deceptive Trade Practices Act**
17 **Claim Because the Act Does Not Allow Claims by Consumers**
18 **(Claim 23)**

19 “The vast majority of federal courts and all lower state courts to address the
20 issue have concluded that relief under the [Ohio Deceptive Trade Practices Act] is
21 not available to consumers.” *Phillips v. Philip Morris Cos.*, 290 F.R.D. 476, 482-
22 83 (N.D. Ohio 2013) (collecting cases and granting judgment on the pleadings
23 against consumer plaintiff); *see also Holbrook v. La.-Pac. Corp.*, 533 F. App’x 493,
24 497-98 (6th Cir. 2013) (affirming dismissal of consumer ODTPA claim because
25 plaintiff “[did] not have standing to raise an ODTPA claim as a consumer”);
26 *Terlesky v. Fifth Dimension, Inc.*, No. 1:15-cv-374, 2015 U.S. Dist. LEXIS 155236,
27 at *5-7 (S.D. Ohio Nov. 17, 2015) (granting motion to dismiss against consumer
28 plaintiff); *In re Experian Data Breach Litig.*, No. SACV 15-1592 (AG) (DFMx),
2016 WL 7973595, at *8 (C.D. Cal. Dec. 29, 2016) (same); *In re Oreck Corp. Halo*

1 *Vacuum & Air Purifiers Mktg. & Sales Practices Litig.*, No. ML 12-2317 CAS
 2 (JEMx), 2012 WL 6062047, at *11 (C.D. Cal. Dec. 3, 2012) (same); *Otto v. Abbott*
 3 *Labs., Inc.*, No. 5:12-cv-01411-SVW-DTB, 2013 WL 12131380, at *12 (C.D. Cal.
 4 Aug. 2, 2013) (same).

5 As many courts have recognized, the ODTPA is “analogous” and
 6 “substantially similar” to the Lanham Act. *Phillips*, 290 F.R.D. at 483; *Holbrook*,
 7 533 F. App’x at 197; *Dawson v. Blockbuster, Inc.*, 2006-Ohio-1240 at ¶ 23, 2006
 8 WL 1061769, at *3 (Ct. App. 2006), *appeal not allowed*, 110 Ohio St. 3d 1442
 9 (Ohio 2006). For that reason, courts routinely “look to the Lanham Act when
 10 adjudicating claims under the DTPA,” and the Lanham Act does not allow
 11 consumer claims. *Phillips*, 290 F.R.D. at 483-84 (collecting cases); *see also*
 12 *Terlesky*, 2015 U.S. Dist. LEXIS 155236, at *6.⁵

13 Plaintiffs cannot deny that Tomko, who bought his Model S vehicle from
 14 Tesla (FAC ¶ 39), is a consumer. Indeed, the notion that Plaintiffs are all
 15 consumers is a central premise of the FAC, which asserts numerous consumer
 16 claims. (*See, e.g.*, FAC ¶ 103 (alleging that Plaintiffs are “consumers” within
 17 meaning of California’s Consumer Legal Remedies Act, which means each is an
 18 “individual who seeks or acquires, by purchase or lease, any goods or services for
 19 personal, family, or household purposes,” Cal. Civ. Code § 1761(d)); *see also* FAC
 20 ¶¶ 113, 133, 163, 185, 300.) Accordingly, Tomko cannot pursue a claim under the
 21 ODTPA, and the Court should dismiss the claim with prejudice.

22 **C. The Court Should Dismiss or, in the Alternative, Strike the Class**
 23 **Allegations from the Ohio Consumer Sales Practices Act Claim**
 24 **Because Plaintiffs Fail to Plead Notice (Claim 22)**

25 The Ohio Consumer Sales Practices Act (“OCSPA”) precludes a class claim

26 ⁵ Many courts also have observed that Ohio’s Consumer Sales Protection Act
 27 would be rendered “superfluous” by reading the ODTPA to include consumer suits,
 28 because the former regulates the same type of conduct and is clearly directed at
 consumers. *Phillips*, 290 F.R.D. at 484 (collecting cases).

1 unless the plaintiff complies with the OCSA's statutory notice requirements. To
2 do so, the plaintiff must plead either that "(1) a specific rule or regulation has been
3 promulgated under R.C. 1345.05 that specifically characterizes the challenged
4 practice as unfair or deceptive or (2) an Ohio state court has found the specific
5 practice either unconscionable or deceptive." *Volbers-Klarich v. Middletown*
6 *Mgmt., Inc.*, 125 Ohio St. 3d 494, 502 (2010). A failure to plead proper notice
7 requires dismissal. *Id.*

8 The standard is rigorous. A plaintiff may not rely on a general statute or
9 regulation prohibiting false advertising; "[t]o permit a generic rule to constitute
10 prior notice for purposes of R.C. 1345.09(B) would allow *any* previous
11 determination of a deceptive act or practice to qualify as prior notice for any
12 subsequent alleged deceptive act or practice." *Marrone v. Philip Morris, USA, Inc.*,
13 110 Ohio St. 3d 5, 10 (2006); *see also In re Oreck Corp.*, 2012 WL 6062047, at *13
14 (dismissing class claims where notice was based on general Ohio regulation);
15 *Corcoran v. CVS Health Corp.*, 169 F. Supp. 3d 970, 992 (N.D. Cal. 2016) (same).

16 Similarly, an Ohio state court decision can satisfy the notice requirement
17 only if the conduct the court or jury found deceptive is "substantially similar" to the
18 conduct challenged in the present case. *Marrone*, 110 Ohio St. 3d at 10. The case
19 must be similar "in essential circumstances or conditions," *id.*; cases that "involve
20 industries . . . very different from the defendant's do not provide meaningful notice
21 of specific acts or practices that violate the [O]CSA," *id.* at 9; *see also Vinson v.*
22 *J.M. Smucker Co.*, No. CV 12-4936-GHK (VBKx), 2013 U.S. Dist. LEXIS 183515,
23 at *18-21 (C.D. Cal. Mar. 25, 2013) (case finding yogurt-maker's health claims
24 deceptive was not "substantially similar" to purported case challenging health
25 claims regarding products that contained trans fats and high fructose corn syrup;
26 similarities between the cases were too high-level, and the cases differed in "the
27 specific nature and type of health claims at issue.").

28 Plaintiffs here do not allege that any case provides the requisite statutory

1 notice to Tesla, let alone one that is “substantially similar.” Nor do Plaintiffs allege
 2 that any rule or regulation provides such notice. To the extent Plaintiffs claim that
 3 the reference to Ohio Revised Code section 1345.02 (*see* FAC ¶¶ 298, 301), which
 4 broadly prohibits deceptive conduct, is enough, this position has been routinely
 5 rejected by courts, including Ohio’s Supreme Court.⁶ *See Marrone*, 110 Ohio St.
 6 3d at 10; *Volbers*, 125 Ohio St. 3d at 502; *In re Oreck Corp.*, 2012 WL 6062047, at
 7 *12-13. Thus, the Court should dismiss or, in the alternative, strike the class
 8 allegations under the OCSPA.

9 **D. The Court Should Dismiss the Georgia Uniform Deceptive Trade**
 10 **Practices Act Claim Because Plaintiff Shastrula Does Not and**
 11 **Cannot Plead a Likelihood of Future Injury (Claim 13)**

12 Plaintiff Shastrula’s claim under the Georgia Uniform Deceptive Trade
 13 Practices Act, Ga. Code Ann. § 10-1-370 *et seq.* (“GUDTPA”), fails because the
 14 statute permits only injunctive relief claims for future injury. It does not permit
 15 claims for damages, nor does it permit injunctive relief claims, like Shastrula’s
 16 claims here, that are predicated on the past purchase of an allegedly defective
 17 product—even where the plaintiff alleges that the product may or will cause injury
 18 in the future.

19 “[T]he sole remedy available under the [G]UDTPA is injunctive relief.”
 20 *Moore-Davis Motors, Inc. v. Joyner*, 252 Ga. App. 617, 619 (2001) (citing Ga.
 21 Code Ann. § 10-1-373(a)). An injunction is “only available to remedy future
 22 wrongs and does not afford a remedy for what is past.” *Terrill v. Electrolux Home*
 23 *Prods., Inc.*, 753 F. Supp. 2d 1272, 1291 (S.D. Ga. 2010) (citation omitted). If a
 24 plaintiff does not meet the requirements for injunctive relief, his claim must be
 25 dismissed: “An individual that has only suffered past harm, even when he brings

26 ⁶ Moreover, this section is part of the OCSPA and generally describes what
 27 the OCSPA prohibits. If it qualified as notice, the OCSPA’s notice requirement
 28 would be meaningless: it would be automatically satisfied whenever a plaintiff
 sued under the OCSPA.

1 his claim on behalf of a putative class of plaintiffs, fails to state a claim under the
2 GUDTPA.” *In re Porsche Cars N. Am., Inc. Plastic Coolant Tubes Prods. Liab.*
3 *Litig.*, 880 F. Supp. 2d 801, 846 (S.D. Ohio 2012).

4 Courts routinely dismiss GUDTPA claims arising from the sale of an
5 allegedly defective product, including misrepresentation and omissions allegations
6 like Shastrula’s here, because they do not allege the type of future injury required
7 for injunctive relief under the statute. For example, in *Garcia v. Chrysler Group,*
8 *LLC*, 127 F. Supp. 3d 212, 217 (S.D.N.Y. 2015), the plaintiffs alleged that the
9 defendant’s vehicles’ faulty electrical system could cause unintended acceleration
10 and other hazards, and that the defendant had failed to disclose this defect at the
11 time of sale. *Id.* at 224, 238. The plaintiffs attempted to plead the requisite future
12 injury under GUDTPA by alleging that the defect was “an ongoing presence . . . in
13 their vehicles,” and that their vehicles had diminished in value. *Id.* at 237-38. The
14 court rejected that attempt, holding that “these harms are due to past conduct,
15 specifically [defendant’s] alleged misrepresentations of the safety and quality of its
16 vehicles and failure to disclose the . . . defect at the time plaintiffs purchase their
17 vehicles.” *Id.* at 238. The court noted that the plaintiffs did “not allege that
18 [defendant] will engage in any additional future conduct (beyond mere inaction)
19 that will injure them” and dismissed the GUDTPA cause of action. *Id.*; *see also*
20 *Terrill*, 753 F. Supp. 2d at 1291-92 (dismissing GUDTPA claim where plaintiffs
21 were allegedly deceived into buying defective product, because this was past injury
22 that could not support injunctive relief); *Catrett v. Landmark Dodge, Inc.*, 253 Ga.
23 App. 639, 644 (2002) (granting summary judgment for defendant on GUDTPA
24 claim because plaintiff’s injury—allegedly being deceived into buying a car—did
25 not “raise a factual question about the likelihood of some future wrong”).

26 Plaintiff Shastrula’s GUDTPA claim is squarely barred by these authorities.
27 The only injury Shastrula identifies in connection with his GUDTPA claim is that
28 he and the putative Georgia class “overpaid for their Defective Vehicles and did not

1 receive the benefit of their bargain, and their vehicles have suffered a diminution in
2 value.” (FAC ¶ 232.) Those are precisely the allegations held to be insufficient in
3 *Garcia*. Accordingly, Shastrula’s GUDTPA claim should be dismissed.

4 **E. The Court Should Dismiss the Georgia Fair Business Practices Act**
5 **Claim Because Plaintiff Shastrula Does Not and Cannot Allege**
6 **That He Provided the Requisite Pre-Suit Notice (Claim 14)**

7 Under the Georgia Fair Business Practices Act (“GFBPA”), a plaintiff must
8 provide the defendant with 30 days’ pre-suit written notice. Ga. Code Ann. § 10-1-
9 399(b). The notice must include the “demand for relief, identifying the claimant
10 and reasonably describing the unfair or deceptive act or practice relied upon and the
11 injury suffered.” *Id.* A plaintiff must plead that he has satisfied the GFBPA’s
12 notice requirements, and dismissal *with prejudice* is *mandatory* when the
13 requirements are not and cannot be met. *See Gibbs v. Abbott Labs., Inc.*, No. 01-C-
14 1315, 2001 U.S. Dist. LEXIS 20411, at *10 (N.D. Ill. Dec. 4, 2001); *Cook v.*
15 *Citibank, N.A.*, No. 1:12-CV-03765-RWS-GGB, 2013 U.S. Dist. LEXIS 193519, at
16 *19-20 (N.D. Ga. Mar. 20, 2013) (recommending dismissal of GFBPA claim
17 because complaint did not allege that notice requirements were satisfied), *adopted*
18 *by* 2013 U.S. Dist. LEXIS 193517 (N.D. Ga. July 16, 2013).

19 If a plaintiff fails to provide the required pre-suit notice, he cannot cure this
20 by providing post-suit notice and amending the complaint. *See Gibbs*, 2001 U.S.
21 Dist. LEXIS 20411, at *10 (also noting that plaintiff cannot rely on “constructive
22 notice” as result of other pending litigation); *Corcoran*, 169 F. Supp. 3d at 993-94
23 (dismissing claim without leave to amend for failure to provide pre-suit notice, and
24 noting that Georgia courts do not accept argument that earlier versions of complaint
25 provide “constructive notice”). Indeed, the GFBPA’s notice requirement leaves so
26 little room for flexibility that the Georgia Court of Appeal has overturned a jury
27 verdict after the plaintiff failed to prove that she complied. *See Brown Realty*
28

1 *Assocs., Inc. v. Thomas*, 193 Ga. App. 847, 851 (1989).⁷

2 Plaintiff Shastrula does not allege that he provided *any* pre-suit notice to
3 Tesla, let alone notice that meets the requirements of the GFBPA. Moreover,
4 Shastrula *could not* have provided the requisite 30 days' notice, because his alleged
5 SUA incident occurred on February 27, 2017 (FAC ¶¶ 40, 83)—only two days
6 before Plaintiffs filed the FAC, which was the first complaint to include Shastrula
7 as a plaintiff. Accordingly, the Court should dismiss his GFBPA claim with
8 prejudice. *See Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 893 (9th Cir.
9 2010) (court can deny leave to amend if amendment would be futile).

10 **F. The Court Should Dismiss the Unjust Enrichment Claim Under**
11 **Georgia Law Because Plaintiff Shastrula Has an Adequate**
12 **Remedy at Law and Alleges an Enforceable Contract (Claim 18)**

13 Unjust enrichment is a claim for equitable relief, and “equitable relief is only
14 available where there is no adequate remedy at law.” *Mitsubishi Int’l Corp. v.*
15 *Cardinal Textile Sales, Inc.*, 14 F.3d 1507, 1518 (11th Cir. 1994) (applying Georgia
16 law). Under Georgia law, a court must dismiss a claim for unjust enrichment if the
17 complaint contains other viable causes of action arising out of the same underlying
18 conduct, because those other causes of action provide an adequate remedy at law.
19 *See Gray v. Abbott Labs.*, No. 10-cv-6377, 2011 U.S. Dist. LEXIS 80189, at *21-23
20 (N.D. Ill. July 22, 2011) (applying Georgia law and dismissing unjust enrichment
21 claim because other causes of action, such as breach of warranty and negligence,
22 were not dismissed).

23 Separately, an unjust enrichment claim also cannot survive a motion to
24 dismiss if the complaint alleges that an enforceable contract exists, and the unjust

25 ⁷ The only exception to the notice requirement is if the defendant “does not
26 maintain a place of business or does not keep assets within the state.” Ga. Code
27 Ann. § 10-1-399(b). As the FAC admits, however, Tesla does have a place of
28 business in Georgia because “Plaintiff Shastrula leased a Model X through a Tesla
retail store in Marietta, Georgia.” (FAC ¶ 40.)

1 enrichment claim incorporates that allegation. *See Goldstein v. Home Depot*
 2 *U.S.A., Inc.*, 609 F. Supp. 2d 1340, 1347 (N.D. Ga. 2009) (dismissing unjust
 3 enrichment claim and noting that, “[u]nder Georgia law, unjust enrichment is only
 4 available in the absence of an enforceable contract”). A party may plead unjust
 5 enrichment in the alternative to a contract-based claim only “if one or more of the
 6 parties contests the existence of an express contract governing the subject matter of
 7 the dispute.” *Id.*; *see also Terrill*, 753 F. Supp. 2d at 1290-91 (same).

8 Both rules defeat Shastrula’s unjust enrichment claim here. Even if the Court
 9 grants this motion in full, Shastrula may have adequate remedies at law because his
 10 claim for breach of implied warranty, which arises from the same underlying
 11 conduct as his unjust enrichment claim, will remain. This alone warrants dismissal.
 12 *See Gray*, 2011 U.S. Dist. LEXIS 80189, at *22-23. Further, the FAC alleges a
 13 contract covering the subject matter of the dispute—the Basic Vehicle Limited
 14 Warranty (*see, e.g.*, FAC ¶¶ 142, 166-67); the unjust enrichment claim incorporates
 15 the allegations about that contract (*see id.* ¶ 273); and Tesla does not dispute that
 16 this warranty defines its obligations with respect to Shastrula. This is a separate
 17 and independent ground requiring dismissal,⁸ even if Plaintiff’s express warranty
 18 claims are dismissed.⁹

19 V. CONCLUSION

20 For the foregoing reasons, Tesla respectfully asks that the Court dismiss
 21 Plaintiffs’ fourth, sixth, seventh, eighth, thirteenth, fourteenth, fifteenth,
 22 seventeenth, eighteenth, twentieth, twenty-third, and twenty-fourth causes of action,
 23

24 _____
 25 ⁸ *See Goldstein*, 609 F. Supp. 2d at 1347; *Terrill*, 753 F. Supp. 2d at 1291.

26 ⁹ What matters is that Shastrula alleges a valid contract, not that he can
 27 recover under its terms. *See Am. Casual Dining, L.P. v. Moe’s Sw. Grill, LLC*, 426
 28 F. Supp. 2d 1356, 1369, 1372 (N.D. Ga. 2006) (dismissing unjust enrichment claim
 based on existence of contract, and dismissing breach of contract claims on separate
 grounds).

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and dismiss and/or strike the class allegations from the twenty-second cause of action.

March 31, 2017

Respectfully submitted,
MORRISON & FOERSTER LLP

By: /s/ Penelope Preovolos
Penelope Preovolos
Attorneys for Defendant
TESLA, INC.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 31st day of March, 2017, the foregoing document was filed electronically on the CM/ECF system, which caused all CM/ECF participants to be served by electronic means.

By: /s/ Penelope Preovolos
Penelope Preovolos

Attorneys for Defendant
TESLA MOTORS, INC.

**Attachment 1:
Plaintiffs' First Amended Complaint
(Per Court's Standing Order
Requiring Attachment of
Challenged Pleading)**

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12 ALI JARRAHI, and MICHAEL TOMKO, individually
and on behalf of the Putative Class, and
13 Plaintiff K.M.S., a minor by and through his
Guardian ad Litem YUN SOO OH
14

15
16 UNITED STATES DISTRICT COURT
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA
18

19 JI CHANG SON, GHODRAT
KHANSARI, MADHUSUDHANA
20 SHASTRULA, ALI JARRAHI, and
MICHAEL TOMKO individually and on
21 behalf of all others similarly situated, and
K.M.S., a minor by and through his
22 *Guardian ad Litem* YUN SOO OH,

23 Plaintiffs,

24 v.

25 TESLA, INC.,

26 Defendant.
27
28

) Case No.: 8:16-cv-02282-JVS-KES

) Judge Assigned: Hon. James V. Selna
) Complaint filed: December 30, 2016

) **FIRST AMENDED CLASS ACTION
COMPLAINT**

- 1. Violation of the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*
- 2. Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*
- 3. Violation of California False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*

- 1) 4. Breach of Express Warranty, Cal.
- 2) Com. Code § 2313
- 3) 5. Breach of the Implied Warranty of
- 4) Merchantability, Cal. Com. Code
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- 7) the Magnuson-Moss Warranty Act, 15
- 8) U.S.C. § 2301, *et seq.*
- 9) 7. Breach of Contract/Common Law
- 10) Warranty
- 11) 8. Violation of the Song-Beverly
- 12) Consumer Warranty Act for Breach of
- 13) Express Warranties, Cal. Civ. Code
- 14) § 1793.2(d) & 1791.2
- 15) 9. Violation of the Song-Beverly
- 16) Consumer Warranty Act for Breach of
- 17) Implied Warranty of Merchantability,
- 18) Cal. Civ. Code § 1792 & 1791.1
- 19) 10. Strict Product Liability
- 20) 11. Strict Product Liability (Failure to
- 21) Warn)
- 22) 12. Negligence
- 23) 13. Violation of Georgia's Uniform
- 24) Deceptive Trade Practices Act, Ga.
- 25) Code Ann. § 10-1-370, *et seq.*
- 26) 14. Violation of Georgia's Fair Business
- 27) Practices Act, Ga. Code Ann. § 10-1-
- 28) 390, *Et Seq.*)
- 15. Breach of Express Warranty, Ga.
- Code Ann. § 11-2-313
- 16. Breach of the Implied Warranty of
- Merchantability, Ga. Code Ann. § 11-
- 2-314
- 17. Breach of Contract/Common Law
- Warranty (Based on Georgia Law)
- 18. Unjust Enrichment (Based on Georgia
- Law)
- 19. Breach of the Implied Warranty of
- Merchantability, N.C. Gen. Stat. § 25-
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- § 1345.01, *et seq.*
- 23. Violation of Ohio Deceptive Trade
- Practices Act, Ohio Rev. Code Ann.
- § 4165.01, *et seq.*)
- 24. Breach of Express Warranty, Ohio
- Rev. Code Ann. § 1302.26, *et seq.*
- (U.C.C. § 2-313)

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-) 25. Ohio Breach of Implied Warranty of Merchantability - Strict Liability, Ohio Rev. Code Ann. § 1302.27 (U.C.C. § 2-314)
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DEMAND FOR JURY TRIAL

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1 Plaintiffs Ji Chang Son, Ghodrat Khansari, Madhusudhana Shastrula, Ali Jarrahi,
2 and Michael Tomko, individually and on behalf of all others similarly situated, and
3 K.M.S., a minor by and through his *Guardian ad Litem* Yun Soo Oh, herein allege as
4 follows:

5 **I**

6 **INTRODUCTION**

7 **A. Tesla Vehicles Are Computers on Wheels**

8 1. In 2008, Tesla Motors, Inc., (“Tesla”) first entered the vehicle market with
9 the production of the Tesla Roadster, an all-electric sports car. In 2012, it began selling
10 the Model S, an all-electric luxury sedan. Following a series of delays, Tesla began
11 selling the Model X,¹ an all-electric luxury crossover sports utility vehicle (“SUV”) in the
12 fourth quarter of 2015.

13 2. Tesla is led by technology pioneer and visionary entrepreneur Elon Musk,
14 who has parlayed his successes in Zip2 and PayPal, to transform the automobile industry
15 with Tesla, and the private space industry with SpaceX.

16 3. Elon Musk’s strategy with Tesla was to enter the automotive market with a
17 highly technical high-end and expensive vehicle that would appeal to environmentally
18 conscious consumers who value cutting-edge technology, luxury, high-performance, and
19 safety.

