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Case No. 12711-VCS
In Re Tesla Motors, Inc. Stockholder Litigation

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE TESLA MOTORS, INC. STOCKHOLDER LITIGATION	))	Consolidated C.A. No. 12711-VCS

PUBLIC VERSION FILED:
May 25, 2018

DEFENDANTS' ANSWER TO THE SECOND AMENDED VERIFIED CLASS ACTION AND DERIVATIVE COMPLAINT

Defendants Elon Musk, Brad W. Buss, Robyn M. Denholm, Ira Ehrenpreis, Antonio J. Gracias, Stephen T. Jurvetson and Kimbal Musk (collectively, the "Defendants"), by and through their undersigned counsel, for their answer to the Second Amended Verified Class Action and Derivative Complaint (the "Complaint"), respond as follows. All allegations not expressly admitted herein, including those contained in the structural headings or footnotes of the Complaint, are denied.[1]

NATURE OF THE ACTION

1. This is a stockholder class and derivative action brought by Plaintiffs on behalf of themselves and all other similarly situated stockholders of Tesla, Inc., formerly known as Tesla Motors, Inc. ("Tesla" or the "Company"), and for the benefit of nominal defendant Tesla against: (a) Tesla's controlling stockholder Elon Musk and the other members of Tesla's Board of Directors (the "Tesla Board" or "Board") to remedy defendants' breaches of fiduciary duty and waste of corporate assets; and (b) Elon Musk and certain of the other defendants for unjust enrichment.

[1] The headings from the Complaint are incorporated herein for placement purposes only and are not intended to be statements or admissions by Tesla. Tesla denies any allegations in the headings set forth in the Complaint.

RESPONSE: The allegations in Paragraph 1 set forth characterizations of Plaintiffs' claims to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 1, except admit that the action purports to be a stockholder class and derivative action and that Plaintiffs purport to represent a putative class of stockholders of Tesla.

2. Tesla is a Delaware corporation headquartered in Palo Alto, California that designs, develops, manufactures and sells electric vehicles and energy storage products. Defendant Elon Musk led Tesla's pre-initial public offering ("IPO") funding rounds and is the Chairman of the Tesla Board, Tesla's Chief Executive Officer ("CEO") and Product Architect, and the Company's largest stockholder. He is the dominant force in Tesla's corporate strategy and has a hands-on role in its product design.

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 2. Defendants deny the allegations in the second sentence of Paragraph 2, except admit that Elon Musk is the Chairman of the Tesla Board, Tesla's Chief Executive Officer and Product Architect, and Tesla's largest stockholder, and that Elon Musk led some, but not all, of Tesla's pre-initial public offering funding rounds. Defendants deny the allegations in the third sentence of Paragraph 2, except admit that Elon Musk is heavily involved in Tesla's corporate strategy and Tesla's product design.

3. On June 21, 2016, Tesla announced in a blog post that it had made an offer (the "Offer") to acquire solar energy system installer SolarCity Corporation ("SolarCity").[1] Elon Musk was also Chairman of the SolarCity Board of Directors (the "SolarCity Board") and SolarCity's largest stockholder, owning approximately 21.9% of its common stock at the time of the Offer. SolarCity was founded by Elon Musk and his cousins, Peter Rive and Lyndon Rive. Lyndon Rive served as

SolarCity's CEO and Peter Rive is its Chief Technology Officer. Both Lyndon Rive and Peter Rive were also directors on the SolarCity Board. (Footnote 1: SolarCity is a Delaware corporation headquartered in San Mateo, California. Its common stock traded on The NASDAQ Global Select Market under the ticker symbol "SCTY.")

RESPONSE: The first sentence of Paragraph 3 appears to characterize a blog post, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants admit the allegations in the second sentence of Paragraph 3 and in Footnote 1. Defendants deny the allegations in the third sentence of Paragraph 3, except admit that Peter Rive and Lyndon Rive founded SolarCity and that they are Elon Musk's cousins. Defendants deny the allegations in the fourth sentence of Paragraph 3, except admit that, as of the date of the Offer, Lyndon Rive served as SolarCity's CEO and Peter Rive served as SolarCity's Chief Technology Officer. Defendants admit the allegations in the fifth sentence of Paragraph 3.

4. On August 1, 2016, Tesla and SolarCity announced that they had executed a merger agreement pursuant to which Tesla would acquire SolarCity in an all-stock deal that at the time valued SolarCity at approximately $2.6 billion, or between $25.37 and $25.83 per share (the "Acquisition").

RESPONSE: Defendants admit that on August 1, 2016, Tesla and SolarCity announced that they had executed a merger agreement pursuant to which Tesla would acquire SolarCity in an all-stock deal that at the time valued SolarCity at approximately $2.6 billion, but otherwise deny the allegations of Paragraph 4

and aver that Tesla and SolarCity announced the valuation of SolarCity to be $25.37 per share.

5. Although stockholders invest in individual companies, by Elon Musk's own account, Tesla, SolarCity and his other company, Space Exploration Technologies Corporation ("SpaceX"), are a "pyramid" atop which he sits, and it is "important that there not be some sort of house of cards that crumbles if one element of the pyramid of Tesla, SolarCity and SpaceX falters."

RESPONSE: Defendants admit that some stockholders invest in individual companies. Defendants deny that Elon Musk stated that he sits atop a pyramid of Tesla, SolarCity, and SpaceX. The remainder of Paragraph 5 appears to quote from an April 27, 2016 article from *The Wall Street Journal*, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 5.

6. Prior to the Acquisition, SolarCity consistently failed to turn a profit, had mounting debt, and was burning through cash at an unsustainable rate. During its ten-year history, SolarCity accumulated over $3 billion in debt, nearly $1.5 billion of which was to become due before the end of 2017, and generated just over $1.8 billion in total revenue. According to its Form 10-Q on August 9, 2016, as of June 30, 2016, SolarCity had cash and cash equivalents of only $145.7 million, which was then supplemented through a $305 million "cash equity" transaction announced on September 12, 2016. By comparison, SolarCity incurred operating losses of $768 million in 2015 and $719 million during the first three quarters of 2016.

RESPONSE: Defendants deny the allegations in Paragraph 6, except admit that (i) Paragraph 6 purports to characterize SolarCity's August 9, 2016 Form 10-Q, SolarCity's February 10, 2016 Form 10-K, and SolarCity's November 9, 2016 Form 10-Q, to which Defendants respectfully refer the Court

for their complete and accurate contents, and (ii) on September 12, 2016, SolarCity announced a cash equity transaction that raised $305 million.

7. Thus, the Acquisition was a bailout of SolarCity, which faced a likely bankruptcy in the near future absent the Acquisition. This planned rescue benefitted the following six of the seven members of the Tesla Board and/or their family members, businesses and business partners: (a) defendant Elon Musk and his cousins Peter Rive and Lyndon Rive; (b) defendant Antonio J. Gracias ("Gracias") and investment funds he manages; (c) defendant Kimbal Musk (Elon Musk's brother), his brother and cousins; (d) defendant Stephen T. Jurvetson ("Jurvetson"), his venture capital firm, and his firm's managing director; (e) the venture capital partner of defendant Ira Ehrenpreis ("Ehrenpreis"); and (f) defendant Brad W. Buss ("Buss"). Among other strong personal and financial ties to Elon Musk and SolarCity, ***all*** of the above are substantial SolarCity stockholders.

RESPONSE: Defendants deny the allegations in Paragraph 7, except admit that Elon Musk, Peter Rive, Lyndon Rive, Antonio J. Gracias and certain funds with which he is affiliated, Kimbal Musk, Stephen T. Jurvetson, certain funds managed by Draper Fisher Jurvetson, John H.N. Fisher, Nancy E. Pfund, and Brad W. Buss were SolarCity stockholders.

8. Pursuant to Section 220, Plaintiffs demanded to inspect certain books and records of Tesla relating to the Offer and Acquisition and entered into confidentiality agreements with Tesla governing the production of such documents (the "220 Documents"), which Plaintiffs have received, reviewed and analyzed. The 220 Documents, along with Tesla's public filings and other statements, show that the process by which the Tesla Board determined to make the Offer and to undertake the Acquisition was poisoned by the participation of Elon Musk and the conflicted directors who are beholden to him and stood to similarly benefit from the Acquisition.

RESPONSE: Defendants admit that Plaintiffs demanded to inspect, and that Plaintiffs received, certain 220 Documents. Defendants lack knowledge

or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence of Paragraph 8, and deny them on that basis. Defendants deny the remaining allegations in Paragraph 8.

9. The Tesla Board did not form a special committee of independent directors to evaluate the Offer or the Acquisition. Instead, Elon Musk and Gracias, both of whom serve on both the SolarCity Board and the Tesla Board, merely recused themselves from Tesla Board votes relating to the Acquisition. This recusal was superficial, however, as both Elon Musk and Gracias participated in Tesla Board discussions and negotiations regarding the Acquisition. Moreover, even setting Elon Musk and Gracias aside, the remaining members of the Tesla Board have disabling conflicts and therefore could not disinterestedly and independently consider the Acquisition.

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 9. Defendants deny the remaining allegations in Paragraph 9, except admit that Elon Musk and Gracias served on the SolarCity Board and the Tesla Board, that they recused themselves from the Tesla Board votes relating to the Acquisition, and that they attended portions of certain Tesla Board meetings at which aspects of the Acquisition were discussed.

10. The Acquisition benefitted Elon Musk, his brother, his cousins, and other Tesla insiders at the expense of Tesla and its minority stockholders. Thus, the Tesla Board's approval of the Acquisition constituted a breach of fiduciary duty and waste of corporate assets, and unjustly enriched Elon Musk and the other Tesla Board members who are SolarCity stockholders. Plaintiffs bring this action to recover the damages caused by the improper self-dealing that led to the Acquisition and to compel Elon Musk and certain other defendants to disgorge to Tesla any payments and/or benefits received in connection with the Acquisition.

RESPONSE: Defendants deny the allegations in the first and second sentences of Paragraph 10. The allegations in the third sentence of Paragraph 10

set forth characterizations of Plaintiffs' claims to which no response is required. To the extent a response is required, Defendants deny the allegations in the third sentence of Paragraph 10.

PARTIES

Plaintiffs and the Nominal Defendant

11. Plaintiff ATRS is a stockholder of Tesla, was a stockholder of Tesla at the time of the wrongdoing alleged herein, and has been a stockholder of Tesla continuously since that time.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and deny them on that basis.

12. Plaintiff Boston is a stockholder of Tesla, was a stockholder of Tesla at the time of the wrongdoing alleged herein, and has been a stockholder of Tesla continuously since that time.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12, and deny them on that basis.

13. Plaintiff Roofers Local 149 is a stockholder of Tesla, was a stockholder of Tesla at the time of the wrongdoing alleged herein, and has been a stockholder of Tesla continuously since that time.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13, and deny them on that basis.

14. Plaintiff OFPRS is a stockholder of Tesla, was a stockholder of Tesla at the time of the wrongdoing alleged herein, and has been a stockholder of Tesla continuously since that time.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14, and deny them on that basis.

15. Plaintiff KBC Asset Management NV is a stockholder of Tesla, was a stockholder of Tesla at the time of the wrongdoing alleged herein, and has been a stockholder of Tesla continuously since that time.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and deny them on that basis.

16. Plaintiff ERSTE-SPARINVEST Kapitalanlagegesellschaft m.b.H. is a stockholder of Tesla, was a stockholder of Tesla at the time of the wrongdoing alleged herein, and has been a stockholder of Tesla continuously since that time.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16, and deny them on that basis.

17. Plaintiff Stichting Blue Sky Active Large Cap Equity Fund USA is a stockholder of Tesla, was a stockholder of Tesla at the time of the wrongdoing alleged herein, and has been a stockholder of Tesla continuously since that time.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17, and deny them on that basis.

18. Plaintiff Rocke is a stockholder of Tesla, was a stockholder of Tesla at the time of the wrongdoing alleged herein, and has been a stockholder of Tesla continuously since that time.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18, and deny them on that basis.

19. Nominal defendant Tesla is a Delaware corporation with its principal place of business located at 3500 Deer Creek Road, Palo Alto, California. Its common stock trades on The NASDAQ Global Select Market under the ticker symbol "TSLA."

RESPONSE: Admitted.

THE TESLA DEFENDANTS

Elon Musk

20. Defendant Elon Musk has served as Chairman of the Tesla Board since April 2004 and as its CEO since October 2008. He is also the Company's largest stockholder. At the time of the Acquisition, Elon Musk owned approximately 22.1% of Tesla's common stock primarily through the Elon Musk Revocable Trust dated July 22, 2003 (the "Elon Musk Trust"). Tesla admits in its filings with the Securities and Exchange Commission ("SEC") that Elon Musk is not an independent director of the Company. Tesla's SEC filings also concede that the Company is "highly dependent on the services of Elon Musk"

RESPONSE: Defendants admit the allegations in the first three sentences of Paragraph 20. Defendants deny the allegations in the fourth sentence of Paragraph 20, except admit that certain of Tesla's filings with the Securities and Exchange Commission disclose that Tesla's Board of Directors has not determined that Elon Musk is an "independent director" as defined in the listing standards of

NASDAQ. Defendants deny the allegations in the fifth sentence of Paragraph 20, except admit that Tesla is highly dependent on the services of Elon Musk and that the quoted language appears in certain of Tesla's SEC filings, including Tesla's Form 10-K dated February 24, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents.

21. The Company has also disclosed that "Mr. Musk spends significant time with Tesla and is highly active in [Tesla's] management." Thus, Elon Musk is inextricably involved in the Company's affairs and exerts a level of influence and day-to-day control over Tesla far beyond what would be typical given his equity stake.

RESPONSE: The first sentence of Paragraph 21 quotes language that appears in certain of Tesla's SEC filings, including Tesla's Form 10-K dated February 24, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants deny the remaining allegations in Paragraph 21.

22. In addition, Tesla's bylaws contain several supermajority voting requirements. For example, any changes at Tesla, including certain mergers, acquisitions, or changes to the Board's compensation or bylaws concerning the Board's composition must be approved by $66^{2}/_{3}$ percent of total voting power of outstanding Tesla voting securities. This supermajority standard allows Elon Musk significant control over corporate matters while only owning approximately 22% of Tesla's common stock.

RESPONSE: Defendants deny the allegations in Paragraph 22, except admit and aver that Tesla's bylaws contain provisions requiring a supermajority

vote in certain very limited circumstances. Defendants respectfully refer the Court to Tesla's bylaws for their complete and accurate contents.

23. Elon Musk holds himself out as a visionary in the areas of alternative energy, electric cars and space travel. Using a select group of favored investors, including Jurvetson, Gracias, and Ehrenpreis, Musk has sought to build enterprises serving each of those sectors. An essential aspect of this investing relationship is the low cost of capital provided to Musk in light of his "visionary" status. Musk and these favored investors understand the link between a SolarCity failure and an increase in the cost of capital for Musk's other enterprises. All are undoubtedly aware that the failure of SolarCity would represent a major setback for Elon Musk and could very well stymie his future endeavors in which they would expect to be included as early investors.

RESPONSE: Defendants deny the allegations in Paragraph 23, except admit that Elon Musk is an officer or director of certain companies that operate in the areas of alternative energy, electric cars and space travel, and that Jurvetson, Gracias, and Ehrenpreis, or funds with which they are affiliated, are investors in one or more of such companies.

24. Elon Musk has served as Chairman of the SolarCity Board since it was formed in July 2006, and is the cousin of its co-founders, Lyndon Rive and Peter Rive.[2] At the time of the Acquisition, Elon Musk owned approximately 21.9% of SolarCity's common stock, making him its largest stockholder. Through the Company's acquisition of SolarCity, Elon Musk personally received over half a billion dollars' worth of Tesla shares. (Footnote 2: The mothers of the Musks and Rives are twins.)

RESPONSE: Defendants admit the allegations in the first two sentences of Paragraph 24 and in Footnote 2. Defendants deny the allegations in the third sentence of Paragraph 24, except admit that Elon Musk received merger consideration for his shares of SolarCity.

25. Elon Musk has also served as the CEO, Chief Technology Officer and Chairman of the Board of SpaceX, the third company in Musk's "pyramid," since 2002. SpaceX is a private aerospace manufacturer and space transport services company founded by Elon Musk to develop advanced rockets for satellite and human transportation. Musk personally contributed $100 million in seed money to start SpaceX, which is believed to be one of the most valuable privately held companies in the world and was valued at an estimated $12 billion as of June 2016.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 25, except admit that Elon Musk has served as the CEO, Chief Technology Officer and Chairman of SpaceX since 2002. Defendants admit that SpaceX is a private company founded by Elon Musk and that SpaceX is developing advanced rockets for satellite and eventually human transportation. Defendants deny the remaining allegations in Paragraph 25, except admit that Musk made financial investments in SpaceX, and that at certain times, public reports estimated the valuation of SpaceX to be approximately $12 billion.

Buss

26. Defendant Buss has served on the Tesla Board since 2009.

RESPONSE: Admitted.

27. Buss was the Chief Financial Officer ("CFO") of SolarCity from August 2014 until his retirement in February 2016, and remained an employee of SolarCity through March 31, 2016. Thereafter, Buss served as a consultant to SolarCity through at least December 31, 2016. At the time of the Acquisition, Buss beneficially owned 37,277 shares of SolarCity common stock.

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 27. Defendants deny the allegations in the second sentence of

Paragraph 27. Defendants admit the allegations in the third sentence of Paragraph 27.

28. As set forth in Tesla's 2014 proxy statement, Tesla designated Buss as an "independent director" under NASDAQ rules. He served on the Tesla Board's Audit, Compensation and Nominating and Governance Committees. But when he joined SolarCity, he resigned from all three committees and according to Tesla's 2015 proxy statement, was admittedly not independent.

RESPONSE: The first sentence of Paragraph 28 appears to characterize the contents of Tesla's Proxy Statement dated April 24, 2014, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants admit that Buss served on the Tesla Board's Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee. Defendants admit that Buss vacated his positions on the Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee upon joining SolarCity as its Chief Financial Officer. Defendants deny the remaining allegations in Paragraph 28, except admit that Tesla's Proxy Statement dated April 22, 2015, discloses that Tesla's Board of Directors had not determined that Buss was an "independent director" as defined in the listing standards of NASDAQ.

29. Upon information and belief, Buss does not currently have full-time employment, but earned $4,954,785 as a director of Tesla for fiscal year 2015. He is indebted to Elon Musk because of, among other things, the $32 million Buss received for 18 months of work as SolarCity's CFO.

RESPONSE: Defendants deny the allegations in Paragraph 29, except admit that Buss currently serves on the Tesla Board and on other boards, that in 2015, Buss received compensation as a Tesla director, including option awards intended to compensate Buss for Board service over a three-year period, and that Buss earned compensation at SolarCity, including stock awards and option awards. Defendants respectfully refer the Court to the 2016 proxy statements for Tesla and SolarCity for information relating to those awards and their valuation.

30. Prior to joining SolarCity, Buss was the CFO and EVP of Finance and Administration of Cypress Semiconductor Corporation ("Cypress"), a semiconductor design and manufacturing company. Cypress provided a third-party manufacturer engaged by Tesla with semiconductors for use in Tesla's Model S. Payments by Tesla allocable to the Cypress semiconductors were approximately $35,000 in 2012, $605,000 in 2013 and $817,000 in 2014. Tesla's selection of Cypress's "TrueTouch automotive touchscreen solution for the infotainment system in the Model S" was touted by Cypress as a significant highlight of its third fiscal quarter of 2012.

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 30. Defendants deny the allegations in the second sentence of Paragraph 30, except admit that Cypress provided semiconductors to a third-party manufacturer engaged by Tesla to build certain components for use in Tesla's Model S automobile. Defendants admit the allegations in the third sentence of Paragraph 30. The fourth sentence of Paragraph 30 appears to quote from and characterize the contents of Cypress's Form 8-K dated October 18, 2012, to which

Defendants respectfully refer the Court for its complete and accurate contents.

Defendants otherwise deny the allegations in Paragraph 30.

Denholm

31. Defendant Robyn M. Denholm ("Denholm") has served on the Tesla Board since August 2014. She is the Chair of the Tesla Board's Audit Committee and a member of its Compensation Committee and Nominating and Governance Committee.

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 31 and admit that Denholm is the Chair of the Tesla Board's Audit Committee and a member of its Compensation Committee and Nominating and Corporate Governance Committee.

32. Denholm served as Executive Vice President, Chief Financial and Operations Officer at Juniper Networks, Inc. ("Juniper") from July 2013 until her retirement in February 2016. After she retired in February 2016, Denholm remained with Juniper through July 2016 to transition her successor [TESLA00001516]. Previously, she served as Juniper's Executive Vice President and CFO since August 2007. Tesla purchases networking equipment manufactured by Juniper in the ordinary course of business through resellers.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 32, except admit that Denholm served as Executive Vice President and Chief Financial and Operations Officer at Juniper from July 2013 until February 2016. Defendants deny the allegations in the second sentence of Paragraph 32, except admit that Denholm remained with Juniper through July 2016 to transition her successor. Defendants admit the allegations in the third and fourth sentences of Paragraph 32.

33. Denholm left Juniper in July 2016, and until 2017 did not have a full-time job. In fiscal years 2014 and 2015, she earned $7,181,066 and $4,979,785, respectively, as a director of Tesla.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 33, except admit that Denholm left Juniper in July 2016. Defendants admit that in fiscal years 2014 and 2015, Denholm was awarded compensation as a Tesla director, including options awarded upon joining the board of directors and options intended to compensate Denholm for Board service over a three-year period. Defendants respectfully refer the Court to Tesla's 2015 and 2016 proxy statements for information relating to those awards and their valuation.

Ehrenpreis

34. Defendant Ehrenpreis has served on the Tesla Board since May 2007. He is the Chair of both the Compensation Committee and the Nominating and Governance Committee of the Tesla Board.

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 34 and admit that Ehrenpreis is the Chair of the Compensation Committee and the Nominating and Corporate Governance Committee of the Tesla Board.

35. Since 2014, Ehrenpreis has been a managing partner and co-owner of venture capital firm DBL Partners ("DBL Partners"), which he co-founded with fellow managing partner and co-owner Nancy Pfund ("Pfund"). Pfund was an observer on the Tesla Board from 2006 to 2010. Pfund was also a member of the SolarCity Board and one of the two members of the Special Committee of the SolarCity Board (the "SolarCity Special Committee") that negotiated and approved the Acquisition on behalf of SolarCity.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 35 but aver that Ehrenpreis has been a managing partner and co-owner of DBL Partners since 2015 and that he co-founded DBL Partners with Pfund. Defendants admit the allegations in the second sentence of Paragraph 35. Defendants admit that Pfund was a member of the SolarCity Board and one of the two members of the SolarCity Special Committee that negotiated the Acquisition on behalf of SolarCity and recommended the Acquisition to the SolarCity Board.

36. Pfund is also the managing director and founder of DBL Investors, LLC ("DBL Investors"). DBL Investors funds participated in SolarCity's Series D venture funding round (closed November 1, 2008); a Series E-1 preferred stock financing round (June 2010), contributing $1 million in capital; and a Series F preferred stock financing round (June and July 2011), contributing more than $1.6 million. At the time of the Acquisition, Pfund beneficially owned (personally and through DBL Investors investment funds) 1,554,114 shares of SolarCity common stock.[3] DBL Investors has also invested in SpaceX. Pfund is a close friend of Elon Musk's and has said that "[h]e's always been a master of the universe in my mind." (Footnote 3: This includes: (a) 449,279 shares held of record by Bay Area Equity Fund I, L.P. (of which DBL Investors is the managing member of the general partner), which represents approximately 15–20% of this fund's total assets under management – valued at $52,648,556 according to DBL Investors' most recent Form ADV filed with the SEC on March 29, 2016; (b) 928,977 shares held of record by DBL Equity Fund-BAEF II, L.P.; (c) 119,208 shares held of record by Pfund as co-trustee of The Pfund Polakoff Family Trust dated February 18, 1993; (d) 38,000 shares held of record by The Pfund Polakoff 2014 CRUT u/a/d 11/07/14; and (e) 18,650 shares issuable upon exercise of options exercisable within 60 days from September 23, 2016.)

