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9 *And the Proposed Classes*

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 DAVID RASMUSSEN, an individual, on
13 behalf of himself and all others similarly
14 situated,

15 Plaintiffs,

16 v.

17 TESLA, INC. d/b/a/ TESLA MOTORS,
18 INC., a Delaware corporation,

19 Defendant.

Case No.

20 **CLASS ACTION COMPLAINT**

21 FOR VIOLATIONS OF THE
22 COMPUTER FRAUD AND ABUSE
23 ACT, 18 U.S.C. § 1030 *ET SEQ.*,
24 MAGNUSON-MOSS WARRANTY
25 ACT, 15 U.S.C. § 2301 *ET SEQ.*,
26 VIOLATIONS OF STATE CONSUMER
27 FRAUD ACTS, UNFAIR
28 COMPETITION LAWS, WARRANTY
LAWS, COMMON LAW FRAUD,
OTHER FRAUDULENT ACTS, AND
UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

1

2 **I. INTRODUCTION..... 1**

3 **II. PARTIES ERROR! BOOKMARK NOT DEFINED.**

4 **III. JURISDICTION..... 12**

5 **IV. VENUE..... 13**

6 **V. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS 13**

7 A. TESLA LITERALLY CATCHES ON FIRE WORLDWIDE..... 13

8 B. TESLA’S SOLUTION TO THE FIRES – SOFTWARE UPDATES 17

9 C. TESLA’S VIOLATIONS OF THE COMPUTER FRAUD AND ABUSE ACT (18 U.S.C. § 1030

10 *ET SEQ.*)..... 19

11 D. TESLA THROTTLES BATTERY CHARGING SPEEDS AND MANIPULATES RANGE

12 CALCULATIONS..... 21

13 E. TESLA KNEW AND WAS FULLY AWARE OF THE PROBLEMS AND CAUSE OF

14 POTENTIAL FIRES..... 24

15 F. TESLA PREVIOUSLY PROFITED BY SELLING WHAT IT NOW CLAIMS AS

16 “INSIGNIFICANT” IN VALUE 25

17 G. TESLA’S MANIPULATES ITS SOFTWARE TO AVOID REPLACING BATTERIES AND TO

18 ESCAPE ITS WARRANTY OBLIGATIONS 27

19 H. TESLA OWNERS HAVE NO CHOICE BUT TO ACCEPT SOFTWARE UPDATES 29

20 I. PLAINTIFF DAVID RASMUSSEN’S EXPERIENCE..... 30

21 J. PLAINTIFF RASMUSSEN IS DENIED A WARRANTY BATTERY REPLACEMENT 36

22 K. COMPLAINTS AND COMMENTS FROM TESLA OWNERS WORLDWIDE..... 39

23 L. CIVIL RICO INVESTIGATION..... 41

24 **VI. CLASS ACTION ALLEGATIONS 42**

25 **VII. TOLLING OF STATUTE OF LIMITATIONS 47**

26 A. FRAUDULENT CONCEALMENT..... 47

27 B. ESTOPPEL..... 48

28 C. DELAYED DISCOVERY DOCTRINE 49

VIII. CAUSES OF ACTION..... 49

COUNT 1..... 49

 VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT

 (18 U.S.C. § 1030 *et seq.*)

COUNT 2..... 54

 VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT (“MMWA”)

 (15 U.S.C. § 2301 *et seq.*)

COUNT 3..... 56

1 VIOLATION OF CALIFORNIA’S SONG-BEVERLY CONSUMER
 2 WARRANTY ACT (“SONG-BEVERLY”)
 (Cal. Civ. Code § 1790 *et seq.*)
 3 **COUNT 4**..... 60
 4 VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW
 (Cal. Bus. & Prof. Code § 17200 *et seq.*)
 5 **COUNT 5**..... 62
 6 VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW
 (Cal. Bus. & Prof. Code § 17200 *et seq.*)
 7 **COUNT 6**..... 66
 8 VIOLATION OF CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT
 (Cal. Civ. Code § 1750 *et seq.*)
 9 **COUNT 7**..... 70
 10 VIOLATIONS OF CALIFORNIA’S FALSE ADVERTISING LAW
 (Cal. Bus. & Prof. Code §§ 17500, *et seq.*)
 11 **COUNT 8**..... 72
 12 TRESPASS TO CHATTELS
 (California Law)
 13 **COUNT 9**..... 73
 14 COMMON LAW FRAUD
 (California Law)
 15 **COUNT 10**..... 76
 16 CONSTRUCTIVE FRAUD
 (California Law)
 17 **COUNT 11**..... 78
 18 FRAUDULENT INDUCEMENT
 (California Law)
 19 **COUNT 12**..... 80
 20 BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING
 (California Law)
 21 **COUNT 13**..... 82
 22 MONEY HAD AND RECEIVED
 (California Law)
 23 **COUNT 14**..... 82
 24 BREACH OF EXPRESS WARRANTY
 (Cal. Comm. Code § 2313)
 25 **COUNT 15**..... 85
 26 BREACH OF IMPLIED WARRANTIES
 (Cal. Comm. Code § 2314)
 27 **COUNT 16**..... 87
 28