20 4. The Tesla vehicles are like no other vehicles that have ever been mass
21 produced. As reported by the Los Angeles Times on March 19, 2015, Elon Musk said in
22 connection with releasing software updates on the Model S, “We really designed the
23 Model S to be a very sophisticated computer on wheels.” That is just as true with the
24 Model X as the Model S. Elon Musk went to on to say: “Tesla is a software company as
25

26 _____
27 ¹ Following the delivery of the 6 Founders’ Series vehicles at the launching ceremony for
28 the Model X, Tesla only sold approximately 206 Model X vehicles in the fourth quarter
of 2015. Sales really began in the first quarter of 2016.

1 much as it is a hardware company. A huge part of what Tesla is, is a Silicon Valley
2 software company.”

3 5. Part of the excitement that Elon Musk and Tesla have created in the
4 automotive market segment is being a market and technology leader in the self-driving
5 technology. This technology allows the vehicle to operate on its own, and to make
6 drivers’ decisions for them. Engineers are responsible to anticipate all of the different
7 foreseeable scenarios vehicles are expected to encounter, and to program the computer
8 systems in the vehicle to anticipate and make decisions to safely operate the vehicle. Part
9 of the excitement around this technology is the potential for preventing driver errors in
10 judgment under times of high stress.

11 6. As reported by Electrek in December 2015, Elon Musk announced that the
12 technology is so advanced that the Tesla has the ability to not only track the vehicle in
13 front of it, but also the two vehicles in front of it. It has the ability to see through rain,
14 fog, snow, and dust to see and react to objects. Elon Musk went on to proclaim that
15 within two years Tesla would have a fully autonomous vehicle that could operate in any
16 condition and on any road. In October 2016, Elon Musk stated that from now on, all new
17 Tesla cars will have full self-driving capabilities.

18 7. The highly-touted ability of the Tesla vehicle computers to understand their
19 environment is futuristic. The vehicle is programmed to remember where home is, to
20 remember the preferred routes of going home, to open the garage door at home, and to
21 raise the suspension when the driver gets home to better handle the slope of the driveway.
22 Astoundingly, the driver can exit the vehicle and the Tesla will open the garage door,
23 enter the garage, park itself, and shut down without a driver operating the vehicle. It also
24 can be summoned by a driver with a cell phone – the vehicle, without a driver, will open
25 the garage door, exit the garage, and drive itself to the driver who summoned the car.

26 8. As is true for all computers, however, Tesla vehicles are only as good as the
27 hardware, engineering, and programming of their onboard computers. As even casual
28 computer users know, even the most sophisticated and successful computer companies in

1 history, such as Microsoft and Apple, regularly release computers and software with
2 bugs, glitches, and unanticipated problems that cause their computers to unexpectedly
3 crash, malfunction, or work differently than intended. These bugs have serious
4 consequences for users of traditional computer products. But for a computer that controls
5 a 5,000 pound machine that can explosively accelerate from a standstill to 60 miles per
6 hour in under 3 seconds, the consequences of a computer glitch can be catastrophic. For
7 that reason, there has to be zero-tolerance for any glitch, bug, or malfunction - a goal no
8 computer company has ever been able to achieve.

9 9. Tesla is no exception. In a high-profile fatality accident in Florida where the
10 vehicle's computer system failed to recognize the presence of a fixed object, Tesla's
11 response, as reported by the New York Times, was to issue a statement stating that the
12 use of this technology "requires explicit acknowledgement that the system is new
13 technology."

14 10. Part of the solution is that Tesla computers learn in order to carry out the
15 driver's instructions, and to protect the driver while doing so. As stated by Elon Musk, as
16 reported in Wired on September 11, 2016, "We're adding 1.5 million miles per day on
17 Autopilot," and all vehicles learn at once. So just as with traditional computers, patches
18 and software updates can be downloaded remotely to remedy glitches, bugs, and
19 problems that were not anticipated by the programming engineers.

20 **B. The Sudden Unintended Acceleration Problems with Tesla Vehicles**

21 11. Tesla first introduced its Model S sedan in 2012. According to Tesla, the
22 "Model S is designed from the ground up to be the safest, most exhilarating sedan on the
23 road. The Model S can accelerate from 0 to 60 miles per hour in as little as 2.5 seconds."

24 12. Beginning in September 2014, all Tesla Model S vehicles were
25 manufactured with a camera mounted at the top of the windshield, forward looking radar,
26 and ultrasonic acoustic location sensors that provide the vehicle's computer with a 360-
27 degree view around the car. This equipment allowed the Model S to detect road signs,
28 lane markings, obstacles, and other vehicles. Beginning in October 2016, Tesla upgraded

1 this hardware in all new Model S vehicles to include 8 surround cameras and 12
2 ultrasonic sensors.

3 13. Model S vehicles operate with an electronic acceleration control system by
4 which complex computer and sensor systems communicate an accelerator pedal's
5 position to the vehicle's onboard computers, telling the vehicle how fast it should go.

6 14. From the introduction of the Model S in 2012 through June 2016, Tesla has
7 sold approximately 75,000 Model S vehicles in the United States.

8 15. The launch of the Model X was one of the most anticipated vehicle launches
9 of all times. A futuristic looking electric luxury high-performance crossover SUV, it had
10 originally been slated for release in 2014.



24
25 16. But it was not until the very end of 2015, that it was actually released. The
26 delay was as a result of technological and mechanical challenges. Following the release,
27 problems arose almost immediately. A lawsuit was filed, and later settled, that
28 highlighted the electronic nature of the problems, including the electronically activated

1 doors that opened and closed unpredictably, the electronic self-parking feature that failed
2 to work, and other reported electronic problems with the vehicle, such as the
3 electronically activated windows failing to open or close. As reported by ABC News on
4 April 5, 2016, Tesla’s explanation for the electronic problems experienced by the Tesla X
5 was “hubris in adding too much new technology to the Model X in version 1.”

6 17. Since the introduction of the Model X in the fourth quarter of 2015 through
7 the end of 2016, Defendant Tesla, Inc., has sold approximately 18,240 Model X vehicles
8 throughout the United States. Model X vehicles operate with an electronic acceleration
9 control system by which complex computer and sensor systems communicate an
10 accelerator pedal’s position to the vehicle’s onboard computers, telling the vehicle how
11 fast it should go.

12 18. Able to accelerate from zero to sixty miles per hour in 2.9 to 3.8 seconds
13 (depending on battery pack) and equipped with advanced safety features including
14 Forward Collision Warning and Advanced Early Braking, Tesla proclaims that the Model
15 X is “the safest, fastest and most capable sport utility vehicle in history.”

16 19. In press releases, sales literature, brochures, online statements, and other
17 consumer-oriented documents, Tesla has consistently promoted “safety” as top priority in
18 all its vehicles, generally, and in the Model X, specifically.

19 20. What has become evident, however, is that Tesla vehicles are susceptible to
20 sudden unintended acceleration (“SUA”), in which the vehicles will accelerate at full
21 power even though the driver reports that they did not command the acceleration by
22 pressing on the accelerator pedal, either at all or not to the degree that would call for the
23 application of full power.

24 21. In the four years since the introduction of the Model S, there have been 13
25 reports to the National Highway Traffic Safety Administration in which Model S drivers
26 report having experienced full power acceleration either while in the act of parking the
27 Model S or while driving at slow speed, 12 of which resulted in a crash of the vehicle,
28 just as both Plaintiff Khansari and Plaintiff Tomko’s spouse experienced.

1 22. In the first full year of production since the Model X was first introduced,
2 Tesla has received, or is otherwise aware of, thirteen nearly identical instances in which
3 drivers of the Model X experienced full power acceleration either while in the act of
4 parking the Model X or while driving the Model X at slow speed, ten of which resulted in
5 a crash of the vehicle, precisely like Plaintiff Son herein experienced as shown below,
6 crashing through the wall that separated his garage from his living room.



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23. Ten of these are known to have been submitted to the National Highway Traffic Safety Administration's ("NHTSA") publicly available complaints database that, based on information and belief, is monitored by Tesla. As illustrated by one of those instances, this picture shows a pattern similar to Plaintiffs' incidents.



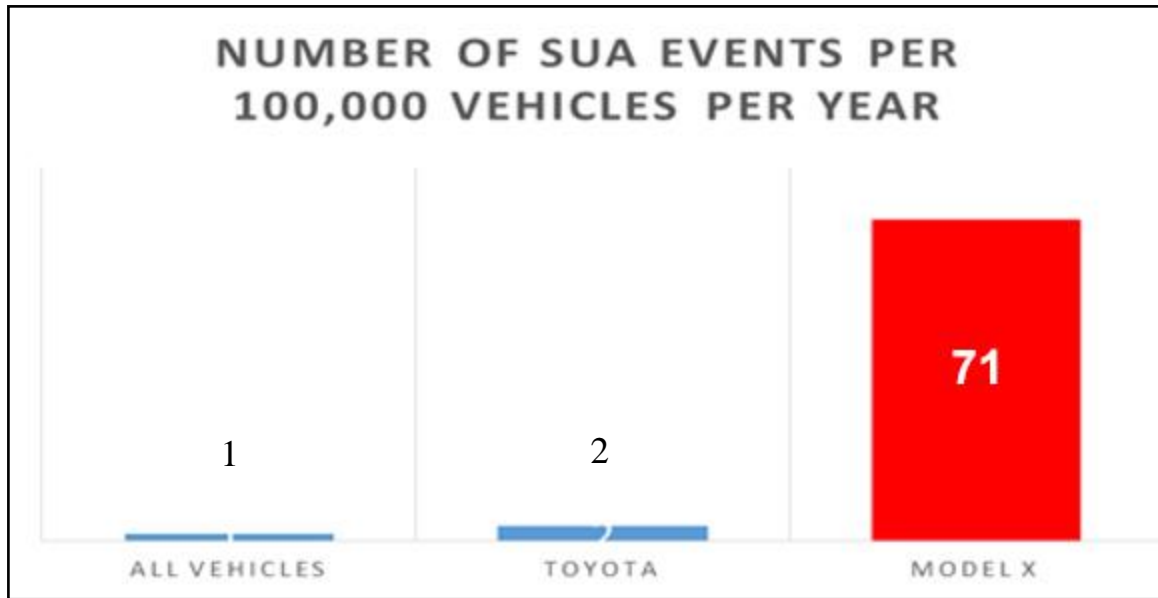
1 24. In addition to the ten reports to NHTSA, there are at least three additional
2 SUA events, including Plaintiff Son’s, Plaintiff Jarrahi’s, and another experienced by a
3 driver of a Model X that did not result in an accident. That other SUA event, which
4 mirrored the SUA incident experienced by Plaintiff Son – but did not result in a collision
5 – was reported to Tesla, but Tesla took no action. Based on that fact, there are likely
6 other Model X SUA events that Tesla is aware of but not recorded in the NHTSA
7 database.

8 25. Sudden Unintended Acceleration (“SUA”) is a well-known safety issue.
9 Though relatively rare, the danger of a vehicle accelerating uncontrollably is obvious.
10 According to a study by NASA of unintended acceleration reports to the National
11 Highway Traffic Administration from 2000 to 2010, there rate of SUA incidents was 1
12 per 100,000 vehicles per year.

13 26. In 2010, the issue became very public when Toyota Motor Company was
14 sued by hundreds of injured parties for claimed SUA events in their vehicles. Toyota
15 Motor Company paid hundreds of millions of dollars in settlement to victims and owners
16 for the claim that there was an electrical defect in the Toyota vehicles that caused SUA
17 events. It also paid the United States government \$1.2 billion for concealing this safety
18 defect. According to a December 2009 Consumer Reports² analysis of SUA event ratio
19 for Toyota’s 2008 model year vehicles, their reported events were 2 per 100,000 vehicles
20 (1 per 50,000 vehicles), or double the average reported by NHTSA.

21 27. By comparison, within the first year of Model X vehicles being on the road,
22 and with only 18,240 Model X vehicles in use (the vast majority of which have been on
23 the road significantly less than one year), there have been thirteen (13) reported incidents
24 of sudden unintended acceleration -- a staggeringly high rate of SUA incidents of 71 per
25 100,000 vehicles per year.

26
27 ² [http://www.consumerreports.org/cro/news/2009/12/analysis-shows-over-40-percent-of-](http://www.consumerreports.org/cro/news/2009/12/analysis-shows-over-40-percent-of-sudden-acceleration-complaints-involve-toyotas/index.htm)
28 [sudden-acceleration-complaints-involve-toyotas/index.htm](http://www.consumerreports.org/cro/news/2009/12/analysis-shows-over-40-percent-of-sudden-acceleration-complaints-involve-toyotas/index.htm) (last viewed on December 29,
2016).



C. Cause of the SUA Events

28. There are different causes of SUA events. They can be caused by a problem with the vehicle, by a driver error in pedal misapplication, or a combination of a problem with the vehicle causing pedal misapplication. For the Model S, of the 14 SUA events reported to NHTSA (one of the 13 reports actually reported two independent SUA events), nine of SUA events occurred while the driver was in the process of parking the vehicle, and all but one of 14 events resulted in a collision. For the Model X, remarkably all ten of the reported SUA events occurred while the driver was in the process of parking the Model X, all but one of which resulted in a collision. The reported Tesla SUA incidents are eerily similar to the circumstances of the SUA events experienced by Plaintiffs.

29. Irrespective of whether the SUA events in the Tesla vehicles are caused by mechanical issues with the accelerator pedal, an unknown failure in the electronic motor control system, a failure in other aspects of the electrical, mechanical, or computer systems, or some instances of pedal misapplication, the Model S and Model X are defective and unsafe.

1 30. Despite its knowledge of the problem, Tesla has failed to properly disclose,
2 explain, fix, or program safeguards to correct the underlying problem of unintended
3 acceleration. This leaves tens of thousands of Tesla owners with vehicles that could
4 potentially accelerate out of control.

5 31. Tesla’s lack of response to this phenomenon is even more confounding when
6 the vehicle is already equipped with the hardware necessary for the vehicle’s computer to
7 be able to intercede to prevent unintended acceleration into fixed objects such as walls,
8 fences, and buildings.

9 32. As set forth in more detail below, Tesla equips all its Model X vehicles, and
10 has equipped its Model S vehicles since March 2015, with Automatic Emergency
11 Braking whereby the vehicle computer will use the forward looking camera and the radar
12 sensor to determine the distance from objects in front of the vehicle. When a frontal
13 collision is considered unavoidable, Automatic Emergency Braking is designed to
14 automatically apply the brakes to reduce the severity of the impact. But Tesla has
15 programmed the system to deactivate when it receives instructions from the accelerator
16 pedal to drive full speed into a fixed object. Tesla confirmed that when it stated that
17 Automatic Emergency Braking will operate only when driving between 5 mph (8 km/h)
18 and 85 mph (140 km/h) but that the vehicle will not automatically apply the brakes, or
19 will stop applying the brakes, “in situations where you are taking action to avoid a
20 potential collision. For example:

- 21 • You turn the steering wheel sharply.
- 22 • You press the accelerator pedal.
- 23 • You press and release the brake pedal.
- 24 • A vehicle, motorcycle, bicycle, or pedestrian, is no longer detected ahead.”

25 33. Apparently, this includes situations where the computer believes, rightly or
26 wrongly, that the driver is commanding full throttle acceleration directly into fixed
27 objects immediately in front of the vehicle. Tesla has designed and manufactured a
28 vehicle that is capable of accelerating from zero to 60 miles per hour in 2.9 seconds –

1 acceleration that was previously achievable only in a select number of exotic sports cars
2 and equipped the vehicle with the ability to sense objects in its path and brake
3 automatically to prevent or minimize frontal impacts, but Tesla has programmed these
4 systems to allow the Model S and Model X to engage full throttle acceleration into fixed
5 objects, such as walls, fences, and beams, that are in the direct path and immediate
6 proximity of the vehicle.

7 34. Despite repeated instances of Tesla drivers reporting uncommanded full
8 power acceleration while parking, Tesla has failed to develop and implement computer
9 algorithms that would eliminate the danger of full power acceleration into fixed objects.
10 This failure to provide a programming fix is especially confounding for a vehicle that
11 knows when it is located at the driver's home and is being parked in the garage, yet
12 carries out an instruction, regardless of whether through an error by the vehicle control
13 systems or by driver pedal misapplication, to accelerate at full power into the garage wall.

14 35. Further, not only has Tesla failed to fix the problems, it has chosen instead
15 to follow in the footsteps of other automobile manufacturers and simply blame the driver.
16 As Toyota Motor Company learned not long ago, blaming the driver for inexplicable and
17 preventable instances of full throttle acceleration is no longer acceptable. That is
18 especially true for a disruption company that seeks to use technology to make smart and
19 safe vehicles.

20 II

21 THE PARTIES

22 36. Plaintiff Ji Chang Son and his son, Plaintiff K.M.S., are citizens of the
23 Republic of South Korea, who at all times relevant herein were residing in Orange
24 County, California. On or about August 5, 2016, Plaintiff Ji Chang Son and his wife,
25 Yun Soo Oh, purchased a 2016 Model X from the Tesla Gallery located in Costa Mesa,
26 California. Plaintiff Ji Chang Son was the driver of the Model X when the vehicle
27 experienced uncommanded full power acceleration while he was pulling into the garage
28 of his home in Orange County, California, on September 10, 2016, causing the vehicle to

1 crash through the interior wall of the garage of his home and come to rest in Plaintiff's
2 living room, injuring Plaintiff Ji Chang Son and his son, Plaintiff K.M.S., who was a
3 front seat passenger in the vehicle.

4 37. Plaintiff Ghodrat Khansari is a resident of Dana Point, California. In our
5 about December, 2015, Plaintiff Khansari purchased a 2015 Model S from a Tesla retail
6 store in Costa Mesa, California. Plaintiff Khansari was the driver of the Model S when
7 the vehicle experienced uncommanded full power acceleration while pulling into a
8 parking spot at a gas station on January 26, 2016, in Orange County, California, causing
9 the vehicle to crash into a fixed steel post.

10 38. Plaintiff Ali Jarrahi is a resident of Winston-Salem, North Carolina. On or
11 about October 22, 2016, Plaintiff Jarrahi purchased a 2016 Model X through a Tesla
12 retail store in Raleigh, North Carolina. On December 5, 2016, Plaintiff Jarrahi's wife
13 was the driver of the Model X when the vehicle experienced uncommanded full power
14 acceleration after she had come to a stop while waiting to make a right turn. As a result
15 of the full power acceleration, she could not negotiate the right hand turn and collided
16 with a vehicle that was also stopped in the left hand turn lane of the road onto which she
17 was attempting to turn.

18 39. Plaintiff Michael Tomko is a resident of Columbus, Ohio. On or about July
19 28, 2016, Plaintiff Tomko purchased a 2016 Model S from a Tesla retail store in
20 Columbus, Ohio. On October 15, 2016, Plaintiff Tomko's spouse was driving the Model
21 S slowly in a parking lot and was preparing to stop when the vehicle experienced
22 uncommanded acceleration, causing the vehicle to surge forward, out of the parking lot
23 and into a wooded area. On January 20, 2017, Plaintiff Tomko's spouse was again
24 driving the Model S in a parking lot and preparing to park when it again experienced
25 uncommanded acceleration and surged forward, jumping a parking block and traveling
26 50 feet before she was able to bring the vehicle to a stop.

27 40. Plaintiff Madhusudhana Shastrula is a resident of Marietta, Georgia. On or
28 about December 29, 2016, Plaintiff Shastrula leased a Model X through a Tesla retail

1 store in Marietta, Georgia. On February 27, 2017, Plaintiff Shastrula was driving his
2 Model X in a parking structure at his office. Plaintiff Shastrula slowed the vehicle and
3 was making a left turn into a parking stall when his Model X experienced uncommanded
4 full power acceleration and collided with a concrete wall.

5 41. Defendant Tesla, Inc., is a Delaware corporation with its headquarters
6 located at 3500 Deer Creek Road, Palo Alto, California 94304.

7 III

8 JURISDICTION AND VENUE

9 42. This Court has subject matter jurisdiction pursuant to the Class Action
10 Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual class
11 members exceed the sum or value of \$5,000,000, exclusive of interest and costs; there are
12 more than 100 putative class members defined below; and there are numerous members
13 of the proposed class who are citizens of a state different from Tesla.

14 43. This Court has personal jurisdiction over Defendant Tesla because its
15 corporate headquarters and primary manufacturing facility are located in California, it
16 conducts substantial business in the District, and because a substantial part of the acts and
17 omissions complained of occurred in the District.

18 44. Venue is proper in the Central District of California pursuant to 28 U.S.C.
19 § 1391(a) and (b) because a substantial part of the events, acts and omissions giving rise
20 to these claims occurred in the Central District of California.

21 IV

22 FACTUAL BACKGROUND

23 A. Tesla's Development of the Model S and Model X Vehicles

24 45. Defendant Tesla Motors, Inc. ("Tesla") designs, develops, manufactures, and
25 sells electric vehicles and electric vehicle powertrain components. The company also
26 provides services for the development and sale of electric powertrain systems and
27 components, to other automotive manufacturers. It markets and sells its vehicles through
28 Tesla stores, as well as via the Internet. As of October 2016, the company operated a

1 network of 99 Tesla Stores and Galleries in the United States, of which 28 are located
2 within California. Tesla was founded in July 2003 and is headquartered in Palo Alto,
3 California. Tesla claims to use proprietary technology and state-of-the-art manufacturing
4 processes to create one of the safest vehicles on the road today.

5 46. Tesla announced the development of the Model S four-door all electric
6 sedan on June 30, 2008. And on March 26, 2009, Tesla revealed the Model S prototype
7 to the public for the first time. The first Model S were delivered to buyers in June 2012.
8 Only approximately 2,620 vehicles were delivered in the United States 2012. In 2013,
9 however, that number would jump to approximately 18,650.

10 47. Tesla has also continued to increase the power and performance of the
11 Model S. In its Fourth Quarter & Full Year 2016 Update, Tesla announced that the
12 Model S P100D had posted a record setting 0 to 60 miles per hour in 2.275 seconds – the
13 fastest vehicle acceleration ever recorded by Motor Trend, “including million dollar, two-
14 seat, gasoline-powered super cars with almost no cargo space.”

15 48. On February 9, 2012, Tesla announced the development of a full-sized, all
16 electric, luxury crossover SUV called the Model X. At that time, Tesla announced that
17 “Tesla Model X Performance version will accelerate from 0 to 60 miles per hour in 4.4.
18 seconds [making the] Model X faster than many sports cars, including the Porsche 911
19 Carrera.”

20 49. By the time Tesla began deliveries of the Model X to North American
21 consumers, it had increased the power and performance of the Model X beyond Tesla’s
22 own projections. At the time of its introduction, Tesla offered the Model X in two
23 performance packages: 1) P90D that can accelerate from 0 to 60 m.p.h. in 3.8 seconds;
24 and 2) the Ludicrous P90D that can accelerate from 0 to 60 m.p.h. in 3.2 seconds. The
25 Model X has a top speed of 155 m.p.h.