RESPONSE: Defendants admit that Pfund is a managing partner of DBL Investors and that DBL Investors was an investor in SolarCity. The third sentence of Paragraph 36 and Footnote 3 appear to characterize the Joint Proxy

Statement/Prospectus filed by Tesla on October 12, 2016 (the "Proxy"), and DBL Investors' Form ADV filed March 29, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 36, and deny them on that basis.

37. Ehrenpreis was an early investor in all things Elon Musk and has stuck with the entrepreneur during some of his darkest days.

RESPONSE: Denied.

38. In addition, Ehrenpreis is an investor in and serves on the board of directors of Mapbox, Inc. ("Mapbox"), a provider of custom online maps. In December of 2015, Tesla and Mapbox entered into an agreement pursuant to which Tesla expects to pay Mapbox certain ongoing fees, including $5 million over the first 12 months of the agreement.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 38, except admit that Ehrenpreis serves on the board of directors of Mapbox, Inc. Defendants admit the allegations in the second sentence of Paragraph 38.

39. Ehrenpreis is a manager of DBL Partners Fund III ("DBL III"). Both Ehrenpreis and DBL III are investors in SpaceX.

RESPONSE: Admitted.

Gracias

40. Defendant Gracias has served on the Tesla Board since May 2007.

RESPONSE: Admitted.

41. Gracias is the founder, managing partner, CEO, Chief Investment Officer, director and sole owner of private equity firm Valor Management Corp., d/b/a Valor Equity Partners ("Valor").

RESPONSE: Admitted.

42. Gracias has long been an investor in Elon Musk's enterprises, dating back to his investment in PayPal.[4] Gracias and Valor participated in several pre-IPO venture funding rounds for SolarCity, Tesla and SpaceX,[5] and Gracias served on the boards of directors of all three companies at the time of the Acquisition. (Footnote 4: In 1999, Elon Musk founded X.com, an online financial services and e-mail payment company. In 2000, X.com merged with Confinity, which had a money transfer service called PayPal. In 2001, the merged company was renamed PayPal, focusing primarily on the money transfer service. In October 2002, PayPal was acquired by eBay for $1.5 billion, of which Elon Musk received $165 million.) (Footnote 5: Through his Valor funds, Gracias participated in four of Tesla's venture funding rounds: Series B (closed February 1, 2005), Series C (May 1, 2006), Series D (May 11, 2007), and Series E (closed February 8, 2008); as well as a pre-IPO venture debt raise conducted by Tesla in March 2009. Valor owned nearly five million shares immediately prior to Tesla's IPO. Similarly, Valor funds participated in SpaceX's $50 million Series C round (closed November 8, 2010) and its $1 billion Series E round (January 20, 2015). Gracias and his Valor funds also participated in SolarCity's pre-IPO Series G preferred stock financing round (February and March 2012), contributing nearly $25 million.)

RESPONSE: Defendants deny the allegations in Paragraph 42, except admit that Gracias invested in PayPal, that certain funds affiliated with Valor participated in pre-IPO venture funding rounds for SolarCity, Tesla, and SpaceX, that Gracias served on the boards of directors of all three companies at the time of the Acquisition, and that Elon Musk received consideration when eBay acquired PayPal at a valuation of approximately $1.5 billion. Defendants admit the allegations in Footnote 4. Defendants deny the allegations in Footnote 5, except admit that certain funds affiliated with Valor participated in certain of Tesla's and

SolarCity's venture funding rounds, and that certain funds affiliated with Valor held, in aggregate, approximately 4.9 million shares of Tesla as of March 31, 2010.

43. Gracias beneficially owned 211,854 shares of SolarCity common stock at the time of the Acquisition, which included (a) 159,023 shares held by AJG Growth Fund, LLC, an investment fund Gracias manages, (b) 38,665 shares held by a Valor private equity fund, Valor Equity Management II, LP, and (c) 14,166 shares issuable upon exercise of options exercisable within 60 days of September 23, 2016.

RESPONSE: Admitted.

44. Elon Musk has invested in Gracias's funds as well. Specifically, the Elon Musk Trust has invested $2 million in each of two Valor funds, Valor Equity Partners, L.P. and Valor Equity Partners II, L.P. [TESLA00001599–1600].

RESPONSE: Admitted.

45. Gracias has been described as one of Elon Musk's closest friends. Elon Musk even gave Gracias the second Tesla Roadster ever made.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 45 and deny them on that basis. Defendants deny the allegations in the second sentence of Paragraph 45.

46. Despite his friendship with Elon Musk and involvement with Musk's other companies, defendant Gracias has served as Tesla's purported "Lead Independent Director" since September 2010. As Tesla has stated, Gracias has "broad authority to direct the actions of [Tesla's] independent directors." In this role, Gracias, among other things: (a) reviews the agenda and materials for meetings of the independent directors; (b) consults with the CEO and Chairman (*i.e.*, Elon Musk) regarding Tesla Board meeting agendas, schedules and materials; (c) communicates with the CEO and Chairman; (d) acts as a liaison between the CEO and Chairman and the independent directors when appropriate; (e) raises issues with management on behalf of the independent directors; (f) annually

reviews, together with the Nominating and Corporate Governance Committee, the Tesla Board's performance during the prior year; and (g) serves as the Tesla Board's liaison for consultation and communication with stockholders as appropriate.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 46, except admit that Gracias has been Tesla's Lead Independent Director since September 2010. The remaining allegations in Paragraph 46 appear to quote from and characterize Tesla's Proxy Statement filed on April 15, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents.

Jurvetson

47. Defendant Jurvetson has served on the Tesla Board since June 2009. He is a member of the Tesla Board's Audit Committee. In fiscal year 2015, Jurvetson earned $6,095,984 as a Tesla director.

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 47. Defendants deny the allegations in the second sentence of Paragraph 47, but aver that, at the time the Complaint was filed, Jurvetson served as a member of the Tesla Board's Audit Committee. Defendants deny the allegations in the third sentence of Paragraph 47, except admit that, in fiscal year 2015, Jurvetson received compensation as a Tesla director, including option awards intended to compensate Jurvetson for Board service over a three-year period. Defendants respectfully refer the Court to Tesla's 2016 proxy statement for information relating to those awards and their valuation.

48. Jurvetson is a managing director of venture capital firm Draper Fisher Jurvetson ("DFJ"). DFJ invested in Tesla before its 2010 initial public offering ("IPO"), participating in Tesla's Series C (closed May 1, 2006), Series D (closed May 11, 2007), and Series E (closed February 8, 2008) venture funding rounds.[6] Thereafter, Jurvetson joined the Tesla Board. DFJ has not held Tesla stock since late 2014 or early 2015. (Footnote 6: Musk is reported to have given Jurvetson the first Tesla Model S ever made, and the second Tesla Model X.)

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 48, but aver that, at the time the Complaint was filed, Jurvetson was a managing director of DFJ. Defendants deny the allegations in the second sentence of Paragraph 48, except admit that DFJ participated in Tesla's Series C, Series D, and Series E funding rounds before Tesla's IPO. Defendants deny the allegations in the third sentence of Paragraph 48, except admit that Jurvetson joined the Tesla Board in June 2009. Defendants deny the allegations in the fourth sentence of Paragraph 48. Defendants deny the allegations in Footnote 6.

49. Another managing director of DFJ, John H.N. Fisher ("Fisher"), was a director of SolarCity at the time of the Acquisition. DFJ also invested in several of SolarCity's pre-IPO venture funding rounds.[7] At the time of the Acquisition, funds managed by DFJ beneficially owned 3,308,266 shares of SolarCity's common stock – approximately 3.3% of shares outstanding.[8] In addition, both Jurvetson and Fisher personally owned SolarCity common stock. Specifically, Jurvetson owned 417,450 shares of SolarCity common stock held by the Steve and Karla Jurvetson Living Trust dated August 27, 2002. Fisher owned 452,868 shares of SolarCity stock.[9] (Footnote 7: DFJ first invested in SolarCity in September 2006 – nearly six years before the company's IPO. The firm then participated in several SolarCity venture capital funding rounds, including: $29.9 million Series D round (November 1, 2008); $23.9 million Series E preferred stock round (October 1, 2009), contributing nearly $4 million; $21.4 million Series E-1 preferred stock round (June 2010), contributing nearly $9 million; and a $20 million Series F preferred stock financing round (June and July 2011), contributing more than $5.9 million.) (Footnote 8: DFJ's ownership of SolarCity includes: (a) 826,745 shares

held of record by Draper Fisher Jurvetson Fund IX, L.P.; (b) 260,838 shares held of record by Draper Fisher Jurvetson Fund X, L.P.; (c) 1,653,952 shares held of record by Draper Fisher Jurvetson Growth Fund 2006, L.P.; (d) 22,403 shares held of record by Draper Fisher Jurvetson Partners IX, LLC; (e) 7,970 shares held of record by Draper Fisher Jurvetson Partners X, LLC; (f) 136,138 shares held of record by Draper Fisher Jurvetson Partners Growth Fund 2006, LLC; (g) 518 shares held of record by Draper Fisher Jurvetson Fund IX Partners, L.P.; (h) 319 shares held of record by Draper Fisher Jurvetson Fund X Partners, L.P., (i) 177,612 shares held of record by Draper Associates, L.P.; (j) 160,396 shares held of record by Draper Associates Riskmasters Fund, LLC, and (k) 61,375 shares held of record by Draper Associates Riskmasters Fund III, LLC.) (Footnote 9: This includes: (a) 401,053 shares of SolarCity common stock held by the John Fisher and Jennifer Caldwell Living Trust dated January 7, 2000, as amended and restated March 27, 2008; (b) 6,776 shares held directly by The Fisher/Caldwell 2012 Irrevocable Children's Trust U/A/D 6-12-12; (c) 1,500 shares held by Caren Patrick, custodian for each of the Saskia C. Fisher UTMA CA and Annelise Fisher UTMA CA; (d) 500 shares are held by John Fisher as Custodian of the Eliza Foster UTMA; (e) 18,651 shares issuable upon the exercise of options exercisable within 60 days of September 23, 2016, which, pursuant to the terms of the Merger Agreement, will be converted into Tesla stock options; and (f) 24,388 shares of SolarCity common stock held by investment firm JHNF Investment LLC, which Fisher manages.)

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 49. Defendants deny the allegations in the second sentence of Paragraph 49 and in Footnote 7, except admit that DFJ and certain affiliated funds invested in certain of SolarCity's pre-IPO venture funding rounds. Defendants deny the allegations in the third sentence of Paragraph 49 and in Footnote 8, except admit that, as of September 23, 2016, DFJ and affiliated funds beneficially owned the shares listed in Footnote 8, other than those listed in parts (i), (j), and (k) of Footnote 8. Defendants admit the allegations in the fourth sentence of Paragraph 49. Defendants admit that, as of September 23, 2016, Jurvetson beneficially

owned 417,450 shares of SolarCity common stock held by the Steve and Karla Jurvetson Living Trust dated August 27, 2002. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the sixth sentence of Paragraph 49 and in Footnote 9 and deny them on that basis, except admit that, as of September 23, 2016, Fisher beneficially owned shares of SolarCity stock.

50. According to Tesla's 2016 annual proxy statement, DFJ is also a "significant stockholder" of SpaceX and participated in numerous venture funding rounds for that company.[10] Jurvetson, Fisher and another DFJ managing director, Randall S. Glein, all serve on the SpaceX Board. (Footnote 10: DFJ participated in the following early venture funding rounds of SpaceX: $30.44 million Series B (August 11, 2009); $50 million Series C (November 8, 2010); lead investor in $30 million Series D (December 21, 2012); $1 billion Series E (January 20, 2015).)

RESPONSE: Paragraph 50 appears to characterize Tesla's proxy statement filed on April 15, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 50 and Footnote 10, except admit that DFJ has participated in certain funding rounds for SpaceX, and that Jurvetson serves on the SpaceX board.

51. Similar to Elon Musk's relationship with Gracias, not only does DFJ invest in Elon Musk, Elon Musk invests in DFJ. Specifically, the Elon Musk Trust is a limited partner in the Draper Fisher Jurvetson Fund X, L.P.

RESPONSE: Defendants deny the allegations in Paragraph 51, except admit that the Elon Musk Trust is a limited partner in the Draper Fisher Jurvetson Fund X, L.P.

52. In addition, Elon Musk and DFJ co-founder Tim Draper have invested alongside each other in other ventures, including NeuroVigil, which develops products that analyze brain signals.

RESPONSE: Defendants deny the allegations in Paragraph 52, except admit that Elon Musk and Tim Draper both invested in NeuroVigil.

Kimbal Musk

53. Defendant Kimbal Musk has served on the Tesla Board since April 2004. He is the brother of Elon Musk and cousin of Lyndon and Peter Rive. Although not an employee of the Company, Tesla concedes in its SEC filings that Kimbal Musk is not an independent director of the Company.

RESPONSE: Defendants admit the allegations in the first two sentences of Paragraph 53. Defendants deny the allegations in the third sentence of Paragraph 53, except admit that certain of Tesla's filings with the Securities and Exchange Commission disclose that Tesla's Board of Directors has not determined that Kimbal Musk is an "independent director" as defined in the listing standards of NASDAQ.

54. At the time of the Acquisition, Kimbal Musk beneficially owned 147,541 shares of SolarCity common stock.

RESPONSE: Admitted.

55. In fiscal year 2015, Kimbal Musk earned $4,964,381 as a director of Tesla. The vast majority of his holdings in Tesla and SolarCity are pledged as collateral to secure personal indebtedness.

RESPONSE: Defendants deny the allegations in Paragraph 55, except admit that, in fiscal year 2015, Kimbal Musk received compensation as a Tesla

director, including option awards intended to compensate Kimbal Musk for Board service over a three-year period. Defendants respectfully refer the Court to Tesla's 2016 proxy statement for information relating to those awards and their valuation. Defendants admit that certain of Kimbal Musk's Tesla shares are pledged as collateral to secure certain personal indebtedness.

56. Kimbal Musk is a director of SpaceX.

RESPONSE: Admitted.

57. Kimbal Musk is a limited partner of Valor Equity Partners II, L.P. (in which his brother has also invested) and Valor Equity Partners III-A, L.P., both of which are funds advised by Valor.

RESPONSE: Admitted.

58. Defendants Elon Musk, Buss, Denholm, Ehrenpreis, Gracias, Jurvetson and Kimbal Musk are referred to collectively herein as the "Tesla Defendants."

RESPONSE: Paragraph 58 purports to define a term in the Complaint and thus does not require a response.

SUBSTANTIVE ALLEGATIONS

Tesla

59. Tesla was founded in 2003 by Silicon Valley engineers Martin Eberhard and Marc Tarpenning who "wanted to prove that electric cars could be better than gasoline-powered cars."

RESPONSE: Defendants deny the allegations in Paragraph 59, except admit and aver that Martin Eberhard and Marc Tarpenning are two of Tesla's co-

founders, along with Elon Musk, JB Straubel, and Ian Wright. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 59, and deny them on that basis.

60. In early 2004, Elon Musk led Tesla's $7.5 million Series A round of financing, and, in exchange, he became Chairman of the Tesla Board pursuant to a Series A voting agreement dated April 23, 2004. [TESLA0001710]. He immediately inserted himself into the Company's operations, including the design of its first car, the Roadster. Over the next few years, Elon Musk acquired a controlling stake in the Company, participating in Tesla's Series B, C, D and E venture funding rounds. Prior to the Company's IPO, Elon Musk invested approximately $70 million in Tesla.

RESPONSE: Defendants deny the allegations in Paragraph 60, except admit that Elon Musk participated in Tesla's $7.5 million Series A funding round, that he was selected as a director of Tesla pursuant to a Series A Voting Agreement dated April 23, 2004, that he became involved in Tesla's operations, including the design of the Roadster, that he participated in Tesla's Series B, C, D, and E funding rounds, and that he invested approximately $70 million in Tesla prior to Tesla's IPO.

61. In November 2007, Elon Musk forced founder and then-CEO Eberhard out of the Company. In October 2008, he appointed himself CEO. Around that time, Tesla was in financial distress. The Company was reportedly spending approximately $4 million per month attempting to bring the Roadster to market. To keep Tesla afloat and bring the Roadster to market, in early 2009, Elon Musk personally borrowed $20 million from SpaceX to satisfy a 2008 pledge to fund that amount in Tesla (the "SpaceX Loan"). Having survived its financial problems, the Company later expanded its automotive line to include a luxury sedan (the Model S) and an SUV (the Model X).

RESPONSE: Defendants deny the allegations in the first three sentences of Paragraph 61, except admit that Elon Musk became CEO of Tesla in October 2008. The fourth sentence of Paragraph 61 appears to refer to unspecified reports. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning these unspecified reports, and deny them on that basis. Defendants deny the remaining allegations in Paragraph 61, except admit that in early 2009, Elon Musk borrowed $20 million from SpaceX to fund Tesla and that Tesla has expanded its automotive line to include the Model S and the Model X.

62. Tesla conducted its IPO on June 29, 2010. Elon Musk repaid the SpaceX Loan by selling 1.4 million shares of Tesla common stock for about $23.8 million. Since the IPO, Elon Musk has been the Company's largest stockholder, owning between approximately 26.5% and 29% of its outstanding common stock, until his sale of shares in a May 25, 2016 offering reduced his ownership stake to 22.5%. As of September 23, 2016, Elon Musk owned 22.1% of Tesla's outstanding common stock.

RESPONSE: Admitted.

63. Until recently, Tesla's sole business was the design, development, manufacturing and sales of high-performance fully electric vehicles and advanced electric vehicle powertrain components. The Company began producing and selling home energy storage systems in 2013 and commercial and utility energy storage systems in 2014. Tesla's primary source of revenue, however, has remained the sale of its vehicles.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 63. Defendants admit the allegations in the second sentence of Paragraph 63. The third sentence of Paragraph 63 appears to characterize Tesla's

financial statements, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 63.

SolarCity

64. SolarCity was founded in 2006 by Elon and Kimbal Musk's cousins, Peter Rive and Lyndon Rive, after Elon Musk suggested to Lyndon Rive that he get into the solar industry as they were driving an RV to the Burning Man festival in Nevada. Lyndon Rive is SolarCity's CEO and Peter Rive is its Chief Technology Officer, and both served on the SolarCity Board. Elon Musk was Chairman of the SolarCity Board and also SolarCity's largest shareholder at the time of the Acquisition, owning approximately 21.9% of its common stock. Lyndon Rive and Peter Rive owned 3.9% and 3.8% of SolarCity's shares of common stock, respectively.

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 64. Defendants deny the allegations in the second sentence of Paragraph 64, except admit that, at the time of the Acquisition, Lyndon Rive served as SolarCity's CEO, Peter Rive served as its Chief Technology Officer, and both served on the SolarCity Board. Defendants admit the allegations in the third and fourth sentences of Paragraph 64.

65. Solar City primarily leases solar panel equipment to residential and commercial customers. The lease payments received from its customers provide SolarCity its main source of revenue. SolarCity relies on debt to finance its up-front costs associated with equipment and installation.

RESPONSE: Defendants deny the allegations in Paragraph 65, except admit that prior to Tesla's acquisition of SolarCity, SolarCity leased solar panel equipment to residential and commercial customers, that revenue from operating

leases and solar energy systems incentives were SolarCity's largest source of revenue, and that SolarCity used debt financing.

66. SolarCity completed its IPO in December 2012. Since then, SolarCity never had a profitable year and has suffered losses in all but three quarters.

RESPONSE: Defendants deny the allegations in Paragraph 66, except admit that SolarCity completed its IPO in December 2012, and that from December 2012 until the Acquisition, SolarCity reported annual net losses and net losses in all but three quarters.

67. Elon Musk has long been propping up SolarCity. In early 2013, Tesla and SolarCity were both in need of cash. Musk increased his personal credit lines from $85 million to $300 million. As collateral, he pledged 9.5 million Tesla shares and 6 million SolarCity shares, which comprised 29% of his total holdings in each company at the time. From May 2013 to October 2013, Musk used funds from the increased credit lines to purchase $100 million in Tesla stock and $10 million in SolarCity stock to inject both companies with needed capital.

RESPONSE: Defendants deny the allegations in the first two sentences of Paragraph 67. Defendants admit the allegations in the third and fourth sentences of Paragraph 67. Defendants deny the remaining allegations in Paragraph 67, except admit that from May 2013 to October 2013, Musk used some of the funds from the credit lines to purchase $100 million in Tesla stock and $10 million in SolarCity stock.

68. In 2015, Musk again increased his personal credit lines to $475 million, and purchased $20 million in Tesla shares and $17.7 million in SolarCity shares. When asked in an interview with *The Wall Street Journal* whether the Tesla Board has ever discussed Elon Musk's personal loans and whether they were

in the best interests of stockholders, defendant Jurvetson replied "I don't have a desire to take on that question."

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 68. The remainder of Paragraph 68 appears to characterize an interview quoted in an April 27, 2016 article from *The Wall Street Journal*, to which Defendants respectfully refer the Court for its complete and accurate contents.

69. Despite Elon Musk's aid, at the time of the Offer, SolarCity was struggling to finance its business, and those struggles continued. Its business model has been described by a number of financial analysts as "unsustainable." Although customer lease payments provide long-term income, SolarCity's debt and cost of financing continued to mount. During the three years immediately prior to the Offer, SolarCity's debt increased 13-fold, totaling $3.56 billion as of June 2016. In 2015, SolarCity's (a) debt interest payments equaled nearly a quarter of its revenue; (b) selling, general, and administrative expenses increased by 79.3% over the previous year; (c) research and development costs were nearly triple the amount spent in 2014; and (d) cash from operations was in the negative by $790 million.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 69. The second sentence of Paragraph 69 appears to quote from statements from unspecified financial analysts. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning these unspecified statements, and deny them on that basis. Defendants deny the allegations in the third and fourth sentences of Paragraph 69. The remaining allegations in Paragraph 69 appear to characterize SolarCity's financial statements reported on the Company's Form 10-K dated March 18, 2014 and Form 10-K dated February 24, 2015, to which Defendants respectfully refer the Court for their

complete and accurate contents. Defendants otherwise deny the remaining allegations in Paragraph 69.

70. In February 2016, SolarCity disclosed fourth quarter 2015 results that fell short of guidance (which had already been lowered in October 2015) and announced below-expected first quarter 2016 installation guidance. The company's stock dropped nearly 30% on this news. A Deutsche Bank research report noted that "[management] credibility is at risk considering the fact that [SolarCity] has missed or guided down for multiple consecutive quarters in a row."

RESPONSE: The first sentence of Paragraph 70 appears to characterize the contents of SolarCity's February 9, 2016 Form 8-K, to which Defendants respectfully refer the Court for its complete and accurate contents. The second sentence of Paragraph 70 appears to refer to publicly available stock price information for SolarCity stock, to which Defendants respectfully refer the Court for its complete and accurate price history. The third sentence of Paragraph 70 purports to quote from a Deutsche Bank research report, to which Defendants respectfully refer the Court for its complete and accurate contents.

71. [redacted]

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 71. The second and third sentences of Paragraph 71 appear to

characterize the materials for the July 19, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants deny the remaining allegations in Paragraph 71.

72. [redacted]

RESPONSE: Defendants deny the allegations in Paragraph 72, except admit that [redacted], to which Defendants respectfully refer the Court for their complete and accurate terms.

73. [redacted]

RESPONSE: The first sentence of Paragraph 73 appears to characterize the contents of the cited Board Discussion Materials presentation of July 19, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants deny the allegations in the second sentence of

Paragraph 73, except admit that Elon Musk and Gracias were members of the SolarCity board. Defendants deny the remaining allegations in Paragraph 73.

74. Although SolarCity appeared focused on top-line growth, its expansion initiatives were unsuccessful. As noted in an article published by *Fortune* on June 22, 2016, "SolarCity also seems to have bitten off more than it can chew when it comes to its plan to build a massive solar panel factory in upstate New York. The company delayed its factory production plans a couple of months ago." On August 1, 2016, SolarCity lowered its installation guidance for 2016, blaming weaker than expected bookings in the first half of the year. Prior to Tesla's Offer, SolarCity's stock price had dropped by nearly 60% since the beginning of 2016.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 74. The second and third sentences of Paragraph 74 appear to quote from an online article published on Fortune.com, to which Defendants respectfully refer the Court for its complete and accurate contents. The fourth sentence of Paragraph 74 appears to characterize the contents of SolarCity's Form 8-K dated August 1, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. The fifth sentence of Paragraph 74 appears to refer to publicly available stock price information for SolarCity stock, to which Defendants respectfully refer the Court for its complete and accurate price history.