1 INTENTIONAL MISREPRESENTATION
 (Cal. Civ. Code §§ 1709-1710)
 2 **COUNT 17** 90
 3 NEGLIGENT MISREPRESENTATION
 (Cal. Civ. Code §§ 1709-1710)
 4 **COUNT 18** 91
 5 FRAUD BY CONCEALMENT
 (Cal. Civ. Code § 3294)
 6 **COUNT 19** 94
 7 QUASI CONTRACT/RESTITUTION/UNJUST ENRICHMENT
 (California Law)
 8 **IX. REQUEST FOR RELIEF** **95**
 9 **X. DEMAND FOR JURY TRIAL** **96**
 10
 11
 12
 13
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I. INTRODUCTION

1. Plaintiff David Rasmussen files this Class Action Complaint against Tesla, Inc. (“Tesla” or “Defendant”) on behalf of himself and all persons worldwide who purchased, owned, used, or leased one or more of Tesla’s Model S or X vehicles (the “Class” and “Class Vehicles” as defined herein) for fraudulent misrepresentations and omissions, unlawful and unfair business practices, violations of the federal Computer Fraud and Abuse Act, 18 U.S.C 1030 *et seq.*, violations of California’s Comprehensive Computer Data Access and Fraud Act, Cal. Pen. Code § 502, and violations of federal and state warranty and consumer protection laws and other violative acts as alleged herein.

2. In an August 2, 2006 blog post by Elon Musk, Co-Founder, CEO and now ex-Chairman titled, “The Secret Tesla Motors Master Plan (just between you and me)”, Musk describes the business strategy of Tesla which can be described as the emulation of typical technological-product life cycles and initially targeting affluent consumers, and then moving into a larger market and appealing to the masses.



The Secret Tesla Motors Master Plan (just between you and me)

Elon Musk, Co-Founder & CEO of Tesla Motors • August 2, 2006

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3. Musk then describes Tesla’s goals and mission in detail, and concludes with a summary of the “Master Plan” as follows:

¹ Musk, Elon, “The Secret Tesla Motors Master Plan (just between you and me)” August 2, 2006, <https://www.tesla.com/blog/secret-tesla-motors-master-plan-just-between-you-and-me> (last accessed Jul. 29, 2019).

1 into the system than you consume in transportation! **So, in short, the master plan is:**

2
3 Build sports car

4 Use that money to build an affordable car

5 Use *that* money to build an even more affordable car

6 While doing above, also provide zero emission electric power generation options

7
8 Don't tell anyone.

9
10 Tags: Environment and Corporate

11
12 SHARE 

[2]

13 4. The last three words in Tesla’s manifesto, “Don’t tell anyone”, depicts the
14 exact behavior of Tesla and its attitude toward customers worldwide. Tesla frequently
15 tries to portray itself as the “good guy” and can be seen by the recent events involving its
16 vehicles. In response to an incident in Hong Kong where a Tesla Model S caught on fire
17 after the batteries ignited, Tesla’s official statement to the public was as follows:

18 “Tesla battery packs are engineered with a state-of-the-art design so
19 that in the very rare instance a fire does occur, it spreads very slowly
20 and vents heat away from the cabin, alerting occupants that there is an
21 issue and giving them enough time to exit the vehicle. The safety of our
22 customers is our top priority, and if we do identify an issue, we will do
23 whatever is necessary to address it.”^[3]

24 5. Tesla’s solution to serving its “top priority” was to include a thermal
25 management safety update, characterized as a “precautionary measure” to “protect the
26 battery and improve [its] longevity.” Tesla further represented that:

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28 ² *Id.*

³ Alvarez, Simon, “Tesla rolls out improved Model S/X battery thermal management software amid HK fire investigation,” Teslarati website, <https://www.teslarati.com/tesla-model-s-model-x-battery-longevity-update/> (May 15, 2019) (last accessed Aug. 5, 2019).