26 50. Tesla now offers the Model with a 100 kWh battery that can accelerate the
27 Model X “from zero to 60 miles per hour in as quick as 2.9 seconds.”
28

1 **B. Tesla Markets the Safety of the Model S and Model X**

2 51. Tesla markets its Model S sedan as being “designed from the ground up to
3 be the safest car on the road.”

4 52. Beginning in September 2014, all Tesla Model S vehicles were
5 manufactured with a camera mounted at the top of the windshield, forward looking radar,
6 and ultrasonic acoustic location sensors that provide the vehicle’s computer with a 360-
7 degree view around the car. This equipment allowed the Model S to detect road signs,
8 lane markings, obstacles, and other vehicles.

9 53. In March 2015, Tesla implemented Automatic Emergency Braking as parts
10 of its version 6.2 software update for the Model S. As described in more detail below,
11 the Automated Emergency Braking was a feature marketed by Tesla as a new “Collision
12 Avoidance Assist” feature that automatically engages the brakes to reduce the impact of
13 an unavoidable frontal collision.

14 54. Beginning in October 2016, Tesla upgraded this hardware in all new Model
15 S vehicles to include 8 surround cameras and 12 ultrasonic sensors.

16 55. Equal with its staggering performance, Tesla marketed the Model X as being
17 “designed to be the safest car on the road,” with every Model X coming “standard with
18 automatic emergency braking and side collision avoidance to prevent accidents from
19 happening in the first place.”

20 56. Every Model X is equipped with “a forward-looking camera, radar, and 360
21 degree sonar sensors to enable advanced autopilot features.”

22 //

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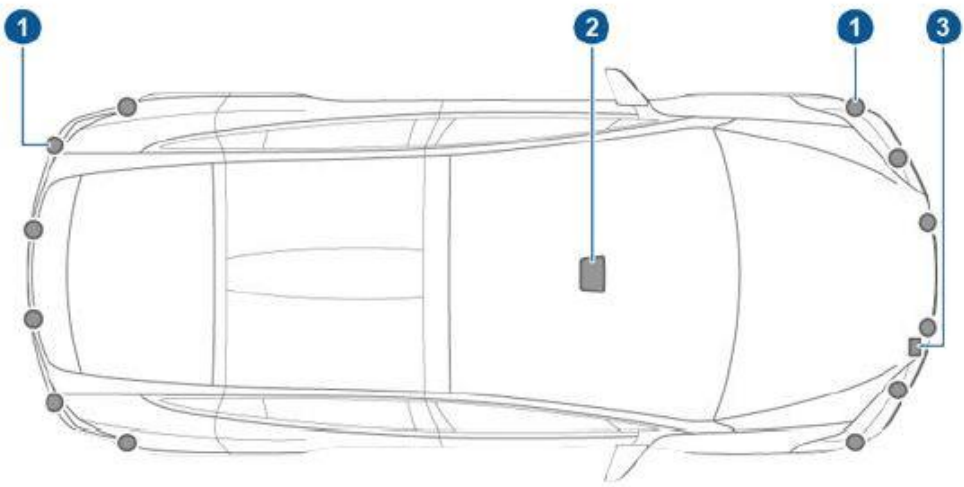
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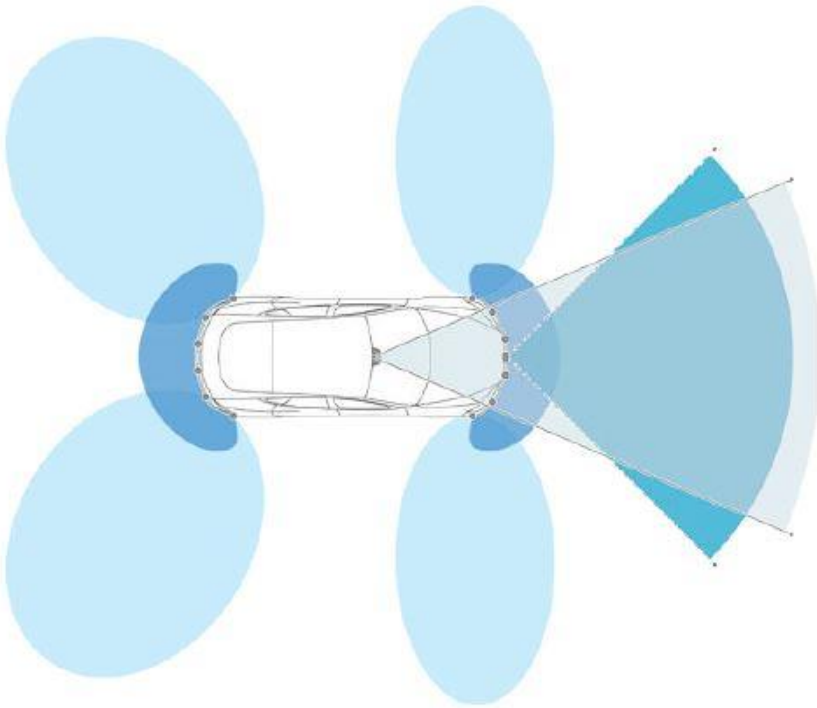
Driver Assistance Components

A Model X equipped with Driver Assistance features includes the following components that actively monitor the surrounding roadway:



1. Ultrasonic sensors are located near the front and rear bumpers.
2. A forward looking camera is mounted on the windshield above the rear view mirror.
3. Radar is mounted in the front grill.

Driver Assistance vehicles also include high precision electrically-assisted braking and steering systems.



Note: The exact detection zone may vary depending on environmental conditions.

1 57. Tesla also promoted its “over-the-air software updates” allowing Tesla to
2 “regularly improve the sophistication of these features, enabling increasingly capable
3 safety and convenience features.”

4 58. Tesla equips the Model X with a pair of safety features called “Forward
5 Collision Warning” and “Automatic Emergency Braking.” As described in the Model X
6 Owner’s Manual:

7 [T]he following collision avoidance features are designed to
8 increase the safety of you and your passengers:

- 9 • Forward Collision Warning provides visual and audible
10 warnings in situations where there is a high risk of a
11 frontal collision
- 12 • Automatic Emergency Braking automatically applies
13 braking to reduce the impact of a frontal collision

14 The forward looking camera and the radar sensor are designed
15 to determine the distance from any object (vehicle, motorcycle,
16 bicycle, or pedestrian) traveling in front of Model X. When a
17 frontal collision is considered unavoidable, Automatic
18 Emergency Braking is designed to automatically apply the
19 brakes to reduce the severity of the impact.

20 When Automatic Emergency Braking applies the brakes, the
21 instrument panel displays a visual warning and you'll hear a
22 chime. You may also notice abrupt downward movement of
23 the brake pedal. The brake lights turn on to alert other road
24 users that you are slowing down.

25 . . .

26 Automatic Emergency Braking operates only when driving
27 between 5 mph (8 km/h) and 85 mph (140 km/h).

28 Automatic Emergency Braking does not apply the brakes, or
stops applying the brakes, in situations where you are taking
action to avoid a potential collision. For example:

- You turn the steering wheel sharply.
- You press the accelerator pedal.
- You press and release the brake pedal.
- A vehicle, motorcycle, bicycle, or pedestrian, is no longer detected ahead.

59. With these and other features, Tesla touts the Model X as being “the safest,
fastest and most capable sport utility vehicle in history.”

1 **C. Tesla Is on Notice of SUA Complaints Involving Both its Model S and Model**
2 **X Vehicles**

3 60. NHTSA maintains an online complaint database where consumers can file
4 complaints regarding issues they are experiencing with their vehicle. Complaints can be
5 entered into the system via the internet, through a toll-free Safety Auto Hotline, by
6 submitting a written vehicle owner questionnaire (“VOQ”) or by mailing a letter. The
7 NHTSA consumer complaints database is considered one of NHTSA’s most important
8 sources of field data and is monitored by all major automobile manufacturers, including
9 Tesla, for the purpose of ascertaining field data about the performance of their vehicles.

10 **1. Model S Reports of Sudden Unintended Acceleration to NHTSA**

11 In September 2013, the first two complaints of sudden unintended acceleration in
12 the Model S were reported to NHTSA. These were the first of what would become 13
13 separate reports detailing 14 SUA incidents, in the next 41 months.

14 61. The following information was entered into the NHTSA complaint database,
15 and therefore, was available to Tesla, in connection with these seven complaints:

16
17 **September 24, 2013 NHTSA ID NUMBER: 10545230**

18 **Components: VEHICLE SPEED CONTROL**

19 **NHTSA ID Number:** 10545230

20 **Incident Date** September 21, 2013

21 **Consumer Location** SAN DIEGO, CA

22 **Vehicle Identification Number** 5YJSA1CN9DF*****

23 **Summary of Complaint**

24 **CRASH** Yes

25 **FIRE** No

26 **INJURIES** 0

27 **DEATHS** 0

28 THE CAR WAS GOING AT ABOUT 5 MPH GOING DOWN A SHORT RESIDENTIAL
DRIVEWAY. BRAKE WAS CONSTANTLY APPLIED. THE CAR SUDDENLY

1 ACCELERATED. IT HIT A CURB AND THE MIDDLE PORTION OF THE CAR LANDED ON
2 A 4.5 FT HIGH VERTICAL RETAINING WALL. THE WALL IS ONE FOOT AWAY FROM
3 THE CURB. THE FRONT PORTION OF THE CAR WAS HANGING UP IN THE AIR. THE
4 CAR WAS AT ABOUT 45 DEGREE UP AND ABOUT 20 DEGREE TILTED TOWARD THE
5 RIGHT SIDE. AN ENGINEER FROM TESLA SAID THE RECORD SHOWED THE
6 ACCELERATING PEDAL WAS STEPPED ON AND IT ACCELERATED FROM 18% TO
7 100% IN SPLIT SECOND. HE BLAMED MY WIFE STEPPING ON THE ACCELERATING
8 PEDAL. BUT HE ALSO SAID THERE WAS A BUILT-IN SAFE-GUARD THAT THE
9 ACCELERATOR COULDN'T GO BEYOND 92%. THE STATEMENTS ARE
10 CONTRADICTORY. IF THERE IS A SAFEGUARD THAT THE ACCELERATOR CANNOT
11 GO BEYOND 92%. THERE WOULD BE NO WAY THAT MY WIFE COULD STEP ON IT
12 100%. THERE WERE SOME MECHANICAL PROBLEM THAT CAUSED THE
13 ACCELERATOR TO ACCELERATE ON ITS OWN FROM 18% TO 100% IN SPLIT SECOND.
14 *LN UPDATED 12/30/2013 *JS

15 **1 Associated Product**

16 **Vehicle**

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2013 |

17 **September 26, 2013 NHTSA ID NUMBER: 10545488**

18 **Components: VEHICLE SPEED CONTROL**

19 **NHTSA ID Number:** 10545488

20 **Incident Date** July 29, 2013

21 **Consumer Location** LAGUNA HILLS, CA

22 **Vehicle Identification Number** 5YJSA1CN1DF*****

23 **Summary of Complaint**

24 **CRASH** Yes

25 **FIRE** No

26 **INJURIES** 0

27 **DEATHS** 0

28 I WAS AT A FULL STOP WAITING TO TURN LEFT INTO THE PARKING GARAGE. WHEN
IT WAS CLEAR OF ONCOMING TRAFFIC FOR ME TO MAKE THE LEFT TURN. I
RELEASED MY FOOT OFF THE BRAKE PEDAL AND THE CAR INSTANTLY SURGED
FORWARD VERY FAST AND HIT ANOTHER VEHICLE PARKED IN THE FRONT OF THE

1 GARAGE. THIS ALL HAPPENED SO QUICKLY THAT I DID NOT HAVE TIME TO AVOID
2 THE IMPACT. THE TIME OF OCCURRENCE WAS IN BROAD DAYLIGHT AT ABOUT 6PM
PST.

3 I HAVE DRIVEN THIS CAR FOR ALMOST 10000 MILES PRIOR TO THE ACCIDENT AND
4 KNOW HOW TO HANDLE THE CAR AND UNDERSTAND THE TORQUE THIS CAR HAS. I
5 HAVE MADE THOUSANDS UPON THOUSANDS OF STOPS AND STARTS WITH THIS
VEHICLE AND THIS IS THE FIRST TIME THIS HAS EVER HAPPENED. THERE IS NO
OTHER TERM TO DESCRIBE THIS OTHER THAN SUDDEN ACCELERATION.

6 THE LOCAL POLICE DEPARTMENT DISPATCHED AN OFFICER AND NO DRUGS OR
7 ALCOHOL WAS INVOLVED. *JS

8 TESLA INSTRUCTED THEIR STAFF TO NOT COMMUNICATE WITH ME ABOUT THIS
ACCIDENT. *JS

9 **1 Associated Product**

10 **Vehicle**

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2013 |

16 **September 29, 2014 NHTSA ID NUMBER: 10639849**

17 **Components: VEHICLE SPEED CONTROL**

18 **NHTSA ID Number:** 10639849

19 **Incident Date** July 19, 2014

20 **Consumer Location** BAKERSFIELD, CA

21 **Vehicle Identification Number** 5YJSA1H13EF*****

22 **Summary of Complaint**

23 **CRASH** Yes

24 **FIRE** No

25 **INJURIES** 0

26 **DEATHS** 0

27 TL* THE CONTACT OWNS A 2014 TESLA MODEL S. WHILE PULLING INTO A PARKING
28 SPACE. THE VEHICLE SURGED FORWARD. JUMPED THE CURB. AND CRASHED INTO
A BUILDING. A POLICE REPORT WAS FILED. THERE WERE NO INJURIES. THE

1 VEHICLE WAS TOWED TO AN IMPOUND LOT. THE MANUFACTURER WAS NOTIFIED
2 OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 1,200.

3 **1 Associated Product**

4 **Vehicle**

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2014 |

9
10 **September 29, 2014 NHTSA ID NUMBER: 10639935**

11 **Components: VEHICLE SPEED CONTROL**

12 **NHTSA ID Number:** 10639935

13 **Incident Date** July 19, 2014

14 **Consumer Location** BAKERSFIELD, CA

15 **Vehicle Identification Number** 5YJSA1H13EF*****

16 **Summary of Complaint**

17 **CRASH** Yes

18 **FIRE** No

19 **INJURIES** 1

20 **DEATHS** 0

21 I PULLED SLOWLY IN TO A PARKING SPOT & MY CAR WAS AT A STOP POSITION
 22 JUST READY TO PUSH PARK BUTTON. WITHIN A SPLIT OF A SECOND. MY CAR
 (TESLA) JUMPED THE CURB AND TRAVELED 5' OF SIDEWALK BREAKING A GLASS
 23 WALL & TRAVELING THROUGH A RESTAURANT BREAKING TABLES & CHAIRS
 WITHIN COUPLE OF SECONDS W/O ME ACCELERATING THE PEDAL. BRAKE PEDAL
 24 WAS APPLIED BY ME HALF WAY THROUGH THE RESTAURANT BEFORE THE CAR
 STOPPED. NO SERIOUS INJURIES TO ANYONE. TESLA WAS NOTIFIED & THIS IS THE
 25 LOG FILE DATA WORD BY WORD FROM THEM. ?AT THE TIME OF THE INCIDENT
 THAT RESULTED IN DAMAGE TO YOUR VEHICLE. YOU INCREASED THE
 26 ACCELERATOR PEDAL POSITION FROM 1% TO 50% IN LESS THAN ONE SECOND
 WITHOUT DEPRESSING THE BRAKE PEDAL. ONE SECOND LATER. YOU INCREASED
 27 THE ACCELERATOR PEDAL TO 100% WITHOUT DEPRESSING THE BRAKE PEDAL.
 ONE SECOND LATER. YOU CONTINUED DEPRESSING THE ACCELERATOR PEDAL AT
 28 100% WITHOUT DEPRESSING THE PEDAL: HOWEVER. THE VEHICLE'S TRACTION
 CONTROL ENGAGED & THEREFORE LIMITED THE VEHICLE'S TOROUQE DESPITE THE
 FACT YOU WERE DEPRESSING THE ACCELERATOR PEDAL AT 100% UNTIL YOU

1 DEPRESSED THE BRAKE PEDAL IN THE FOLLOWING SECOND.? INSUFFICIENT
 2 INFORMATION PROVIDED BY TESLA. HOW MUCH WAS THE ACCELERATOR PEDAL
 3 DEPRESSED? SPEED OF THE CAR? DISTANCE TRAVEL? HOW DOES THIS PROVE THAT
 4 THIS IS NOT SUDDEN ACCELERATION? THE LOG DOES PROVE THAT I WAS AT A
 5 STOP. MY CAR WILL BE TOTALED BUT IS STILL SITTING AT STORAGE WITH
 6 INSURANCE COMPANY FOR A SHORT PERIOD OF TIME. MANY ACCIDENTS WITH
 7 TESLA HAS OCCURRED, EVEN JUST LIKE MINE IN TO A RESTAURANT(
 8 [HTTP://INSIDEEVS.COM/TESLA-MODEL-S-CRASHES-THROUGH-RESTAURANT-
 9 DRIVER-BLAMES-IT-ON-UNINTENDED-ACCELERATION/](http://INSIDEEVS.COM/TESLA-MODEL-S-CRASHES-THROUGH-RESTAURANT-DRIVER-BLAMES-IT-ON-UNINTENDED-ACCELERATION/))
 10 ([HTTP://WWW.MOTORAUTHORITY.COM/NEWS/1087171 TESLA-MODEL-S-
 11 UNINTENDED-ACCELERATION-COMPLAINT-FILED-WITH-NHTSA.](http://WWW.MOTORAUTHORITY.COM/NEWS/1087171_TESLA-MODEL-S-UNINTENDED-ACCELERATION-COMPLAINT-FILED-WITH-NHTSA.)) THEY CAN'T ALL
 12 BE DRIVERS FAULT. NHTSA NEEDS TO INVESTIGATE THE BOX IN THE CAR BEFORE
 13 FATAL INJURIES OCCUR. PUBLIC SAFETY SHOULD BE THE PRIORITY. *TR

8 **1 Associated Product**

9 **Vehicle**

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2014 |

15 **August 18, 2015 NHTSA ID NUMBER: 10749575**

16 **Components: VEHICLE SPEED CONTROL**

17 **NHTSA ID Number:** 10749575

18 **Incident Date** August 4, 2015

19 **Consumer Location** RANCHO SANTA FE, CA

20 **Vehicle Identification Number** 5YJSA1DN5DF****

21 **Summary of Complaint**

22 **CRASH** Yes

23 **FIRE** No

24 **INJURIES** 0

25 **DEATHS** 0

26 TL* THE CONTACT OWNS A 2013 TESLA MODEL S. THE CONTACT STATED THAT THE
 27 VEHICLE SUDDENLY ACCELERATED WITHOUT WARNING TO ITS MAXIMUM
 28 ACCELERATION RATE AND CRASHED INTO FIVE PARKED VEHICLES. THE DRIVER
 SIDE OF THE VEHICLE WAS DAMAGED AND THE AIR BAGS DID NOT DEPLOY. THERE
 WERE NO INJURIES. A POLICE REPORT WAS FILED. THE VEHICLE WAS TOWED

AWAY BY AAA. THE MANUFACTURER WAS NOTIFIED BUT WAS UNABLE TO ADVISE THE CONTACT OF THE CAUSE OF THE FAILURE. THE FAILURE MILEAGE WAS 9,021.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2013 |

December 15, 2015 NHTSA ID NUMBER: 10810457

Components: VEHICLE SPEED CONTROL

NHTSA ID Number: 10810457

Incident Date November 25, 2015

Consumer Location COPPELL, TX

Vehicle Identification Number 5YJSA1S28FF****

Summary of Complaint

CRASH Yes

FIRE No

INJURIES 0

DEATHS 0

ON THE AFTERNOON OF NOVEMBER 25, 2015. I WAS DRIVING INTO A STRIP MALL PARKING LOT. I WAS GOING TO PULL INTO ONE OF THOSE SPACES WHERE YOU CAN PARK PERPENDICULAR TO A SIDEWALK CURB AND THE SIDEWALK LEADS UP TO THE STORE FRONTS.

WHEN APPROACHING THE PARKING SPACE. THE CAR WAS ALREADY IN REGENERATIVE BRAKING MODE. AND ACCORDING TO TESLA'S LOGS. THE CAR SLOWED DOWN TO 3.5 MPH. SINCE THE CAR HAD ENOUGH MOMENTUM TO ROLL INTO THE SPACE ON ITS OWN. MY FOOT WAS NOT ON THE ACCELERATOR OR THE BRAKE PEDAL. MY FOOT WAS UP RESTING ON ITS HEEL. READY TO TAP THE BRAKE WHEN IT GOT CLOSE ENOUGH TO THE CURB.

WHILE THE CAR WAS COASTING INTO THE SPACE THE MOTOR WAS VERY QUIET. ALL OF A SUDDEN. I HEARD A "WHIRRING" SOUND FROM THE MOTOR. I DON'T KNOW HOW BETTER TO DESCRIBE IT. THAN TO SAY IT WAS ALMOST LIKE THE MOTOR WENT FROM A STATE OF SLUMBER TO A FULL STATE OF AWARENESS.

1 I BELIEVE THE MOTOR WAS “WHIRRING” LOUDLY FOR ABOUT A SECOND BEFORE
2 THE CAR TOOK OFF AT SUCH A FAST PACE AND WOUND UP HITTING A BRICK
3 WALL. IT HAPPENED SO QUICKLY. I DIDN’T HAVE ANY TIME TO REACT. AFTER THE
4 IMPACT, I DIDN’T EVEN KNOW THE AIRBAGS DEPLOYED UNTIL I OPENED MY EYES
5 AND SAW THE DEFLATED AIRBAGS IN THE CAR. IT LOOKED LIKE THE CAR JUMPED
6 THE CURB, HIT THE BRICK WALL, BOUNCED BACKWARDS FROM THE IMPACT AND
7 LANDED BACK INTO THE PARKING SPACE.

8 ACCORDING TO TESLA’S LOGS, THE DATA READS THAT THE PEDAL WAS
9 DEPRESSED DOWN TO 97% AND THE CAUSE OF THE ACCIDENT WAS DUE TO
10 DRIVER ERROR. I STAND FIRMLY BY MY STATEMENT THAT MY FOOT WAS NOT ON
11 EITHER THE ACCELERATOR OR THE BRAKE PEDAL WHEN THE CAR ACCELERATED.
12 DATA MAY SHOW THERE WAS PEDAL DEPRESSION BUT I DID NOT DO THE
13 DEPRESSING. THIS WAS DUE TO UNINTENDED ACCELERATION BY THE CAR.