75. In 2016, SolarCity cut almost 20% of its workforce, reducing its employee count from 15,273 as of December 31, 2015 to 12,243 as of December 31, 2016. This included a 22.4% decrease in operations, installations and manufacturing employees and a 26.6% decrease in sales and marketing employees.

RESPONSE: Defendants deny the allegations in Paragraph 75, except admit that SolarCity had 15,273 employees as of December 31, 2015 and 12,243

employees as of December 31, 2016, and that the decrease in the number of employees between these two dates included a 22.4% decrease in operations, installations and manufacturing employees and a 26.6% decrease in employees in various sales and marketing related departments.

76. In addition, SolarCity undertook several rounds of bond offerings in recent years. It referred to these bond offerings as "solar bonds" and attempted to sell them through its website.

RESPONSE: Defendants deny the allegations in Paragraph 76, except admit that SolarCity has sold solar bonds through a web-based platform.

77. Analysts have noted that most retail investors were not interested in the solar bonds. Historically, the largest buyer in these bond offerings was Musk's private company, SpaceX. SpaceX purchased $90 million in solar bonds from SolarCity in March 2015, $75 million in June 2015 and another $90 million in March 2016.[11] In November 2015, another Elon Musk-affiliated entity purchased $10 million and Lyndon Rive purchased $3 million in solar bonds. (Footnote 11: SpaceX's bond purchases from SolarCity have raised questions from Congress, where some are concerned that SpaceX is using money from federal contracts to fund SolarCity. In April 2016, Representative Doug Lamborn (R. Colo.) proposed a bill amendment that would prohibit Elon Musk from using SpaceX money to buy SolarCity bonds. In an interview, Rep. Lamborn said that the purpose of the proposed amendment, which was ultimately withdrawn, was to send a message to Musk. The message appears to have been received, as SpaceX has not purchased any SolarCity bonds since then.)

RESPONSE: The first sentence of Paragraph 77 appears to refer to certain unspecified analyst statements. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning these unspecified statements, and deny them on that basis. Defendants admit the allegations in the second sentence of Paragraph 77. Defendants deny the

allegations in the third sentence of Paragraph 77 but aver that SpaceX purchased $90 million in solar bonds from SolarCity in March 2015 and $75 million in June 2015, and that SpaceX used the proceeds from the repayment of the $90 million in solar bonds purchased in March 2015 to purchase $90 million in bonds in March 2016. Defendants deny the allegations in the fourth sentence of Paragraph 77. The contents of Footnote 11 appear to characterize an April 27, 2016 article from *The Wall Street Journal*, to which defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Footnote 11.

78. SolarCity initiated its most recent offering on August 17, 2016, pursuant to which the company hoped to raise $124 million by issuing 18-month bonds bearing an interest rate of 6.5%. Indicative of the lack of outside interest, on August 23, 2016, SolarCity disclosed that Elon Musk had placed orders to purchase $65 million and Lyndon and Peter Rive had each placed orders to purchase $17.5 million of these bonds — thus accounting collectively for $100 million, more than 80% of the total offering.

RESPONSE: Defendants deny the allegations in Paragraph 78, except admit that SolarCity initiated a solar bond offering on August 17, 2016, consisting of bonds with a maturity date of February 17, 2018 and an interest rate of 6.5%, that the initial maximum principal amount of the offered series was $124 million, and that on August 23, 2016, SolarCity disclosed that Elon Musk, Lyndon Rive, and Peter Rive placed orders to purchase $65 million, $17.5 million, and $17.5 million, respectively, in solar bonds in the offering.

79. In defending his borrowings from one of his three companies to fund the others, Elon Musk has admitted that Tesla, SolarCity and SpaceX are a "pyramid" atop which he sits, stating it is "important that there not be some sort of house of cards that crumbles if one element of the pyramid of Tesla, SolarCity and SpaceX falters."

RESPONSE: Defendants deny the allegations in Paragraph 79, except admit that part of Paragraph 79 appears to quote from an April 27, 2016 article from *The Wall Street Journal*, to which defendants respectfully refer the Court for its complete and accurate contents.

80. In addition to its liquidity problems, SolarCity faced legal problems as well. On September 26, 2016, Cogenra Solar, Inc., a subsidiary of SolarCity competitor SunPower Corporation, and Khosla Ventures III, L.P., filed a lawsuit against SolarCity and its subsidiary, Silevo, Inc. ("Silevo") accusing SolarCity and Silevo of misappropriating trade secrets and intellectual property and engaging in other violations of law relating to solar cell shingling technology. The plaintiffs seek, *inter alia*, compensatory and punitive damages, and a permanent injunction prohibiting SolarCity and Silevo's use of the misappropriated information and prosecution of certain patent applications.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 80. The remainder of Paragraph 80 appears to characterize a complaint filed on September 26, 2016 in the United States District Court for the Northern District of California captioned *Cogenra Solar, Inc.* v. *SolarCity Corp.*, Case No. 3:16-cv-5481, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the remaining allegations in Paragraph 80.

81. That SolarCity's interests in Silevo may be ensnared in litigation is particularly concerning for Tesla's stockholders given Elon Musk's public

statements that Silevo would be the driver of any synergies in the Acquisition and represents the gem of SolarCity.

RESPONSE: Denied.

The Acquisition

82. To prevent the collapse of SolarCity and a total loss on their substantial investments therein, by early 2016 Elon Musk and his cousins concluded that they needed a financial bailout. However, SolarCity was in no position to conduct another equity offering. It had already issued nearly 25 million additional shares since its IPO, and its stock had declined approximately 64% from February 2015 to February 2016. Another debt offering was likewise unavailable. SolarCity had just recently raised capital in November 2015 for which it was forced to seek alternative funding. Accordingly, the credit markets were functionally closed to SolarCity in light of its massive debt and continuing cash burn. Elon Musk and his cousins thus determined that the better option was to cause Tesla, at the expense of Tesla and its stockholders, to acquire SolarCity, which would provide SolarCity with access to Tesla's (somewhat) stronger balance sheet and greater ability to tap the public capital markets.

RESPONSE: Defendants deny the allegations in Paragraph 82, except admit that (i) SolarCity had issued approximately 25 million shares since its IPO; (ii) the third sentence of Paragraph 82 appears to refer to publicly available stock price information for SolarCity stock, to which Defendants respectfully refer the Court for its complete and accurate price history; and (iii) SolarCity had raised capital in November 2015 by issuing certain convertible notes.

SolarCity's Financial Situation Grows Dire and Musk Begins His Push for Tesla to Acquire SolarCity

83. [redacted]

[redacted]

RESPONSE: Paragraph 83 appears to characterize the contents of the cited Board Discussion Materials presentation of July 19, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 83.

84. The same month, without authority from the Tesla Board, Elon Musk suggested to his cousin and fellow SolarCity stockholder and director Lyndon Rive that they should seriously consider a potential combination of Tesla and SolarCity. Of course, SolarCity itself arose from Elon Musk's "suggestion" to Lyndon Rive during their drive to Burning Man.

RESPONSE: Defendants deny the allegations in Paragraph 84, but aver that in February 2016, Elon Musk suggested to Lyndon Rive that he believed more serious consideration of a potential combination between Tesla and SolarCity was in order.

85. A special meeting of the Tesla Board was called on February 29, 2016, at which Tesla "Management [*i.e.*, Musk and Tesla CFO Jason Wheeler ("Wheeler")] presented a preliminary proposal to acquire SolarCity." [TESLA00001346]. However, Musk was leading the effort. Wheeler, who had only been at Tesla for a few months, took a back seat to his boss Musk in presenting to the Board.[12] (Footnote 12: Upon information and belief, a significant portion of Wheeler's early time at Tesla consisted of working with Elon Musk to develop a defensible rationale for the Acquisition.)

RESPONSE: Defendants deny the allegations in Paragraph 85 and Footnote 12, except admit that a special meeting of the Tesla Board was called on

February 29, 2016, at which Wheeler presented a preliminary proposal for Tesla to acquire SolarCity, and that Wheeler became CFO of Tesla in November 2015.

86. The purported purpose of acquiring SolarCity was "to complement the Company's Tesla Energy business, grow the Sales operations of the Company and to create other product, service and operational synergies through the combination of the companies." Musk only proposed, however, and the Tesla Board only discussed, the potential acquisition of SolarCity; Musk did not propose an acquisition of other companies in the solar industry or other strategic transactions that could provide similar purported benefits to Tesla, because his ulterior motive in making the proposal was to use Tesla to bail out the struggling SolarCity (and, therefore, himself and his cousins).

RESPONSE: The first sentence of Paragraph 86 appears to quote the minutes of the Special Meeting of the Board of Directors of Tesla held on February 29, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 86.

87. Elon Musk also dismissed out of hand as unworkable the idea that Tesla could have a successful joint venture operation with SolarCity in lieu of the Acquisition. Musk's rationale is suspect given that large multi-national companies commonly engage in complex and successful joint ventures. During a September 22, 2016 call, Elon Musk announced SolarCity's plans to unveil a "solar roof" on October 28, 2016. The "solar roof" is different than solar panels in that instead of separately attaching solar panels to an existing roof, the panels would be integrated into the roof itself. The announcement indicated that the roof would have an integrated battery and charger (manufactured by Tesla). Thus, despite Musk's suggestion that a joint venture between SolarCity and Tesla would be unworkable, it appears that Tesla and SolarCity have already engaged in such an arrangement—no merger needed.

RESPONSE: Defendants deny the allegations in the first two sentences of Paragraph 87. Defendants deny the allegations in the third sentence of

Paragraph 87, but aver that on September 22, 2016, Elon Musk announced via Twitter SolarCity's plans to unveil a solar roof on October 28, 2016. Defendants admit the allegations in the fourth and fifth sentences of Paragraph 87. Defendants deny the remaining allegations in Paragraph 87.

88. Moreover, given SolarCity's pressing need for capital, Tesla would have been in a good position to extract favorable terms from SolarCity in connection with joint venture negotiations.

RESPONSE: Denied.

89. At the conclusion of the meeting, the Board "decided not to proceed with an offer to SolarCity at this time because of the potential impact on the management team's time and resources in the near term." [TESLA00001347].

RESPONSE: Paragraph 89 appears to quote the minutes of the Special Meeting of the Board of Directors of Tesla held on February 29, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents.

90. Two weeks later, on March 15, 2016, the Board again discussed Musk's proposed acquisition of SolarCity. In that meeting, the Board gave clear direction to management (specifically, Elon Musk and Jason Wheeler, the only management team members present at the meeting) that the Board did not intend to proceed with a potential acquisition of SolarCity. The Board further instructed management "to focus its efforts on the execution of current business matters." [TESLA00001348-49]. The minutes reflect that SolarCity was again the only potential target specifically discussed by the Tesla Board.

RESPONSE: Paragraph 90 appears to quote from and characterize the Minutes of a Regular Meeting of the Board of Directors of Tesla on March 15, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 90.

Musk Returns to the Board Again
Seeking an Acquisition of SolarCity

91. At a regularly scheduled Tesla Board meeting less than three months later on May 31, 2016, Elon Musk again raised the issue of acquiring SolarCity. Specifically, the minutes reflect that, at the outset of the meeting, Musk "discussed certain strategic opportunities in the solar energy space that had been raised and discussed but ultimately deferred at previous meetings" – *i.e.*, his February 29, 2016 proposal to acquire SolarCity. [TESLA00001455–56].

RESPONSE: Paragraph 91 appears to characterize and quote from the Minutes of a Regular Meeting of the Board of Directors of Tesla on May 31, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 91.

92. The Tesla Board then discussed "with management [*i.e.*, Elon Musk and Wheeler] the possible benefits and detriments of acquiring a solar energy company in the context of the Company's strategic plan" — a plan that was authored by Elon Musk and according to him has always contemplated the acquisition of SolarCity. *See* ¶¶ 138-140, *infra*. According to the meeting minutes, "[i]n this discussion, the Board discussed the possibility of evaluating an acquisition of SolarCity Corporation . . . as a potential target of opportunity in the solar energy space." [TESLA00001455]. The minutes reflect that SolarCity was the only potential target specifically discussed by the Tesla Board.

RESPONSE: Paragraph 92 appears to characterize and quote from the Minutes of a Regular Meeting of the Board of Directors of Tesla on May 31, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 92.

93. This time, the Tesla Board capitulated and authorized Elon Musk and his management team to (a) assess a potential acquisition of a solar energy company; (b) engage an independent financial advisor on behalf of the Tesla Board and the Company to assist in such assessment; and (c) instruct the law firm

Wachtell, Lipton, Rosen & Katz ("Wachtell") to undertake a review of a potential acquisition by Tesla. [TESLA00001456].

RESPONSE: Paragraph 93 appears to characterize and quote from the Minutes of a Regular Meeting of the Board of Directors of Tesla on May 31, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 93.

94. Despite the Tesla Board members' obvious conflicts in considering an acquisition of SolarCity, the Tesla Board did not form a special committee, nor were separate financial or legal advisors retained to represent the independent directors. Rather, Wachtell and financial advisor Evercore Partners ("Evercore") were selected and retained by Tesla management (led by CEO Elon Musk) to represent the full Tesla Board (led by Chairman Elon Musk) and the Company (led by CEO Elon Musk).

RESPONSE: Defendants deny the allegations in Paragraph 94, except admit that the Tesla Board did not form a special committee or retain separate financial or legal advisors to represent any subset of the directors.

The Tesla Board Makes the Offer

95. Tesla engaged Evercore on June 17, 2016. [TESLA00001323–37]. Under the terms of Evercore's engagement, 82% of its ultimate $7 million fee was contingent on the consummation of a transaction. [TESLA00001323].

RESPONSE: Defendants deny the allegations in Paragraph 95, except (i) admit that Tesla and Evercore entered into an engagement letter dated June 17, 2016, and (ii) aver that the second sentence of Paragraph 95 appears to characterize the terms of such engagement letter, to which Defendants respectfully refer the Court for its complete and accurate contents.

96. Evercore met with the Tesla Board on only one occasion, a two-and-a-half hour meeting on June 20, 2016, before the Tesla Board voted to make the Offer to acquire SolarCity. Evercore did not provide a conflict disclosure letter to Tesla until June 20, 2016.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 96, except admit that Evercore met with the Tesla Board on June 20, 2016. Defendants deny the allegations in the second sentence of Paragraph 96, except admit that on June 20, 2016, Evercore sent the Tesla Board a letter entitled "Re: Disclosure of Relationships."

97. The Tesla Board called the June 20, 2016 special meeting "to further explore a potential strategic transaction between the Company and a participant in the solar energy industry." [TESLA00001459].

RESPONSE: Paragraph 97 appears to quote from the Minutes of a Special Meeting of the Board of Directors of Tesla from June 20, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 97.

98. Although Defendants publicly touted that Elon Musk and Gracias recused themselves from the Tesla Board vote on whether to make the Offer, both were present for the substantial majority of the meetings at which the Offer was discussed, and Elon Musk played a leading role in the discussions. Elon Musk began the June 20, 2016 special meeting by "remind[ing] the board that the issue had been raised and discussed but ultimately deferred at previous meetings and review[ing] some of the strategic considerations that the board had evaluated at those previous meetings [*i.e.*, the acquisition of SolarCity]." [TESLA00001459]. Not to be dismissed is the force of Elon Musk's dominating personality in the context of the Tesla Board setting. To that end, Elon Musk's "reminder" to the Tesla Board was actually a tacit order to do as he asked. Moreover, Elon Musk's favored investors (who also sit on the boards of SpaceX and SolarCity in addition

to Tesla) have seen firsthand how quickly Elon Musk has dismissed those who challenge his master plan.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 98, except admit that Elon Musk and Gracias were present for portions of certain Tesla Board meetings at which the Offer was discussed, but recused themselves from, among other things, voting on the Offer. The second sentence of Paragraph 98 appears to quote from the Minutes of a Special Meeting of the Board of Directors of Tesla from June 20, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the remaining allegations in Paragraph 98.

99. Following Elon Musk's "reminder", Evercore presented the "results" of its assessment. Evercore had purportedly been retained to "provide financial advisory services to the Company in connection with evaluating, and if requested by the Company, negotiating and executing, strategic and financial alternatives in the solar energy sector," [TESLA00001323–37], and unsurprisingly identified SolarCity as "the most attractive asset in the solar market." [TESLA00001461]. Conversely, that same day, an analyst from Goldman Sachs & Co., which was a co-underwriter in Tesla's $2 billion secondary stock offering that was issued just weeks earlier, publicly stated that SolarCity was the "worst positioned" company in the solar energy sector for capitalizing on future growth in the industry.

RESPONSE: Paragraph 99 appears to characterize and quote from the Minutes of a Special Meeting of the Board of Directors of Tesla from June 20, 2016, the June 17, 2016 engagement letter between Tesla and Evercore, and a statement from an analyst from Goldman Sachs & Co., to which Defendants

respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 99.

100. The full Tesla Board, including Elon Musk and Gracias, were present for Evercore's presentation and the ensuing discussion. The minutes reflect that although Evercore gave a brief analysis of "various potential targets," the Tesla Board did not discuss potential acquisitions of any targets other than SolarCity. Rather, the Tesla Board only discussed: (a) "the strategic rationale for pursuing an acquisition in the solar energy industry"; (b) "the various customer, product, operational and financial synergies of a potential acquisition ***of SolarCity***" (emphasis added); (c) "the financial, credit and indebtedness profile ***of SolarCity*** and of a potential combined company, ***SolarCity's*** ability to meet its current and future debt obligations and financing needs, as well as the Company's market valuation relative to its net asset base" (emphasis added); and (d) "the reasonableness of [third-party forecasts ***for SolarCity***] and assumptions based on public information and market perception ***of SolarCity***" (emphasis added), before turning to the details of the Offer. [TESLA00001461].

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 100. The remainder of Paragraph 100 purports to quote from and characterize the Minutes of a Special Meeting of the Board of Directors of Tesla from June 20, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 100.

101. After discussions that centered on SolarCity as the acquisition target, the entire Board, including Musk and Gracias, "then discussed, with input from management [*i.e.*, Musk] and representatives of Evercore, the value and structure of a potential acquisition proposal for SolarCity." The Tesla Board, including Musk and Gracias, "determined that an initial proposal, if any, should be presented as a range of exchange ratios reflecting a premium over the closing price of SolarCity's shares based on the limited diligence done to date and valuation analysis presented by Evercore" and "considered a range of 0.122x to 0.131x shares of the Company's common stock for each share of SolarCity common stock,

representing a value of $26.50 to $28.50 for each share of SolarCity common stock." [TESLA00001461–62]. The Tesla Board, including Musk and Gracias, "then considered the form and content of a possible proposal letter" to the SolarCity Board, which includes Elon Musk, as Chairman, as well as Gracias. [TESLA00001462].

RESPONSE: Paragraph 101 appears to quote from and characterize the Minutes of a Special Meeting of the Board of Directors of Tesla from June 20, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 101.

102. Prior to its adjournment, Elon Musk and Gracias left the June 20 meeting, and thereafter the remainder of the Tesla Board approved and adopted the Offer on the very same terms discussed with Musk and Gracias. [TESLA00001462–63].

RESPONSE: Paragraph 102 appears to characterize the Minutes of a Special Meeting of the Board of Directors of Tesla from June 20, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 102.

103. On June 21, 2016, Tesla announced in a blog post that on June 20, 2016, it had made the Offer to acquire SolarCity for Tesla stock that valued SolarCity at $26.50 to $28.50 per share, or a range from approximately $2.6 to $2.8 billion. The Offer provided for an exchange ratio of 0.122x to 0.131x shares of Tesla stock for each share of Solar City stock.[13] The proposed purchase price reflected a 21%–30% premium over SolarCity's closing price on June 20, 2016. According to the Tesla Board, the Offer provided "compelling value for SolarCity and its stockholders while also giving SolarCity's stockholders the opportunity to receive Tesla common stock at a premium exchange ratio . . . ." (Footnote 13: During a June 22, 2016 conference call, Tesla declined to explain whether there was a price collar or similar mechanism in connection with the proposed exchange ratio.)

RESPONSE: Paragraph 103 appears to quote from and characterize Tesla's blog post of June 21, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. Footnote 13 appears to characterize a publicly transcribed June 22, 2016 conference call, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 103.

104. Tesla has touted that, because they were directors of both Tesla and SolarCity, Elon Musk and Gracias recused themselves from voting on the Offer at the June 20th meeting at which it was approved, and would recuse themselves from voting on the Offer at the SolarCity Board as well. But given Elon Musk's significant participation in the Tesla Board discussions leading to the determination to make the Offer, on a June 22, 2016 conference call, when an analyst asked whether "recused from voting" also meant "recused from discussion and not present in the room when this was brought up," Tesla's General Counsel Todd Maron ("Maron") had to admit that it meant recused from voting only.

RESPONSE: Paragraph 104 purports to characterize a publicly transcribed June 22, 2016 conference call, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 104, except admit that Elon Musk and Gracias recused themselves from voting on the Offer, including at the June 20th Special Meeting of the Tesla Board, and from voting on the Offer as members of the SolarCity Board.

105. Furthermore, when asked during the June 22, 2016 conference call "how independent do you consider the remaining directors; do they have any personal ownership of SolarCity and the other things that are likely to relate to the Board issues," Maron dodged the questions, stating that it was "really too early in the process to get into all the different details. . . . it's probably more appropriate to just focus on the business rationale for why this deal makes sense."

RESPONSE: Paragraph 105 purports to characterize and quote from a publicly transcribed June 22, 2016 conference call, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 105.

106. Maron thus avoided disclosing that the five remaining Tesla Board members who did vote on the Offer included: (1) Kimbal Musk, who was a SolarCity stockholder, Elon Musk's brother and the Rives' cousin and admittedly not an independent director; (2) Buss, who was SolarCity's recently retired CFO and then-current consultant and a SolarCity stockholder; (3) Ehrenpreis, whose venture capital firm partner, Pfund, was a SolarCity director and significant SolarCity stockholder; and (4) Jurvetson, who owned SolarCity stock both individually and through his venture capital firm DFJ, and whose partner at DFJ was a SolarCity director. Accordingly, Kimbal Musk, Buss, Ehrenpreis and Jurvetson, their family members, businesses and/or business partners, all stood to benefit from the Acquisition of SolarCity.

RESPONSE: Defendants deny the allegations in Paragraph 106, except admit that (i) Kimbal Musk was a SolarCity stockholder and is Elon Musk's brother and the cousin of Peter and Lyndon Rive; (ii) Buss had previously served as SolarCity's CFO and was a SolarCity stockholder; (iii) Pfund was a SolarCity director and stockholder; (iv) Jurvetson and DFJ owned SolarCity stock; (v) Fisher was a SolarCity director; and (vi) Kimbal Musk, Buss, and Ehrenpreis voted on the Offer.

107. Also at the June 20, 2016 meeting at which it determined to make the Offer, the Tesla Board (including Elon Musk and Gracias) amended its bylaws to adopt a forum selection provision designating the state courts of Delaware (or, if no state court has jurisdiction, the United States District Court for the District of Delaware) as the exclusive forum for any derivative action or action involving

claims for breach of fiduciary duty, claims arising under the Delaware General Corporation Law ("DGCL"), the Company's charter or bylaws, or the internal affairs doctrine, or any "internal corporate claims" as defined in the DGCL. [TESLA00001462]. The adoption of the forum selection provision indicated that the Tesla Board knew it would be facing stockholder litigation in response to the Offer.

RESPONSE: The first sentence of Paragraph 107 appears to characterize the Minutes of a Special Meeting of the Board of Directors of Tesla from June 20, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 107.