1 ““As we continue our investigation of the root cause, out of an
2 abundance of caution, we are revising charge and thermal management
3 settings on Model S and Model X vehicles via an over-the-air software
4 update that will begin rolling out today, to help further protect the
battery and improve battery longevity”^[4]

5 6. What Tesla failed to disclose and has yet to reveal or acknowledge is that the
6 aforementioned software updates to improve “battery longevity” and to “further protect”
7 the battery were all fraudulent and intentional misrepresentations of what the software
8 updates would accomplish. Under the guise of “safety” and increasing the “longevity” of
9 the batteries of the Class Vehicles, Tesla fraudulently manipulated its software with the
10 intent to avoid its duties and legal obligations to customers to fix, repair, or replace the
11 batteries of the Class Vehicles, all of which Tesla knew were defective, yet failed to
12 inform its customers of the defects. Tesla failed to inform customers that the software
13 updates would cause significant harm to its customers in terms of reduced range
14 capabilities, longer battery charging times, and overall decrease in the value of the Class
15 Vehicles. Tesla accomplished this fraud by manipulating its software in at least the
16 following ways: by placing an artificial, software induced limitation on the total number
17 of usable kilo-watt hours (“kWh”) for the Class Vehicles, in other words, limiting the
18 maximum capacity of the Class Vehicles, by limiting the ability of owners of the Class
19 Vehicles to charge the battery cells up to the natural and normal amount of approximately
20 4.2 volts, by placing a battery capacity limitations, by decreasing the charging speed for
21 the Class Vehicles, and by reducing the performance in terms of speed and other factors
22 for the Class Vehicles.

23 7. Tesla cannot be exonerated for its wrongdoing despite claiming and acting
24 under the guise of “safety.” If this were true, Tesla could have informed owners of the
25 Class Vehicles whether their car was at a higher risk of catching on fire and could have
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27 ⁴ *Id.*

1 offered to replace the batteries for the Class Vehicles. Instead, Tesla has, and continues
2 to, deny the fact that the software updates in question have caused significant harm and
3 damage to customers. Tesla denies that the software updates had a significant effect on
4 the batteries of the Class Vehicles, and unlawfully expects its customers to foot the bill
5 for a battery replacement.

6 8. Tesla knew that the batteries of the Class Vehicles were defective, and also
7 pushed out software updates despite knowing that the Class Vehicles would suffer from
8 loss in range and performance. It is apparent that Tesla's top priority is not the safety of
9 its customers, but really, itself and its intent to avoid providing warranty battery
10 replacements to rightful customers. Tesla cannot be exonerated from its greed and
11 fraudulent intent, all of which have already harmed, continue to harm, and will continue
12 harming innocent purchasers and consumers nationwide. Tesla must be held accountable
13 for its actions and should not be allowed to continue acting unchecked and treating its
14 customer base in line with the descriptive title in an April 26, 2013 article by CNN titled
15 "Tesla offers idiot proof warranty", which goes on to explain the warranties that Tesla
16 provides for the batteries of its vehicles.⁵

17 9. Tesla's treatment of customers seeking warranty repair and more
18 information regarding their vehicles shows that perhaps what Tesla truly thinks of its
19 customers is similar to the title of the article above. This is further exhibited by Tesla's
20 ability to significantly alter and affect things after sale of its vehicles, such as total range
21 of a vehicle, amongst others, which can lead to a negative impact on the value of an
22 electric vehicle. Customers are duped by Tesla's fraudulent business practices and
23 Tesla's fraudulent misleading and deceptive marketing and advertisements regarding
24 warranties and safety of the vehicles. Customers are then further duped after purchase
25 when Tesla fails to recognize the problems caused by its own actions and are then
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27 ⁵ CNN, "Tesla offers idiot proof warranty", April 26, 2013
28 <https://money.cnn.com/2013/04/26/autos/tesla-service-guarantee>, (last accessed Jul. 31, 2019).

1 harmed even further when Tesla shifts blame to its customers instead. Customers are
 2 harmed by Tesla's assurances and warranties and are left completely helpless at the hands
 3 of Tesla. Tesla's ability to directly control, affect, and effectively decrease the value and
 4 mileage range of its vehicles *after* they are sold constitutes unfair business practices and
 5 violations of state and federal consumer protection and warranty laws. Punitive and
 6 exemplary damages are especially warranted here, where Tesla has acted completely with
 7 the intent to avoid its legal obligations and duties to its customers as promised.

8 10. To date, Tesla has failed to inform owners of the scope of which vehicles are
 9 affected and has failed to repair or remedy the situation it created by "stealing" the
 10 battery capacity rightfully owned and paid for by its customers. Tesla's priorities are
 11 clearly not towards customers and purchasers of its Model S and Model X vehicles and
 12 also cannot be exonerated by claiming that it needs more time to develop a remedy.