14 **1 Associated Product**

15 **Vehicle**

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2015 |

16 **February 15, 2016 NHTSA ID NUMBER: 10836289**

17 **Components: VEHICLE SPEED CONTROL**

18 **NHTSA ID Number:** 10836289

19 **Incident Date** September 14, 2015

20 **Consumer Location** SEATTLE, WA

21 **Vehicle Identification Number** 5YJSA3H12EF*****

22 **Summary of Complaint**

23 **CRASH** Yes

24 **FIRE** No

25 **INJURIES** 0

26 **DEATHS** 0

27 DRIVER PURCHASED A 2014 TESLA MODEL S CAR IN JUNE 2015 FROM THE
28 HANGZHOU CHINA DEALERSHIP. THIS CAR WAS DRIVEN MODERATELY IN THE
FOLLOWING MONTHS. IN SEPTEMBER 14, 2015, THE CAR WAS BEING DRIVEN

1 WITHIN A SMALL, ENCLOSED HOUSING COMPOUND. THE CAR WAS GOING VERY
 2 SLOW AS THE DRIVER WAS TURNING TO EXIT THE COMPOUND THROUGH A GATED
 3 ENTRANCE. THE CAR SUDDENLY ACCELERATED WITHOUT THE DRIVER'S
 ASSISTANCE AND DROVE THROUGH THE TRAFFIC GATE BEFORE THE DRIVER WAS
 ABLE TO QUICKLY BREAK AND BRING THE CAR TO A STOP.

4 ELECTRONIC RECORDS ACCESSED ON SEPTEMBER 15, 2015 REVEALED THE
 5 FOLLOWING INFORMATION: THE CAR WAS ORIGINALLY BEING DRIVEN AT 4.7
 6 KM/HR WITH THE ACCELERATION PEDAL DEPRESSED AT 2.8%. WITHIN ONE
 7 SECOND, THE ACCELERATION PEDAL WENT FROM BEING DEPRESSED 2.8% TO 84.8%
 8 AND THE CAR INCREASED TO 10.75 KM/HR. DURING THE FOLLOWING SECOND, THE
 9 CAR'S RECORDS SHOW THE ACCELERATION PEDAL TO CONTINUE TO BE
 10 COMPRESSED AT 84% WITH THE SPEED INCREASING TO 18.35 KM/HR. BUT WITH THE
 11 BREAK PEDAL ALSO BEING SIMULTANEOUSLY COMPRESSED. IN THE SUBSEQUENT
 12 SECOND, THE ANTI-LOCK BRAKES INITIATED, AND THE CAR WAS BROUGHT TO A
 13 STOP A SECOND LATER.

14 WE REJECT THE DEALERSHIP'S DECISION THAT THIS WAS DRIVER'S ERROR. IN
 15 SUCH A NARROW ENVIRONMENT AS THE HOUSING COMPOUND, AND DURING A
 16 SLOW AND CONTROLLED TURN, THERE THE DRIVER HAD NO REASON TO PUT
 17 SIGNIFICANT PRESSURE ON THE ACCELERATION PEDAL AS THE RECORDS SHOW –
 18 WHETHER INTENTIONAL OR UNINTENTIONAL. WE ALSO FEEL THAT IT WOULD
 19 HAVE BEEN DIFFICULT FOR THE DRIVER TO PUSH BOTH THE ACCELERATOR AND
 20 BREAK PEDAL TO SUCH A DEGREE SIMULTANEOUSLY. THEREFORE, WE BELIEVE
 21 THAT THE CAR EXPERIENCED AN UNINTENDED ACCELERATION, WHICH WAS NOT
 22 OF THE DRIVER'S CAUSING.

23 THERE HAVE BEEN MANY SIMILAR REPORTS OF TESLA MODEL S UNINTENDED
 24 ACCELERATION CRASHES IN CHINA. WE FEEL THAT THIS IS A SERIOUS SAFETY
 25 HAZARD WHICH NEEDS TO BE FURTHER INVESTIGATED.

26 **1 Associated Product**

27 **Vehicle**

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2014 |

28 **May 10, 2016 NHTSA ID NUMBER: 10864163**

Components: VEHICLE SPEED CONTROL

NHTSA ID Number: 10864163

Incident Date May 6, 2016

Consumer Location FREDERICK, MD

1 **Vehicle Identification Number 5YJSA1E13GF******

2 **Summary of Complaint**

3 **CRASH Yes**

4 **FIRE No**

5 **INJURIES 0**

6 **DEATHS 0**

7 UNINTENDED ACCELERATION OCCURRED ON 2 SEPARATE OCCASIONS WITH 2
8 DIFFERENT DRIVERS WITHIN 2 WEEKS. MODEL S 70D

9 INCIDENT 1: MY WIFE WAS AT A STOP SIGN. SHE REMOVED HER FOOT FROM THE
10 BRAKE AND BEFORE APPLYING THE ACCELERATOR THE CAR SURGED FORWARD
11 AGGRESSIVELY. SINCE HER FOOT NEVER TOUCHED THE ACCELERATOR SHE WAS
12 ABLE TO APPLY THE BRAKE AND STOP WITHIN 8-10 FEET. SHE WAS VISIBLY
13 SHAKEN WHEN SHE GOT HOME BUT, REGRETTABLY, NO REPORT WAS FILED.

14 INCIDENT 2: ABOUT 2 WEEKS LATER, MAY 6, I WAS PULLING INTO MY GARAGE
15 WITH MY WIFE AND BABY IN THE VEHICLE. 2-3 FEET FROM THE THE GARAGE
16 WALL (IN CREEP MODE) I GENTLY TOUCHED THE BRAKE TO COME TO A STOP. AT
17 THAT POINT THE CAR SURGED FORWARD VERY AGGRESSIVELY. I IMMEDIATELY
18 APPLIED HEAVY BRAKE AND WAS ABLE TO STOP THE CAR IN A FEW FEET (SINCE
19 MY FOOT WAS ALREADY OVER THE BRAKE PEDAL). THE FRONT END HIT THE
20 GARAGE WALL AND PENETRATED 10-12 INCHES CAUSING DRYWALL DAMAGE AND
21 SIGNIFICANT DAMAGE TO OUR POWDER ROOM ON THE OTHER SIDE.

22 A REPORT WITH TESLA WAS FILED IMMEDIATELY. LOGS WERE DOWLOADED AND
23 SHOW THAT THE ACCELERATOR WAS DEPRESSED TO 97% POWER IN LESS THAN A
24 SECOND AND THAT IT WAS DRIVER ERROR. MY WIFE AND I HAVE A COMBINED 48
25 YEARS OF ACCIDENT FREE DRIVING AND NEITHER OF US HAVE EVER MISTAKEN
26 CONTROL PEDALS OR HAVE EVER FLOORED A GAS PEDAL IN A SECOND.

27 MY WIFE IS 37, HEALTHY AND A PHYSICIAN. I AM A HEALTHY 42 YEAR OLD PILOT.
28 WE CAN BOTH SAY WITH 100% CERTAINTY THAT NEITHER INCIDENT WAS DRIVER
ERROR. TESLA HAS A SERIOUS UNINTENDED ACCELERATION PROBLEM ALSO
MADE EVIDENT BY THE OTHER COMPLAINTS FILED ON NHTSA. ALL OF WHICH
SEEM TO FALL UNDER SIMILAR OPERATING PARAMETERS.

WE NOW HAVE A \$90,000 CAR SITTING IN OUR GARAGE THAT IS UNSAFE FOR MY
FAMILY. IT SEEMS TESLA IS GOING THE ROUTE OF WAITING FOR INJURY AND
DEATHS TO OCCUR BEFORE THEY ACKNOWLEDGE THIS SAFETY DEFECT.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|------|-------|------|
|------|-------|------|

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2016 |

May 11, 2016 NHTSA ID NUMBER: 10864353

Components: VEHICLE SPEED CONTROL

NHTSA ID Number: 10864353

Incident Date May 11, 2016

Consumer Location DENHAM SPRINGS, LA

Vehicle Identification Number 5YJSA1E23FF****

Summary of Complaint

CRASH No

FIRE No

INJURIES 0

DEATHS 0

WHILE DRIVING SLOWLY ~5MPH IN A WAL MART PARKING LOT. MY WIFE WENT TO PULL INTO A PARKING SPOT. SHE TOOK HER FOOT OFF THE ACCELERATOR PEDAL AND THE CAR ACCELERATED "FULLY" ALMOST HITTING THE CAR IN FRONT. MY WIFE HAD TO SLAM ON THE BRAKES TO PREVENT AN ACCIDENT.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2015 |

June 17, 2016 NHTSA ID NUMBER: 10874744

Components: VEHICLE SPEED CONTROL

NHTSA ID Number: 10874744

Incident Date June 10, 2016

Consumer Location SAN JOSE, CA

Vehicle Identification Number 5YJSA1E28FF****

Summary of Complaint

CRASH Yes

FIRE No

INJURIES 0

DEATHS 0

UNINTENDED. UNCOMMANDED ACCELERATION. CAR RAPIDLY ACCELERATED TO MAXIMUM THROTTLE DURING PARKING MANEUVER IN A PARKING STRUCTURE. I WAS TRAVELLING AT 3MPH. CAR ACCELERATED. HIT ANOTHER VEHICLE AND A WALL. TESLA CLAIMS VEHICLE LOGS SHOW THROTTLE WAS COMMANDED TO 98%. AT NO TIME DID I HAVE ANYTHING BUT A LIGHT TOUCH ON THE THROTTLE.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2015 |

September 27, 2016 NHTSA ID NUMBER: 10910065

Components: VEHICLE SPEED CONTROL, SERVICE BRAKES, AIR BAGS

NHTSA ID Number: 10910065

Incident Date September 16, 2016

Consumer Location TUCSON, AZ

Vehicle Identification Number SYJSA1H4SFF****

Summary of Complaint

CRASH Yes

FIRE No

1 **INJURIES 1**

2 **DEATHS 0**

3 I DROVE THE CAR INTO A PARKING SPACE AT THE SCHOOL (DESERT CHRISTIAN
4 ELEMENTARY) IN TUCSON ARIZONA ON SEPT 16TH ABOUT 11:05 AM. WHEN THE
5 CAR ACCELERATED ON ITS OWN (UNINTENDED ACCELERATION) AND CRASHED
6 INTO 2 PARKED VEHICLES AND AIRBAGS DEPLOYED AND I SUSTAINED A
7 FRACTURE OF MY RIGHT ARM REQUIRING SURGERY. ALSO MY CAR (THE TESLA
8 MODEL S) WAS DAMAGED AND THE TWO OTHER PARKED CARS.

9 **1 Associated Product**

10 **Vehicle**

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2015 |

11
12
13
14 **February 6, 2017 NHTSA ID NUMBER: 10949955**

15 **Components: SERVICE BRAKES, VEHICLE SPEED CONTROL**

16 **NHTSA ID Number: 10949955**

17 **Incident Date** January 5, 2017

18 **Consumer Location** MOUNTAIN VIEW, CA

19 **Vehicle Identification Number** 5YJSA1E1XGF*****

20 **Summary of Complaint**

21 **CRASH** Yes

22 **FIRE** No

23 **INJURIES 2**

24 **DEATHS 0**

25 I WAS STOPPED AT A STOP LIGHT ON MY WAY TO WORK AROUND 8AM ON A VERY
26 CROWDED CITY STREET. AS THE LIGHT TURNED GREEN. I SLOWLY PRESSED ON
27 THE GAS TO MOVE FORWARD AND THE CAR TOOK OFF AT TOP SPEED. I HIT THE
28 BRAKE BUT THE CAR DID NOT RESPOND - IT DID NOT SLOW DOWN OR STOP. NOR
DID ANY ALARM. EITHER VISUAL OR AUDITORY. GO OFF INSIDE THE CAR. TO HIT
THE CAR IN FRONT OF ME AND THEN HAD TO SWERVE TO AVOID HITTING DOZENS
OF CARS IN MY PATH. I GRAZED PAST A LAMP POST. ANOTHER CAR AND FINALLY
CRASHED INTO A TREE.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2016 |

February 9, 2017 NHTSA ID NUMBER: 10953656

Components: VEHICLE SPEED CONTROL, UNKNOWN OR OTHER

NHTSA ID Number: 10953656

Incident Date December 23, 2016

Consumer Location PASADENA, CA

Vehicle Identification Number 5YJSA1E22GF*****

Summary of Complaint

CRASH Yes

FIRE No

INJURIES 3

DEATHS 0

COMPLAINANT, A PHYSICIAN, HAD TAKEN DELIVERY OF A 2016 TESLA MODEL S ON DECEMBER 22, 2016. THE FOLLOWING DAY, SHE PULLED INTO HER DRIVEWAY AT HOME AND BROUGHT THE VEHICLE TO A STOP. WITH HER FOOT STILL ON THE BRAKE, THE VEHICLE SUDDENLY ACCELERATED ON ITS OWN FROM A STOPPED POSITION TO SPEEDS OF BETWEEN 40-60 MPH. THE VEHICLE PLOWED THROUGH THE BRICKS OF HER DRIVEWAY, THROUGH SHRUBS SEPARATING HER PROPERTY FROM HER NEIGHBOR, WENT THROUGH AND ACROSS THE NEIGHBOR'S YARD AND ONTO AND ADJOINING STREET, WHERE IT COLLIDED WITH A TRUCK.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|------|-------|------|
|------|-------|------|

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL S | 2016 |

2. Model X Reports of Sudden Unintended Acceleration to NHTSA

62. On June 7, 2016, less than six months into the full scale distribution of the Model X, the first complaint of sudden unintended acceleration was registered in NHTSA’s complaint database. This would be the first of seven separate complaints that would be entered in the NHTSA complaint database in just the next four months.

63. The following information was entered into the NHTSA complaint database, and therefore, was available to Tesla, in connection with these seven complaints:

June 7, 2016 NHTSA ID NUMBER: 10873117

Components: STRUCTURE, VEHICLE SPEED CONTROL, AIR BAGS

NHTSA ID Number: 10873117

Incident Date June 4, 2016

Consumer Location ANAHEIM, CA

Vehicle Identification Number 5YJXCAE46GF****

Summary of Complaint

CRASH Yes

FIRE No

INJURIES 1

DEATHS 0

OUR 5 DAY OLD TESLA X WHILE ENTERING A PARKING STALL SUDDENLY AND UNEXPECTEDLY ACCELERATED AT HIGH SPEED ON ITS OWN CLIMBING OVER GRASS AND AND CRASHED INTO A BUILDING.

THE AIRBAGS DEPLOYED AND MY WIFE'S ARMS HAVE BURN MARKS AS A CONSEQUENCE.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL X | 2016 |

August 4, 2016 NHTSA ID NUMBER: 10893066

Components: VEHICLE SPEED CONTROL, AIR BAGS

NHTSA ID Number: 10893066

Incident Date July 28, 2016

Consumer Location DANBURY, CT

Vehicle Identification Number 5YJXCAE29GF*****

Summary of Complaint

CRASH Yes

FIRE No

INJURIES 0

DEATHS 0

TL* THE CONTACT OWNS A 2016 TESLA MODEL X. WHILE ATTEMPTING TO PARK, THE VEHICLE INDEPENDENTLY ACCELERATED WITHOUT WARNING AND CRASHED INTO A WOOD FENCE. THE AIR BAGS FAILED TO DEPLOY. THERE WERE NO INJURIES. A POLICE REPORT WAS FILED. THE VEHICLE WAS NOT DIAGNOSED OR REPAIRED. THE MANUFACTURER WAS NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 49.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|------|-------|------|
|------|-------|------|

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL X | 2016 |

August 24, 2016 **NHTSA ID NUMBER: 10898260**

Components: STRUCTURE, VEHICLE SPEED CONTROL, FUEL/PROPULSION SYSTEM

NHTSA ID Number: 10898260

Incident Date July 8, 2016

Consumer Location ORMOND BEACH, FL

Vehicle Identification Number 5YJXCBE21GF****

Summary of Complaint

CRASH Yes

FIRE No

INJURIES 0

DEATHS 0

ON JULY 8TH 2016, AT 9:37 A.M., WHILE SLOWLY PULLING INTO A PARKING SPACE AT CREEKWOOD DOG PARK IN BRADENTON FLORIDA. MY TESLA MODEL X SUDDENLY ACCELERATED UNDER ITS OWN VOLITION, DROVE OVER A PARKING STOP, OVER A FIVE INCH CURB, AND THEN HIT AND KNOCKED OVER A CONCRETE LIGHT POLE. ALL THIS HAPPENED IN A DISTANCE OF LESS THAN TWENTY FEET. TESLA WAS NOTIFIED IMMEDIATELY AND THE CAR WAS TAKEN TO DIMMITT COLLISION CENTER IN CLEARWATER, FLORIDA. THE SERVICE MANAGER AT TESLA OF TAMPA, TOLD ME VERBALLY THE LOG FROM THE EDR SAYS THE CAR WAS TRAVELING AT 6 MPH. THEN THE ACCELERATOR WAS ADVANCED TO OVER 50% AND THEN TO 87%. THE CAR ACCELERATED TO 20 MPH AND ABRUPTLY STOPPED. I DENIED THIS SCENARIO AND ASKED FOR A SUPERVISOR. TESLA'S SOUTHEAST REGIONAL MANAGER MET US AT THE BODY SHOP. HE HANDED ME A LETTER THAT HAD DIFFERENT EDR RESULTS-VEHICLE SPEED WAS 7 MPH, PEDAL POSITION WENT FROM 3.2% TO 15.6% TO 100% AND CAR WENT TO 14 MPH. THE FIRST REPAIR ESTIMATE SHOWED ACTUAL MILEAGE AS 205 AND A SUBSEQUENT REPAIR ESTIMATE SHOWS THE ACTUAL MILEAGE AS 1425. THESE FIGURES ARE INACCURATE SINCE I HAD LOOKED AT THE ODOMETER SEVERAL DAYS BEFORE THE ACCIDENT AND THE MILEAGE WAS OVER 1800. I INFORMED TESLA THAT I AM POSITIVE BEYOND A SHADOW OF DOUBT THAT THE CAR'S ELECTRONIC THROTTLE COMPUTER WAS RESPONSIBLE FOR THE ACCIDENT WHICH THEY DENY. THIS APPEARS TO BE THE INDUSTRY STANDARD SINCE EXPERTS WILL TESTIFY THAT ALTHOUGH A CAR IS RESPONSIBLE FOR UNINTENDED ACCELERATION THERE WILL

1 BE NO TRACEABLE EVIDENCE OF THAT RESPONSIBILITY AND THEREFORE THE
2 MANUFACTURER HAS PLAUSIBLE DENIABILITY. TESLAS ARE UNDERGOING
3 UNINTENDED ACCELERATION AT A RATE MORE FREOUENT THAN 1/5.000 VEHICLES
4 MANUFACTURED. THIS IS WAY MORE FREOUENT THAN THE INDUSTRY STANDARD.
5 GENERAL MOTORS HAS AN EXTREMELY GOOD RATE OF 1/123,000 VEHICLES.

4 **1 Associated Product**

5 **Vehicle**

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL X | 2016 |

11 [September 19, 2016 NHTSA ID NUMBER: 10908051](#)

12 **Components: VEHICLE SPEED CONTROL, UNKNOWN OR OTHER**

13 **NHTSA ID Number:** 10908051

14 **Incident Date** May 23, 2016

15 **Consumer Location** BOSTON, MA

16 **Vehicle Identification Number** 5YJXCAE24GF****

17 **Summary of Complaint**

18 **CRASH** Yes

19 **FIRE** No

20 **INJURIES** 0

21 **DEATHS** 0

22 WHILE TURNING LEFT TO ENTER A VERY NARROW GARAGE ENTRANCE I NEEDED
23 TO DETERMINE WHETHER OR NOT I HAD TO STRAIGHTEN OUT BEFORE PULLING IN
24 OR IF MY LEFT TURN WAS TIGHT ENOUGH TO PULL IN WITHOUT REVERSING TO
25 STRAIGHTEN OUT. I SAW THAT I WAS IN THE POSITION THAT I COULD CONTINUE
26 INTO THE GARAGE AND LIGHTLY PRESSED THE ACCELERATOR TO FINISH MY
27 TURN INTO THE GARAGE.

28 IT WAS AT THIS POINT THAT THE CAR ACCELERATED WITH EXTREME FORCE AND
WITHIN A SECOND SLAMMED INTO A LARGE CONCRETE POLE THAT WAS JUST
INSIDE THE GARAGE TO THE LEFT.

I NEVER FELT THE CAR SLOW IN THAT MOMENT. ONLY SPEED UP AND I BELIEVE
THE CAR SLAMMED INTO THE POLE WHILE ACCELERATING AND WOULD HAVE

1 CONTINUED TO ACCELERATE IF NOT FOR THE LARGE POLE.

2 I DID NOT HAVE EITHER FOOT DEPRESSED ON EITHER PEDAL AT THE MOMENT OF
 3 COLLISION. THE AIR BAGS DID NOT DEPLOY. BUT THERE WAS VERY SEVERE
 DAMAGE TO THE FRONT END OF THE CAR THAT WILL BE AT LEAST \$25K.

4 I WAS NOT ON THE PHONE OR DISTRACTED IN ANY WAY. I WAS DRIVING
 5 CAREFULLY AND PAYING FULL ATTENTION. THIS IS NOT A CASE OF MISTAKEN
 PEDAL BECAUSE I WAS INTENDING TO ACCELERATE.

6 AT FIRST TESLA TOLD US OVER THE PHONE THAT THEIR LOGS SHOW THAT THE
 7 DRIVER PRESSED THE PEDAL 100% AND THEN TAPPED THE BRAKE BEFORE IMPACT.
 THIS EXPLANATION SOUNDED PHYSICALLY IMPOSSIBLE BECAUSE THE DISTANCE
 8 COVERED WAS LESS THAN 3 CAR LENGTHS. A MONTH LATER TESLA SENT A
 9 LETTER STATING THE DRIVER PRESSED THE ACCELERATOR 100% UNTIL THE
 10 VEHICLE SENSED A CRASH. TESLA DID NOT RESPOND TO OUR QUERY ABOUT WHY
 THEIR LOG STORY HAD CHANGED. TESLA ALSO REFUSED TO PROVIDE DATA
 ABOUT ACCELERATOR/BRAKE PERCENTAGE AND CAR SPEED FOR THE CAR
 EARLIER IN THE DAY. IF A DRIVER IS PRESSING THE PEDAL 100% IT IS A VERY
 11 DELIBERATE ACTION.

12 THIS IS A FAILURE OF THE ACCELERATOR AND THE AUTOMATIC BRAKING. THE
 13 CAR ACCELERATED ON ITS OWN AND CRASHED FULL FORCE INTO A LARGE
 CONCRETE POLE.

14 **1 Associated Product**

15 **Vehicle**

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL X | 2016 |

21 [September 26, 2016 NHTSA ID NUMBER: 10909588](#)

22 **Components: VEHICLE SPEED CONTROL, WHEELS**

23 **NHTSA ID Number:** 10909588

24 **Incident Date** September 22, 2016

25 **Consumer Location** LEXINGTON, MA

26 **Vehicle Identification Number** 5YJXCAE44GF****

27 **Summary of Complaint**

28 **CRASH** Yes

FIRE No

INJURIES 0

DEATHS 0

I WAS GOING UP BY DRIVEWAY WAITING FOR MY GARAGE DOOR TO OPEN. I TOOK MY FOOT OFF THE ACCELERATOR AND WAS SLOWING DOWN WITHOUT HITTING THE BREAKS WAITING FOR THE GARAGE DOOR TO OPEN. THE CAR TOOK OFF THROUGH THE GARAGE DOOR AND HIT MY HUSBANDS CAR SITTING IN THE GARAGE.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL X | 2016 |

[September 30, 2016 NHTSA ID NUMBER: 10910701](#)

[Components: VEHICLE SPEED CONTROL](#)

NHTSA ID Number: 10910701

Incident Date September 29, 2016

Consumer Location BEVERLEY HILLS, CA

Vehicle Identification Number UNKNOWN*****

Summary of Complaint

CRASH No

FIRE No

INJURIES 0

DEATHS 0

HERE IS A NEW COMPLAINT OF UNINTENDED ACCELERATION WHICH SOUNDS HIGHLY CREDIBLE.