The Market Reacts Unfavorably to Tesla's Acquisition Proposal

108. The market reacted to news of the Offer by quickly discounting Tesla's stock price by 10%, lowering the Company's market capitalization by $3.4 billion — more than the entire market capitalization of SolarCity. SolarCity's stock price shot up by 17%. The Offer was also widely panned by analysts, who questioned the purported synergies resulting from the combination and predicted that SolarCity would prove a distraction to Tesla management and aggravate its current cash flow problems. Tesla stock was quickly downgraded by Morgan Stanley and Oppenheimer after the Offer was announced.

RESPONSE: The first two sentences of Paragraph 108 appear to refer to publicly available stock price information for Tesla and SolarCity, to which Defendants respectfully refer the Court for their complete and accurate price history. The remaining allegations in Paragraph 108 purport to characterize reports by Morgan Stanley, Oppenheimer, and other unspecified analysts, to which

Defendants respectfully refer the Court for their complete and accurate contents.

Defendants otherwise deny the allegations in Paragraph 108.

109. In downgrading its rating of Tesla stock from "Outperform" to "Perform," Oppenheimer noted that the Offer "contemplate[ed] what we believe is a fundamental change to [Tesla's] business model." Furthermore, Oppenheimer saw little benefit to Tesla in the deal: "We believe this acquisition would alleviate some of the financial concerns at [SolarCity] and yield operational synergies for the [SolarCity] platform including improved brand position, additional customer outreach, and improved engineering talent, but we struggle to see the benefit to [Tesla] other than potential leverage on its retail stores." Oppenheimer explained its reason for downgrading its rating of Tesla: "We believe investors are likely to view this transaction as a bailout for [SolarCity] and a distraction to [Tesla's] own production hurdles." Similarly, Morningstar stated, "[w]e are skeptical of the strategic benefit as well."

RESPONSE: Paragraph 109 purports to characterize and quote from a report from Oppenheimer and a June 21, 2016 note from a Morningstar analyst, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 109.

110. On June 22nd, Morgan Stanley noted that the proposed acquisition "[i]ncreases execution complexity at a sensitive time for [Tesla's] core business," and pointed out that SolarCity's cash burn "would exacerbate cash consumption of Tesla on a pro forma basis." Furthermore, Morgan Stanley saw "limited industrial logic to the combination overall." On June 23, 2016, Morgan Stanley downgraded Tesla's stock from "Overweight" to "Equal Weight," stating:

> Does buying [SolarCity] help [Tesla] make better cars? No. . . .
>
> Does buying [SolarCity] improve the pace of Tesla's cash burn? No. . . .
>
> Does buying [SolarCity] improve Tesla's access to the capital markets to help fund the mission? No. . . .

RESPONSE: Paragraph 110 purports to characterize and quote from reports from Morgan Stanley, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 110.

111. In a research report titled "A lean mean cash burning machine for TSLA; a life-line for SCTY," Barclays stated:

> **Little in the way of synergies, much in the way of cash burn**: TSLA announced yesterday after the close that it offered to buy SCTY in an all-stock deal valued up to $2.9bn (based off the most recent price of Tesla). While no doubt the Tesla bulls will hail the combination as visionary, we believe the assumption of another $2.6bn of debt to fold in a solar company with limited synergies and uncertain growth/cash prospects only reinforces our negative view of TSLA (UW, PT $165). For SCTY (UW, PT $20), it is a timely lifeline in light of the issues we've recently highlighted (see here and here).
>
> **Combination reinforces cash burn** . . . : Given limited access to capital for SCTY, we believe the core rationale for this deal is for SCTY to take advantage of TSLA's relatively favorable access to and cost of capital. However, the combined entity is likely to magnify the losses and cash burn that both were seeing individually. On a simple combination of our current non-GAAP estimates for both companies, we estimate pretax losses of $1.3bn/$1.4bn in 2016/2018. More concerning is our combined estimate of cash burn of $2.8bn/$2.4bn in 2016/2018 (inclusive of cash from collateralized lease borrowing), as well as combined net debt of $2.5bn.
>
> . . . **making it even more clear that Tesla will need additional capital raises**: In funding SCTY's losses, it further reinforces our view TSLA will need to return to the capital markets for additional capital infusions, likely via the equity markets. However, this is contingent on the equity capital market remaining an open well for TSLA – which is far from certain.

> **Advantages for SCTY:** ***Selling / branding*** – SCTY can reduce customer acquisition cost by leveraging TSLA's retail sales network and brand recognition, which could expand the pool of customers and reduce sales time. SCTY's YE1Q16E sales cost of $0.67/w represented nearly a quarter of SCTY total system costs. There is nothing in the solar industry with brand awareness even approaching TSLA's. ***Financing availability –*** In our view, residential roof-top solar is a fragile business highly dependent on continuous external funding from the tax-equity and ABS markets - the potential to be part of a larger company could reduce this hurdle. SpaceX already owns $165mn of SCTY's recourse solar bonds. In addition, SCTY was at risk of tripping some credit covenants based on 12-month trailing GAAP gross profit to cash interest expense.
>
> **Skeptical of TSLA benefits**: In purchasing SCTY, TSLA is broadening its range as a vertically integrated clean energy company. It believes it could expand SCTY's addressable market and vice-versa, with SCTY benefiting from TSLA design and access to high-traffic stores. We are skeptical of the benefits. Not only do solar panels on cars make little sense (they'd be largely cosmetic), we think powering TSLA recharges with SCTY panels will be tough given recharges occur at night. Moreover, as previously discussed, stationary storage systems pulling solar power don't make sense in a net metering regime.

RESPONSE: Paragraph 111 purports to characterize and quote from a report from Barclays, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 111.

112. Many analysts also criticized the obvious conflicts that existed between the Tesla Board and the SolarCity Board, with Credit Suisse calling it a "corporate governance mess." JP Morgan questioned whether "SolarCity's capital needs could have been a motivating factor for the acquisition at this time."

RESPONSE: Paragraph 112 purports to quote statements from Credit Suisse and JP Morgan analysts, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 112.

113. As *Fortune* stated, "the move is classic Musk. He's partly doubling down on the slumping solar company, and is willing to pile SolarCity's risk onto the already risky, but temporarily stable, electric car maker."

RESPONSE: Paragraph 113 appears to quote from an online article posted on Fortune.com, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 113.

114. Following announcement of the Offer, on June 28, 2016, CtW Investment Group ("CtW"), which works with union-sponsored pension funds to enhance longterm stockholder value, sent a letter to Gracias, as "Lead Independent Director," questioning the Tesla Board's "failure to establish a corporate governance structure that inspires confidence that the terms [of the Offer] are being negotiated in the best interest of Tesla investors ... particularly [] when six out of seven board members have ties to SolarCity." CtW accurately noted that Tesla's corporate governance practices mirrored those of a private, venture capital-backed firm rather than a publicly traded company, and demanded that the Tesla Board, among other things, immediately recruit two new independent directors to form a special committee tasked with evaluating and negotiating any transaction with SolarCity. CtW also specifically demanded the removal of Kimbal Musk from the Tesla Board.

RESPONSE: Paragraph 114 appears to quote from and characterize a publicly available letter from CtW Investment Group, to which Defendants

respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 114.

115. Tesla's corporate governance practices are akin to those of one component of a trifecta of private companies owned by one man – the "pyramid" Elon Musk believes his companies to be – and not those of a publicly traded company with the best interests of its stockholders in mind. Indeed, Elon Musk has previously expressed his preference to run private companies over public companies, writing in an email to SpaceX employees: "[G]iven my experiences with Tesla and SolarCity, I am hesitant to foist being public on SpaceX, especially given the long term nature of our mission. Some at SpaceX who have not been through a public company experience may think that being public is desirable. This is not so."

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 115. The second, third, and fourth sentences of Paragraph 115 purport to characterize and quote from a publicly available e-mail from Elon Musk to SpaceX employees, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 115.

116. On conference calls regarding the Acquisition, Elon Musk has all but confirmed that he runs Tesla as a private venture capital-backed firm. For example, on June 22, 2016, in response to questions about the pricing of Tesla's proposal, Elon Musk showed utter disregard for his duty to maximize value for Tesla's stockholders, stating "one isn't going to be worried whether it's a few hundred million dollars one way or the other down the road." In addition, on an August 1, 2016 conference call, Musk repeatedly referred to Tesla as "my company."

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 116. The second sentence of Paragraph 116 purports to characterize and

quote from a publicly transcribed conference call from June 22, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in the second sentence of Paragraph 116. Defendants deny the allegations in the third sentence of Paragraph 116.

Before Tesla Even Begins Due Diligence, Musk Begins Communicating to the Market That the Acquisition is a Foregone Conclusion

117. On June 23, 2016, Tesla and SolarCity executed a confidentiality and non-disclosure agreement governing due diligence materials [TESLA00001338], and on June 26, 2016, SolarCity opened a data room allowing representatives of Tesla and Evercore access to due diligence materials.

RESPONSE: Admitted.

118. But before this due diligence even began, during a June 22, 2016 conference call, Elon Musk indicated to investors and analysts that the Acquisition was a *fait accompli*:

> Like the board opinion is unanimous for both companies. So, I mean, unless there's something discovered that like that I have no idea about or just that nobody on the board has any idea about, which is extremely unlikely, then the board would – the independent board members would recommend in favor of completing a transaction somewhere in the price range that was mentioned, most likely.

RESPONSE: Paragraph 118 appears to quote from a publicly transcribed conference call from June 22, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 118.

119. The Tesla Board (including Elon Musk and Gracias) convened another meeting on July 5, 2016, at which it received an update from Evercore. Despite the fact that only limited due diligence had taken place thus far and that

such due diligence had been "limited to historical information," as Evercore was still awaiting SolarCity's internal forecasts, Evercore recommended "that Tesla continue to remain publicly committed to the deal and move expeditiously to complete due diligence and then submit a final offer and sign a merger agreement promptly" without regard to what the due diligence might uncover. [TESLA00000352]. Evercore, with a heavily contingent fee in the balance, also advised the Tesla Board that there was an "Increasing View of Deal Certainty" among analysts. [TESLA00000356].

RESPONSE: Paragraph 119 purports to quote from and characterize the materials for the July 5, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 119, except admit that the Tesla Board met on July 5, 2016 and that Evercore participated in the meeting.

120. Thus, despite his limited recusal, Elon Musk knew that the Acquisition was a foregone conclusion because he wanted it to happen and he would use his outsized influence over the Company and Board to ensure that it happened. The purportedly independent Tesla Board process of considering the Acquisition was therefore a sham.

RESPONSE: Denied.

Due Diligence Uncovers a Significant "Liquidity Situation" at SolarCity and Other Issues

121. Certain "key diligence findings" were presented at a special meeting of the Tesla Board on July 19, 2016. The primary "key discovery" was SolarCity's dire "Liquidity Situation" — that the company faced a near-term liquidity crisis that could potentially trigger a default on its revolver and cross-defaults on other debt. [TESLA00000738].

RESPONSE: Paragraph 121 purports to quote from and characterize the materials for the July 19, 2016 Tesla Board meeting, to which Defendants

respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 121, except admit that the Tesla Board met on July 19, 2016 and that, among other things, due diligence-related matters were presented.

122. [redacted]

RESPONSE: Paragraph 122 appears to characterize the materials for the July 19, 2016 Tesla Board meeting and the materials for the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 122.

123. [redacted]

RESPONSE: Paragraph 123 appears to characterize the materials for the July 19, 2016 Tesla Board meeting and the materials for the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 123.

124. [redacted]

RESPONSE: Paragraph 124 appears to characterize the materials for the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 124.

125. Defendants Elon Musk and Gracias (as members of the SolarCity Board) and Buss (as SolarCity's then-CFO) knew about this liquidity crisis and potential for default since at least February 2016. [redacted] Yet, despite this knowledge, neither Elon Musk, Gracias, nor Buss disclosed SolarCity's liquidity crisis and looming defaults to the rest of the Tesla Board before Tesla made the Offer to SolarCity.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 125, except admit that Elon Musk and Gracias were members of the SolarCity Board. The second sentence of Paragraph 125 appears to characterize the materials for the July 19, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 125.

126. Instead, the rest of the Tesla Board was forced to learn about SolarCity's liquidity crisis in July through due diligence. Thus, the full Board did not know SolarCity's dire straits until well after Elon Musk, who was fully aware of those problems all along, had communicated to the market that the Acquisition was a near-certainty (*see* ¶¶ 118–120, *supra*).

RESPONSE: Denied.

127. Furthermore, while SolarCity's liquidity crisis was being revealed in due diligence, Elon Musk was campaigning to convince "certain institutional investors" to support the Acquisition. [TESLA00001476].

RESPONSE: Paragraph 127 purports to quote from and characterize the Minutes of a Special Meeting of the Tesla Board on July 19, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 127.

128. Thus, by ensuring an "Increasing View of Deal Certainty" in the market through his public statements that nothing would be revealed in due diligence that would derail the Acquisition, as well as conversations with institutional investors, Elon Musk forced the Tesla Board into a position in which they had no choice but to follow through with the Acquisition.

RESPONSE: Denied.

129. [redacted]

RESPONSE: Paragraph 129 purports to characterize and quote from the materials for the Special Meeting of the Tesla Board on July 5, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 129.

130. In order to remedy the potential default on the Revolver and ensure that SolarCity survived until the Acquisition could be consummated, Elon Musk and the Rives personally provided the short-term capital that SolarCity so desperately needed by buying $100 million in SolarCity bonds on August 23, 2016. These bonds were to mature on February 17, 2018 and would be repaid by Tesla, with Tesla also paying 6.5% interest semi-annually through that date.

RESPONSE: Defendants deny the allegations in Paragraph 130, except admit that Elon Musk, Lyndon Rive, and Peter Rive purchased a total of $100 million in Solar Bonds with an interest rate of 6.5% per annum and a maturity date of February 17, 2018.

131. Additionally, due diligence revealed significant deficiencies in SolarCity's business model. On July 19, 2016, the Tesla Board reviewed key due diligence findings compiled in connection with the Acquisition. One of those key findings was an almost billion dollar potential liability in connection with SolarCity's new 1 GW manufacturing facility planned for Buffalo, New York (the "Buffalo Factory").

RESPONSE: Defendants deny the allegations in Paragraph 131, except admit that at the July 19, 2016 Special Meeting, the Tesla Board discussed certain due diligence findings and that certain materials relating to due diligence are contained in the materials for the July 19, 2016 Special Meeting, to which Defendants respectfully refer the Court for their complete and accurate contents.

132. In 2012, SolarCity entered into an agreement with the State of New York that would result in SolarCity shuttering its China-based manufacturing facility and moving primary production to Buffalo, New York. In exchange, the State of New York offered several concessions to SolarCity, including tax credits, a loan to fund the Buffalo Factory build, and a grant worth hundreds of millions of dollars.

RESPONSE: Defendants deny the allegations in Paragraph 132 and aver that Plaintiffs purport to characterize agreements between Silevo and the Research Foundation for the State University of New York, to which Defendants respectfully refer the Court for their complete and accurate contents.

133. Under the terms of that agreement, SolarCity is required to invest $5 billion over 10 years in total capital and operational expenditures in New York State beginning when the Buffalo Factory reaches full capacity manufacturing. SolarCity is also obligated to employ 1,460 people in Buffalo within two years of completion, 2,000 in New York within five years of completion, and 5,000 in New York within 10 years of completion. [TESLA00000738].

RESPONSE: Paragraph 133 purports to characterize the terms of an agreement with the Research Foundation for the State University of New York, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 133.

134. If SolarCity fails to meet any of these targets, it will be liable for a payment of $41.2 million per year for each year any of the milestones is not met. [TESLA00000738].

RESPONSE: Paragraph 134 purports to characterize the terms of an agreement with the Research Foundation for the State University of New York, to which Defendants respectfully refer the Court for its complete and accurate contents. Paragraph 134 also states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 134.

135. [redacted]

RESPONSE: Paragraph 135 purports to characterize the materials for the Special Meeting of the Tesla Board on July 19, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 135.

136. If Tesla wanted to abandon the Buffalo Factory and engage in a market-competitive manufacturing operation, it would potentially be liable for what essentially amounts to an approximately $646 million termination fee. Failure to reach full production on the timeline provided for in the contract could also result in a breach—a very real concern because the Buffalo Factory is already behind schedule. [TESLA00000872-73].

RESPONSE: Paragraph 136 purports to characterize the terms of an agreement with the Research Foundation for the State University of New York, to which Defendants respectfully refer the Court for its complete and accurate contents. Paragraph 136 also states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 136.

137. Indeed, SolarCity's Form 10-K filed with the SEC on March 1, 2017, disclosed that it had determined that two milestones, which would have required SolarCity to make additional earnout payments to the prior owners of Silevo, would no longer be achieved. The first milestone would have been reached if, prior to December 31, 2017, Silevo achieved both (i) volume production from a

Silevo or SolarCity production facility located in the United States and (ii) full equipment commissioning in the Buffalo Factory while meeting target cost and efficiency requirements. The second milestone would have been reached if, prior to December 31, 2017, Silevo achieved volume production with target cost and efficiency requirements from the Buffalo Factory.

RESPONSE: The first sentence of Paragraph 137 appears to characterize SolarCity's Form 10-K of March 1, 2017, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants admit the allegations in the second and third sentences of Paragraph 137.

138. Despite the alarming facts regarding SolarCity's liquidity problems, imminent defaults and other significant concerns discovered in the course of due diligence that had just been revealed to the remaining Tesla Board members, Elon Musk continued to assure the market that the Acquisition was a near-certainty. Specifically, on July 20, 2016, Elon Musk published his "Master Plan, Part Deux" to Tesla's website, outlining ***his*** vision for the Company's future and updating ***his*** original "Master Plan" that had been published in 2006.

RESPONSE: Defendants deny the allegations in Paragraph 138, except admit that, on July 20, 2016, Elon Musk published a blog post on Tesla's website entitled "Master Plan, Part Deux," to which Defendants respectfully refer the Court for its complete and accurate contents.

139. The "Master Plan, Part Deux" was widely criticized by analysts. As summed up by Barclays, it was "long on exciting visions of the future and short on financial details."

RESPONSE: The first sentence of Paragraph 139 purports to refer to the views of unspecified analysts. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning these

unspecified analysts' views, and deny them on that basis. The second sentence of Paragraph 139 purports to quote from a report by a Barclays analyst, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in the second sentence of Paragraph 139.

140. One thing the "Master Plan, Part Deux" did make clear, however, is that the Acquisition is being driven by Elon Musk, as it has been a component of his strategy for Tesla for at least ten years:

> The first master plan that I wrote 10 years ago is now in the final stages of completion. It wasn't all that complicated and basically consisted of:
>
> 1. Create a low volume car, which would necessarily be expensive
>
> 2. Use that money to develop a medium volume car at a lower price
>
> 3. Use that money to create an affordable, high volume car
>
> And . . .
>
> Provide solar power. No kidding, this has literally been on our website for 10 years.
>
> * * *
>
> Part of the reason I wrote the first master plan was to defend against the inevitable attacks Tesla would face accusing us of just caring about making cars for rich people, implying that we felt there was a shortage of sports car companies or some other bizarre rationale. . .
>
> However, the main reason was to explain how our actions fit into a larger picture, so that they would seem less random. The point of all this was, and remains, accelerating the advent of sustainable energy, so that we can imagine far into the future and life is still good. That's

> what "sustainable" means. It's not some silly, hippy thing -- it matters for everyone. . . . the faster we achieve sustainability, the better.
> Here is what we plan to do to make that day come sooner:
>
> **Integrate Energy Generation and Storage**
>
> Create a smoothly integrated and beautiful solar-roof-with-battery product that just works, empowering the individual as their own utility, and then scale that throughout the world. One ordering experience, one installation, one service contact, one phone app.
>
> We can't do this well if Tesla and SolarCity are different companies, which is why we need to combine and break down the barriers inherent to being separate companies. That they are separate at all, despite similar origins and pursuit of the same overarching goal of sustainable energy, is largely an accident of history. Now that Tesla is ready to scale Powerwall and SolarCity is ready to provide highly differentiated solar, the time has come to bring them together.

RESPONSE: Paragraph 140 appears to quote from a Tesla blog post of July 20, 2016, entitled "Master Plan, Part Deux," to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 140.

141. Just before the release of the Master Plan, Part Deux, Tesla changed its web address from teslamotors.com to tesla.com, which fueled rumors of a broader strategy shift away from cars and towards the production of batteries and solar panels, which likewise contemplated that the Acquisition was inevitable.[14] (Footnote 14: On February 1, 2017, Tesla changed its name from "Tesla Motors, Inc." to "Tesla, Inc.")

RESPONSE: Defendants deny the allegations in Paragraph 141, except admit that in July 2016, Tesla changed its web address from teslamotors.com to tesla.com. Defendants admit the allegations in Footnote 14.

**Tesla Announces Entry into the Merger Agreement,
Which Benefits Elon Musk and Other SolarCity Stockholders**

142. On August 1, 2016, Tesla and SolarCity announced that they had entered into an Agreement and Plan of Merger dated July 31, 2016 (the "Merger Agreement"), which sets forth the terms of the Acquisition. In its Form 8-K filed with the SEC disclosing entry into the Merger Agreement and the terms of the Acquisition, Tesla stated that transactions contemplated by the Merger Agreement, including the Acquisition as well as an issuance of shares of Tesla common stock in connection therewith (the "Share Issuance"), were approved by the Tesla Board.[15] (Footnote 15: Pursuant to the terms of a "go-shop" provision in the Merger Agreement, SolarCity was entitled to a 45-day "go-shop" period running through September 14, 2016, during which time it was free to solicit a superior proposal (as defined by the Merger Agreement) from other potential suitors. Unsurprisingly, considering SolarCity's precarious financial condition and the excessive deal price agreed to by Tesla, no such superior proposal arose. While an unidentified "Party B" – the only remaining potential counterparty to a strategic transaction with SolarCity by mid-July – had engaged in discussions with SolarCity regarding a potential acquisition, no offer was ever made, and on July 22, 2016, Party B had determined not to proceed with a transaction.)

RESPONSE: Paragraph 142 appears to characterize Tesla's Form 8-K filed on August 1, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants further aver that the Form 8-K filed on August 1, 2016 discloses that the transactions contemplated by the Merger Agreement were approved by the Tesla Board, with Elon Musk and Gracias recusing themselves. The first sentence of Footnote 15 purports to characterize the terms of the Merger Agreement, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Footnote 15, except admit that on July 22, 2016, representatives of Lazard

informed the SolarCity Special Committee that Party B had determined not to proceed with a transaction.

143. Under the Merger Agreement, each share of SolarCity common stock issued and outstanding was to be converted into the right to receive 0.110 shares of Tesla common stock (the "Exchange Ratio"). The Acquisition was valued at $2.6 billion or $25.37 per share of SolarCity stock based on the five-day volume weighted average price of Tesla shares as of July 29, 2016 (*i.e.*, the last trading day prior to the announcement of the Acquisition). The Acquisition price rises to $25.83 per SolarCity share if based on the closing price of Tesla's shares as of that date.

RESPONSE: Paragraph 143 purports to characterize the terms of the Merger Agreement, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 143, except admit that the Acquisition was valued at $2.6 billion or $25.37 per share of SolarCity common stock based on the 5-day volume weighted average price of Tesla shares as of July 29, 2016.

144. Not surprisingly, given Elon Musk's power and influence over the Tesla Board, the final consideration for the Acquisition valuing SolarCity at approximately $2.6 billion is within the range initially proposed at the June 20, 2016 Tesla Board meeting – the same range that was discussed with the full participation of Elon Musk and Gracias and without the benefit of any due diligence.

RESPONSE: Denied.

145. Although the exchange ratio is slightly lower than that Tesla initially offered, the valuation of SolarCity is within the range initially proposed, and the Acquisition remains an attempt by Elon Musk and the Tesla Board to cause Tesla to bail Elon Musk, the Rives, and other affiliates out of their failing investments in SolarCity.

RESPONSE: Defendants deny the allegations in Paragraph 145, except admit that the exchange ratio contained in the Merger Agreement is below the range of exchange ratios contained in the June 20, 2016 Offer.

146. Many large investors in SolarCity, such as Valor, DFJ and DBL, are also heavily invested in and hold seats on the boards of Musk's other enterprises, including Tesla and SpaceX. If Elon Musk were to allow the SolarCity prong of his pyramid to default, resulting in his frequent investors receiving pennies on the dollar in bankruptcy, it is less likely that those investors would be willing to contribute additional capital for Tesla, SpaceX or any future ventures. By exchanging SolarCity stock for Tesla stock, Elon Musk saves these favored investors from large losses.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 146, except admit that Valor and DFJ have, through their funds, invested in Tesla and SpaceX. Defendants deny the remaining allegations in Paragraph 146.

147. Furthermore, causing Tesla to bail out SolarCity, rather than let SolarCity slide into bankruptcy, would protect Elon Musk's standing in the business community, as well as his ego. The Acquisition will help preserve Musk's reputational capital and status as not just an innovative thinker, but also a businessman who can make new technology profitable for investors. Despite any successes, SolarCity's demise as a public company would leave Elon Musk with a professional black eye and create intense public scrutiny, as SolarCity has accepted over $1.2 billion in government subsidiaries relating to clean energy. Elon Musk's businesses often depend on public assistance, as his portfolio of companies had collectively benefited from over $4.9 billion in government support by the time of the Acquisition.

RESPONSE: Denied.

148. A public failure of SolarCity would also greatly impair Elon Musk's ability to raise capital simply by making predictions of future products. Many people who have backed Musk against calls that his business model is not

financially sustainable, including current Tesla investors, could begin to question his logic. Through the Acquisition, SolarCity's financial struggles can now be masked among the financial statements of a much larger corporation, while allowing Elon Musk to maintain his professional standing.

RESPONSE: Denied.

149. Accordingly, the Acquisition was intended to, and did, benefit Elon Musk, his brother, his cousins and their affiliates, and certain Tesla directors at the expense of the Company and its minority stockholders. Although a transaction that would be harmful to Tesla would generally be most damaging to Elon Musk, as he was Tesla's largest stockholder at the time of the Acquisition with approximately 22.1% of the Company's outstanding shares, that is not true here because any dilution of his Tesla stock will be offset by the rescue of the SolarCity stock and bonds he owns. Indeed, the Acquisition resulted in a net increase in Elon Musk's ownership of Tesla common stock. Further, Elon Musk will have the opportunity to increase his ownership interests going forward because his compensation as the Company's CEO consists almost exclusively of Tesla stock options.

RESPONSE: Defendants deny the allegations in Paragraph 149, except admit that Elon Musk was Tesla's largest stockholder at the time of the Acquisition with approximately 22.1% of the Company's outstanding shares and that Elon Musk has received compensation as Tesla's CEO in the form of Tesla stock options.

150. Following the consummation of the Acquisition, Elon Musk and Kimbal Musk's cousins, Lyndon Rive and Peter Rive, became executive officers of the surviving SolarCity subsidiary of Tesla.

RESPONSE: Defendants admit the allegations in Paragraph 150, but aver that Lyndon Rive and Peter Rive are no longer executive officers of SolarCity.

THE FINANCIAL UNFAIRNESS OF THE ACQUISITION

The Acquisition Will Mire Tesla in Crushing Debt and Weaken Its Already-Strained Finances

151. As a result of the Acquisition, Tesla has taken on new financial obstacles at a time when Tesla is facing a number of its own challenges. As aptly put in an August 1, 2016 *The Wall Street Journal* article commenting on the lack of cash at both companies, "Tesla latching on to SolarCity is the equivalent of a shipwrecked man clinging to a piece of driftwood grabbing onto another man without one. Tesla burned through 50 cents of cash for each dollar of revenue in the past four quarters, while SolarCity consumed a whopping $6.00."

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 151. The second and third sentences of Paragraph 151 appears to quote from and characterize an online article posted on the website of *The Wall Street Journal* on August 1, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 151.

152. Indeed, following the announcement of the Acquisition, Standard & Poor's lowered its outlook on Tesla to "CreditWatch with negative implications" "to reflect the significant risks related to the sustainability of the company's capital structure following the proposed transaction."

RESPONSE: Paragraph 152 appears to quote from a report issued by Standard & Poor's on August 1, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents.

153. The Acquisition has nearly doubled Tesla's debt. As of June 30, 2016, Tesla's consolidated indebtedness was approximately $3.7 billion and SolarCity's was approximately $3.3 billion. Further, as the Form S-4 filed with the SEC on August 31, 2016 explains, "the Combined Company may have to incur

additional indebtedness in connection with ... the closing of the Merger, as well as for its ongoing business needs." This will "result in a substantial increase in comparison to Tesla's indebtedness on a recent historical basis," and could, *inter alia*, "reduc[e] Tesla's flexibility to respond to changing business and economic conditions and increas[e] Tesla's interest expense."

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 153. Defendants admit the allegations in the second sentence of Paragraph 153. Paragraph 153 appears to characterize and quote from Tesla's Form S-4 filed on August 31, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 153.

154. [redacted]

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 154. The remainder of Paragraph 154 purports to characterize and quote from the materials for the July 5, 2016 Tesla Board Meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 154.

155. [redacted]

[redacted]

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 155. The remainder of Paragraph 155 appears to characterize and quote from the materials from the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 155.

156. SolarCity attempted to satisfy its liquidity needs by offering an additional $124 million in "solar bonds" in August 2016. As explained above, despite offering an annual interest rate of 6.5% for debt with only an 18-month duration, it appears few buyers on the open market were interested. Of course, Elon Musk and his cousins, Peter Rive and Lyndon Rive, stepped in to purchase $100 million, or more than 80%, of the debt.

RESPONSE: Defendants deny the allegations in Paragraph 156, except admit that SolarCity initiated a solar bond offering in August 2016, consisting of bonds with a maturity date of February 17, 2018 and an interest rate of 6.5%, that the initial maximum principal amount of the offered series was $124 million, and that Elon Musk, Peter Rive, and Lyndon Rive purchased a total of $100 million of such bonds.

157. Prior to the Acquisition, SolarCity's problems appeared to be only worsening. On August 1, 2016, *i.e.,* the day the parties announced the Acquisition,

SolarCity lowered its full year guidance due to weaker than expected demand in the company's residential sector. Then, on August 9, 2016, SolarCity reported a second quarter loss of $250.3 million, or 56 cents a share, compared with $155.7 million, or 23 cents a share, a year earlier. For the third quarter, SolarCity incurred a loss of $225.3 million, or 55 cents per share, compared with a $234.2 million loss, or 52 cents per share, a year earlier.

RESPONSE: Paragraph 157 appears to characterize the contents of a SolarCity press release and Form 8-K filed August 1, 2016, SolarCity's Form 10-Q filed August 9, 2016, and SolarCity's Form 10-Q filed November 9, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 157.

158. Tesla's lenders recognized the problems the Acquisition presented for the Company. For example, one of Tesla's principal sources of cash is an asset-based loan agreement (the "ABL") under which a group of banks, including Goldman Sachs Bank USA and Deutsche Bank AG, provide Tesla with up to $1 billion in revolving credit. The same day Tesla entered the Merger Agreement with SolarCity, Tesla also entered into a Fourth Amendment to the ABL with its lenders. That Fourth Amendment excluded SolarCity from the definition of Tesla "Subsidiaries" entitled to use funds borrowed under the ABL and, further, included a provision requiring that "Tesla and its Subsidiaries shall not guarantee or otherwise become directly liable for any Indebtedness of SolarCity..."

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 158, and deny them on that basis. Defendants deny the allegations in the second sentence of Paragraph 158, except admit that Tesla has entered into an ABL Credit Agreement with a group of banks, including Goldman Sachs Bank USA and Deutsche Bank AG. Paragraph 158 appears to characterize and quote from the

Fourth Amendment to Credit Agreement dated July 31, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 158.

159. In other words, Tesla will not be able to use funds borrowed under the ABL to support SolarCity and will not be permitted to guarantee any other SolarCity indebtedness. One analyst, in an August 29, 2016 *Seeking Alpha* article titled "Tesla's Lenders Place SolarCity In A Leper Colony," described this as "a truly stunning provision" and noted that "[q]uite obviously," Tesla's lenders "view SolarCity as a danger to Tesla's financial integrity, and want to minimize the chance that any support given by Tesla to SolarCity will impair their right to be repaid."

RESPONSE: The first sentence of Paragraph 159 purports to characterize the terms of the Fourth Amendment to Credit Agreement dated July 31, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. The remainder of Paragraph 159 appears to quote from an anonymous blog post on seekingalpha.com, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 159.

160. As a result, Tesla now needs to find other sources of funds to prop-up the combined company, with the most likely source being further dilutive equity offerings. Indeed, Elon Musk previously commented that combining Tesla and SolarCity could require a "small equity capital raise" in 2017, which could be a "low to mid-single digit" percentage of Tesla's market capitalization, which currently stands at approximately $28.29 billion.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 160. The second sentence of Paragraph 160 purports to characterize and

quote from a publicly transcribed August 1, 2016 conference call, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in the second sentence of Paragraph 160.

161. Notably, the day after Tesla made these disclosures, its share price fell by more than $11, or 5.3%, and SolarCity's stock dropped by more than 9%.

RESPONSE: Paragraph 161 appears to refer to publicly available stock price information for SolarCity stock and Tesla stock, to which Defendants respectfully refer the Court for its complete and accurate price history.

162. While Defendants claimed that Tesla's purpose in acquiring SolarCity was to take advantage of synergies between the two companies[16] and realize substantial long-term value, many industry analysts have questioned the viability of the projected synergies and view the Acquisition as a Tesla-financed bailout for SolarCity and its stockholders:

(a) Duncan Meaney, a financial adviser and portfolio manager at the Social Equity Group, was quoted as follows: "It does raise the suspicion that this is a way to bail out Solar City, which is a fairly significant money-losing operation."

(b) In an article entitled "Tesla, SolarCity Look Like a Bad Fit," Bill Alpert and Travis Arbon of Barron's and Dow Jones & Company explain: "Musk envisions Tesla-store visitors picking up a $40,000 car, a $10,000 battery backup system, and a 20-year solar contract in one trip. That's implausible. He confessed on Wednesday's conference call that he had no idea how much overlap there is between Tesla car buyers and SolarCity homeowners, and we suspect that most thrift-minded solar-lease customers will find even Tesla's cost-reduced Model 3 car unaffordable whenever it rolls out."

(c) "It's a bailout," said Jesse Pichel, an investment banker at Roth Capital Partners, adding, "SolarCity has had a hard time raising money. Tesla solves that problem."

(d) Angelo Zino, an analyst at S&P Global Market Intelligence, was recently quoted in an online *Bloomberg* article as follows: "This deal has everything to do with debt. Call it a bailout, call it what you will . . . SolarCity is one bad economic downturn away from going belly up."

(e) Investment manager Jim Chanos blasted the proposal, calling it a "brazen Tesla bailout of SolarCity" and "a shameful example of corporate governance at its worst."
(Footnote 16: On an August 1, 2016 conference call, Elon Musk suggested that an estimate of $150 million to $200 million in synergies was "conservative." However, when pressed for further detail on this estimate and whether it could be broken down quantitatively, Tesla representatives were unable to do so, stating only that "[r]ight now we're not assigning the $150 million at any lower level of detail than that."

RESPONSE: Paragraph 162 appears to quote from and characterize a June 23, 2016 online *Bloomberg* article entitled "Musk Touts SolarCity Deal Synergy, But It May Be About Debt," a June 25, 2016 online *Barron's* article entitled "Tesla, SolarCity Look Like a Bad Fit," an August 1, 2016 online *Wall Street Journal* article entitled "Tesla and SolarCity Agree to $2.6 Billion Deal," and an online interview of Jim Chanos on CNBC, to which Defendants respectfully refer the Court for their complete and accurate contents. Footnote 16 purports to quote from and characterize a publicly transcribed August 1, 2016 conference call, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 162.

163. On August 1, 2016, UBS published a research report titled "Tesla & SolarCity: Deal Synergies Still Cloudy," maintaining its "sell" rating for Tesla and outlining the numerous troubling aspects of the Acquisition:

. . . We continue to remain cautious on the deal given lack of compelling synergies (most could seemingly be achieved through a JV), and the fact this is an unneeded distraction for TSLA management which already faces challenges with the Model 3 launch and significant production targets. We note that a lack of any quantitative assessment of the storage prospects – outside of (well articulated) prospects in Hawaii – emphasize the lack of clarity in terms of TSLA's ability to execute. The deal would appear 'too early' for its time given the infancy of the resi solar sector (with net metering still largely in place).

Synergies Remain Vague

The company provided limited financial quantification of the $150m cost synergies. Qualitatively, the synergies will come from lower customer acquisition costs by leveraging TSLA's retail footprint (foot traffic of 3m per year), savings from combined installation/service of solar & storage, savings from supply chain efficiencies (e.g. both companies source inverters), and leveraging TSLA's manufacturing expertise. Ultimately, TSLA envisions combining vehicle, charger, and storage delivery/installation in "a one truck and one trip" solution. Given investor caution around the SCTY deal, we are surprised by the lack of quantitative details on the solar/storage combo.

SCTY: Cutting 2016 Guidance Again, Cost Improvements Marginal

Despite beating quarterly guidance, SCTY has cut 2016 install expectations again, implying only ~9.4% YoY growth in total installations on updated midpoint of 950MW. Further, we estimate total sales cost per watt (on flat cost structure) would yield ~76 cents on a per unit basis –> 44% above the 53 cents disclosed in Q2'15 but consistent with management's previous comments suggesting ~20% cost improvement over Q1 customer acquisition cost of 97 cents. While this is still an improvement vs recent high of 97 cents last quarter, it doesn't appear sufficient to dispel concerns of more serious issues at the company. Our initial impression remains biased towards loan products and direct cash sales, which would not favor SCTY's current focus on PPAs.

Few Details on New Products and Cost Savings

We are increasingly cautious on resi solar fundamentals but note a number of questions remain unanswered today. The two new products focused on integrated solar+storage and another focused on new roof construction. The offerings weren't fleshed out, but management could provide more compelling details later. However, this lack of clarity on new products was combined with vague cost savings goals and lackluster cost improvements from SCTY, making for a generally cloudy outlook. Current disclosures in the merger agreement suggest cost savings will come from lower hardware, reduced installation, improved manufacturing, and reducing customer acquisition costs, though we are unsure how much of that would come from synergies versus previously planned cost reduction. Furthermore, SCTY's 45 day go-shop period could yield further offers, but we note the failed VSLR acquisition provides poor precedent here and we do not assume a bidding war occurs.

RESPONSE: Paragraph 163 purports to quote from and characterize an August 1, 2016 research report published by UBS titled "Tesla & SolarCity: Deal Synergies Still Cloudy," to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 163.

164. UBS has continued to reiterate its position following the approval and closing of the Acquisition, stating in February 2017 that "[w]ith the closure of the SCTY merger, TSLA is assuming numerous risks . . . [which] include slowing sales growth, challenged economics following the end of ITC in 2022, risk from changes in net metering rules (ex. Nevada in late 2015), and Silevo commitments. We continue to believe SCTY is an unneeded distraction during a very challenging launch period."

RESPONSE: Paragraph 164 purports to quote from and characterize a February 2017 statement from UBS, to which Defendants respectfully refer the

Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 164.

165. Similarly, on February 27, 2017, Goldman Sachs downgraded Tesla from "Neutral" to "Sell," citing, *inter alia*, the Acquisition. Specifically, Goldman Sachs stated: "We believe the recent acquisition of SolarCity increased the risk profile of Tesla amidst a business model transition – from company-owned equipment installation and lease/PPA contracts to customer purchased equipment on cash/loan sales – and provides limited synergies. Ultimately, the acquisition raised the net leverage of Tesla while creating EBITDA and FCF drag that requires incremental non-recourse debt to be raised. Lastly, we see 2017 as a pivotal year for Tesla as it looks to become a mass automobile manufacturer, and with the integration of SolarCity also occurring the company may lack the singular focus it should have on achieving its Model 3 launch targets."

RESPONSE: Paragraph 165 purports to quote from and characterize a February 27, 2017 Goldman Sachs report, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 165.

166. Further, Tesla has no history of successfully completing any acquisition of this nature, which further draws into the question the viability of any projected synergies. As Tesla concedes in its most recent Form 10-K filed with the SEC on March 1, 2017, Tesla "has no experience integrating a business of the size and scale of SolarCity. If the integration process takes longer than expected or is more costly than expected, [Tesla] may fail to realize some or all of the anticipated benefits of the acquisition." Tesla even identified the specific problems that may arise, including:

- "complexities associated with managing the combined businesses;"
- "integrating personnel from two companies;"
- "creation of uniform standards, controls, procedures, policies and information systems; and"
- "potential unknown liabilities and unforeseen increased expenses, delays or regulatory conditions associated with the acquisition."

RESPONSE: Paragraph 166 purports to quote and characterize Tesla's Form 10-K filed on March 1, 2017, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 166.

167. Even if the hypothetical benefits of the Acquisition were supported by research and due diligence (which they are not) and the businesses could be successfully integrated (an enormous task which Tesla has no experience in undertaking), there was no rational business reason for Tesla to take on such a substantial risk to achieve them. As Adam Jonas, Managing Director of the Global Auto Research Team at Morgan Stanley & Co., advised: "While there may be any number of lucid arguments supporting the strategic rationale of a combination, we believe many of the benefits could have been achieved through arm's length/strategic partnership and without the risks inherent in exposing Tesla shareholders to the financial and capital markets risks faced by SolarCity."

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 167. The second sentence of Paragraph 167 purports to quote from a report from Adam Jonas, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 167.

Evercore's Deficient Fairness Opinion

168. As noted above, Evercore served as the financial advisor to Tesla and provided a fairness opinion regarding the Acquisition. Pursuant to the terms of its engagement, Evercore was to receive a $1.25 million fee upon delivery of its opinion and an additional $5.75 million, or approximately 82% of its total compensation, if the Acquisition was consummated.

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 168. The remainder of Paragraph 168 appears to characterize the terms

of the June 17, 2016 engagement letter between Tesla and Evercore, to which Defendants respectfully refer the Court for its complete and accurate contents.

169. With the majority its advisory fee hanging in the balance, Evercore presented patently flawed financial analyses to the Board in connection with its fairness opinion that served as window dressing for the unfair price that the Tesla Board agreed to pay in the Acquisition. Specifically, Evercore's financial analyses were unreliable and specious because: (i) Evercore's discounted cash flow ("DCF") analyses for SolarCity failed to utilize realistic financial projections prepared by SolarCity management: (ii) Evercore's DCF analyses for SolarCity failed to account for forthcoming federal tax changes that thwart SolarCity's long-term viability; and (iii) Evercore's analysis of the exchange ratio was based on overly conservative financial projections for Tesla that were prepared by analysts, while disregarding more reliable forecasts prepared by Tesla management.

RESPONSE: Denied.

Evercore's DCF Analyses of SolarCity Failed to Utilize Realistic Financial Projections Prepared by SolarCity Management

170. Evercore performed two DCF analyses of SolarCity. With respect to the underlying financial projections, the first DCF relied on forecasts that were prepared by SolarCity management and provided to Evercore in mid-July 2016. These projections are referred to as the "SolarCity Unrestricted Liquidity Case" in Joint Proxy Statement/Prospectus (the "Proxy") filed by Tesla on October 12, 2016.

RESPONSE: Defendants deny the allegations in the first two sentences of Paragraph 170, except admit that Evercore performed DCF analyses of SolarCity, including certain analyses that used projections referred to in the Proxy as the "SolarCity Unrestricted Liquidity Case," and that forecasts prepared by SolarCity management were provided to Evercore in July 2016. The remainder of Paragraph 170 appears to characterize the Proxy, to which Defendants respectfully

refer the Court for its complete and accurate contents. Defendants otherwise deny the remaining allegations in Paragraph 170.

171. Evercore determined that these projections were unjustifiably bullish, and the Tesla management, led by Elon Musk, revised these forecasts downward to, among other things, "reflect certain due diligence findings, including SolarCity's near-term liquidity needs." [TESLA00001476]. As Evercore's July 30, 2016 Board presentation explains, "[g]iven SolarCity's liquidity challenges, Tesla's management team provided Evercore with adjustments to create a revised sensitivity case," which the Proxy refers to as the "SolarCity Revised Sensitivity Forecasts." [TESLA00001120].

RESPONSE: Paragraph 171 purports to quote from and characterize the minutes from the July 19, 2016 Tesla Board meeting and the materials for the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 171, except admit that Tesla's management team provided Evercore with certain forecast adjustments, which the Proxy refers to as the "SolarCity Revised Sensitivity Forecasts."

172. Specifically, the SolarCity Revised Sensitivity Forecasts reduced SolarCity's projections for residential MW deployed by 25 percent and commercial and other MW deployed by 30 percent. [TESLA00000879]. As a result of these reductions, cash requirements decreased accordingly. *Id.* The Revised Sensitivity Forecasts also reduced overhead and research and development costs by 10 percent due to the decrease in installed MW projections and increase litigation costs projections. *Id.*

RESPONSE: Paragraph 172 appears to characterize the materials for the July 24, 2016 Tesla Board meeting, to which Defendants respectfully refer the

Court, together with subsequent presentations containing updated versions of the referenced materials, for their complete and accurate contents.

173. Evercore performed a second DCF analysis that incorporated the SolarCity Revised Sensitivity Forecasts. Both DCF analyses purported to yield per-share value ranges supporting the Acquisition price and thus Evercore's July 30, 2016 fairness opinion.

RESPONSE: Defendants deny the allegations in Paragraph 173, except admit that Evercore performed certain DCF analyses using the SolarCity Revised Sensitivity Forecasts and that Evercore rendered a fairness opinion on July 30, 2016. Defendants respectfully refer the Court to the Proxy for the complete and accurate contents of the fairness opinion. Defendants otherwise deny the allegations in Paragraph 173.

174. In August 2016, however, SolarCity management provided Evercore with a second, significantly less optimistic forecast [TESLA00001759-60], which more accurately reflected SolarCity's liquidity issues, and which the Proxy refers to as the "SolarCity Liquidity Management Case."

RESPONSE: Defendants deny the allegations in Paragraph 174, except admit that SolarCity management prepared a set of projections referred to in the Proxy as the "SolarCity Liquidity Management Case" and that Evercore received that set of projections in August 2016.

175. When SolarCity's financial advisor, Lazard, performed DCF analyses utilizing the SolarCity Liquidity Management Case, Lazard derived per share value ranges for SolarCity falling entirely below the Acquisition price. Specifically, Lazard's initial DCF analysis based on the SolarCity Liquidity Management Case calculated a "per-share equity value reference range for SolarCity of approximately $6.75 to $19.25." After correcting for a supposed "computational error," which

the Proxy claims "double-counted SolarCity's projected outstanding indebtedness of $400 million under its revolving credit facility," Lazard's DCF analysis based on the SolarCity Liquidity Management Case yielded values for SolarCity of only "$10.50 to $23.25" per share. As explained above, the Acquisition price is $25.37 per share of SolarCity stock based on the five-day volume weighted average price of Tesla shares as of July 29, 2016 (*i.e.,* the last trading day prior to the announcement of the Acquisition), or $25.83 per SolarCity share if based on the closing price of Tesla's shares as of that date.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 175. The second and third sentences of Paragraph 175 purport to characterize and quote from the Proxy, to which Defendants respectfully refer the Court for its complete and accurate contents. The fourth sentence of Paragraph 175 purports to characterize the publicly available stock price information for Tesla stock, to which Defendants respectfully refer the Court for its complete and accurate price history. Defendants otherwise deny the allegations in Paragraph 175.

176. Despite learning of SolarCity management's alternate, lower projections, Evercore did not perform an additional DCF analysis and did not revise its valuation of SolarCity at all. Nor did the Board request that Evercore perform such an analysis. Instead, at an August 25, 2016 special meeting, despite its failure to perform any further DCF analysis, Evercore orally advised the Board that the SolarCity Liquidity Management Case did not alter "its prior valuation analysis." The Tesla Board similarly determined that the new information did not "change[] its view as to the value of SolarCity," despite having neither requested nor received any further financial analysis.

RESPONSE: Defendants deny the allegations in the first two sentences of Paragraph 176. The remaining allegations in Paragraph 176 purport to characterize and quote from the minutes of the August 25, 2016 Tesla Board

meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 176.