[HTTPS://FORUMS.TESLA.COM/FORUM/FORUMS/NEAR-ACCIDENT-WHILE-PARKING-JUST-NOW](https://forums.tesla.com/forum/forums/near-accident-while-parking-just-now)

NEAR ACCIDENT WHILE PARKING JUST NOW!!

SUBMITTED BY HAMI05 ON SEPTEMBER 29, 2016

WOW GUYS I'VE SEEN THOSE UNINTENDED ACCELERATION THREADS BEFORE AND THOUGHT THAT THE PERSON MUST'VE ALWAYS DEFINITELY BEEN PUNCHING THE ACCELERATOR. BUT I'M NOT SO SURE AFTER WHAT JUST HAPPENED TO ME. PLEASE HEAR ME OUT. BECAUSE MY SON AND I ARE FRANKLY QUITE SCARED RIGHT NOW. I WAS DRIVING INTO A PARKING LOT AND I JUST LIGHTLY PRESSED THE ACCELERATOR AS I WAS GOING UNDER 10 MPH AND ALL OF A SUDDEN MY X WENT FROM 10 TO OVER 40 MPH IN ABOUT 2 SECONDS! I DIDN'T EVEN KNOW THE THING COULD ACCELERATE THAT FAST! CAN ANYBODY EXPLAIN WHAT THE HECK MIGHT'VE HAPPENED? THANKFULLY I WAS ABOUT 100 FT AWAY FROM ANY OTHER CARS BEFORE IT TOOK OFF. SO I HAD TIME TO SLAM THE BRAKES WITHOUT PANICKING. OTHERWISE WHO KNOWS WHAT WOULD'VE HAPPENED... I'M CERTAIN THAT I DIDN'T ACCIDENTALLY ACTIVATE CRUISE CONTROL/AP. SO THERE'S NO WAY THAT COULD'VE CAUSED IT. MY THEORY IS THAT THE REGENERATIVE BRAKES MAY HAVE GIVEN ME A SUDDEN KICK OF ACCELERATION? I'M KIND OF WORRIED NOW. BECAUSE THIS IS ACTUALLY THE SECOND TIME SOMETHING LIKE THIS HAS HAPPENED TO ME. EXCEPT THE FIRST TIME WASN'T NEARLY AS BAD. SO I DIDN'T ASK YOU GUYS ABOUT IT. HAS ANYONE ELSE HAD THIS HAPPEN TO THEM? DO YOU GUYS THINK I NEED TO ASK MY TESLA TEAM ABOUT THIS?

THIS HASN'T ONLY HAPPENED TO ME WHILE GETTING READY TO PARK. THE FIRST TIME I WAS JUST ACCELERATING UP TO 25 IN MY NEIGHBORHOOD AND IT SUDDENLY WENT TO 35 IN A SECOND BUT I WASN'T TOO BOTHERED ABOUT THAT. BECAUSE IT WAS JUST A 10MPH BURST. BUT THIS ONE THAT HAPPENED TO ME TODAY WAS THE CAR JUMPING 30 MPH... I'VE DRIVEN THIS CAR FOR 2000 MILES NOW AND IT'S THE ONLY CAR I'VE BEEN DRIVING REALLY OVER THE PAST MONTH.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL X | 2016 |

October 12, 2016 NHTSA ID NUMBER: 10915633

Components: SERVICE BRAKES, VEHICLE SPEED CONTROL

NHTSA ID Number: 10915633

Incident Date October 7, 2016

Consumer Location SANTA CLARA, CA

Vehicle Identification Number 5YJXCBE22GF*****

Summary of Complaint

CRASH Yes

FIRE No

INJURIES 0

DEATHS 0

TL* THE CONTACT OWNS A 2016 TESLA MODEL X. WHILE PARKING THE VEHICLE. IT ACCELERATED WHILE DEPRESSING THE BRAKE PEDAL AND CRASHED INTO A FENCE. THERE WERE NO INJURIES AND A POLICE REPORT WAS NOT FILED. THE AIR BAGS DID NOT DEPLOY. THE VEHICLE WAS NOT DIAGNOSED OR REPAIRED. THE MANUFACTURE WAS NOTIFIED OF THE FAILURE. THE FAILURE MILEAGE WAS 1,000.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL X | 2016 |

December 14, 2016 NHTSA ID NUMBER: 10935272

Components: AIR BAGS, STRUCTURE, VEHICLE SPEED CONTROL

NHTSA ID Number: 10935272

Incident Date December 13, 2016

Consumer Location AMAGANSETT, NY

Vehicle Identification Number 5YJXCBE24GF*****

Summary of Complaint

CRASH Yes

FIRE No

INJURIES 1

DEATHS 0

I HAD PULLED INTO A PARKING LOT. PROCEEDED TO PULL INTO A SPOT ADJACENT TO A CINDER BLOCK BUILDING. I HAD MY FOOT LIGHTLY ON THE GAS PEDAL. THEN AS I MADE THE TURN INTO THE SPOT, MY FOOT WAS ON THE BRAKE - THE

1 CAR LURCHED FORWARD AND SPED UP AND THE BRAKES DID NOT STOP IT. I WENT
2 RIGHT INTO THE CONCRETE BUILDING. HEAD ON - AIR BAGS DEPLOYED. THE
3 FRONT END CRUSHED AND THE 2 AIRBAGS ON THE DRIVERS SIDE DEPLOYED AND
4 WERE SMOKING. I READ ON LINE THAT THERE HAVE BEEN NUMEROUS INCIDENCES
5 OF THIS HAPPENING WITH THE TESLA. SPONTANEOUS ACCELERATION WITH MY
6 FOOT NOT ON THE GAS PEDAL. THE CAR WOULD NOT STOP BY THE BRAKES! I
7 COULD HAVE BEEN SERIOUSLY INJURED OR HIT ANOTHER PERSONA OR VEHICLE.
8 THE CAR HIT THE BUILDING AS WELL AS A NATURAL GAS PIPE THAT WAS
9 RUNNING ALONG THE BUILDINGS SIDE AT THE LEVEL OF MY FRONT BUMPER. I
10 FILED A POLICE REPORT.

11 **1 Associated Product**

12 **Vehicle**

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL X | 2016 |

13
14 **January 3, 2017 NHTSA ID NUMBER: 10939234**

15 **Components: STRUCTURE, FUEL/PROPULSION SYSTEM, VEHICLE SPEED**
16 **CONTROL**

17 **NHTSA ID Number:** 10939234

18 **Incident Date** November 2, 2016

19 **Consumer Location** SANTA CLARA, CA

20 **Vehicle Identification Number** 5YJXCAE27GF*****

21 **Summary of Complaint**

22 **CRASH** Yes

23 **FIRE** No

24 **INJURIES** 0

25 **DEATHS** 0

26 WHILE TURNING LEFT INTO A PARKING SPOT AT A VERY SLOW SPEED. THE CAR
27 SUDDENLY ACCELERATED WITH EXTREME FORCE. IT RAN OVER A CURB AND
28 COLLIDED WITH A TREE AND A TRUCK. THERE WAS ONLY LIGHT PRESSURE ON
THE ACCELERATOR. THE AUTOMATIC BRAKING AND THE AIRBAGS DID NOT
DEPLOY. THERE WAS OVER \$18 000 DAMAGE TO THE TWO VEHICLES AND THE
TESLA MODEL X IS NOT DRIVEABLE WITHOUT REPAIRS.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL X | 2016 |

February 27, 2017 NHTSA ID NUMBER: 10957394

Components: STRUCTURE, VEHICLE SPEED CONTROL

NHTSA ID Number: 10957394

Incident Date February 27, 2017

Consumer Location MARIETTA, GA

Vehicle Identification Number 5YJXCAE24GF*****

Summary of Complaint

CRASH Yes

FIRE No

INJURIES 1

DEATHS 0

TAKATA RECALL

I DROVE MY TESLA MODEL X 2016 TODAY TO WORK AND WHEN I WAS ABOUT TO PARK THE CAR IN THE PARKING LOT (AROUND 6 MILES PER HOUR MAY BE) IT SUDDENLY ACCELERATED AND HIT THE CONCRETE WALL AND BOUNCED BACK AROUND 8 FEET. SINCE IT WAS FOR PARKING I CAN SURELY SAY THAT I DID NOT ACCELERATE THE CAR. THE STEERING AIR BAGS AND KNEE AIR BAGS CAME OFF AND ALSO THE PASSENGER SIDE KNEE AIR BAGS CAME OFF AS WELL. I SEARCHED ONLINE AND THERE SEEMS TO BE A CLASS ACTION SUITE ON THIS ISSUE BUT TESLA IS NOT ACCEPTING IT AS THE GLITCH IN THEIR SOFTWARE OR SOME OTHER COMPONENT. I FELT LIKE THE ACCELERATOR GOT PRESSED THE WAY WHEN THE CAR WAS IN CRUISE MODE. UNLESS I WANTED TO HIT THE WALL INTENTIONALLY THERE WAS NO NEED FOR ME TO PRESS THE ACCELERATOR TO SPEED FROM ALMOST ZERO TO WHATEVER THE HIGH SPEED IT ATTAINED AT THE TIME OF HITTING THE WALL.

1 Associated Product

Vehicle

| MAKE | MODEL | YEAR |
|-------|---------|------|
| TESLA | MODEL X | 2016 |

a. Reports of Sudden Unintended Acceleration are 71 Times Higher Than Historical Rates for Other Vehicles

64. Tesla sold approximately 18,240 Model X vehicles in the United States from September 29, 2015, through the end of 2016. The Model X having at least 13 reported (either to NHTSA or directly to Tesla) sudden unintended acceleration incidents in the first full year of production with only 18,240 vehicles on the road (most of which have been on the road significantly less than one year) results in a rate of 71 SUA events per 100,000 vehicles per year.

65. In contrast, according to a study by NASA of unintended acceleration reports to the National Highway Traffic Administration from 2000 to 2010, from there was 1 SUA accident per 100,000 vehicles per year. Accordingly, the Model X is reported to experience 71 times as many SUA events as the average number of reported SUA events for other manufacturers.

66. Rather than correcting the defect through programmatic logic, Tesla's strategy in responding to SUA complaints has been to blame any report of SUA on driver error. For example, Tesla was notified by the Model X owner of the first SUA incident registered in the NHTSA complaints database. After performing an investigation, Tesla seized on a nearly identical conclusion that it reached in its investigation of Plaintiffs' incident, stating:

“We analyzed the vehicle logs which confirm that this Model X was operating correctly under manual control and was never in Autopilot or cruise control at the time of the incident or in the minutes before. Data shows that the vehicle was traveling at 6 mph when the accelerator pedal was abruptly increased to 100%. Consistent with the driver's actions, the vehicle applied torque and accelerated as instructed. Safety is the top priority at Tesla and we engineer and build our cars with this foremost in

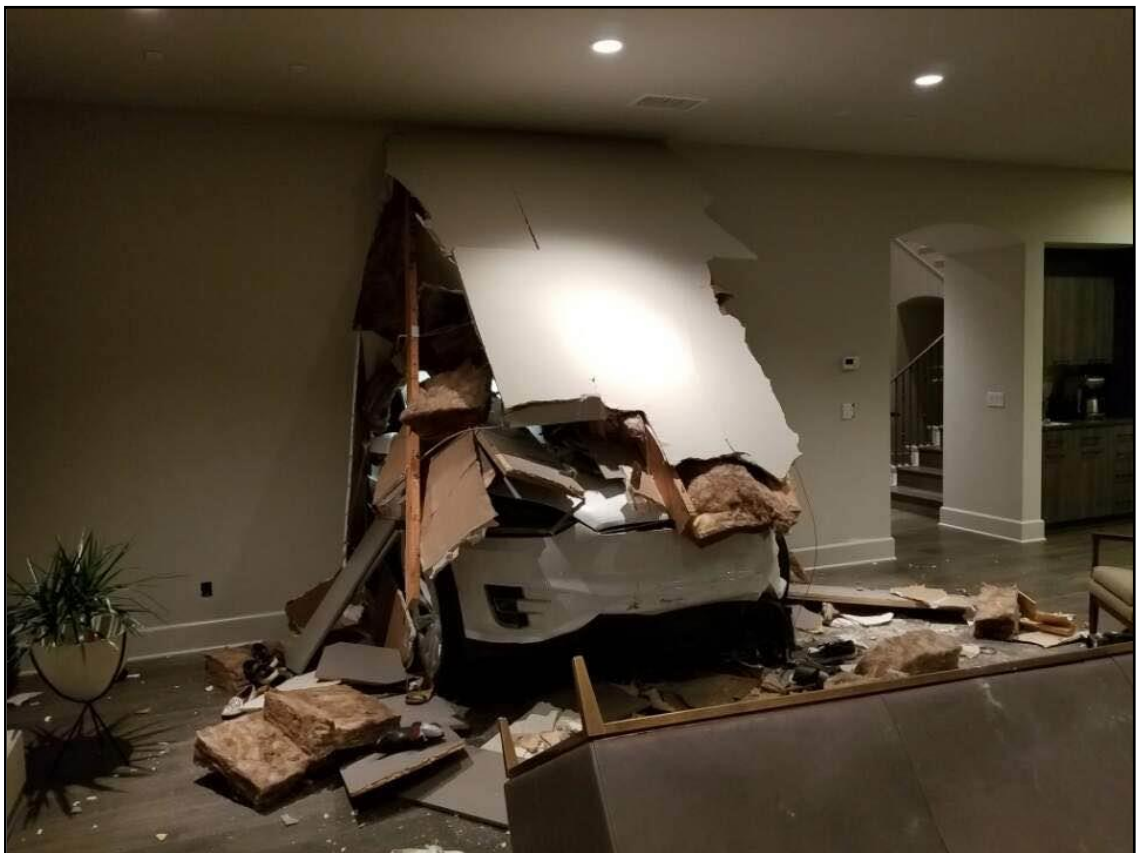
1 mind. We are pleased that the driver is ok and ask our
2 customers to exercise safe behavior when using our vehicles.”

3 **D. Plaintiff Ji Chang Son’s and Plaintiff K.M.S.’s SUA Event**

4 67. On September 10, 2016, Plaintiff Ji Chang Son was returning to his Orange
5 County home in his Model X with his son, Plaintiff K.M.S.

6 68. At approximately 8:00 p.m., Plaintiff Ji Chang Son slowed his vehicle to
7 approximately 6 miles per hour and made a left turn easing into his driveway the garage
8 after the door opened, just as he had done on countless prior occasions.

9 69. Except that this time, as Plaintiff Ji Chang Son slowly pulled into his
10 driveway, the vehicle spontaneously began to accelerate at full power, jerking forward
11 and crashing through the interior wall of the garage, destroying several wooden support
12 beams in the wall and a steel sewer pipe, among other things, and coming to rest in
13 Plaintiffs’ living room. Plaintiffs were trapped inside the vehicle because the doors were
14 pinned shut by wood support beams and other debris.



1 70. Smoke began flooding the interior of the vehicle. Plaintiff Ji Chang Son and
2 Plaintiff K.M.S. feared that the Model X was about to explode and burst into flames and
3 furiously sought other ways to escape the vehicle.

4 71. Fortunately, Plaintiff K.M.S. managed to open a window and crawl out. He
5 ran to the other side of the Model X and struggled to force the window open on Plaintiff
6 Ji Chang Son's side of the vehicle. As the smoke continued to fill the Model X's interior
7 and now the entire living room, Plaintiff K.M.S. courageously helped his father Plaintiff
8 Ji Chang Son escape from the vehicle.

9 72. Both Plaintiff Son and Plaintiff K.M.S. suffered lacerations to their legs in
10 the collision, with residual scarring.

11 73. Plaintiff Son immediately notified Defendant of the incident and that the
12 vehicle had exhibit sudden unintended acceleration as he was pulling into his driveway.
13 Tesla responded by stating that the “vehicle responded correctly to driver-applied inputs”
14 even though acknowledging that Mr. Son had made a left turn into his driveway at less
15 than 5 miles per hour, and had not been pressing the accelerator pedal for the preceding 4
16 seconds, when the computer registered a 100% acceleration command the second before
17 the vehicle collided with the back wall of his garage.

18 **E. Plaintiff Khansari’s SUA Event**

19 74. On January 26, 2016, Plaintiff Khansari was the driver of his Model S
20 traveling north on Interstate 5 in Orange County, California. Plaintiff Khansari exited the
21 interstate at Oso Parkway and pulled into a Union 76 gas station.

22 75. Plaintiff Khansari drove past the gas pumps intended to park his vehicle in a
23 parking spot. As Plaintiff Khansari neared the parking spot, his Model S experienced
24 uncommanded full power acceleration, causing the vehicle to crash into a fixed barrier.

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13 76. Plaintiff Khansari notified Tesla of the incident and that he believed the
14 vehicle had exhibited sudden unintended acceleration. However, Defendant told Plaintiff
15 Khansari that the vehicle “was operating within normal operating parameters, did not
16 exhibit any unexpected behavior and appropriately responded to the driver-applied
17 inputs.” Tesla acknowledged that the vehicle had been traveling at 4 miles per hour when
18 the vehicles onboard computer determined that the accelerator went from 0% to 100% in
19 under three seconds, accelerating the vehicle to 16 miles per hour at the point of impact,
20 and then continued to register 100% acceleration for 4 seconds *after* the impact.
21 Defendant maintained that the acceleration was the result of driver input even while
22 acknowledging that the brakes were pressed intermittently at the same time that the
23 vehicle was exhibiting full acceleration.

24 **F. Plaintiff Jarrahi’s Vehicle’s SUA Event**

25 77. On December 5, 2016, Plaintiff Jarrahi’s wife was the driver of Plaintiff
26 Jarrahi’s Model X near the Forsyth County Day School. Plaintiff Jarrahi’s wife was
27 driving westbound on State Route 1001 and had come to a complete stop as she waited
28 for a crossing guard to allow her to make a right turn onto PVA Forsyth County Day. As

1 she commenced her turn, the vehicle accelerated at what felt like full power. As a result
2 of the powerful acceleration, Plaintiff Jarrahi's wife was unable to negotiate the right
3 hand turn and her vehicle collided with a vehicle in the southbound lanes of PVA Forsyth
4 Country Day, causing her air bags to deploy.

5 78. Plaintiff Jarrahi notified Tesla of the SUA incident.

6 **G. Plaintiff Tomko's Vehicle's SUA Incidents**

7 79. On October 15, 2016, Plaintiff Tomko's wife was driving Plaintiff Tomko's
8 Model S slowly in a parking lot and was preparing to stop when the vehicle experienced
9 uncommanded acceleration, causing the vehicle to surge forward, out of the parking lot
10 and into a wooded area. The vehicle suffered minor damage and had to be towed out of
11 the wooded area.

12 80. Plaintiff Tomko notified Defendant of the SUA incident. After uploading
13 data from the vehicle's onboard computers, Defendant informed Plaintiff Tomko that the
14 vehicle had gone from 0% acceleration to 100% acceleration, that the vehicle had not
15 malfunctioned, and concluded that the vehicle was appropriately responding to driver
16 input.

17 81. On January 20, 2017, Plaintiff Tomko's spouse was again driving Plaintiff
18 Tomko's Model S in a parking lot and preparing to park when it again experienced
19 uncommanded acceleration and surged forward, jumping a parking block and traveling
20 50 feet before she was able to bring the vehicle to a stop.

21 82. Plaintiff Tomko again notified Defendant of the SUA incident. After
22 uploading data from the vehicle's onboard computers and inspecting the vehicle,
23 Defendant again informed Plaintiff Tomko that the car had gone from 4% acceleration to
24 100% acceleration and again attributed the incident to driver input.

25 **H. Plaintiff Shastrula's SUA Incident**

26 83. On February 27, 2017, Plaintiff Shastrula was driving his Model X in a
27 parking structure at his office. As Plaintiff Shastrula approached his intended parking
28 spot, he slowed the vehicle and made a left turn into the parking spot. He completed the

1 left turn and was advancing the last few feet into the spot when his Model X experienced
2 uncommanded full power acceleration and collided with a concrete wall, causing the
3 airbags to deploy.



1 **I. Defects in the Model S and Model X**

2 84. The Model S and Model X – designed, manufactured, sold, and/or
3 distributed by Tesla – are defective in that they are vulnerable to incidents of sudden full
4 power unintended acceleration. Regardless of the many root causes that may create this
5 overarching defect, an effective automated emergency braking and/or automated throttle
6 control mechanism would serve as a fail-safe design feature to prevent and/or minimize
7 the risk of injury, harm, or damage to Tesla owners, occupants, and the general public
8 form SUA events.

9 85. Tesla has been aware that SUA events are occurring at a markedly high rate
10 in the Model S, and an even more alarmingly high rate in the Model X, but has not, as of
11 yet, explained the root cause of this dramatic increase in SUA events. This made it
12 critically important for Tesla to design and implement an adequate fail-safe system to
13 prevent or mitigate the consequences of SUA. Therefore, the Model S and the Model X
14 are defective for their lack of an adequate fail safe system as a result of the following:

- 15 a. The inability of the Automated Emergency Braking system to be able to
16 detect when full acceleration has not been commanded by the driver;
- 17 b. The Automated Emergency Braking system’s identification of 100%
18 accelerator pedal input as an indicator of positive driver control that
19 automatically renders the Automated Emergency Braking system
20 inoperative;
- 21 c. The lack of a proper fail-safe logic that will cut power and apply the brakes
22 when the vehicle registers full power acceleration when there are fixed
23 objects in the immediate path of the vehicle; and
- 24 d. The lack of a proper fault detection system that would recognize an SUA
25 event beyond the maximum design tolerance and respond by shutting down
26 the throttle.

27 86. Finally, the faults and defects in Tesla’s safety critical vehicle electronic
28 systems described above show that Tesla has not properly tested or validated these

1 systems individually or as a whole and, moreover, Tesla has failed to verify that all
2 electronic vehicle systems capable of requesting torque are robust enough, and contain
3 sufficient redundancies to prevent SUA events.

4 **J. Choice of Law Allegations**

5 87. Tesla is headquartered in Palo Alto, California.

6 88. Tesla does substantial business in California, with a significant portion of
7 the proposed Nationwide Class located in California. For example, approximately 45%
8 of all new Tesla Model S sales come from California, and it is expected a similar
9 percentage of Model X sales are from California.

10 89. Tesla's main automobile manufacturing facility is also located in California.

11 90. In addition, the conduct that forms the basis for each and every Class
12 members' claims against Tesla emanated from Tesla's headquarters in California.

13 **V**

14 **CLASS ALLEGATIONS**

15 91. Plaintiff Son, Khansari, Shastrula, Jarrahi, and Tomko brings this action on
16 their own behalf, and on behalf of a nationwide class pursuant to Federal Rules of Civil
17 Procedure, Rules 23(a), 23(b)(2), and/or 23(b)(3).

18 **Nationwide Class:**

19 All persons or entities in the United States who are current
20 owners and/or lessees of a Tesla Model S or Model X.

21 92. In the alternative to the Nationwide Class, and pursuant to Federal Rules of
22 Civil Procedure, Rule 23(c)(5), Plaintiffs allege a separate class for the following States
23 based on the applicable laws set forth in the alternate state law counts, only in the event
24 that the Court declines to certify the Nationwide Class above. Specifically, the state
25 classes consist of the following:

26 **California Class:**

27 All persons or entities in California who are current owners
28 and/or lessees of a Tesla Model S or Model X for primarily
personal, family or household purposes, as defined by
California Civil Code § 1791(a).

1 **Georgia Class:**

2 All persons or entities in Georgia who are current owners
3 and/or lessees of a Tesla Model S or Model X.

4 **North Carolina:**

5 All persons or entities in North Carolina who are current
6 owners and/or lessees of a Tesla Model S or Model X.

7 **Ohio:**

8 All persons or entities in Ohio who are current owners and/or
9 lessees of a Tesla Model S or Model X.

10 93. Together, the Nationwide Class and the State Classes shall be collectively
11 referred to herein as the “Class.” Excluded from the Class are Defendant Tesla, its
12 affiliates, employees, officers and directors, persons or entities that purchased the Class
13 Vehicles for resale, and the Judge(s) assigned to this case. Plaintiffs reserve the right to
14 modify, change, or expand the Class definitions based on discovery and further
15 investigation.

16 94. Numerosity: Upon information and belief, the Class is so numerous that
17 joinder of all members is impracticable. While the exact number and identities of
18 individual members of the Class are unknown at this time, such information being in the
19 sole possession of Defendant and obtainable by Plaintiff Son only through the discovery
20 process, Plaintiffs believe, and on that basis allege, that thousands of Class Vehicles have
21 been sold and leased in each of the States that are the subject of the Class.

22 95. Existence and Predominance of Common Questions of Fact and Law:
23 Common questions of law and fact exist as to all members of the Class. These questions
24 predominate over the questions affecting individual Class Members. These common
25 legal and factual questions include, but are not limited to, whether:

- 26 a. the Model S and Model X vehicles were sold or leased with a defect;
27 b. Tesla knew of the defect but failed to disclose the problem and its
28 consequences to its customers;
 c. Tesla misrepresented the safety of the Model S and Model X;

- 1 d. Tesla's misrepresentations and omissions regarding the safety of its
2 vehicles were likely to deceive a reasonable person in violation of the
3 CLRA;
- 4 e. Tesla violated the unlawful prong of the UCL by its violation of the
5 CLRA;
- 6 f. Tesla violated the unlawful prong of the UCL by its violation of
7 federal laws;
- 8 g. misrepresentations and omissions regarding the safety of its vehicles
9 were likely to deceive a reasonable person in violation of the
10 fraudulent prong of the UCL;
- 11 h. reasonable consumers would consider the defect or its consequences
12 to be material;
- 13 i. Tesla breached its express warranties regarding the safety and quality
14 of its vehicles;
- 15 j. Tesla breached the implied warranty of merchantability because its
16 vehicles were not fit for their ordinary purpose due to their sudden
17 acceleration defect;
- 18 k. Tesla has failed to provide free repairs as required by its New Vehicle
19 Limited Warranty and/or Powertrain Warranty;
- 20 l. Tesla should be required to disclose the existence of the defect;
- 21 m. Whether Plaintiffs and Class Members are entitled to damages,
22 restitution, restitutionary disgorgement, equitable relief, and/or other
23 relief; and
- 24 n. The amount and nature of such relief to be awarded to Plaintiffs and
25 the National Class.

26 96. Typicality: All of Plaintiffs' claims are typical of the claims of the Class
27 inasmuch as Plaintiffs purchased or leased a Tesla Model S or Model X vehicle, and each
28 member of the Class either purchased or leased a Tesla Model S or Model X vehicle.
Furthermore, Plaintiffs and all members of the Class sustained the same monetary and
economic injuries of being sold a vehicle with a safety defect that is still present in the
vehicle, and the remedy sought for each is the same in which Plaintiffs seek a fix of the
defect for themselves and all absent Class Members.

97. Adequacy: Plaintiffs are adequate representatives because their interests do
not conflict with the interests of the Class that they seek to represent, they have retained
counsel competent and highly experienced in complex class action litigation, and they

1 intend to prosecute this action vigorously. The interests of the Class will be fairly and
2 adequately protected by Plaintiffs and their counsel.

3 98. Superiority: A class action is superior to all other available means of fair
4 and efficient adjudication of the claims of Plaintiffs and members of the Class. The
5 injury suffered by each individual Class member is relatively small in comparison to the
6 burden and expense of individual prosecution of the complex and extensive litigation
7 necessitated by Defendant Tesla's conduct. It would be virtually impossible for members
8 of the Class individually to redress effectively the wrongs done to them. Even if the
9 members of the Class could afford such individual litigation, the court system could not.
10 Individualized litigation presents a potential for inconsistent or contradictory judgments.
11 Individualized litigation increases the delay and expense to all parties, and to the court
12 system, presented by the complex legal and factual issues of the case. By contrast, the
13 class action device presents far fewer management difficulties, and provides the benefits
14 of single adjudication, an economy of scale, and comprehensive supervision by a single
15 court. Upon information and belief, members of the Class can be readily identified and
16 notified based on, *inter alia*, Defendant's vehicle identification numbers, warranty
17 claims, registration records, and database of complaints.

18 99. Defendant has acted, and refused to act, on grounds generally applicable to
19 the Class, thereby making appropriate final equitable relief with respect to the Class as a
20 whole.

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1 VI

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 VIOLATIONS OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT

5 (“CLRA”) (Cal. Civ. Code § 1750, *et seq.*)

6 (By Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula on Behalf of the
7 Nationwide Class or, Alternatively, by Plaintiffs Son and Khansari on behalf of the
8 California Class)

9 100. Plaintiffs and the Class incorporate by reference each preceding and
10 succeeding paragraph as though fully set forth at length herein.

11 101. Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula brings this claim on
12 behalf of themselves and on behalf of the Members of the Nationwide Class.
13 Alternatively, Plaintiffs Son and Khansari bring this claim on behalf of themselves and
14 on behalf of the Members of the California Class.

15 102. Tesla is a “person” as that term is defined in California Civil Code
16 § 1761(c).

17 103. Plaintiffs and the Class are “consumers” as that term is defined in California
18 Civil Code § 1761(d).

19 104. Plaintiff Son previously filed an affidavit that shows venue in this District is
20 proper, to the extent such an affidavit is required by California Civil Code § 1780(d).

21 105. Tesla engaged in unfair and deceptive acts in violation of the CLRA by the
22 practices described above, and by knowingly and intentionally concealing from Plaintiffs
23 and Class Members that the Model S and Model X suffer from a defect(s) (and the costs,
24 risks, and diminished value of the vehicles as a result of this problem). These acts and
25 practices violate, at a minimum, the following sections of the CLRA:

26 (a)(1) representing that Defective Vehicles have characteristics,
27 uses, benefits, and qualities which they do not have

28 (a)(2) Misrepresenting the source, sponsorship, approval or
certification of goods or services;

1 (a)(5) Representing that goods or services have sponsorships,
2 characteristics, uses, benefits or quantities which they do not
3 have, or that a person has a sponsorship, approval, status,
affiliation or connection which he or she does not have;

4 (a)(7) Representing that goods or services are of a particular
5 standard, quality, or grade, or that goods are of a particular style
or model, if they are of another; and

6 (a)(9) Advertising goods and services with the intent not to sell
7 them as advertised.

8 106. Tesla's unfair or deceptive acts or practices occurred repeatedly in Tesla's
9 trade or business, were capable of deceiving a substantial portion of the purchasing
10 public, and imposed a serious safety risk on the public.

11 107. Tesla knew that the Model S and Model X were defectively designed or
12 manufactured, unsafe, and were not suitable for their intended use.

13 108. Tesla knew that the Model S and Model X were defectively designed or
14 manufactured, would fail without warning, and were not suitable for their intended use of
15 regulating power and vehicle speed based on driver commands. Tesla nevertheless failed
16 to warn Plaintiffs and the Class Members about these inherent dangers despite having a
17 duty to do so.

18 109. Tesla owed Plaintiffs a duty to disclose the defective nature of Model S and
19 Model X, including the dangerous risk of throttle control failure and the lack of adequate
20 fail-safe mechanisms, because they:

- 21 a. Possessed exclusive knowledge of the defects rendering the Model S and
22 Model X inherently more dangerous and unreliable than similar vehicles;
23 b. Intentionally concealed the hazardous situation with Model S and Model X
24 vehicles through its deceptive marketing campaign designed to hide the life-
25 threatening problems from Plaintiffs; and/or
26 c. Made incomplete representations about the safety and reliability of the
27 Model S and Model X generally, while purposefully withholding material
28 facts from Plaintiffs that contradicted these representations.

1 110. The Model S and Model X vehicles pose an unreasonable risk of death or
2 serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public
3 at large, because they are susceptible to incidents of SUA.

4 111. Whether or not a vehicle (a) accelerates only when commanded to do so;
5 (b) accelerates when it knows will result in the collision with a fixed object; and (c) does
6 not activate the automatic emergency braking when it receives instructions to accelerate
7 100% into a fixed object are facts that a reasonable consumer would consider important
8 in selecting a vehicle to purchase or lease.

9 112. When Plaintiffs bought leased their Model S or Model X for personal,
10 family, and household purposes, they reasonably expected the vehicle would (a) not
11 accelerate unless commanded to do so by application of the accelerator pedal or other
12 driver controlled means; (b) would not accelerate when it knows will result in the
13 collision with a fixed object; and (c) would not deactivate the automatic emergency
14 braking when it receives instructions to accelerate 100% into a fixed object.

15 113. Tesla's unfair or deceptive acts or practices were likely to and did in fact
16 deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of
17 Defective Vehicles.

18 114. As a result of its violations of the CLRA detailed above, Tesla caused actual
19 damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs and
20 the Class Members currently own or lease, or within the class period have owned or
21 leased, a Model S or Model X that is defective and inherently unsafe.

22 115. Plaintiffs risk irreparable injury as a result of Tesla's acts and omissions in
23 violation of the CLRA, and these violations present a continuing risk to Plaintiffs as well
24 as to the general public.

25 116. The facts concealed or not disclosed by Tesla to Plaintiffs and the Class
26 Members are material in that a reasonable consumer would have considered them to be
27 important in deciding whether to purchase the Model S or Model X or pay a lesser price.
28 Had Plaintiffs and the Class Members known about the defective nature of the Model S

1 and Model X, they would not have purchased the Model S or Model X or would have
2 paid less for them.

3 117. Plaintiffs' and the other Class Members' injuries were proximately caused
4 by Tesla's fraudulent and deceptive business practices.

5 118. Pursuant to the provisions of California Civil Code section 1782(a),
6 Plaintiffs sent a notice letter to Defendant providing it with the opportunity to correct its
7 business practices. To Plaintiffs' knowledge, Defendant no action within the specified
8 notice period.

9 119. Pursuant to California Civil Code section 1780, Plaintiffs, on behalf of
10 themselves and Members of the California Class, seek an order from this Court enjoining
11 Defendant from continuing the methods, acts and practices set forth above and a
12 declaration that Defendant's conduct violates the Consumers Legal Remedies Act, as
13 well as actual and punitive damages and attorneys' fees and costs.

14 **SECOND CAUSE OF ACTION**

15 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW**

16 **(Cal. Bus. & Prof. Code § 17200)**

17 **(By Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula on Behalf of the**
18 **Nationwide Class or, Alternatively, by Plaintiffs Son and Khansari on behalf of the**
19 **California Class)**

20 120. Plaintiffs' and the Class incorporate by reference each preceding and
21 succeeding paragraph as though fully set forth at length herein.

22 121. Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula brings this claim on
23 behalf of themselves and on behalf of the Members of the Nationwide Class.

24 Alternatively, Plaintiffs Son and Khansari bring this claim on behalf of themselves and
25 on behalf of the Members of the California Class.

26 122. The California Unfair Competition Law ("UCL") prohibits acts of "unfair
27 competition," including any "unlawful, unfair or fraudulent business act or practice" and
28 "unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

1 123. Tesla has violated the unlawful prong of section 17200 by its violations of
2 the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, as set forth in Count I
3 by the acts and practices set forth in this Complaint.

4 124. Tesla has violated the fraudulent prong of section 17200 because the
5 misrepresentations and omissions regarding the safety and reliability of its vehicles as set
6 forth in this Complaint were likely to deceive a reasonable consumer, and the information
7 would be material to a reasonable consumer.

8 125. Tesla has violated the unfair prong of section 17200 because the acts and
9 practices set forth in the Complaint, including the manufacture and sale of vehicles with a
10 sudden acceleration defect that lack effective fail-safe mechanism, and Tesla's failure to
11 adequately investigate, disclose and remedy, offend established public policy, and
12 because the harm they cause to consumers greatly outweighs any benefits associated with
13 those practices.

14 126. Tesla's conduct has also impaired competition within the automotive
15 vehicles market and has prevented Plaintiff from making fully informed decisions about
16 whether to purchase or lease Defective Vehicles and/or the price to be paid to purchase or
17 lease Defective Vehicles.

18 127. Plaintiffs have suffered an injury in fact, including the loss of money or
19 property, as a result of Tesla's unfair, unlawful and/or deceptive practices. As set forth in
20 the allegations concerning Plaintiffs, in purchasing or leasing their Tesla vehicle,
21 Plaintiffs relied on the misrepresentations and/or omissions of Tesla with respect of the
22 safety and reliability of the vehicles. Tesla's representations turned out not to be true
23 because the vehicles can unexpectedly and dangerously accelerate out of the drivers'
24 control. Had Plaintiffs known this, they would not have purchased or leased their Tesla
25 vehicles and/or paid as much for them.

26 128. All of the wrongful conduct alleged herein occurred, and continues to occur,
27 in the conduct of Tesla's business. Tesla's wrongful conduct is part of a pattern or
28

1 generalized course of conduct that is still perpetuated and repeated, both in the State of
2 California and nationwide.

3 129. Plaintiffs request that this Court enter such orders or judgments as may be
4 necessary to enjoin Tesla from continuing its unfair, unlawful, and/or deceptive practices
5 and to restore to Plaintiffs and members of the Class any money Tesla acquired by unfair
6 competition, including restitution and/or restitutionary disgorgement, as provided in
7 California Business & Professions Code section 17203 and California Civil Code section
8 3345; and for such other relief set forth below.

9 **THIRD CAUSE OF ACTION**

10 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**

11 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

12 **(By Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula on Behalf of the**
13 **Nationwide Class or, Alternatively, by Plaintiffs Son and Khansari on behalf of the**
14 **California Class)**

15 130. Plaintiffs and the Class incorporate by reference each preceding and
16 succeeding paragraph as though fully set forth at length herein.

17 131. Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula brings this claim on
18 behalf of themselves and on behalf of the Members of the Nationwide Class.
19 Alternatively, Plaintiffs Son and Khansari bring this claim on behalf of themselves and
20 on behalf of the Members of the California Class.

21 132. California Business & Professions Code section 17500 states: “It is
22 unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of real or
23 personal property . . . to induce the public to enter into any obligation relating thereto, to
24 make or disseminate or cause to be made or disseminated . . . from this state before the
25 public in any state, in any newspaper or other publication, or any advertising device, . . .
26 or in any other manner or means whatever, including over the Internet, any statement . . .
27 which is untrue or misleading, and which is known, or which by the exercise of
28 reasonable care should be known, to be untrue or misleading.”

1 133. Tesla caused to be made or disseminated throughout California and the
2 United States, through advertising, marketing and other publications, statements that
3 were untrue or misleading, and which were known, or which by the exercise of
4 reasonable care should have been known to Tesla, to be untrue and misleading to
5 consumers, including Plaintiffs and the other Class Members.

6 134. Tesla has violated section 17500 because the misrepresentations and
7 omissions regarding the safety, reliability, and functionality of its Model S and Model X
8 vehicles as set forth in this Complaint were material and likely to deceive a reasonable
9 consumer.

10 135. Plaintiffs and the other Class Members have suffered an injury in fact,
11 including the loss of money or property, as a result of Tesla's unfair, unlawful, and/or
12 deceptive practices. In purchasing and/or leasing their Tesla vehicles, Plaintiffs and the
13 other Class Members relied on the misrepresentations and/or omissions of Tesla with
14 respect to the safety and reliability of such vehicles. Tesla's representations turned out
15 not to be true because the vehicles can unexpectedly and dangerously accelerate out of
16 the driver's control; the vehicle implements a full acceleration instruction into a fixed
17 object; and fails to use automatic emergency braking. Had Plaintiffs and the other Class
18 Members known this, they would not have purchased or leased their Class Vehicles
19 and/or paid as much for them. Accordingly, Plaintiffs and the other Class Members
20 overpaid for their Class Vehicles and did not receive the benefit of their bargain.

21 136. All of the wrongful conduct alleged herein occurred, and continues to occur,
22 in the conduct of Tesla's business. Tesla's wrongful conduct is part of a pattern or
23 generalized course of conduct that is still perpetuated and repeated, both in the state of
24 California and nationwide.

25 **137.** Plaintiffs, individually and on behalf of the other Class Members, requests
26 that this Court enter such orders or judgments as may be necessary to enjoin Tesla from
27 continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs
28

1 and the other Class Members any money Tesla acquired by unfair competition, including
2 restitution and/or restitutionary disgorgement, and for such other relief set forth below.

3 **FOURTH CAUSE OF ACTION**

4 **BREACH OF EXPRESS WARRANTY**

5 **(By Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula on Behalf of the**
6 **Nationwide Class or, Alternatively, by Plaintiffs Son and Khansari on behalf of the**
7 **California Class)**

8 138. Plaintiffs and the Class incorporate by reference each preceding and
9 succeeding paragraph as though fully set forth at length herein.

10 139. Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula brings this claim on
11 behalf of themselves and on behalf of the Members of the Nationwide Class.
12 Alternatively, Plaintiffs Son and Khansari bring this claim on behalf of themselves and
13 on behalf of the Members of the California Class.

14 140. Tesla is and was at all relevant times a merchant with respect to motor
15 vehicles under California Commercial Code section 2104.

16 141. Tesla provided all purchasers and lessees of the Model S and Model X
17 vehicles with the express warranties described herein, which became part of the basis of
18 the bargain. Accordingly, Tesla's warranties are express warranties under state law.

19 142. In the course of selling its vehicles, Tesla expressly warranted in writing that
20 its vehicles were covered by a Basic Warranty that provided: "the Basic Vehicle Limited
21 Warranty covers the repair or replacement necessary to correct defects in the materials or
22 workmanship of any parts manufactured or supplied by Tesla that occur under normal use
23 for a period of 4 years or 50,000 miles (80,000 km), whichever comes first."

24 143. The parts affected by the defect, including the accelerator control system and
25 Automated Emergency Braking, were distributed by Tesla in the Model S and Model X
26 and are covered by the warranties Tesla provided to all purchasers and lessors of its
27 vehicles.
28

1 144. Tesla breached these warranties by selling and leasing Class Vehicles with
2 the defect, requiring repair or replacement within the applicable warranty periods, and
3 refusing to honor the warranties by providing free repairs or replacements during the
4 applicable warranty periods.

5 145. Plaintiffs notified Tesla of the breach within a reasonable time, and/or were
6 not required to do so because affording Tesla a reasonable opportunity to cure its breach
7 of written warranty would have been futile. Tesla also knew of the defect and yet have
8 chosen to conceal it and to fail to comply with their warranty obligations.

9 146. As a direct and proximate cause of Tesla's breach, Plaintiffs and the other
10 Class Members bought or leased Class Vehicles they otherwise would not have, overpaid
11 for their vehicles, did not receive the benefit of their bargain, and their Class Vehicles
12 suffered a diminution in value.

13 147. Tesla's attempt to disclaim or limit these express warranties vis-à-vis
14 consumers is unconscionable and unenforceable under the circumstances here.
15 Specifically, Tesla's warranty limitation is unenforceable because they knowingly sold a
16 defective product without informing consumers about the defect.

17 148. The time limits contained in Tesla's warranty period were also
18 unconscionable and inadequate to protect Plaintiffs and members of the Class. Among
19 other things, Plaintiffs and Class Members had no meaningful choice in determining
20 these time limitations the terms of which unreasonably favored Tesla. A gross disparity
21 in bargaining power existed between Tesla and the Class Members, and Tesla knew or
22 should have known that the Model S and Model X vehicles were defective at the time of
23 sale and would fail well before the expiration of their useful life.

24 149. Plaintiffs and the Class Members have complied with all obligations under
25 the warranty, or otherwise have been excused from performance of said obligations as a
26 result of Defendant's conduct described herein.

27
28

1 **FIFTH CAUSE OF ACTION**

2 **BREACH OF IMPLIED WARRANTY**

3 **(By Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula on Behalf of the**
4 **Nationwide Class or, Alternatively, by Plaintiffs Son and Khansari on behalf of the**
5 **California Class, and by Plaintiff K.M.S., individually)**

6 150. Plaintiffs and the Class incorporate by reference each preceding and
7 succeeding paragraph as though fully set forth at length herein.

8 151. Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula brings this claim on
9 behalf of themselves and on behalf of the Members of the Nationwide Class.

10 Alternatively, Plaintiffs Son and Khansari bring this claim on behalf of themselves and
11 on behalf of the Members of the California Class. Plaintiff K.M.S brings this claims
12 individually.

13 152. Tesla was at all relevant times the manufacturer, distributor, warrantor,
14 and/or seller of the Model S and Model X. Tesla knew or had reason to know of the
15 specific use for which the Model S and Model X vehicles were purchased.

16 153. Tesla provided Plaintiffs and the other Class members with an implied
17 warranty that the Model S and Model X and any parts thereof are merchantable and fit for
18 the ordinary purposes for which they were sold. However, the Model S and Model X
19 vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe
20 transportation at the time of sale or thereafter because, *inter alia*, there are defects in the
21 vehicle control systems that permit sudden unintended acceleration to occur; the vehicles
22 do not have an adequate fail-safe to protect against such SUA events; and the accelerator
23 control system was not adequately tested to prevent SUA events.

24 154. Therefore, the Model S and Model X vehicles are not fit for their particular
25 purpose of providing safe and reliable transportation.