Evercore Failed to Account for Forthcoming Federal Tax Changes that Thwart SolarCity's Long-Term Viability

177. Since at least 2008, SolarCity's business model has centered around the leasing of solar energy systems to residential and commercial customers, as opposed to cash- or loan-based sales. Solar leases provide two primary financial benefits to SolarCity: (i) the future lease payments to be made by the customers receiving the solar energy systems, and (ii) tax equity associated with the Federal Solar Investment Tax Credit (the "Federal SITC").

RESPONSE: Defendants deny the allegations in Paragraph 177, except admit that part of SolarCity's business model involved leasing solar energy systems to customers and admit that solar leases provided financial benefits to SolarCity.

178. Although neither inherently provides quick and substantial cash, SolarCity developed ways to try to immediately monetize these benefits. SolarCity monetizes these assets by selling or transferring the solar energy systems to funds or special purpose entities and will assign the tax attributes and lease payment streams to the investors in return for upfront cash. SolarCity then uses the cash from investors to pay for its operating and capital costs including the expenses associated with installing future solar energy systems.

RESPONSE: Defendants deny the allegations in Paragraph 178, except admit that SolarCity has conducted transactions that involved generating cash through the sale of solar energy systems to fund investors.

179. Even setting aside SolarCity's historical inability to generate positive cash flows, its business model centered around solar leasing is unsustainable going forward, as the tax benefits under the Federal SITC will almost entirely be phased out.

RESPONSE: Defendants deny the allegations in Paragraph 179, except admit that Paragraph 179 purports to characterize Sections 48 and 25D of the Internal Revenue Code, to which Defendants respectfully refer the Court for their complete and accurate contents.

180. Under to the Energy Policy Act of 2005 (the "Energy Policy Act"), the Federal SITC presently allows for those investing in solar energy systems to recoup 30% of the total cost of their residential or commercial solar systems through dollar-for-dollar federal tax credits. When SolarCity leases a solar system, as opposed to cash- or loan-based sale, the benefits of the Federal SITC accrue to SolarCity.

RESPONSE: Paragraph 180 contains legal conclusions to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the Energy Policy Act of 2005 for its complete and accurate contents.

181. However, for both residential and commercial systems, the Federal SITC declines to 26% of the total system costs in 2020 and drops again to 22% in 2021. In 2022, the tax credit for commercial systems settles at a 10% rate while credits for residential systems are eliminated entirely.

RESPONSE: Paragraph 181 contains legal conclusions to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to Sections 48 and 25D of the Internal Revenue Code for their complete and accurate contents.

182. These significant reductions in the tax credits reconcile with the intent of the Energy Policy Act, which initiated the Federal SITC as a means to provide financial assistance to clean energy companies at a time when their costs were

high, with the benefits ramping down as the price of clean energy became more competitive. Tellingly, solar energy prices have dropped for six consecutive years and reached an all-time low in 2016.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 182, and deny them on that basis. The second sentence of Paragraph 182 appears to refer to publicly available price information for solar energy, to which Defendants respectfully refer the Court for its complete and accurate price history.

183. Although solar energy companies are presently benefitting from substantial tax credits under the Federal SITC, the propriety of the tax benefits has come into question. As widely reported, the Senate Finance Committee (the "SFC") and the House Ways and Means Committee (the "HWMC") have launched an investigation into whether solar energy companies improperly received billions of dollars in tax incentives. In early 2016, Senator Orrin Hatch of the SFC, who is leading the probe along with Congressman Kevin Brady of the HWMC, concluded that the United States Treasury Department and Internal Revenue Service do not have adequate controls over the Federal SITC program. As part of the inquiry, in September 2016 the SFC and the HWMC sent letters to seven foreign and domestic solar energy companies, including SolarCity, which expanded upon the initial investigation.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 183, and deny them on that basis, except admit that the Senate Finance Committee and the House Ways and Means Committee sent a letter to SolarCity in September 2016.

184. Additionally, in July 2012, SolarCity received a subpoena from the U.S. Treasury Department's Offices of the Inspector General to deliver documents relating to SolarCity's applications for U.S. Treasury Grants and its communications with certain other solar energy development companies or with

certain firms that appraise solar energy property for U.S. Treasury grant application purposes.

RESPONSE: Admitted.

185. The Inspector General and the United States Department of Justice are engaged in an ongoing investigation into whether SolarCity misrepresented the fair market value of its solar energy systems in Treasury grant applications (the "DOJ Investigation").

RESPONSE: Defendants deny the allegations in Paragraph 185, except admit that the Inspector General and the United States Department of Justice had been investigating the administration and implementation of the U.S. Treasury grant program, but aver that such investigation has been closed.

186. If the DOJ Investigation results in a determination that SolarCity misrepresented the value of its solar energy systems, SolarCity could be required to pay material damages and penalties for any funds received based on such misrepresentations. Indeed, SolarCity has already accrued a reserve for its potential liability associated with the DOJ Investigation. Because SolarCity securitized its solar energy system assets, it may also be required to make indemnity payments to SolarCity investors.

RESPONSE: Defendants deny the allegations in Paragraph 186 and aver that the DOJ Investigation has been closed, and that SolarCity and the U.S. government entered into a settlement in which SolarCity admitted no wrongdoing.

187. As the 220 Documents reveal, the tax equity and associated revenue from sales of bundled solar energy systems is the lynchpin to SolarCity's business model. [redacted] Even though SolarCity could still receive revenue from the securitization of the lease payments,

SolarCity's business model cannot be sustained without the tax benefits from the Federal SITC.

RESPONSE: The first and second sentences of Paragraph 187 purport to quote from and characterize the materials from the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 187.

188. The revenues from the tax benefits under the Federal SITC not only drive SolarCity's available cash, but the tax incentives also drive consumer demand. In its Form 10-K filed on February 2, 2016, SolarCity explains that "[t]hese incentives help catalyze private sector investments in solar energy, energy efficiency and energy storage measures, including the installation and operation of residential and commercial solar energy systems." Consequently, even for SolarCity's nominal cash-and loan-based transactions, the revenues from this nominal part of SolarCity's overall business may also be impacted.

RESPONSE: The second sentence of Paragraph 188 appears to quote from SolarCity's Form 10-K filed on February 2, 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 188.

189. In performing its DCF analyses, Evercore failed to fully account for the financial impact on SolarCity resulting from the almost total phase-out of the Federal SITC. In calculating the terminal value for its DCF analyses, Evercore relied on the forecasts for both the SolarCity Unrestricted Liquidity Case and the Revised Sensitivity Forecasts for the year 2020, which is the final year of the projection period. [TESLA00001124-25]. By doing so, Evercore incorrectly assumed that the tax structure in place for the Federal SITC in 2020 [redacted] would remain in place into perpetuity. In reality, by 2022 (just the second year into the perpetuity period) the tax credits will be completely eliminated for residential installations and reduced to just 10% for commercial installations.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 189. The second sentence of Paragraph 189 purports to characterize the materials for the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants deny the allegations in the third and fourth sentences of Paragraph 189.

190. Compounding this blatant error, Evercore applied a perpetuity growth rate (the "PGR") of 3.0% to 5.0% in calculating the terminal value for its DCF analyses. Although the substantial phase out of the Federal SITC further calls into question the long-term viability of SolarCity, Evercore selected a range for SolarCity's PGR of 3.0% to 5.0% for purposes of its DCF analyses. Not only does this exceed what is generally acceptable even for highly profitable companies, but Evercore's selected PGR assumes that SolarCity will continue to grow at a rate that exceeds recent growth of the overall U.S. economy. By comparison, Lazard used a PGR range of just 1.5% to 3.0% when valuing SolarCity. The PGR is critical to the output of Evercore's DCF analyses, as the value from the perpetuity period represents 84.4% of the total value for the DCF using the SolarCity Unrestricted Liquidity case and 91.4% of the value using the Revised Sensitivity Case. [TESLA00001136-37].

RESPONSE: The fifth sentence of Paragraph 190 appears to characterize the materials from the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 190, except admit that Evercore applied a range of perpetuity growth rates of 3.0% to 5.0% in calculating the terminal value for purposes of its DCF analyses of SolarCity.

Evercore Used Overly Conservative Financial Projections for Tesla

191. Evercore's financial analysis is also deficient because in determining that the Acquisition exchange ratio was "fair" it used projections for Tesla

developed by Goldman Sachs on the basis of only publicly available information, instead of Tesla's management projections.

RESPONSE: Denied.

192. In connection with its fairness analysis, at the direction of Tesla, Evercore utilized the Goldman Sachs equity research model instead of Tesla's internal model with management projections. Evercore's July 24, 2016 presentation to the Tesla Board acknowledges as much, noting that the Goldman Sachs model is "more conservative over time" than Tesla's internal projections. [TESLA00000873]. Tesla's internal projections provided to Plaintiffs in connection with the 220 Documents confirm that that is the case. Evercore's valuation of Tesla utilizing these conservative numbers without regard to the management forecasts results in an exchange ratio even more favorable to SolarCity.

RESPONSE: Paragraph 192 appears to quote from and characterize the materials from the July 24, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 192, except admit that Evercore's fairness opinion states that "[Tesla] instructed [Evercore] to utilize the Goldman Sachs equity research model, as a reasonable estimate of expected future financial performance of [Tesla]."

Analysts Sharply Question Evercore's Financial Analyses

193. Multiple analysts have questioned Evercore's valuation of SolarCity. For example, on September 6, 2016, Professor Aswath Damodaran, who teaches corporate finance and valuation at the Stern School of Business at New York University, published a blog post and video titled "Keystone Kop Valuations: Lazard, Evercore and the TSLA/SCTY Deal" sharply criticizing the work underlying both Evercore and Lazard's fairness opinions.

RESPONSE: The allegations in the first sentence of Paragraph 193 appear to refer to the views of unspecified analysts. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning these unspecified analysts' views, and deny them on that basis. The second sentence of Paragraph 193 purports to characterize a September 6, 2016 blog post and video by Aswath Damodaran, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in the second sentence of Paragraph 193.

194. Like the many analysts cited above, Professor Damodaran questioned the purported synergies that Tesla has touted will result from the Acquisition. In addition, he pointed out that Tesla cannot justify paying a control premium for SolarCity because both companies are already controlled by Elon Musk.

RESPONSE: Paragraph 194 purports to characterize a September 6, 2016 blog post by Aswath Damodaran, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 194.

195. Furthermore, Professor Damodaran characterized the banks' outsourcing of work and flawed assumptions as "lazy" and "incompetent," and noted that each is entitled to a significant fee that is contingent on the Acquisition being consummated, thus suggesting that the bankers' "errors" were the result of bias in favor of the Acquisition. Specifically, Professor Damodaran pointed out the following faults in the bankers' analyses:

(a) No internal checks for consistency: In both banks' DCF analyses, there is "almost a cavalier disregard" for the connection between growth, risk and reinvestment. Thus when the growth rate is adjusted, Evercore and Lazard failed to make a corresponding adjustment to cash flow and/or reinvestment. As

Professor Damodaran stated, no real business can increase its growth rate without reinvesting more and/or without changing its cash flows.

(b) Discount rates: Both Evercore and Lazard fail to change the discount rates used as they moved through time to 2021. For example, Evercore uses a 12-15% cost of capital estimated for the next four years, when SolarCity is a growth company with a lot of risk. However, by 2021, both Tesla and SolarCity are described as money-making, profitable companies with a slower growth rate, but the banks failed to take this into account by changing the discount rate. In addition, Professor Damodaran points out that for Tesla, Lazard uses a higher discount rate than Evercore, but for SolarCity, Evercore uses a higher discount rate than Lazard.

(c) Pricing and valuation: Both banks shift back and forth between value and price, and often mix the two, with Lazard estimating the terminal value for Tesla by taking cash flow for the next four years and applying 10x EBITDA. This is not a valuation; it is forward pricing.

(d) Outsourcing of cash flows: Both banks used cash flow forecasts provided to them by management. In the case of Tesla, the expected cash flows for 2016-2020 were generated by Goldman Sachs Equity Research, and for SolarCity, the cash flows for that same period were provided by SolarCity, conveniently under two scenarios, one with a liquidity crunch and one without. Thus the bankers, who were instructed by their clients to use the cash flows handed to them, started off with biased raw numbers that were not believable.

(e) Terminal value "hijinks": In estimating terminal value of Tesla, Evercore used a growth rate of 6-8% in perpetuity. However, such a growth rate is impossible in an economy where the risk-free rate is 1.5%, inflation is close to zero, and real growth is 1-1.5%.

RESPONSE: Paragraph 195 purports to quote from and characterize a September 6, 2016 blog post and video by Aswath Damodaran, to which Defendants respectfully refer the Court for their complete and accurate contents.

Defendants otherwise deny the allegations in Paragraph 195.

196. Professor Damodaran concluded that the bad assumptions and other flaws in Evercore's fairness opinion suggest "that the bankers involved in the Evercore valuations either have forgotten basic valuation or they just don't care."

RESPONSE: Paragraph 196 purports to quote from and characterize a September 6, 2016 blog post and video by Aswath Damodaran, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 196.

TESLA STOCKHOLDERS' VOTE ON THE ACQUISITION WAS COERCED AND NOT FULLY INFORMED

197. On October 12, 2016, Tesla filed the Proxy with the SEC and scheduled a special meeting of Tesla stockholders to hold a vote on the Acquisition. In attempt to conceal the self-interested nature and mask the insurmountable financial struggles of SolarCity, Defendants took steps, however, to predetermine the outcome of that vote. Recognizing that fully informed and disinterested Tesla stockholders would have reason to vote the deal down, Defendants withheld material information from the Proxy, including information concerning the insurmountable financial struggles of SolarCity and Defendants' self-interested reasons for bailing it out. Compounding the Proxy's deficiencies, Elon Musk embarked on a public relations tour to foster support for the Acquisition, during which he made numerous misrepresentations to the public, including Tesla's stockholders, concerning the Acquisition.

RESPONSE: Defendants admit the allegations in the first sentence of Paragraph 197. Defendants deny the remaining allegations in Paragraph 197.

198. Putting aside Defendants' failure to fully inform Tesla's stockholders (and Elon Musk's efforts to propagandize them), Defendants effectively guaranteed stockholder approval of the Acquisition by failing to limit the vote to truly disinterested Tesla stockholders. Instead, Defendants allowed including institutional stockholders who had large equity positions in SolarCity (and who, therefore, shared the fundamental conflict leading Musk to pursue the Acquisition in the first place) to vote on the proposed transaction as "disinterested" Tesla stockholders. Indeed, it appears that the Acquisition was approved only as a result

of support from those conflicted SolarCity investors and that it ***did not*** win support from a majority of Tesla's truly disinterested stockholders.

RESPONSE: Defendants deny the allegations in Paragraph 198, except admit that institutional stockholders in Tesla that held equity positions in SolarCity were not excluded from the vote of Tesla's stockholders by reason of the fact that they may have held equity positions in SolarCity.

The Proxy Failed to Disclose That the Acquisition and Its Timing Were Driven by a Desire to Bail Out SolarCity and Avoid Having SolarCity Default on Its Revolver

199. As set forth above, analysts recognized that the alleged synergies touted to justify the Acquisition were not realistic and could not have been the true reason for the deal. In truth, the purpose of the Acquisition was to bail out SolarCity and protect Elon Musk's reputation and salvage the investments that Elon Musk and other Defendants had in SolarCity. Although the Proxy set forth various "[r]easons for the [m]erger," the Proxy failed to disclose that the true purpose of the Acquisition was to rescue a financially failing SolarCity that could no longer survive as a standalone entity for self-interested reasons.

RESPONSE: Defendants deny the allegations in Paragraph 199, except admit that the Proxy contained a section entitled "Tesla's Reasons for the Merger and Tesla Share Issuance; Recommendation of the Tesla Board of Directors," to which Defendants refer the Court for its complete and accurate contents.

200. At the time the Acquisition was proposed and negotiated, SolarCity was in jeopardy of violating the covenants in its Revolver. It was further in jeopardy of defaulting on its non-recourse indebtedness, which could have triggered a cross-default under the Revolver. Although defendants Musk, Gracias and Buss were aware these dangers as early as February 2016 and the remainder of the Tesla Board learned of this as early as July 2016 as shown in the 220 Documents, Defendants failed to disclose these critical facts in the Proxy.

RESPONSE: Paragraph 200 purports to characterize the materials for the meetings of the Tesla Board in July 2016, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 200.

201. The Acquisition was motivated by, and its timing was driven by, a desire on the part of Defendants to avoid SolarCity defaulting on its Revolver. The Proxy failed to disclose these facts.

RESPONSE: Denied.

The Proxy Failed to Disclose the Patent Flaws in Evercore's DCF Analyses

202. In the Proxy, Defendants disclosed only certain basic elements of Evercore's DCF analyses to Tesla stockholders, and withheld information contained in the 220 Documents. Specifically, the Proxy provides: (i) the forecasts for Total Megawatts Inspected, Sources of Cash, Use of Cash, and Net Generation (of cash) for the underlying projections; (ii) Evercore's selected PGR; and (iii) Evercore's selected discount rate. By including just this minimal information, Defendants were able to effectively mask the critical flaws that undermine Evercore's valuations, as discussed above, and give Tesla stockholders the false impression that the proposed consideration was fair.

RESPONSE: Paragraph 202 purports to characterize the Proxy, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 202, except admit that the Proxy discloses, among other things, the forecasts for Total MegaWatts Inspected, Source of Cash, Use of Cash, and Net Generation of Cash, the range of perpetuity growth rates used by Evercore, and the range of discount rates used by Evercore.

203. Critically, Defendants withheld the components Evercore used for SolarCity's Sources of Cash, including the forecasts for Tax Equity. By doing so, Defendants concealed SolarCity's continuing and heavy reliance on solar leases and the associated tax benefits as part of its business plan. Although Musk had been touting that SolarCity was pivoting away from the solar leasing model in favor of cash- and loan-based sales, [redacted]

RESPONSE: Defendants deny the allegations in the first two sentences of Paragraph 203. The third sentence of Paragraph 203 appears to characterize the materials for the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 203.

204. Information concerning SolarCity's reliance on the solar leasing model would have been critical to Tesla stockholders because it would have shown that SolarCity was continuing to operate under an unsustainable business model, as discussed above, and undermined the unjustifiably high PGR selected by Evercore. Indeed, the perpetuity period represents 84.4% of the total value for the DCF using the SolarCity Unrestricted Liquidity case and 91.4% of the value using the Revised Sensitivity Case [TESLA00001136-37] — a fact that Defendants withheld from Tesla stockholders.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 204. The second sentence of Paragraph 204 appears to characterize the materials for the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in the second sentence of Paragraph 204.

205. Further, the Proxy failed to disclose that Evercore assumed incorrect rates for the tax credits under the Federal SITC for purposes of its DCF analyses. As discussed above, Evercore assumed that the tax structure in place for the Federal SITC in 2020 would remain in place permanently [TESLA00001123-24], even though 2020 is just the first year of the reductions for the tax credits. The tax credits will drop by another 16% for commercial solar systems and residential systems by another 26% by 2022.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 205. The second sentence of Paragraph 205 appears to characterize the materials for the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in the second sentence of Paragraph 205. The third sentence of Paragraph 205 contains legal conclusion to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to Sections 48 and 25D of the Internal Revenue Code for their complete and accurate contents.

206. The Proxy's omission of Evercore's improper assumption for purposes of its DCF analyses is exacerbated by disclosures in the Proxy concerning other valuations. For Evercore's Sum-of-the-Parts Analysis, the Proxy States: "In the terminal year it was assumed that these solar tax credits would not extend into perpetuity and therefore were not accounted for in the terminal value." Because the Proxy fails to address this issue in connection with Evercore's DCF analyses, a reasonable stockholder would have been misled to assume (incorrectly) that Evercore used the same approach in connection with those analyses as it did for its Sum-of-the-Parts analysis.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 206. The second sentence of Paragraph 206 appears to quote the Proxy,

to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants deny the allegations in the third sentence of Paragraph 206.

207. As a result of these deficiencies in the Proxy, Tesla stockholders were led to believe that SolarCity was worth billions more than its true value.

RESPONSE: Denied.

The Proxy Failed to Disclose that Defendant Buss Served as an Advisor to SolarCity While He and the Rest of the Tesla Board Determined to Undertake the Acquisition

208. As discussed above, following his retirement as SolarCity's CFO, defendant Buss served as a consultant to SolarCity until December 31, 2016—that is, during the entire period in which the Tesla Board considered, negotiated, agreed to and then recommended approval of the Acquisition.

RESPONSE: Denied.

209. The Proxy discloses that "Mr. Brad W. Buss, a member of the Tesla Board, was the Chief Financial Officer of SolarCity from August 2014 until February 2016," but wholly fails to disclose Buss's then-current role as a consultant to SolarCity—thereby misleading Tesla stockholders to believe Buss's relationship with, and loyalties to, SolarCity ended in February 2016. The Proxy, therefore, misled Tesla's stockholders concerning Buss's independence and thereby prevented Tesla's stockholders from making a fully informed assessment as to the independence of the Board that structured and recommended the Acquisition.

RESPONSE: The first sentence of Paragraph 209 appears to quote from the Proxy, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in the first sentence of Paragraph 209. Defendants deny the allegations in the second sentence of Paragraph 209.

The Proxy Omitted Material Information Regarding Certain Tesla Directors' Relationship With SpaceX

210. As alleged herein, multiple Tesla directors have relationships with SpaceX. Elon Musk, Kimbal Musk, Gracias and Jurvetson all serve on the SpaceX Board. Additionally, at least Elon Musk, Ehrenpreis (personally and through his DBL fund), Gracias (personally and through his Valor funds) and Jurvetson (through his DFJ funds) are investors in SpaceX.

RESPONSE: Defendants deny the allegations in Paragraph 210, except admit that Elon Musk, Kimbal Musk, Gracias, and Jurvetson serve on the SpaceX Board, and that Elon Musk, Ehrenpreis, funds affiliated with DBL Partners, funds affiliated with Valor, and funds affiliated with DFJ are investors in SpaceX.

211. The Proxy fails to disclose the full scope of the conflict created by the Tesla directors' investments in, and other relationships with, SpaceX.

RESPONSE: Denied.

212. SpaceX is mentioned in the Proxy only in connection with SpaceX's ownership of certain SolarCity solar bonds due in 2017. In connection with that disclosure, the Proxy identifies Elon Musk, Kimbal Musk, Gracias and Jurvetson as directors of SpaceX. The Proxy fails, however, to disclose any of the Tesla directors' investments in SpaceX.

RESPONSE: Paragraph 212 appears to characterize the Proxy, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 212.

213. Further, the Proxy does not disclose the larger conflict created by the Tesla directors' investments in, and relationships with, SpaceX. As alleged herein, even Elon Musk himself has acknowledged that Tesla, SolarCity and SpaceX form a "pyramid" and it is "important that there not be some sort of house of cards that crumbles if one element of the pyramid of Tesla, SolarCity and SpaceX falters." As further alleged herein, a SolarCity failure would damage Elon Musk's

reputation as a "visionary" and could harm his other enterprises, including SpaceX, by, *inter alia*, causing an increase in the cost of capital for such enterprises. As a result, each director affiliated with SpaceX would have added incentive to help prevent the SolarCity block in Musk's "pyramid" from collapsing.

RESPONSE: The first and second sentences of Paragraph 213 appear to characterize and quote from the Proxy and an April 27, 2016 article from *The Wall Street Journal*, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in the first and second sentences of Paragraph 213. Defendants deny the allegations in the third and fourth sentences of Paragraph 213.

214. This omitted information is material because, without it, Tesla's stockholders were misled about, and unable to assess, the potential effects on Tesla directors' interests in SpaceX if Tesla did not acquire SolarCity, and as a result, the independence of the Board that structured and recommended the Acquisition.

RESPONSE: Denied.

The Proxy Failed to Disclose that Credit Suisse Acted as a Financial Advisor to SolarCity in Connection with the Acquisition

215. Recent analyst reports on Tesla issued by Credit Suisse disclose that Credit Suisse "has a material conflict of interest with the subject company" because it "is acting as financial advisor to SolarCity Corporation . . . on their sale to Tesla Motors Inc. . . ."

RESPONSE: Paragraph 215 appears to quote unspecified analyst reports issued by Credit Suisse. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning these unspecified reports, and deny them on that basis.

216. Credit Suisse is one of the lenders participating in Tesla's ABL, and appears to have prepared at least one slide of a presentation made by Tesla to Institutional Shareholder Services ("ISS") in its efforts to gain support for the Acquisition.

RESPONSE: Defendants deny the allegations in Paragraph 216, except admit that Credit Suisse AG, Cayman Islands Branch, is a lender in Tesla's ABL Credit Facility.

217. The Proxy failed to disclose that Credit Suisse advised SolarCity in connection with the Acquisition, or what Credit Suisse's role was in connection with the Acquisition.

RESPONSE: Denied.

Elon Musk Made Unsupported and Contradictory Statements to the Media and Investors During a Public Relations Tour Leading up to the Stockholder Vote

218. Following the announcement of the Offer, Elon Musk undertook a well-documented public relations tour in attempt to gain stockholder support for the Acquisition. Compounding the deficiencies in the Proxy, Musk sought to propagandize Tesla's stockholders to vote in favor of the Acquisition by making numerous false or misleading statements to the media and investors as part of this campaign. These statements are largely summarized in a 9-page presentation (the "November Press Release") posted to Tesla's investor relations website on November 1, 2016—just two weeks before the stockholder vote.

RESPONSE: Defendants deny the allegations in Paragraph 218, except admit that Elon Musk made certain public statements regarding the Acquisition following the announcement of the Offer, and that Tesla posted a 9-page report on its website on November 1, 2016.

219. The November Press Release states: "SolarCity is now no longer as reliant on leasing. Its customers are increasingly choosing to opt for cash

purchases and loans, which creates a healthier mix of upfront and recurring revenue." [redacted] Such reliance is highly tenuous, as the benefits of the Federal SITCs are set to substantially and quickly phase out in the near future.

RESPONSE: The first two sentences of Paragraph 219 appear to quote the report posted on Tesla's website on November 1, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. The third and fourth sentences of Paragraph 219 purport to characterize the materials for the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 219.

220. Further, direct sales were a drag on SolarCity's profitability. In a report published on August 11, 2016, analysts at UBS Global Research state: "We view strategy shift towards increasing cash and loan sales with concerns, given that SCTY has had a history of negative gross margins for their Solar Energy Systems and Components Sales Segment, with the two year average gross margin approximately negative 10%." Consequently, while a shift away from leasing and towards direct sales would help reduce the effects of the substantial phase out of the Federal SITCs, a larger percentage of direct sales is hardly a "healthier" product mix because each transaction creates a loss for SolarCity.

RESPONSE: Paragraph 220 purports to quote from a report published by UBS Global Research on August 11, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 220.

221. In addition, the November Press Release states that Tesla believed SolarCity would "add more than half a billion dollars in cash to Tesla's balance sheet over the next 3 years." However, this representation is contradicted by the forecasts in the Revised Sensitivity Forecasts, which Elon Musk himself created with his Tesla management team. According to these projections, SolarCity is forecasted to generate only $23 million in cash between 2017 and 2019, despite [redacted]

RESPONSE: Paragraph 221 appears to quote from and characterize the report posted on Tesla's website on November 1, 2016, the Proxy, and the materials for the July 30, 2016 Tesla Board meeting, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 221.

The Merger Agreement Failed to Limit the Vote to Only Disinterested Stockholders Who Did Not Suffer From Financial Conflicts

222. Tesla and SolarCity repeatedly touted that the Acquisition was conditioned on approval by not only a majority of the total shares of each company, but also a majority of the shares of each company not affiliated with Elon Musk. However, these purported protections were hollow, as the body of stockholders participating in the purportedly non-affiliated votes still includes many conflicted stockholders.

RESPONSE: Defendants deny the allegations in Paragraph 222, except admit that the Acquisition was conditioned on approval by (i) the affirmative vote of the holders of a majority of the total votes of shares of Tesla common stock cast in person or by proxy at the special meeting; (ii) the affirmative vote of the holders

of a majority of the shares of Tesla common stock not owned, directly or indirectly, by the directors and named executive officers of SolarCity, including Elon Musk, Gracias, Jeffrey B. Straubel, and certain of their affiliates, cast in person or by proxy at the special meeting; (iii) the affirmative vote of the holders of a majority of the outstanding shares of SolarCity common stock entitled to vote in person or by proxy at the special meeting; and (iv) the affirmative vote of the holders of a majority of the shares of SolarCity common stock not owned, directly or indirectly, by Elon Musk and the other directors and named executive officers of Tesla and SolarCity, and certain of their affiliates, other than Pfund and Donald R. Kendall, Jr., cast on the proposal in person or by proxy at the SolarCity special meeting.

223. Specifically, with respect to Tesla, Section 3.04 of the Merger Agreement provided that the Acquisition was subject to approval by (i) the holders of a majority of the total votes of Tesla shares cast at a to-be-scheduled special meeting of Tesla stockholders, which was ultimately held on November 17, 2016 (the "Special Meeting"); and (ii) the holders of a majority of the total votes of Tesla shares not owned by "Excluded Parent Parties" cast at the Special Meeting. "Excluded Parent Parties" is defined in Section 9.03 of the Merger Agreement as:

> the directors and named executive officers of [SolarCity] in each case as of the date of this Agreement and/or as of record date set in respect of the [Special Meeting] and including, for the avoidance of doubt, Elon Musk, Antonio Gracias and Jeffrey B. Straubel, and the Persons in which any of the foregoing Persons have a pecuniary interest or in the name of which the shares of [Tesla] Common Stock of any of the foregoing Persons are registered or beneficially held, whether directly or indirectly.

RESPONSE: Paragraph 223 appears to quote from and characterize the Merger Agreement, to which Defendants respectfully refer the Court for its complete and accurate contents.

224. The Merger Agreement therefore did not exclude from the purportedly disinterested vote numerous Tesla stockholders who are beholden to Elon Musk and/or who own, or whose family members and/or business partners own, SolarCity stock and therefore stood to benefit from the Acquisition, including: Kimbal Musk; Jurvetson; Ehrenpreis; Buss; Tesla executive officers, including Jason Wheeler, Doug Field and Greg Reichow; and any other Tesla stockholders who also owned stock in SolarCity.

RESPONSE: Paragraph 224 appears to characterize the Merger Agreement, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 224.

225. As of September 23, 2016, the record date for the Special Meeting, excluding shares held by Musk, Gracias, Straubel, and their affiliates, there were 118,044,090 shares of Tesla common stock outstanding and entitled to vote at the Special Meeting. Of these shares, 68,788,787 voted in favor of the Acquisition.

RESPONSE: Defendants deny the allegations in Paragraph 225, except admit that as of September 23, 2016, excluding shares held or voted by the Excluded Tesla Parties, as defined in the Merger Agreement, there were 118,044,090 shares of Tesla common stock outstanding and entitled to vote at the Special Meeting, and that of those shares, 68,788,787 voted in favor of the Acquisition.

226. According to the 220 Documents, on June 20, 2016, Evercore gave a presentation to the Board that highlighted the enormous shareholder overlap between Tesla and SolarCity. That presentation, the relevant portion of which is

attached hereto as Exhibit A, informed the Board that, as of June 17, 2016, among Tesla's top 25 institutional investors, investors holding 45.7% of Tesla's shares (66,658,000 shares) also held shares in SolarCity. [TESLA00000243]. This overlap does not even include smaller institutional investors or individual shareholders, including Musk, who also owned shares in each company.

RESPONSE: Paragraph 226 purports to characterize materials for the June 20, 2016 Tesla Board meeting and Exhibit A to the Complaint, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 226.

227. These shareholders were not disinterested as they had the incentive to use Tesla's capital to bail out their investments in SolarCity, which were at risk of being zeroed out. Therefore, most, if not all, of these institutional shareholders likely voted in favor of the Acquisition. Despite their lack of disinterestedness, under the terms of the Acquisition they were eligible to vote on the transaction in the so-called majority of the minority vote, thus rendering the vote ineffective for cleansing purposes. Moreover, the fact that this overlap was highlighted to the Board before Tesla made its initial offer indicates that it knew any final deal was likely to gain Tesla shareholder approval and any purported majority of the minority vote that allowed overlapping shareholders to vote would be a sham.

RESPONSE: Defendants deny the allegations in Paragraph 227, except admit that the entities listed under "Tesla – Top 25 Institutional Shareholders" in Exhibit A to the Complaint were not Excluded Tesla Parties under the terms of the Merger Agreement.

228. As these shareholders were not disinterested, the shares they held should be excluded from what are deemed disinterested shares. Deducting these 66,658,000 shares from the 68,788,787 purportedly disinterested shares that were voted in favor of the Acquisition, leaves only 2,130,787 potentially disinterested shares that were voted in favor of the Acquisition. That amounts to only 4.1% of the total outstanding potentially disinterested shares.

RESPONSE: Paragraph 228 contains legal arguments and conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 228.

229. Furthermore, absent evidence concerning whether the shareholders that owned these 2,130,787 shares also owned SolarCity shares, it is impossible to determine at the pleading stage whether disinterested shareholders cast even these votes. Regardless, even assuming all of these shares were owned by disinterested holders, the vote to approve the Acquisition would have failed as 12,067,214 shares were voted against the deal.

RESPONSE: Paragraph 229 contains legal arguments and conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 229.

230. Because the ineffective protections in the Merger Agreement failed to condition the Acquisition on the vote of truly disinterested Tesla stockholders, the Acquisition was approved and then closed on November 21, 2016.

RESPONSE: Defendants deny the allegations in Paragraph 230, except admit that the Acquisition was approved and that the Acquisition was completed on November 21, 2016.

DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS

231. Plaintiffs bring Counts I through III and VI derivatively in the right and for the benefit of Tesla to redress the Individual Defendants' breaches of fiduciary duties, unjust enrichment and waste of corporate assets.

RESPONSE: The allegations in Paragraph 231 set forth characterizations of Plaintiffs' claims to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 231.

232. Plaintiffs are stockholders of Tesla, were stockholders of Tesla at the time of the wrongdoing alleged herein, and have been stockholders of Tesla continuously since that time.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 232 and deny them on that basis.

233. Plaintiffs will adequately and fairly represent the interests of the Company and its stockholders in enforcing and prosecuting its rights.

RESPONSE: Paragraph 233 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 233.

234. As a result of the facts set forth herein, Plaintiffs have not made any demand on the Board to institute this action against the Individual Defendants. Such demand would be a futile and useless act because the Tesla Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

RESPONSE: Paragraph 234 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 234, except admit that Plaintiffs have not made a demand on the Board to institute this action.

235. The Board currently consists of seven directors: defendants Elon Musk, Kimbal Musk, Gracias, Ehrenpreis, Jurvetson, Buss and Denholm. For the reasons set forth below, none of these directors is capable of disinterestedly and independently considering a demand to commence and vigorously prosecute this action.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 235, but aver that, at the time the Complaint was filed, the Tesla Board consisted of seven directors: Elon Musk, Kimbal Musk, Gracias, Ehrenpreis, Jurvetson, Buss, and Denholm. The second sentence of the Paragraph 235 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in the second sentence of Paragraph 235.

Elon Musk Cannot Disinterestedly and Independently Consider a Demand

236. As Chairman of the Board of SolarCity and its largest stockholder, Elon Musk admittedly stands on both sides of the Acquisition.

RESPONSE: Defendants deny the allegations in Paragraph 236, except admit that Elon Musk was the Chairman of the Board of SolarCity and was SolarCity's largest stockholder.

237. The Acquisition prevented a SolarCity implosion, which also eliminated the risk of a margin call on Elon Musk's $475 million in personal loans.

RESPONSE: Denied.

238. As discussed herein, Elon Musk benefitted from the Acquisition because it protected the investments of Valor, DFJ and DBL in SolarCity. Valor, DFJ and DBL are frequent investors in Elon Musk's various entities, and therefore keeping these investors happy will allow him to continue seeking financing from them in the future.

RESPONSE: Denied.

239. In addition, as discussed herein, by causing the Company to bail out SolarCity, the Acquisition benefitted Elon Musk's cousins, Lyndon and Peter Rive, who were SolarCity co-founders, 3.9% and 3.8% (respectively) stockholders, and

are serving as executives of the surviving SolarCity subsidiary of Tesla following the consummation of the Acquisition.

RESPONSE: Defendants deny the allegations in Paragraph 239, except admit that Lyndon Rive and Peter Rive were SolarCity's co-founders, owned 3.9% and 3.8% of SolarCity's shares of common stock, respectively, and served as executives of the SolarCity subsidiary of Tesla following the consummation of the Acquisition, but aver that Lyndon Rive and Peter Rive are no longer executive officers of SolarCity.

240. The Acquisition will also benefit Elon Musk's brother Kimbal Musk and close friend Gracias, both of whom are SolarCity stockholders.

RESPONSE: Defendants deny the allegations in Paragraph 240, except admit that Kimbal Musk and Gracias were SolarCity stockholders at the time of the Acquisition.

241. For all of these reasons, Elon Musk cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

RESPONSE: Denied.

Gracias Cannot Disinterestedly and Independently Consider a Demand

242. Like Elon Musk, as a member of both the Tesla Board and the SolarCity Board, Gracias admittedly stood on both sides of the Acquisition.

RESPONSE: Defendants deny the allegations in Paragraph 242, except admit that Gracias was a member of the Tesla Board and the SolarCity Board.

243. In addition, Gracias (personally and through certain Valor funds) beneficially owned SolarCity common stock and therefore stood to benefit from the Acquisition.

RESPONSE: Defendants deny the allegations in Paragraph 243, except admit that Gracias and certain funds affiliated with Valor beneficially owned SolarCity common stock.

244. Furthermore, Gracias cannot disinterestedly and independently consider a demand against his close friend Elon Musk. The relationship between Elon Musk and Gracias dates back to at least 2001, when Gracias invested in PayPal. Elon Musk subsequently provided Gracias and Valor the opportunity to participate in several pre-IPO venture funding rounds for SolarCity, Tesla and SpaceX, and appointed him to the board of directors of each company. In fiscal year 2015, Gracias received almost $11 million in aggregate director compensation from Tesla and SolarCity, in addition to whatever he earned as a director of SpaceX.

RESPONSE: Defendants deny the allegations in Paragraph 244, except admit that Gracias invested in PayPal and that certain funds affiliated with Valor participated in pre-IPO venture funding rounds for SolarCity, Tesla, and SpaceX; that Gracias served on the boards of directors of SolarCity, Tesla, and SpaceX at the time of the Acquisition; and that, in fiscal year 2015, Gracias received compensation as a Tesla director and a SolarCity director, including option awards intended to compensate Gracias for Board service over a three-year period. Defendants respectfully refer the Court to the 2016 proxy statements for Tesla and SolarCity for information relating to those awards and their valuation.

245. In addition, both Elon Musk and Kimbal Musk are invested in various Valor funds. As manager of these funds, Gracias serves as a fiduciary to Elon Musk and Kimbal Musk.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 245, except admit that Elon Musk and Kimbal Musk have invested in certain funds affiliated with Valor. The second sentence of Paragraph 245 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in the second sentence of Paragraph 245.

246. Valor's website includes a testimonial from Elon Musk, in which he describes Gracias's value to Tesla:

> I'd like to thank Valor for being a key investor. And not just an investor, but a strategic partner. I don't think we would've made it without their help, so thank you.[17]

(Footnote 17: http://www.valorep.com/about (last visited on July 29, 2016).)

RESPONSE: Paragraph 246 appears to quote from Valor's website, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 246.

247. Similarly, Valor's website includes the following testimonial from Peter Rive, COO & CTO of SolarCity:

> Valor is simply the best investor I've ever worked with. Their initial diligence is thoughtful and detailed, but their help in improving the company after the investment is invaluable. They have an awesome team who implement lean process methodologies to improve throughput without an increase in operating expenses. I want to emphasize the word "implement" which is key to the Valor guys. They're not consultants who create a set of power point presentations – they actually do the work! The end result is that when Valor

> invested in our company they simultaneously lowered the execution risk of the business.[18]

(Footnote 18: http://www.valorep.com/about (last visited on July 29, 2016).)

RESPONSE: Paragraph 247 appears to quote from Valor's website, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 247.

248. Gracias uses these testimonials and his relationship with Elon Musk to solicit fund investors and entrepreneurs seeking venture capital on behalf of Valor.

RESPONSE: Denied.

249. For all of these reasons, Gracias cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

RESPONSE: Denied.

Kimbal Musk Cannot Disinterestedly and Independently Consider a Demand

250. Kimbal Musk was interested in the Acquisition, which benefits him and his family members (Elon Musk, Peter Rive and Lyndon Rive), who collectively owned over 26% of SolarCity's common stock.

RESPONSE: Defendants deny the allegations in Paragraph 250, except admit that Elon Musk, Peter Rive, and Lyndon Rive, in the aggregate, owned over 26% of SolarCity's common stock.

251. Kimbal Musk is not independent from his brother. He sits on the Boards of Directors of Tesla and SpaceX by virtue of being Elon Musk's brother, and collects significant director fees as a result thereof. In 2015, Kimbal Musk received director compensation from Tesla alone in the amount of $4,964,381.

RESPONSE: Defendants deny the allegations in Paragraph 251, except admit that Kimbal Musk is a board member of Tesla and SpaceX, and that, in fiscal year 2015, Kimbal Musk received compensation as a Tesla director, including option awards intended to compensate Kimbal Musk for Board service over a three-year period. Defendants respectfully refer the Court to Tesla's 2016 proxy statement for information relating to those awards and their valuation.

252. In addition, Kimbal Musk is not independent from Gracias (his brother's close friend with whom he sits on both the Tesla Board and the SpaceX Board), who is interested in the Acquisition and, through his control over Valor, manages two private equity funds in which Kimbal Musk has invested.

RESPONSE: Defendants deny the allegations in Paragraph 252, except admit that Kimbal Musk and Gracias are members of the Tesla Board and the SpaceX Board, and that Kimbal Musk has invested in certain funds affiliated with Valor.

253. For all of these reasons, Kimbal Musk cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

RESPONSE: Denied.

Ehrenpreis Cannot Disinterestedly and Independently Consider a Demand

254. Ehrenpreis was interested in the Acquisition. As alleged herein, his venture capital partner, Pfund, was a SolarCity stockholder and therefore stood to benefit from the Acquisition. Pfund also served on the SolarCity Board and the SolarCity Special Committee. Pfund was an observer on the Tesla Board from 2006 to 2010.

RESPONSE: Defendants deny the allegations in Paragraph 254, except admit that Pfund was a SolarCity stockholder, board member, and Special Committee member, and that Pfund was an observer on the Tesla Board from 2006 to 2010.

255. Ehrenpreis is also not independent from Elon Musk. Ehrenpreis, his partner Pfund, and the various funds they manage have collectively invested in all three of Elon Musk's current companies – Tesla, SolarCity and SpaceX.

RESPONSE: Denied.

256. In addition, Ehrenpreis's interest in Mapbox and the payments to be received in connection therewith from Tesla impact his ability to disinterestedly consider a demand.

RESPONSE: Denied.

257. For all of these reasons, Ehrenpreis cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

RESPONSE: Denied.

Jurvetson Cannot Disinterestedly and Independently Consider a Demand

258. Jurvetson is interested in the Acquisition because he, his partner (Fisher) and funds managed by their venture capital firm (DFJ) own SolarCity common stock. Accordingly, Jurvetson cannot disinterestedly consider a demand.

RESPONSE: Defendants deny the allegations in Paragraph 258, except admit that Jurvetson, Fisher, and certain funds managed by DFJ owned SolarCity common stock.

259. Jurvetson also lacks independence from Elon Musk. His venture capital firm has invested in Tesla, SolarCity and SpaceX, and Jurvetson and/or his

venture capital partner Fisher serve on the boards of directors of all three companies.

RESPONSE: Defendants deny the allegations in Paragraph 259, except admit that DFJ has invested in Tesla, SolarCity, and SpaceX, that Jurvetson serves on the board of Tesla and the board of SpaceX, and that Fisher was a director of SolarCity at the time of the Acquisition.

260. DFJ has turned a substantial profit from its investments in SolarCity, selling down its 26.2% interest down to 3.3% since the December 2012 IPO. DFJ is also a "significant stockholder of SpaceX,"[19] which as of January 2015 was valued at approximately $12 billion.
(Footnote 19: Tesla Motors, Inc. Def. Proxy Statement (DEF14A) at 17 (Apr. 15, 2016).)

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 260, except admit that DFJ and affiliated funds reduced their percentage ownership in SolarCity over time following SolarCity's IPO. The second sentence of Paragraph 260 appears to quote Tesla's Proxy Statement filed April 15, 2016, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants deny the remaining allegations in Paragraph 260, except admit that, in January 2015, certain public reports estimated the valuation of SpaceX to be approximately $12 billion.

261. Jurvetson has not tried to hide his admiration for Elon Musk, stating that Musk's "passion is breathtaking" and praising his dedication and vision.

RESPONSE: Paragraph 261 appears to quote from and characterize an April 27, 2016 article from *The Wall Street Journal*, to which defendants

respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 261.

262. Additionally, Jurvetson and DFJ serve as fiduciaries of the Elon Musk Trust, which is a limited partner of DFJ investment fund Draper Fisher Jurvetson Fund X, L.P.

RESPONSE: Paragraph 262 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 262, except admit that the Elon Musk Trust is a limited partner in the Draper Fisher Jurvetson Fund X, L.P.

263. For all of these reasons, Jurvetson cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

RESPONSE: Denied.

Buss Cannot Disinterestedly and Independently Consider a Demand

264. Like Elon Musk and Gracias, Buss stood on both sides of the Acquisition in two respects. First, he beneficially owned 89,203 shares of SolarCity common stock. Second, though Buss recently resigned as the Chief Financial Officer of SolarCity, he continued to serve as a consultant to SolarCity through the end of 2016.

RESPONSE: Denied.

265. Buss's current primary source of income is his lucrative position as a director of Tesla.[20] In fiscal year 2015, Buss earned an astounding $4,954,785 in director fees. Accordingly, Buss cannot disinterestedly and independently consider a demand against (i) Denholm, Ehrenpreis and Gracias, who as members of Tesla's Compensation Committee, make recommendations to the Board as to director compensation; (ii) Elon Musk, who admittedly "periodically provide[s] input on company-wide compensation, including to employees and directors" [TESLA0001712]; or (iii) his fellow Board members as a whole, who consider the

Compensation Committee's recommendations and ultimately approve director compensation.
(Footnote 20: Through December 31, 2016, Buss received $1,000 per month in compensation from SolarCity for his service as an advisor.)

RESPONSE: Defendants deny the allegations in the first two sentences of Paragraph 265, except admit that Buss currently serves on the Tesla Board and on other boards, and that in 2015, Buss received compensation as a Tesla director, including option awards intended to compensate Buss for Board service over a three-year period. Defendants respectfully refer the Court to Tesla's 2016 proxy statement for information relating to those awards and their valuation. Defendants deny the remaining allegations in Paragraph 265, except admit that Denholm, Ehrenpreis and Gracias are members of Tesla's Compensation Committee, that the Tesla Board approves director compensation, and that Plaintiffs purport to quote from Elon Musk's Questionnaire for Fiscal 2015 Reporting, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants deny the allegations in Footnote 20.

266. For all of these reasons, Buss cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

RESPONSE: Denied.

Denholm Cannot Disinterestedly and Independently Consider a Demand

267. Denholm left Juniper in February 2016, and until 2017 did not have a full-time job. Accordingly, her recent sole source of income has been her lucrative position as a director of Tesla. In fiscal years 2014 and 2015, Denholm earned $7,181,066 and $4,979,785, respectively, in director fees as a Tesla director.