26 155. Tesla impliedly warranted that the Model S and Model X vehicles were of
27 merchantable quality and fit for such use. This implied warranty included, among other
28 things: (i) a warranty that the Model S and Model X vehicles manufactured, supplied,

1 distributed, and/or sold by Tesla were safe and reliable for providing transportation and
2 would not experience premature and catastrophic failure; and (ii) a warranty that the
3 Model S and Model X would be fit for its intended use while being operated.

4 156. Contrary to the applicable implied warranties, the Model S and Model X
5 vehicles at the time of sale and thereafter were not fit for their ordinary and intended
6 purpose of providing Plaintiffs and the other Class Members with reliable, durable, and
7 safe transportation. Instead, the Model S and Model X suffer from a defective design(s)
8 and/or manufacturing defect(s).

9 157. Tesla's actions, as complained of herein, breached the implied warranty that
10 the Class Vehicles were of merchantable quality and fit for such use.

11 158. After Plaintiffs received the injuries complained of herein, notice was given
12 by Plaintiffs to Defendant, by direct communication with Defendant Tesla as well as by
13 the filing of this lawsuit in the time and in the manner and in the form prescribed by law,
14 of the breach of said implied warranty.

15 159. As a legal and proximate result of the breach of said implied warranty,
16 Plaintiffs sustained the damages herein set forth.

17 160. Plaintiffs and Class Members are, therefore, entitled to damages in an
18 amount to be proven at the time of trial.

19 **SIXTH CAUSE OF ACTION**

20 **BREACH OF WRITTEN WARRANTY UNDER THE MAGNUSON-MOSS**
21 **WARRANTY ACT**

22 **(15 U.S.C. § 2301, *et seq.*)**

23 **(By Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula on Behalf of the**
24 **Nationwide Class or, Alternatively, by Plaintiffs Son and Khansari on behalf of the**
25 **California Class)**

26 161. Plaintiffs and the Class incorporate by reference each preceding and
27 succeeding paragraph as though fully set forth at length herein.
28

1 162. Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula brings this claim on
2 behalf of themselves and on behalf of the Members of the Nationwide Class.

3 Alternatively, Plaintiffs Son and Khansari bring this claim on behalf of themselves and
4 on behalf of the Members of the California Class.

5 163. Plaintiffs and the Class are “consumers” within the meaning of the
6 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

7 164. Defendant Tesla is a “supplier” and “warrantor” within the meaning of 15
8 U.S.C. §§ 2301(4)-(5).

9 165. The Model S and Model X vehicles are “consumer products” within the
10 meaning of 15 U.S.C. § 2301(1).

11 166. Tesla’s 5 year/60,000 miles Basic Warranty and 10 year/100,000 miles
12 Powertrain Warranty are “written warranties” within the meaning of 15 U.S.C. § 2301(6).

13 167. Tesla breached these warranties as described in more detail above, but
14 generally by not repairing or adjusting the Defective Vehicles’ materials and
15 workmanship defects; providing Defective Vehicles not in merchantable condition and
16 which present an unreasonable risk of sudden unintended acceleration and not fit for the
17 ordinary purpose for which vehicles are used; providing Vehicles that were not fully
18 operational, safe, or reliable; and not curing defects and nonconformities once they were
19 identified.

20 168. Plaintiffs and Class Members have had sufficient direct dealings with either
21 the Tesla or its agents to establish privity of contract between Plaintiffs and the Class
22 members. However, privity is also not required because Plaintiffs’ and Class Members’
23 Model S and Model X vehicles are dangerous instrumentalities due to the aforementioned
24 defects and nonconformities.

25 169. Plaintiffs and the other Class Members relied on the existence and length of
26 the express warranties in deciding whether to purchase or lease the Class Vehicles.

27 170. Defendant Tesla’s breach of the express warranties has deprived Plaintiffs
28 and the other Class Members of the benefit of their bargain.

1 171. The amount in controversy of Plaintiffs' individual claims meets or exceeds
2 the sum or value of \$25.00. In addition, the amount in controversy meets or exceeds the
3 sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all
4 claims to be determined in this suit.

5 172. Tesla has been afforded a reasonable opportunity to cure its breach of the
6 written warranties and/or Plaintiffs and the other Class Members were not required to do
7 so because affording Tesla a reasonable opportunity to cure its breach of written
8 warranties would have been futile. Tesla was also on notice of the alleged defect from
9 the complaints and service requests it received from Class Members, as well as from its
10 own warranty claims, customer complaint data, and/or parts sales data.

11 173. As a direct and proximate cause of Tesla's breach of the written warranties,
12 Plaintiffs and the other Class Members sustained damages and other losses in an amount
13 to be determined at trial. Defendant Tesla's conduct damaged Plaintiffs and the other
14 Class Members, who are entitled to recover actual damages, consequential damages,
15 specific performance, diminution in value, costs, including statutory attorney fees and/or
16 other relief as deemed appropriate.

17 **SEVENTH CAUSE OF ACTION**

18 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

19 **(By Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula on Behalf of the**
20 **Nationwide Class or, Alternatively, by Plaintiffs Son and Khansari on behalf of the**
21 **California Class)**

22 174. Plaintiffs and the Class incorporate by reference each preceding and
23 succeeding paragraph as though fully set forth at length herein.

24 175. Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula bring this claim on
25 behalf of themselves and on behalf of the Members of the Nationwide Class.
26 Alternatively, Plaintiffs Son and Khansari bring this claim on behalf of themselves and
27 on behalf of the Members of the California Class. To the extent Tesla's repair or adjust
28 commitment is deemed not to be a warranty under California's Commercial Code,

1 Plaintiffs plead in the alternative under common law warranty and contract law. Tesla
2 limited the remedies available to Plaintiffs and the Class Members to just repairs and
3 adjustments needed to correct defects in materials or workmanship of any part supplied
4 by Tesla and/or warranted the quality or nature of those services to Plaintiffs.

5 176. Tesla breached this warranty or contract obligation by failing to repair the
6 Model S and Model X evidencing a sudden unintended acceleration problem or to replace
7 them.

8 177. As a direct and proximate result of Tesla’s breach of contract of common
9 law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at
10 trial, which shall include, but is not limited to, all compensatory damages, incidental and
11 consequential damages, and other damages allowed by law.

12 **EIGHTH CAUSE OF ACTION**

13 **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT FOR**
14 **BREACH OF EXPRESS WARRANTIES**

15 **(Cal. Civ. Code § 1793.2(d) & 1791.2)**

16 **(By Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula on Behalf of the**
17 **Nationwide Class or, Alternatively, by Plaintiffs Son and Khansari on behalf of the**
18 **California Class)**

19 178. Plaintiffs and the Class incorporate by reference each preceding and
20 succeeding paragraph as though fully set forth at length herein.

21 179. Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula bring this claim on
22 behalf of themselves and on behalf of the Members of the Nationwide Class.

23 Alternatively, Plaintiffs Son and Khansari bring this claim on behalf of themselves and
24 on behalf of the Members of the California Class.

25 180. Plaintiffs and the Class Members who purchased or leased the Model S and
26 the Model X in California are “buyers” within the meaning of California Civil Code
27 section 1791.
28

1 181. The Tesla vehicles are “consumer goods” within the meaning of California
2 Civil Code section 1791(a).

3 182. Tesla is a “manufacturer” of the Model S and Model X within the meaning
4 of California Civil Code section 1791(j).

5 183. Plaintiffs and the Class bought/leased new motor vehicles manufactured by
6 Tesla.

7 184. Tesla made express warranties to Plaintiffs and the Class within the meaning
8 of California Civil Code sections 1791.2 and 1793.2, both in its warranty manual and
9 advertising, as described above.

10 185. Tesla’s Model S and Model X had and continue to have defects that were
11 and continue to be covered by Tesla’s express warranties and these defects substantially
12 impair the use, value, and safety of Tesla’s vehicles to reasonable consumers like
13 Plaintiffs and the Class.

14 186. Plaintiffs and the Class delivered their vehicles to Tesla or its authorized
15 repair facility for repair of the defects and/or notified Tesla in writing of the need for
16 repair of the defects because they reasonably could not deliver the vehicles to Tesla or its
17 authorized repair facility due to fear of unintended acceleration.

18 187. Tesla and its authorized repair facilities failed and continue to fail to repair
19 the vehicles to match Tesla’s written warranties after a reasonable number of
20 opportunities to do so.

21 188. Plaintiffs and the Class Members gave Tesla or its authorized repair facilities
22 at least two opportunities to fix the defects unless only one repair attempt was possible
23 because the vehicle was later destroyed or because Tesla or its authorized repair facility
24 refused to attempt the repair.

25 189. Tesla did not promptly replace or buy back the vehicles of Plaintiffs and the
26 Class.

27 190. As a result of Tesla’s breach of its express warranties, Plaintiffs and the
28 Class received goods whose dangerous condition substantially impairs their value to

1 Plaintiffs and the Class. Plaintiffs and the Class have been damaged as a result of the
2 products' malfunctioning, and the nonuse of their vehicles.

3 191. Pursuant to California Civil Code sections 1793.2 & 1794, Plaintiffs and the
4 Class are entitled to damages and other legal and equitable relief including, at their
5 election, the purchase price of their vehicles, or the overpayment or diminution in value
6 of their vehicles.

7 **NINTH CAUSE OF ACTION**

8 **VIOLATION OF THE SONG-BEVERLY ACT – BREACH OF IMPLIED**
9 **WARRANTY**

10 **(Cal. Civ. Code §§ 1792, 1791.1, *et seq.*)**

11 **(By Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula on Behalf of the**
12 **Nationwide Class or, Alternatively, by Plaintiffs Son and Khansari on behalf of the**
13 **California Class)**

14 192. Plaintiffs and the Class incorporate by reference each preceding and
15 succeeding paragraph as though fully set forth at length herein.

16 193. Plaintiffs Son, Khansari, Jarrahi, Tomko, and Shastrula bring this claim on
17 behalf of themselves and on behalf of the Members of the Nationwide Class.

18 Alternatively, Plaintiffs Son and Khansari bring this claim on behalf of themselves and
19 on behalf of the Members of the California Class.

20 194. At all relevant times hereto, Tesla was the manufacturer, distributor,
21 warrantor, and/or seller of the Model S and Model X. Tesla knew or should have known
22 of the specific use for which the Model S and Model X vehicles were purchased.

23 195. Tesla provided Plaintiffs and the Class Members with an implied warranty
24 that the Model S and Model X vehicles, and any parts thereof, are merchantable and fit
25 for the ordinary purposes for which they were sold. However, the Model S and Model X
26 vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe
27 transportation at the time of sale or thereafter because, *inter alia*, there are defects in the
28 vehicle control systems that permit sudden unintended acceleration to occur; the vehicles

1 do not have an adequate fail-safe to protect against such SUA events; and the accelerator
2 control system was not adequately tested.

3 196. The Model S and Model X vehicles are not fit for the purpose of providing
4 safe and reliable transportation because of the defect.

5 197. Tesla impliedly warranted that the Model S and Model X vehicles were of
6 merchantable quality and fit for such use. This implied warranty included, among other
7 things: (i) a warranty that the Model S and Model X vehicles manufactured, supplied,
8 distributed, and/or sold by Tesla were safe and reliable for providing transportation and
9 would not experience premature and catastrophic failure; and (ii) a warranty that the
10 Model S and Model X would be fit for their intended use while being operated.

11 198. Contrary to the applicable implied warranties, the Model S and Model X
12 vehicles at the time of sale and thereafter were not fit for their ordinary and intended
13 purpose of providing Plaintiffs and the other Class Members with reliable, durable, and
14 safe transportation. Instead, the Model S and Model X suffer from a defective design(s)
15 and/or manufacturing defect(s). Tesla's actions, as complained of herein, breached the
16 implied warranty that the Class Vehicles were of merchantable quality and fit for such
17 use in violation of California Civil Code sections 1792 and 1791.1.

18 **TENTH CAUSE OF ACTION**

19 **STRICT PRODUCT LIABILITY**

20 **(By Plaintiffs Son and K.M.S., individually)**

21 199. Plaintiffs incorporate by reference each preceding and succeeding paragraph
22 as though fully set forth at length herein.

23 200. Plaintiffs Son and K.M.S., individually, are informed and believe and based
24 thereon allege that Tesla designed, manufactured, researched, tested, assembled,
25 installed, marketed, advertised, distributed, and sold a certain 2016 Tesla Model X,
26 bearing Vehicle Identification Number 5YJXCBE27GF009026 (hereinafter referred to as
27 the "subject vehicle").
28

1 201. At all times relevant hereto, Tesla knew that the subject vehicle would be
2 operated and inhabited by consumers without inspection for defects.

3 202. At the time of the collision described above, the subject vehicle was being
4 used in a manner and fashion that was foreseeable by Tesla, and in a manner in which it
5 was intended to be used.

6 203. Tesla designed, engineered, developed, manufactured, fabricated,
7 assembled, equipped, tested or failed to test, inspected or failed to inspect, repaired,
8 retrofitted or failed to retrofit, failed to recall, labeled, advertised, promoted, marketed,
9 supplied, distributed, wholesaled, and sold the subject vehicle and its component parts
10 and constituents, which was intended by Tesla to be used for the purpose of use as a
11 passenger vehicle, and other related activities.

12 204. The subject vehicle was unsafe for its intended use by reason of defects in its
13 manufacture, design, testing, components and constituents, so that it would not safely
14 serve its purpose, but would instead expose the users of said product, and others, to
15 serious injuries because of the failure of Tesla to properly guard and protect the users of
16 the subject vehicle, and others, from the defective design of said product.

17 205. Tesla designed the subject vehicle defectively, causing it to fail to perform
18 as safely as an ordinary consumer would expect when used in an intended or reasonably
19 foreseeable manner.

20 206. The risks inherent in the design of the subject vehicle outweigh significantly
21 any benefits of such design.

22 207. Plaintiffs were not aware of the aforementioned defects.

23 208. As a legal and proximate result of the aforementioned defects of the subject
24 vehicle, Plaintiffs Son and K.M.S. sustained the injuries and damages set forth herein.

25 209. Plaintiffs Son and K.M.S. are, therefore, entitled to damages in an amount to
26 be proven at the time of trial.

27
28

ELEVENTH CAUSE OF ACTION

NEGLIGENCE

(By Plaintiffs Son and K.M.S., individually)

210. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein

211. At all times herein mentioned, Tesla designed, manufactured, assembled, analyzed, recommended, merchandised, advertised, promoted, distributed, supplied, and sold to distributors and retailers for sale, the subject vehicle and/or its component parts.

212. Tesla owed Plaintiffs Son and K.M.S. a duty to exercise reasonable care in the design, testing, manufacture, assembly, sale, distribution and servicing of the subject vehicle, including a duty to ensure that the subject vehicle did not cause Plaintiffs Son and K.M.S., other users, bystanders, or the public, unnecessary injuries or deaths.

213. Tesla knew or should have known that the subject vehicle is defectively designed and inherently dangerous and has a propensity to suddenly accelerate, lose control, and cause injuries.

214. Tesla knew or should have known that the subject vehicle was defectively designed and/or manufactured and was therefore prone to failure under normal driving conditions, potentially causing injuries and/or deaths.

215. Tesla failed to exercise ordinary care and breached their duties by, among other things:

- a. Failure to use due care in the manufacture, distribution, design, sale, testing, and servicing of the subject vehicle and its component parts in order to avoid the aforementioned risks to individuals;
- b. Failure to provide adequate warning of the sudden acceleration problem and its propensity to cause and/or contribute to an accident;
- c. Failure to incorporate within the vehicle and its design reasonable safeguards and protections against sudden acceleration and the consequences thereof;

- d. Failure to make timely correction to the design of the subject vehicle to correct the sudden acceleration problems;
- e. Failure to adequately identify and mitigate the hazards associated with sudden unintended acceleration in accordance with good engineering practices and other ways; and,
- f. Were otherwise careless or negligent.

216. The aforementioned negligent acts and omissions of Tesla were the direct and proximate cause of Plaintiffs’ damages.

217. Plaintiffs Son and K.M.S. are, therefore, entitled to damages in an amount to be proven at trial, together with interest thereon and costs.

TWELFTH CAUSE OF ACTION

FAILURE TO WARN

(By Plaintiffs Son and K.M.S., individually)

218. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein

219. Tesla knew that the subject vehicle, and its component parts, would be purchased and used without inspection for defects in the design of the vehicle.

220. The subject vehicle was defective when it left the Defendant’s control.

221. Tesla knew or should have known of the substantial dangers involved in the reasonably foreseeable use of these vehicles, whose defective design, manufacturing, and lack of sufficient warnings caused them to have an unreasonably dangerous propensity to suffer from sudden unintended acceleration and thereby cause injuries.

222. Tesla failed to adequately warn of the substantial dangers known or knowable at the time of the defective vehicles’ design, manufacture, and distribution.

223. Tesla failed to provide adequate warnings, instructions, guidelines or admonitions to members of the consuming public, including Plaintiffs Son and K.M.S., of the defects, which Tesla knew, or in the exercise of reasonable care should have known, to have existed in the subject vehicle, and its component parts.

1 224. Tesla knew that these substantial dangers are not readily recognizable to an
2 ordinary consumer and that consumers would purchase and use these products without
3 inspection.

4 225. At the time of Plaintiffs Son’s and K.M.S.’s injuries, the subject vehicle was
5 being used in the manner intended by Tesla, and in a manner that was reasonably
6 foreseeable by Tesla as involving substantial danger that was not readily apparent to its
7 users.

8 226. Plaintiffs Son’s and K.M.S.’s damages were the legal and proximate result
9 of the actions and inactions of Tesla, who owed a duty to Plaintiffs in designing,
10 manufacturing, warning about, and distributing the subject vehicle.

11 **THIRTEENTH CAUSE OF ACTION**

12 **VIOLATION OF GEORGIA’S UNIFORM DECEPTIVE TRADE**
13 **PRACTICES ACT**

14 **(Ga. Code Ann. § 10-1-370, et seq.)**

15 **(By Plaintiff Shastrula on Behalf of the Georgia Class)**

16 227. Plaintiffs and the Class incorporate by reference each preceding and
17 succeeding paragraph as though fully set forth at length herein.

18 228. Plaintiff Shastrula brings this claim on behalf of himself and on behalf of the
19 Members of the Georgia Class.

20 229. The conduct of Defendant as set forth herein constitutes unfair or deceptive
21 acts or practices, including, but not limited to Defendant’s manufacture and sale of
22 vehicles with a sudden acceleration defect that lack other effective fail-safe mechanisms,
23 which Defendant failed to adequately investigate, disclose and remedy, and its
24 misrepresentations and omissions regarding the safety and reliability of its vehicles.

25 230. Defendant’s actions as set forth above occurred in the conduct of trade or
26 commerce.

27 231. Defendant’s actions impact the public interest because Plaintiff Shastrula
28 was injured in exactly the same way as thousands of others purchasing and/or leasing

1 Tesla vehicles as a result of Tesla’s generalized course of deception. All of the wrongful
2 conduct alleged herein occurred, and continues to occur, in the conduct of Defendant’s
3 business.

4 232. Plaintiff Shastrula and the Georgia Class were injured as a result of
5 Defendant’s conduct. Plaintiff Shastrula and the Class Members overpaid for their
6 Defective Vehicles and did not receive the benefit of their bargain, and their vehicles
7 have suffered a diminution in value.

8 233. Defendant’s conduct proximately caused the injuries to Plaintiff Shastrula
9 and the Class Members.

10 234. Defendant is liable to Plaintiff Shastrula and the Class Members for damages
11 in amounts to be proven at trial, including attorneys’ fees, costs, and treble damages.

12 235. Pursuant to Georgia Code Annotated section 10-1-370, Plaintiff Shastrula
13 will serve the Georgia Attorney General with a copy of this complaint as Plaintiffs seek
14 injunctive relief.

15 **FOURTEENTH CAUSE OF ACTION**

16 **VIOLATION OF GEORGIA’S FAIR BUSINESS PRACTICES ACT**

17 **(Ga. Code Ann. § 10-1-390, *et seq.*)**

18 **(By Plaintiff Shastrula on Behalf of the Georgia Class)**

19 236. Plaintiffs and the Class incorporate by reference each preceding and
20 succeeding paragraph as though fully set forth at length herein.

21 237. Plaintiff Shastrula brings this claim on behalf of himself and on behalf of the
22 Members of the Georgia Class.

23 238. Defendant’s conduct as set forth herein constitutes unfair or deceptive acts
24 or practices, including, but not limited to, Defendant’s manufacture and sale of vehicles
25 with a sudden acceleration defect that lack effective fail-safe mechanisms, which
26 Defendant failed to adequately investigate, disclose and remedy, and its
27 misrepresentations and omissions regarding the safety and reliability of its vehicles.
28

1 239. Defendant's actions as set forth above occurred in the conduct of trade or
2 commerce.

3 240. Defendant's actions impact the public interest because Plaintiff Shastrula
4 and the Class Members were injured in exactly the same way as thousands of others
5 purchasing and/or leasing Tesla vehicles as a result of Defendant's generalized course of
6 deception. All of the wrongful conduct alleged herein occurred, and continues to occur,
7 in the conduct of Defendant's business.

8 241. Plaintiff Shastrula and the Class were injured as a result of Defendant's
9 conduct. Plaintiff Shastrula and the Class overpaid for their Defective Vehicles and did
10 not receive the benefit of their bargain, and their vehicles have suffered a diminution in
11 value.

12 242. Defendant's conduct proximately caused the injuries to Plaintiff Shastrula
13 and Class Members.

14 243. Defendant is liable to Plaintiff Shastrula and the Class for damages in
15 amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

16 244. Pursuant to Georgia Code Annotated section 10-1-390, Plaintiff Shastrula
17 will serve the Georgia Attorney General with a copy of this complaint as Plaintiff
18 Shastrula seeks injunctive relief.

19 **FIFTEENTH CAUSE OF ACTION**
20 **BREACH OF EXPRESS WARRANTY**

21 **(Ga. Code Ann. § 11-2-313)**

22 **(By Plaintiff Shastrula on Behalf of the Georgia Class)**

23 245. Plaintiffs and the Class incorporate by reference each preceding and
24 succeeding paragraph as though fully set forth at length herein.

25 246. Plaintiff Shastrula brings this claim on behalf of himself and on behalf of the
26 Members of the Georgia Class.

27 247. Defendant is and was at all relevant times a merchant with respect to motor
28 vehicles.

1 248. In the course of selling its vehicles, Defendant expressly warranted in
2 writing that the Vehicles were covered by a Basic Warranty.

3 249. Defendant breached the express warranty to repair and adjust to correct
4 defects in materials and workmanship of any part supplied by Defendant. Defendant has
5 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles' materials
6 and workmanship defects.

7 250. In addition to this Basic Warranty, Defendant expressly warranted several
8 attributes, characteristics and qualities, as set forth above.

9 251. These warranties are only a sampling of the numerous warranties that
10 Defendant made relating to safety, reliability and operation, which are more fully
11 outlined above. Generally these express warranties promise heightened, superior, and
12 state-of-the-art safety, reliability, and performance standards. These warranties were
13 made, inter alia, in advertisements, in Defendant's "e brochures," and in uniform
14 statements provided by Defendant to be made by salespeople. These affirmations and
15 promises were part of the basis of the bargain between the parties.