Accordingly, Denholm cannot disinterestedly and independently consider a demand against (i) Ehrenpreis and Gracias, who in their capacities as fellow members of the Compensation Committee make recommendations to the Board as to director compensation; (ii) Elon Musk, who admittedly "periodically provide[s] input on company-wide compensation, including to employees and directors" [TESLA0001712]; or (iii) her fellow Board members as a whole, who consider the Compensation Committee's recommendations and ultimately approve director compensation.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 267. Defendants deny the remaining allegations in Paragraph 267, except admit that (i) in fiscal years 2014 and 2015, Denholm was awarded compensation as a Tesla director, including options awarded upon joining the board of directors and options intended to compensate Denholm for Board service over a three-year period. Defendants respectfully refer the Court to Tesla's 2015 and 2016 proxy statements for information relating to those awards and their valuation; (ii) Ehrenpreis and Gracias are members of Tesla's Compensation Committee; (iii) the Tesla Board approves director compensation; and (iv) Plaintiffs purport to quote from Elon Musk's Questionnaire for Fiscal 2015 Reporting, to which Defendants respectfully refer the Court for its complete and accurate contents.

The Acquisition Was Not the Product of a Valid Exercise of Business Judgment

268. Demand is further excused because the Acquisition was otherwise not the product of a valid exercise of business judgment.

RESPONSE: Denied.

269. First, Elon Musk is the controlling stockholder of Tesla and stood on both sides of the Acquisition. Indeed, Elon Musk and Tesla are essentially synonymous. Elon Musk provided the money that served as the foundation for the Company's early development: he led Tesla's Series A and Series B rounds of funding and co-led its Series C round of funding. He has also been the single longest tenured individual at Tesla since the 2008 departure of co-founders Martin Eberhard and Marc Tarpenning (an event largely orchestrated by Elon Musk).

RESPONSE: Defendants deny the allegations in Paragraph 269, except admit that Elon Musk participated in Tesla's Series A, Series B, and Series C rounds of funding.

270. Elon Musk is the dominant force behind Tesla's corporate strategy, which has proceeded for the last decade according to his "Master Plan," which was personally authored by Musk and was published to the Company's website on August 2, 2006. The Company now has begun to proceed according to Musk's "Master Plan, Part Deux," which was published to the Company's website on July 20, 2016 (as explained above, the new plan calls for Tesla to combine with SolarCity, and confirms that this has been Elon Musk's plan for Tesla all along). In an August 1, 2016 conference call about the Acquisition, Elon Musk explained: "I think I've spoken quite a bit at length probably about the objectives [of the Acquisition], so I don't think there's anything new I have to add. It was described when we announced it and then again in my master plan update ... I should say master plan 10 years ago."

RESPONSE: Paragraph 270 appears to characterize an August 2, 2006, blog post by Elon Musk entitled "The Secret Tesla Motors Master Plan (just between you and me)," a July 20, 2016 blog post by Elon Musk entitled "Master Plan, Part Deux," and a publicly transcribed August 1, 2016 conference call, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 270.

271. In addition to crafting Tesla's big-picture strategy, Elon Musk is the Company's Chief Product Architect and has played a hands-on role in the design of its products, including dictating details such as the lowering of the Tesla Roadster's side rails by three inches and selecting interior trim. Elon Musk is the clear public face of Tesla and he is viewed, both within the Company and by much of the public, as a visionary business leader who is, to a significant degree, personally responsible for Tesla's success. As Tesla has acknowledged, "[i]n addition to serving as the CEO since October 2008, Mr. Musk has contributed significantly and actively to us since our earliest days in April 2004 by recruiting executives and engineers, contributing to the Tesla Roadster's engineering and design, raising capital for us and bringing investors to us, and raising public awareness of the Company." Elon Musk himself has stated that he "tried to actually not be CEO quite hard and eventually [it] was sort of [that] or the company wasn't going to make it."

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 271, except admit that Elon Musk is Tesla's Product Architect and is heavily involved in product design. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 271, and deny them on that basis. The third sentence of Paragraph 271 appears to quote from Tesla's Proxy Statement filed on April 13, 2012, to which Defendants respectfully refer the Court for its complete and accurate contents. The fourth sentence of Paragraph 271 appears to quote a publicly transcribed conference call dated June 3, 2014, to which Defendants respectfully refer the Court for its complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 271.

272. For example, a January 14, 2015 *Detroit Free Press* profile typical of Elon Musk's press coverage described him as the subject of a "personality cult" while acknowledging that "[m]uch of [Tesla's] growth is pegged directly to the

sheer force of Musk's personality." As described in a *TIME* article published on August 4, 2016: "Like Apple under Steve Jobs and Amazon under Jeff Bezos, Tesla Motors has an image deeply entangled with that of its founder. Only with Tesla . . . success still lies in an often-delayed future. And so Musk is even more crucial to what Tesla is, because that future must be filtered through his vision."

RESPONSE: Paragraph 272 purports to quote from and characterize a January 14, 2015 online article in the *Detroit Free Press* and an August 4, 2016 online article in *TIME*, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 272.

273. Tesla's lenders and strategic partners have agreed. Affiliates of Daimler AG, with which Tesla previously entered into a series of strategic collaboration and other agreements, had the right to terminate such agreements in the event that Elon Musk was not serving as Tesla's CEO or Chairman and their representative on the Tesla Board did not approve of his successor. Similarly, the Company's prior credit facility from the Department of Energy provided that Tesla would be in default thereof if Musk failed to own a certain amount of Tesla stock.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 273. The second sentence of Paragraph 273 appears to characterize the terms of previous agreements between Tesla and affiliates of Daimler AG, to which Defendants respectfully refer the Court for their complete and accurate contents. The third sentence of Paragraph 273 appears to characterize the terms of a January 20, 2010 loan facility with the Federal Financing Bank and the United States Department of Energy, to which Defendants respectfully refer the Court for

their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 273.

274. The Company's annual and quarterly reports on Forms 10-K and 10-Q consistently acknowledge that Tesla is "highly dependent on the services of Elon Musk," who is "highly active in [the Company's] management," and if Tesla were to lose his services, it could "disrupt our operations, delay the development and introduction of our vehicles and services, and negatively impact our business, prospects and operating results as well as cause our stock price to decline."

RESPONSE: Paragraph 274 purports to quote from and characterize certain unspecified Tesla annual and quarterly reports on Forms 10-K and 10-Q, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 274.

275. For years, the Company's quarterly and annual reports also acknowledged that the "concentration of ownership among [Tesla's] existing executive officers, directors and their affiliates may prevent new investors from influencing significant corporate decisions." Although this ownership level was less than 50%, the Company admitted that "these stockholders will be able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, amendment of our certificate of incorporation and approval of significant corporate transactions."

RESPONSE: Paragraph 275 appears to quote from and characterize certain unspecified Tesla annual and quarterly reports on Forms 10-K and 10-Q, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the allegations in Paragraph 275.

276. Elon Musk also had actual control and influence over the Board's decision-making, including its decisions to submit the Offer to SolarCity and to approve the Acquisition. As explained above, the Acquisition was conceived of and instigated by Musk and approved by a majority of directors who each shared

with Elon Musk a special interest in the Acquisition. These directors, and Elon Musk's confidante J.B. Straubel, collectively beneficially owned approximately 1% of Tesla's common stock as of September 23, 2016.

RESPONSE: Defendants deny the allegations in Paragraph 276, except admit that Straubel and the directors of Tesla other than Elon Musk collectively owned approximately 1% of Tesla's common stock as of September 23, 2016.

277. Because Elon Musk is a controlling stockholder who stands on both sides of the Acquisition, the business judgment rule does not protect the Board's decision to approve the Acquisition, and demand is therefore excused.

RESPONSE: Paragraph 277 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 277.

278. Second, the Acquisition was not approved by a Board majority consisting of independent and disinterested directors. As explained above, five of Tesla's seven directors – each of whom suffered disabling conflicts – voted to approve the Acquisition. For this reason as well, the business judgment rule does not protect the Board's decision to approve the Acquisition, and demand is therefore excused.

RESPONSE: Paragraph 278 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 278, except admit that the five Tesla directors who voted on the Acquisition voted to approve it.

279. Third, the Tesla Board's approval of the Acquisition was not taken honestly and in good faith, and the Acquisition process was otherwise without the bounds of reason. As explained above, the Tesla Board's approval of the Acquisition advanced the interests of Elon Musk and other insiders rather than the interests of Tesla and its minority stockholders. Furthermore, despite the potent

conflicts possessed by a majority of its members, the Tesla Board, *inter alia*, (a) failed to form a special committee of disinterested and independent directors; (b) permitted Elon Musk's and Gracias's involvement in Board meetings and deliberation and generally limited their recusals to voting; and (c) failed to require recusals of the other conflicted directors. The Acquisition also violated the Board's own internal governance procedures. As the Company's public filings explain, Tesla's Audit Committee charter requires the Audit Committee to review and approve "***in advance*** any proposed related" party transactions (emphasis added). The Audit Committee was therefore required to review and approve the Acquisition in advance, but failed to do so.

RESPONSE: Defendants deny the allegations in the first three sentences of Paragraph 279, except admit that the Tesla Board did not form a special committee, that Elon Musk and Gracias recused themselves from the Tesla Board votes relating to the Acquisition, and that they attended portions of certain Tesla Board meetings at which aspects of the Acquisition were discussed. The remaining allegations in Paragraph 279 state legal conclusions to which no response is required. To the extent a response is required, the allegations appear to characterize certain unspecified Tesla public filings, to which Defendants respectfully refer the Court for their complete and accurate contents. Defendants otherwise deny the remaining allegations in Paragraph 279.

280. The Board further failed to consider any alternatives to the Acquisition. The Board also knowingly failed to inform itself concerning material aspects of the Acquisition. As explained above, after learning that SolarCity had withheld material information regarding its management's forecasts for the company, the Board failed to request that Evercore perform an additional DCF analysis using those forecasts or perform any additional analysis regarding the value of SolarCity.

RESPONSE: Denied.

281. Finally, analysts have been virtually unanimous in their assessment that the Acquisition did not serve any rational business purpose for Tesla, providing additional evidence that the decision to enter into the Acquisition cannot be the valid exercise of business judgment.

RESPONSE: Denied.

282. For each of these reasons, a demand on the Board would be futile and is therefore excused.

RESPONSE: Denied.

CLASS ACTION ALLEGATIONS

283. Plaintiffs bring Counts IV, V and VII on their own behalf and as a class action, pursuant to Court of Chancery Rule 23, on behalf of all holders of Tesla common stock (the "Class") since August 1, 2016 and their successors in interest. Excluded from the Class are Defendants and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants.

RESPONSE: The allegations in Paragraph 283 set forth characterizations of Plaintiffs' claims to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 283.

284. This action is properly maintainable as a class action.

RESPONSE: Paragraph 284 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 284.

285. The Class is so numerous that joinder of all members is impracticable.

RESPONSE: Paragraph 285 contains legal conclusions to which no response is required.

286. As September 15, 2016, there were approximately 114 million shares of Tesla common stock held by the Company's minority stockholders. Upon information and belief, there are thousands of members of the Class.

RESPONSE: Defendants deny the allegations in the first sentence of Paragraph 286, but aver that, as of September 15, 2016, there were approximately 114 million shares of Tesla common stock held by stockholders other than Tesla's named executives officers and directors. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 286, and deny them on that basis.

287. There are questions of law and fact which are common to the Class, including, but not limited to:

(a) whether Defendants breached their fiduciary duties to Plaintiffs and the other members of the Class; and

(b) whether Plaintiffs and the other members of the Class are entitled to damages as a result of Defendants' breaches of fiduciary duties.

RESPONSE: Paragraph 287 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 287.

288. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of claims of the other members of the Class, and Plaintiffs have the same interests as the other members of the Class. All members of the Class have suffered the same harms in that the Tesla Defendants determined to cause the Company to undertake the Acquisition to benefit Elon Musk, his cousins, and certain other of the Defendants and their affiliates to the detriment of the Company's minority stockholders.

RESPONSE: Paragraph 288 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 288.

289. Moreover, the Defendants caused the same equitable harm and damages to the Class through their breaches of their fiduciary duties of loyalty and care.

RESPONSE: Denied.

290. Accordingly, Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

RESPONSE: Paragraph 290 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 290.

291. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual Class members that would establish incompatible standards of conduct for Defendants. Adjudications with respect to individual Class members would, as a practical matter, be dispositive, or would substantially impair the interests of the Class members.

RESPONSE: Paragraph 291 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 291.

292. Defendants have acted or refused to act on grounds that apply generally to the Class, such that injunctive or declaratory relief is appropriate with respect to the Class as a whole.

RESPONSE: Paragraph 292 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 292.

293. The questions of law and fact common to the members of the Class predominate over any questions affecting only its individual members, such that a class action is superior to any other available method for fairly and efficiently adjudicating the controversy.

RESPONSE: Paragraph 293 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 293.

FIRST CAUSE OF ACTION

Derivatively on Behalf of Tesla Against Elon Musk for Breach of Fiduciary Duty in His Capacity as Tesla's Controlling Stockholder

294. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

RESPONSE: In answer to the allegations in Paragraph 294, Defendants incorporate and restate their answers to each of Paragraphs 1 through 293 as if fully set forth herein.

295. Elon Musk is the controlling stockholder of Tesla (see ¶¶269-277, *supra*).

RESPONSE: Denied.

296. As controlling stockholder, Elon Musk owes fiduciary duties to the Company and its remaining stockholders. In breach of those duties, Elon Musk used his control over the corporate machinery to, among other things, orchestrate

Board approval of the Acquisition, which unfairly provides SolarCity's stockholders, including himself and the other interested members of the Board, with excessive value for their failed investments in SolarCity.

RESPONSE: Denied.

297. The Acquisition was a self-interested transaction for Elon Musk in several regards. For example, a bailout of SolarCity would protect Elon Musk against personal loss arising from his personally guaranteed loans to SolarCity. A bailout of SolarCity also provides Elon Musk with the ability to save his favored investors from tremendous loss now and, at the same time, preserve his ability to seek additional capital for his other enterprises in the future. Elon Musk is considered a visionary in alternative energy, electric cars and space travel, and a public failure of SolarCity will greatly impair Elon Musk's reputation and his visionary status.

RESPONSE: Denied.

298. As a result of Elon Musk's breaches of fiduciary duties, the Company has suffered and will continue to suffer harm, including, but not limited to, the excessive consideration to be paid to acquire SolarCity and the negative effects on Tesla's financial condition that will result from the Acquisition.

RESPONSE: Denied.

SECOND CAUSE OF ACTION

Derivatively on Behalf of Tesla Against the Tesla Defendants for Breach of the Fiduciary Duty of Loyalty by Causing Tesla to Acquire SolarCity

299. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

RESPONSE: In answer to the allegations in Paragraph 299, Defendants incorporate and restate their answers to each of Paragraphs 1 through 298 as if fully set forth herein.

300. As alleged in detail herein, as directors and/or officers of Tesla, each of the Individual Defendants had a fiduciary duty to, among other things, act in furtherance of the best interests of the Company and its stockholders so as to benefit all stockholders equally and not in furtherance of their personal interests.

RESPONSE: Paragraph 300 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 300.

301. Each of the Individual Defendants breached his or her fiduciary duty of loyalty by causing and/or allowing Tesla to enter into the self-dealing SolarCity Acquisition, which was not, and could not have been, an exercise of good faith business judgment. Rather, the SolarCity Acquisition was intended to, and did, unduly benefit Elon Musk and his cousins, at the expense of the Company and its minority stockholders.

RESPONSE: Denied.

302. As a direct and proximate result of the Individual Defendants' breaches of fiduciary duty, the Company has sustained substantial damages, as alleged herein.

RESPONSE: Denied.

THIRD CAUSE OF ACTION

Derivatively on Behalf of Tesla Against Elon Musk, Kimbal Musk, Gracias, Buss and Jurvetson for Unjust Enrichment

303. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

RESPONSE: In answer to the allegations in Paragraph 303, Defendants incorporate and restate their answers to each of Paragraphs 1 through 302 as if fully set forth herein.

304. The Acquisition was specifically intended to bailout SolarCity and spread across all of Tesla's stockholders the loss that would otherwise be experienced only by Defendants Elon Musk, Kimbal Musk, Gracias, Buss and Jurvetson on their substantial investments in SolarCity. The Acquisition forces Tesla and all its stockholders to absorb a portion of SolarCity's losses irrespective of whether they currently hold SolarCity stock themselves.

RESPONSE: Denied.

305. Accordingly, defendants Elon Musk, Kimbal Musk, Gracias, Buss and Jurvetson will receive improper profits as a result of the SolarCity Acquisition, as alleged herein.

RESPONSE: Denied.

306. It would be unconscionable and against the fundamental principles of justice, equity and good conscience for such defendants to retain the improper benefits they receive as a result of the SolarCity Acquisition.

RESPONSE: Denied.

307. To remedy the unjust enrichment of these defendants, the Court should order them to disgorge to the Company all benefits derived from the SolarCity Acquisition.

RESPONSE: Denied.

FOURTH CAUSE OF ACTION

Individual and Class Claim Against the Tesla Defendants for Breach of Fiduciary Duty

308. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

RESPONSE: In answer to the allegations in Paragraph 308, Defendants incorporate and restate their answers to each of Paragraphs 1 through 307 as if fully set forth herein.

309. Plaintiffs bring this Count IV individually and on behalf of the Class.

RESPONSE: The allegations in Paragraph 309 set forth characterizations of Plaintiffs' claims to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 309.

310. The Tesla Defendants, as directors of Tesla, owed the minority stockholders of Tesla fiduciary duties of loyalty and care. The Acquisition is intended to unduly benefit controlling stockholder Elon Musk at the expense of the Class through the improper transfer of economic and voting power from the individual Class members to the Company's controlling stockholder. Thus, in approving the Merger Agreement and the Share Issuance and allowing the self-dealing Acquisition to take place, the Tesla Defendants breached their fiduciary duty to the Class.

RESPONSE: Paragraph 310 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 310.

311. The Tesla Defendants' breach of their fiduciary duty to the minority stockholders entitles the Class to damages and other monetary relief, as well as equitable relief, including rescission of the Merger Agreement and declaratory relief to prevent the dilution of voting rights.

RESPONSE: Denied.

312. Plaintiffs have no adequate remedy at law.

RESPONSE: Paragraph 312 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 312.

FIFTH CAUSE OF ACTION

Individual and Class Claim Against Elon Musk for Breach of Fiduciary Duty as Controlling Stockholder

313. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

RESPONSE: In answer to the allegations in Paragraph 313, Defendants incorporate and restate their answers to each of Paragraphs 1 through 312 as if fully set forth herein.

314. Plaintiffs bring this Count V individually and on behalf of the Class.

RESPONSE: The allegations in Paragraph 314 set forth characterizations of Plaintiffs' claims to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 314.

315. As the controlling stockholder of Tesla, Elon Musk had a fiduciary duty to, among other things, act in furtherance of the best interests of the Company's minority stockholders so as to benefit all stockholders equally and not in furtherance of his own personal interests.

RESPONSE: Denied.

316. Elon Musk breached his fiduciary duty by causing Tesla to enter into the self-dealing Acquisition at a price that is unfair to the Company in order to unduly benefit himself at the expense of the Company's minority stockholders through the improper transfer of economic and voting power from the individual Class members to himself.

RESPONSE: Denied.

317. As detailed herein, the Acquisition is intended to unduly benefit Elon Musk at the expense of the Class. Thus, Elon Musk breached his fiduciary duty to the Class.

RESPONSE: Denied.

318. Furthermore, the Share Issuance constitutes an improper expropriation of economic value and voting power from Tesla's public stockholders to its controlling stockholder Elon Musk.

RESPONSE: Denied.

319. Therefore, the Acquisition and Share Issuance will not result in an equal dilution of each of the Company's shares. Instead, the public stockholders will suffer a separate harm resulting from the extraction from the public stockholders, and redistribution to the controlling stockholder, of a portion of the economic value and voting power embodied in the minority interest. Consequently, Tesla's public stockholders are entitled to recover the value represented by the overpayment.

RESPONSE: Denied.

SIXTH CAUSE OF ACTION

Derivatively on Behalf of Tesla Against the Tesla Defendants for Waste

320. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

RESPONSE: In answer to the allegations in Paragraph 320, Defendants incorporate and restate their answers to each of Paragraphs 1 through 319 as if fully set forth herein.

321. The Tesla Defendants owed Tesla the obligation to avoid wasting Tesla's assets.

RESPONSE: Paragraph 321 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 321.

322. The Acquisition served no legitimate corporate purpose of Tesla and could not have been based on a valid assessment of Tesla's best interests. Rather, the Acquisition was orchestrated and executed in order to advance the interests of SolarCity and the Tesla Defendants at the expense of Tesla.

RESPONSE: Denied.

323. The Acquisition is so one-sided that no business person of ordinary, sound judgment could conclude that Tesla received adequate value in the transaction.

RESPONSE: Denied.

324. The Tesla Defendants breached their obligations to Tesla and wasted corporate assets by proposing, approving, and implementing the Acquisition without proper corporate purpose, resulting in a needless and wasteful use of corporate assets.

RESPONSE: Denied.

325. As a direct and proximate result of the waste of corporate assets by the Tesla Defendants, Tesla has been and continues to be damaged.

RESPONSE: Denied.

SEVENTH CAUSE OF ACTION

Individual and Class Claim Against the Tesla Defendants for Breach of the Duty of Disclosure

326. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

RESPONSE: In answer to the allegations in Paragraph 326, Defendants incorporate and restate their answers to each of Paragraphs 1 through 325 as if fully set forth herein.

327. Plaintiffs bring this Count VII individually and on behalf of the Class.

RESPONSE: The allegations in Paragraph 327 set forth characterizations of Plaintiffs' claims to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 327.

328. As directors, officers and/or the controlling stockholder of Tesla, the fiduciary duties of each of the Tesla Defendants included the obligation to make full, accurate and non-misleading disclosures to Tesla's stockholders in connection with the Acquisition and any stockholder vote thereon.

RESPONSE: Paragraph 328 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 328.

329. As alleged herein (¶¶191-217), the Tesla Defendants violated their duty of disclosure by making materially false, misleading and incomplete statements regarding the Acquisition and the circumstances surrounding it, including, without limitation, the purpose of the Acquisition, the flaws in Evercore's financial analyses, and the independence of the Tesla Board that negotiated and approved the Acquisition.

RESPONSE: Denied.

330. As a result of the foregoing conduct and the consummation of the Acquisition, the Tesla Defendants breached the fiduciary duties they owed to Plaintiffs and the Class, and Plaintiffs and the Class suffered injury as a result.

RESPONSE: Denied.

AFFIRMATIVE DEFENSES

Defendants assert the following defenses with respect to the causes of action alleged in the Complaint, without assuming the burden of proof or persuasion where such burden rests on the Plaintiffs. Defendants reserve the right to supplement their defenses as discovery may warrant.

FIRST DEFENSE

The Complaint, in whole or in part, fails to state a claim against Defendants upon which relief can be granted.

SECOND DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the limitations on personal liability set forth in Tesla's Certificate of Incorporation and/or bylaws and Section 102(b)(7) of the Delaware General Corporation Law. Plaintiffs have not pleaded any non-exculpated breach of fiduciary duty.

THIRD DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of stockholder ratification and/or the doctrines established by the Delaware Supreme Court in *Corwin* v. *KKR Financial Holdings, LLC*, 125 A.3d 304 (Del. 2015).

FOURTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because neither Plaintiffs nor the Company have suffered any loss, damage or injury as a result of the conduct in the Complaint.

FIFTH DEFENSE

Plaintiffs failed to make a demand upon the Tesla Board and cannot establish that making such a demand would be futile.

SIXTH DEFENSE

Plaintiffs are not entitled to maintain this action as a class action.

SEVENTH DEFENSE

Damages are not available to certain putative class members under the doctrines of acquiescence, waiver, estoppel, or similar doctrines, including, without limitation, because putative class members who voted in favor of the merger are barred from any award of damages.

WHEREFORE, Defendants respectfully request the Court enter an order:

1. Dismissing the Complaint with prejudice;

2. Denying all claims for relief asserted by Plaintiffs and the putative class;

3. Awarding Defendants their reasonable attorneys' and professionals' fees and costs; and

4. Awarding such other relief as the Court deems just and proper.

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May 18, 2018

PUBLIC VERSION FILED:
May 25, 2018

CERTIFICATE OF SERVICE

I, Garrett B. Moritz, hereby certify that on May 25, 2018, I caused true and correct copies of the *PUBLIC VERSION of Defendants' Answer to the Second Amended Verified Class Action and Derivative Complaint* to be served through File & Serve*Xpress* on the following counsel of record:

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