16 252. These additional warranties were also breached because the Defective
17 Vehicles were not fully operational, safe, or reliable, nor did they comply with the
18 warranties expressly made to purchasers or lessees. Defendant did not provide at the
19 time of sale, and has not provided since then, vehicles conforming to these express
20 warranties.

21 253. Furthermore, the limited warranty of repair and/or adjustments to defective
22 parts, fails in its essential purpose because the contractual remedy is insufficient to make
23 the Plaintiff Shastrula and the Class whole and because the Defendant has failed and/or
24 has refused to adequately provide the promised remedies within a reasonable time.

25 254. Accordingly, recovery by Plaintiff Shastrula and the Class is not limited to
26 the limited warranty of repair or adjustments to parts defective in materials or
27 workmanship, and Plaintiff Shastrula and the Class Members seek all remedies as
28 allowed by law.

1 255. Also, as alleged in more detail herein, at the time that Defendant warranted
2 and sold the vehicles it knew that the vehicles did not conform to the warranties and were
3 inherently defective, and Defendant wrongfully and fraudulently misrepresented and/or
4 concealed material facts regarding its vehicles. Plaintiff Shastrula and the Class were
5 therefore induced to purchase the vehicles under false and/or fraudulent pretenses.

6 256. Moreover, many of the damages flowing from the Defective Vehicles cannot
7 be resolved through the limited remedy of “replacement or adjustments,” as those
8 incidental and consequential damages have already been suffered due to Defendant’s
9 fraudulent conduct as alleged herein, and due to their failure and/or continued failure to
10 provide such limited remedy within a reasonable time, and any limitation on Plaintiff
11 Shastrula’s and the Class’s remedies would be insufficient to make Plaintiff and the Class
12 whole.

13 257. Finally, due to the Defendant’s breach of warranties as set forth herein,
14 Plaintiff Shastrula and the Class assert as an additional and/or alternative remedy, as set
15 forth in Georgia Code Annotated section 11-2-608, for a revocation of acceptance of the
16 goods, and for a return to Plaintiff Shastrula and to the Class of the purchase price of all
17 vehicles currently owned.

18 258. Defendant was provided notice of these issues by the instant complaint, and
19 by numerous complaints filed with the NHTSA, as well as individual letters and
20 communications sent by Plaintiffs and the Class.

21 259. As a direct and proximate result of Defendant’s breach of express
22 warranties, Plaintiff Shastrula and the Class have been damaged in an amount to be
23 determined at trial.

24 //
25 //
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SIXTEENTH CAUSE OF ACTION

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Ga. Code Ann. § 11-2-314)

(By Plaintiff Shastrula on Behalf of the Georgia Class)

260. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

261. Plaintiff Shastrula brings this claim on behalf of himself and on behalf of the Members of the Georgia Class.

262. Defendant is and was at all relevant times a merchant with respect to motor vehicles.

263. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to Georgia Code Annotated section 11-2-314.

264. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events; and the accelerator control mechanism and electronics were adequately tested.

265. Defendant was provided notice of these issues by the instant complaint, and by numerous complaints filed with the NHTSA, as well as individual letters and communications sent by Plaintiffs and the Class.

266. Plaintiff Shastrula and the Class have had sufficient dealings with either Defendant to establish privity of contract between Plaintiffs and the Class. Notwithstanding this privity is also not required because Plaintiffs' and Class members' Tesla vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

1 267. As a direct and proximate result of Defendant’s breach of the warranties of
2 merchantability, Plaintiff Shastrula and the Class have been damaged in an amount to be
3 proven at trial.

4 **SEVENTEENTH CAUSE OF ACTION**

5 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

6 **(By Plaintiff Shastrula on Behalf of the Georgia Class)**

7 268. Plaintiffs and the Class incorporate by reference each preceding and
8 succeeding paragraph as though fully set forth at length herein.

9 269. Plaintiff Shastrula brings this claim on behalf of himself and on behalf of the
10 Members of the Georgia Class.

11 270. To the extent Defendant’s repair or adjust commitment is deemed not to be a
12 warranty under Georgia’s Commercial Code, Plaintiff Shastrula pleads in the alternative
13 under common law warranty and contract law. Defendant limited the remedies available
14 to Plaintiff Shastrula and the Class to just repairs and adjustments needed to correct
15 defects in materials or workmanship of any part supplied by Defendant, and/or warranted
16 the quality or nature of those services to Plaintiff Shastrula and the Class Members.

17 271. Defendant breached this warranty or contract obligation by failing to repair
18 the Defective Vehicles evidencing a sudden unintended acceleration problem or to
19 replace them.

20 272. As a direct and proximate result of Defendant’s breach of contract or
21 common law warranty, Plaintiff Shastrula and the Georgia Class have been damaged in
22 an amount to be proven at trial, which shall include, but is not limited to, all
23 compensatory damages, incidental and consequential damages, and other damages
24 allowed by law.

25 //
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EIGHTEENTH CAUSE OF ACTION

UNJUST ENRICHMENT

(By Plaintiff Shastrula on Behalf of the Georgia Class)

273. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

274. Plaintiff Shastrula brings this claim on behalf of himself and on behalf of the Members of the Georgia Class.

275. Defendant had knowledge of the safety defects in its vehicles, which it failed to disclose to Plaintiff Shastrula and the Class.

276. As a result of Defendant’s wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Defendant charged a higher price for their vehicles than the vehicles’ true value and Defendant obtained monies which rightfully belong to Plaintiff Shastrula and the Georgia Class Members.

277. Defendant appreciated, accepted and retained the non-gratuitous benefits conferred by Plaintiff Shastrula and other Class members, who without knowledge of the safety defects paid a higher price for vehicles which actually had lower values. It would be inequitable and unjust for Defendant to retain these wrongfully obtained profits.

278. Plaintiff Shastrula and the Georgia Class Members, therefore, are entitled to restitution and seek an order establishing Defendant as constructive trustees of the profits unjustly obtained, plus interest.

NINETEENTH CAUSE OF ACTION

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(N.C. Gen. Stat. § 25-2-314)

(By Plaintiff Jarrahi on Behalf of the North Carolina Class)

279. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

1 280. Plaintiff Jarrahi brings this claim on behalf of himself and on behalf of the
2 Members of the North Carolina Class.

3 281. Defendant is and was at all relevant times a merchant with respect to motor
4 vehicles under North Carolina General Statute section 25-2-314.

5 282. A warranty that the Defective Vehicles were in merchantable condition was
6 implied by law in the instant transaction, pursuant to North Carolina General Statute
7 section 25-2-314.

8 283. The Model S and Model X vehicles, when sold and at all times thereafter,
9 were not in merchantable condition and are not fit for the ordinary purpose for which
10 vehicles are used. Specifically, the Defective Vehicles are inherently defective in that
11 there are defects in the vehicle control systems that permit sudden unintended
12 acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect
13 against such SUA events; and the accelerator control mechanisms and electronics were
14 not adequately tested.

15 284. Defendant was provided notice of these issues by the instant complaint, and
16 by numerous complaints filed with the NHTSA, as well as individual letters and
17 communications sent by Plaintiffs and the Class.

18 285. As a direct and proximate result of Defendant's breach of the warranties of
19 merchantability, Plaintiff Jarrahi and the Class have been damaged in an amount to be
20 proven at trial.

21 **TWENTIETH CAUSE OF ACTION**

22 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

23 **(Based on North Carolina Law)**

24 **(By Plaintiff Jarrahi on Behalf of the North Carolina Class)**

25 286. Plaintiffs and the Class incorporate by reference each preceding and
26 succeeding paragraph as though fully set forth at length herein.

27 287. Plaintiff Jarrahi brings this claim on behalf of himself and on behalf of the
28 Members of the North Carolina Class.

1 288. To the extent Defendant’s repair or adjust commitment is deemed not to be a
2 warranty under North Carolina’s Commercial Code, Plaintiff Jarrahi pleads in the
3 alternative under common law warranty and contract law. Defendant limited the
4 remedies available to Plaintiff and the Class to just repairs and adjustments needed to
5 correct defects in materials or workmanship of any part supplied by Defendant, and/or
6 warranted the quality or nature of those services to Plaintiff Jarrahi and the Class.

7 289. Defendant breached this warranty or contract obligation by failing to repair
8 the Defective Vehicles evidencing a sudden unintended acceleration problem or to
9 replace them.

10 290. As a direct and proximate result of Defendant’s breach of contract or
11 common law warranty, Plaintiff Jarrahi and the North Carolina Class have been damaged
12 in an amount to be proven at trial, which shall include, but is not limited to, all
13 compensatory damages, incidental and consequential damages, and other damages
14 allowed by law.

15 **TWENTY-FIRST CAUSE OF ACTION**

16 **UNJUST ENRICHMENT**

17 **(Based on North Carolina Law)**

18 **(By Plaintiff Jarrahi on Behalf of the North Carolina Class)**

19 291. Plaintiffs and the Class incorporate by reference each preceding and
20 succeeding paragraph as though fully set forth at length herein.

21 292. Plaintiff Jarrahi brings this claim on behalf of himself and on behalf of the
22 Members of the North Carolina Class.

23 293. As a result of its wrongful and fraudulent acts and omissions, as set forth
24 above, pertaining to the design defect of the Model S and Model X vehicles and the
25 concealment of the defect, Defendant charged a higher price for its vehicles than the
26 vehicles’ true value and Defendant obtained monies which rightfully belong to Plaintiff
27 Jarrahi and Class Members.
28

1 294. Defendant knowingly enjoyed the benefit of increased financial gains, to the
2 detriment of Plaintiff Jarrahi and the Class Members, who paid a higher price for vehicles
3 which actually had lower values. It would be inequitable and unjust for Defendant to
4 retain these wrongfully obtained profits.

5 295. Plaintiff Jarrahi and the North Carolina Class Members, therefore, are
6 entitled to restitution and seek an order establishing Defendant as constructive trustees of
7 the profits unjustly obtained, plus interest.

8 **TWENTY-SECOND CAUSE OF ACTION**

9 **VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT**

10 **(Ohio Rev. Code Ann. § 1345.01, *et seq.*)**

11 **(By Plaintiff Tomko on Behalf of the Ohio Class)**

12 296. Plaintiffs and the Class incorporate by reference each preceding and
13 succeeding paragraph as though fully set forth at length herein.

14 297. Plaintiff Tomko brings this claim on behalf of himself and on behalf of the
15 Members of the Ohio Class.

16 298. The Ohio Consumer Protection Act, Ohio Revised Code section 1345.02,
17 prohibits unfair or deceptive acts or practices in connection with a consumer transaction.
18 Specifically, the Act prohibits suppliers from representing that goods have characteristics
19 or uses or benefits which they do not have. The Act also prohibits suppliers from
20 representing that their goods are of a particular quality or grade they are not.

21 299. Defendant is a “supplier” as that term is defined in the Ohio Consumer
22 Protection Act, Ohio Rev. Code § 1345.01(c).

23 300. Plaintiff Tomko is a “consumer” as that term is defined in the Ohio
24 Consumer Protection Act, Ohio Rev. Code § 1345.01(d).

25 301. The conduct of Defendant alleged above constitutes unfair and/or deceptive
26 consumer sales practices in violation of Ohio Revised Code section 1345.02 because
27 Defendant represented through advertising and other marketing communications that the
28

1 vehicles were new and free from defects and could be driven safely in normal operation.
2 Instead, the vehicles were not of the standard, quality or grade of new vehicles.

3 302. Defendant's conduct caused Plaintiff Tomko's and the Class Members'
4 damages as alleged.

5 303. Plaintiff Tomko specifically does not allege herein a claim for violation of
6 Ohio Revised Code section 1345.72.

7 304. As a result of the foregoing wrongful conduct of Defendant, Plaintiff Tomko
8 and the Ohio Class Members have been damaged in an amount to be proven at trial,
9 including, but not limited to, actual and statutory damages, treble damages, court costs
10 and reasonable attorney's fees, pursuant to Ohio Revised Code section 1345.09, *et seq.*

11 **TWENTY-THIRD CAUSE OF ACTION**

12 **VIOLATION OF OHIO DECEPTIVE TRADE PRACTICES ACT**

13 **(Ohio Rev. Code Ann. § 4165.01, *et seq.*)**

14 **(By Plaintiff Tomko on Behalf of the Ohio Class)**

15 305. Plaintiffs and the Class incorporate by reference each preceding and
16 succeeding paragraph as though fully set forth at length herein.

17 306. Plaintiff Tomko brings this claim on behalf of himself and on behalf of the
18 Members of the Ohio Class.

19 307. Ohio Revised Code section 4165.02(A) provides that a "person engages in a
20 deceptive trade practice when, in the course of the person's business, vocation, or
21 occupation," the person does any of the following: "(2) Causes likelihood of confusion or
22 misunderstanding as to the source, sponsorship, approval, or certification of goods or
23 services; . . . (7) Represents that goods or services have sponsorship, approval,
24 characteristics, ingredients, uses, benefits, or quantities that they do not have or that a
25 person has a sponsorship, approval, status, affiliation, or connection that the person does
26 not have; . . . (9) Represents that goods or services are of a particular standard, quality,
27 or grade, or that goods are of a particular style or model, if they are of another; . . . [and]
28 (11) Advertises goods or services with intent not to sell them as advertised."

1 308. Defendant is a “person” within the meaning of Ohio Revised Code section
2 4165.01(d).

3 309. The vehicles sold to Plaintiff Tomko and the Ohio Class Members were not
4 of the particular sponsorship, approval, characteristics, ingredients, uses, benefits, or
5 qualities represented by Defendant.

6 310. The vehicles sold to Plaintiff Tomko and the Ohio Class Members were not
7 of the particular standard, quality, and/or grade represented by Defendant.

8 311. Defendant made false or misleading statements of fact concerning the
9 vehicles Plaintiffs purchased – i.e., that such vehicles were suitable for ordinary use –
10 when Defendant, in fact, knew that they were defective and not suitable for ordinary use.

11 312. These statements materially influenced Plaintiff Tomko’s decision to
12 purchase his Model S, in that Defendant’s statements caused Plaintiff Tomko and the
13 Class Members to purchase vehicles that they otherwise would not have had they known
14 of the dangerous defect.

15 313. Defendant’s deceptive trade practices caused Plaintiff Tomko and the Ohio
16 Class Members damages as alleged.

17 314. As a result of the foregoing wrongful conduct of Defendant, Plaintiffs have
18 been damaged in an amount to be proven at trial, including, but not limited to, actual,
19 equitable relief and reasonable attorneys’ fees.

20 **TWENTY-FOURTH CAUSE OF ACTION**

21 **BREACH OF EXPRESS WARRANTY**

22 **(Ohio Rev. Code Ann. § 1302.26, *et seq.* (U.C.C. § 2-313))**

23 **(By Plaintiff Tomko on Behalf of the Ohio Class)**

24 315. Plaintiffs and the Class incorporate by reference each preceding and
25 succeeding paragraph as though fully set forth at length herein.

26 316. Plaintiff Tomko brings this claim on behalf of himself and on behalf of the
27 Members of the Ohio Class.

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1 317. Defendant expressly warranted – through statements and advertisements
2 described above – that its vehicles were of high quality, and, at a minimum, would
3 actually work properly and safely.

4 318. Defendant breached this warranty by knowingly selling to Plaintiff Tomko
5 and the Ohio Class Members vehicles with dangerous defects, and which were not of
6 high quality.

7 319. Plaintiff Tomko and the Ohio Class Members have been damaged as a direct
8 and proximate result of the breaches by Defendant in that the Defective Vehicles
9 purchased or leased by Plaintiff Tomko and the Ohio Class Members were and are worth
10 far less than what Plaintiff Tomko and the Ohio Class Members paid to purchase, which
11 was reasonably foreseeable to Defendant.

12 **TWENTY-FIFTH CAUSE OF ACTION**
13 **OHIO BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY -**
14 **STRICT LIABILITY**

15 **(Ohio Rev. Code Ann. § 1302.27 (U.C.C. § 2-314))**
16 **(By Plaintiff Tomko on Behalf of the Ohio Class)**

17 320. Plaintiffs and the Class incorporate by reference each preceding and
18 succeeding paragraph as though fully set forth at length herein.

19 321. Plaintiff Tomko brings this claim on behalf of himself and on behalf of the
20 Members of the Ohio Class.

21 322. Defendant impliedly warranted that its vehicles were of good and
22 merchantable quality and fit, and safe for their ordinary intended use – transporting the
23 driver and passengers in reasonable safety during normal operation, and without unduly
24 endangering them or members of the public.

25 323. As described above, there were dangerous defects in the vehicles
26 manufactured, distributed, and/or sold by Defendant, which Plaintiff Tomko and the Ohio
27 Class Members purchased or leased, including, but not limited to, defects that caused the
28

1 vehicles to suddenly and unintentionally accelerate, and the lack of safety systems which
2 would prevent such acceleration.

3 324. These dangerous defects existed at the time the vehicles left Defendant's
4 manufacturing facilities and at the time they were sold or leased to Plaintiff Tomko and
5 the Ohio Class Members.

6 325. These dangerous defects were the direct and proximate cause of damages to
7 Plaintiff Tomko and the Ohio Class Members.

8 **TWENTY-SIXTH CAUSE OF ACTION**

9 **OHIO NEGLIGENT DESIGN, ENGINEERING & MANUFACTURE**

10 **(Based on Ohio Law)**

11 **(By Plaintiff Tomko on Behalf of the Ohio Class)**

12 326. Plaintiffs and the Class incorporate by reference each preceding and
13 succeeding paragraph as though fully set forth at length herein.

14 327. Plaintiff Tomko brings this claim on behalf of himself and on behalf of the
15 Members of the Ohio Class.

16 328. Defendant is a manufacturer and supplier of automobiles. Defendant owed
17 Plaintiff Tomko and the Ohio Class Members a non-delegable duty to exercise ordinary
18 and reasonable care to properly design, engineer, and manufacture the vehicles against
19 foreseeable hazards and malfunctions including uncontrollable acceleration.

20 329. Defendant owed Plaintiff Tomko and the Ohio Class Members a non-
21 delegable duty to exercise ordinary and reasonable care in designing, engineering, and
22 manufacturing the vehicles so that they would function normally, including that they
23 would not accelerate out of control.

24 330. Defendant also owed – and owes – a continuing duty to notify Plaintiff
25 Tomko and the Ohio Class Members of the problem at issue and to repair the dangerous
26 defects.

1 331. Defendant breached these duties of reasonable care by designing,
2 engineering, and manufacturing vehicles that accelerated out of control, and breached its
3 continuing duty to notify Plaintiffs of these defects.

4 332. The foreseeable hazards and malfunctions include, but are not limited to, the
5 sudden and unanticipated and uncontrollable acceleration of these vehicles.

6 333. Plaintiff Tomko and the Ohio Class Members did not and could not know of
7 the intricacies of these defects and their latent and dangerous manifestations, or the
8 likelihood of harm therefrom arising in the normal use of their vehicles.

9 334. At all relevant times, there existed alternative designs and engineering which
10 were both technically and economically feasible. Further, any alleged benefits associated
11 with the defective designs are vastly outweighed by the real risks associated with sudden
12 and uncontrollable acceleration.

13 335. The vehicles were defective as herein alleged at the time they left
14 Defendant's factory, and the vehicles reached Plaintiff Tomko and the Ohio Class
15 Members without substantial change in the condition in which they were sold.

16 336. As a direct and proximate result of Defendant's breaches, Plaintiff Tomko
17 and the Ohio Class Members have suffered damages.

18 337. Accordingly, Plaintiff Tomko and the Ohio Class Members s are entitled to
19 recover appropriate damages including, but not limited to, diminution of value, return of
20 lease payments and penalties, and injunctive relief related to future lease payments or
21 penalties.

22 **TWENTY-SEVENTH CAUSE OF ACTION**

23 **UNJUST ENRICHMENT**

24 **(Based on Ohio Law)**

25 **(By Plaintiff Tomko on Behalf of the Ohio Class)**

26 338. Plaintiffs and the Class incorporate by reference each preceding and
27 succeeding paragraph as though fully set forth at length herein.
28

1 339. Plaintiff Tomko brings this claim on behalf of himself and on behalf of the
2 Members of the Ohio Class.

3 340. Plaintiff Tomko and the Ohio Class Members paid Defendant the value of
4 vehicles that are non-defective, and in exchange, Defendant provided Plaintiff Tomko
5 and the Ohio Class Members vehicles that are, in fact, defective.

6 341. Further, Plaintiff Tomko and the Ohio Class Members paid Defendant the
7 value for vehicles that would not be compromised by substantial, invasive repairs, and in
8 return received vehicles that require such repairs.

9 342. Further, Plaintiff Tomko and the Ohio Class Members paid Defendant for
10 vehicles they could operate, and in exchange, Defendant provided Plaintiff Tomko and
11 the Ohio Class Members vehicles that could not be normally operated because their
12 defects posed the possibility of life-threatening injuries or death.

13 343. As such, Plaintiff Tomko and the Ohio Class Members conferred a windfall
14 upon Defendant, which knows of the windfall and has retained such benefits, which
15 would be unjust for Defendant to retain.

16 344. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff
17 Tomko and the Ohio Class Members have suffered and continue to suffer various
18 damages, including, but not limited to, restitution of all amounts by which Defendant was
19 enriched through its misconduct.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs Ji Chang Son, Ghodrat Khansari, Madhusudhana
22 Shastrula, Ali Jarrahi, and Michael Tomko, individually and on behalf of all others
23 similarly situated, and K.M.S., on behalf of himself and members of the Class, and
24 Plaintiff K.M.S. respectfully request that this Court:

- 25 A. determine that the claims alleged herein may be maintained as a class action
26 under Rule 23 of the Federal Rules of Civil Procedure, and issue an order
27 certifying one or more Classes as defined above;
28

- B. appoint Plaintiffs Ji Chang Son, Ghodrat Khansari, Madhusudhana Shastrula, Ali Jarrahi, and Michael Tomko as the representatives of the Class(es) and their counsel as Class counsel;
- C. award all actual, general, special, incidental, statutory, punitive, and consequential damages and restitution to which Plaintiffs and the Class Members are entitled;
- D. award pre-judgment and post-judgment interest on such monetary relief;
- E. grant appropriate injunctive and/or declaratory relief, including, without limitation, an order that requires Tesla to repair, recall, and/or replace the Model S and Model X vehicles and to extend the applicable warranties to a reasonable period of time, or, at a minimum, to provide Plaintiffs and Class Members with appropriate curative notice regarding the existence and cause of sudden unintended acceleration;
- F. award reasonable attorneys' fees and costs;
- G. grant such further relief that this Court deems appropriate.

Dated: March 1, 2017

Respectfully submitted,

By: /s/ Richard D. McCune
 Richard D. McCune
 McCUNE WRIGHT AREVALO, LLP
 Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: March 1, 2017

By: /s/ Richard D. McCune
 Richard D. McCune
 McCUNE WRIGHT AREVALO, LLP
 Attorneys for Plaintiffs