13 11. On August 1, 2019, Tesla discovered a problem with a feature on its vehicles
 14 called "Dog Mode," which allows owners to leave their pets inside the cars safely and
 15 protects them against the risk of overheating and extremely high temperatures. Less than
 16 two days later, Tesla took notice of the issue and apparently went to work immediately.
 17 The individual who reported the problem stated the following on Twitter:



27 ⁶ Lambert, Fred, "Tesla starts pushing fix to its 'Dog Mode' in incredible turnaround" August 2, 2019, Electrek,
 28 <https://electrek.co/2019/08/02/tesla-pushing-fix-dog-mode/> (last visited August 5, 2019).

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2 12. Thankfully, there were no animals harmed as a result of Tesla’s software
3 malfunction. As one website dedicated to electric vehicles states:

4
5 “While the problem was potentially dangerous and probably shouldn’t
6 have been there in the first place, you have to give it up for Tesla being
7 able to fix it and push the update so fast.

8 That’s the big advantage of Tesla’s business model based around over-
9 the-air software updates and a short feedback loop.

10 It doesn’t get much shorter than customers tweeting the CEO, who
11 responded quickly and Tesla’s software team pushed the update almost
12 as quickly.”^[7]

13 13. Here, the problem was only “potentially dangerous” and as noted by the
14 author of the article and the Twitter user who reported the malfunction to Mr. Musk,
15 Tesla had acted swiftly in response to the pet-owner’s call for distress. While Tesla may
16 seem to be the “good guy” here, the same cannot be said for the thousands of Tesla
17 owners worldwide who have suffered actual damage whose lives are in actual danger and
18 at risk of their cars igniting on fire and exploding. While the owner above is correct in
19 stating that no other car manufacturer could have acted so swiftly the way that Tesla did,
20 the same could be said about the fact that Tesla is the first, and currently only, car
21 manufacturer that can sell a car to customers while retaining the ability to later rob them
22 of the car’s capabilities, functions, value and performance. This goes to show the fact
23 that perhaps the top priorities are of a company like Tesla, which prioritizes the
24 development of games and entertainment onboard its vehicles, are not aligned with the
25 the safety of the owners who are at risk of being seriously harmed and who have already
26 suffered from damages. Not only are the problems alleged herein a low priority for

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⁷ *Id.*

1 Tesla, it is clear that Tesla has acted with the intent to escape from its duties and legal
2 obligations it has to its customers, with greed and profit being Tesla's only motives.

3 14. Despite the fact that there have been over a dozen reports of Tesla's vehicles
4 catching fire over the past six years, with most of the recent fires being unrelated to a
5 crash or auto-collision, Tesla clearly has not made this issue a top priority. Tesla knew
6 and was aware, of the fact that the software updates would cause significant range loss
7 for the Class Vehicles and has failed to address this issue to date. Tesla cannot continue
8 to be allowed to operate unchecked as it has, especially where real harm has been done
9 and where actual owners have suffered from damage.

10 15. While the technical aspect of Tesla's fraudulent manipulation of its software
11 updates and technical issues regarding lithium-ion batteries may be complex, the scheme
12 and fraud that Tesla perpetuated was motivated purely by money and profit and was simple
13 when carried out by Tesla where: (1) Tesla knew or should have known that the batteries
14 of the Class Vehicles were defective; (2) Tesla released software updates under the guise
15 of safety and effectively limited the capacity of the batteries, lowered the charging
16 speeds, and decreased the performance of the vehicles; (3) Tesla denied customers who
17 sought replacement batteries or similar remedies under warranty despite having caused
18 the same problems that its customers complained of; and where Tesla's acts were
19 motivated by an intent to escape its legal duties and obligations to customers in an
20 attempt to save costs. Tesla's dependence on the "success" of its defective batteries and
21 vehicles is unsurprising at a time where Tesla faces increased competition in the electric-
22 vehicle market and a decrease in the number of sales of its defective vehicles.

23 16. While government officials and regulators are already investigating and/or
24 examining Tesla's conduct,⁸ it is insufficient to help the owners of Class Vehicles who
25 are forced to choose from at least the following harms, damage, and costs: (1) continue
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1 driving the Class Vehicles where range has been severely impacted by a loss of anywhere
2 between 20-40 miles, spend more time charging their vehicles which increases costs and
3 severe inconveniences to their daily travel and commutes; or (2) pay out-of-pocket
4 monies for a replacement battery from Tesla (approximately \$20,000 - \$25,000 as of the
5 date of filing) and not knowing whether or when their vehicles will be at risk of suffering
6 from Tesla's nefarious and harmful software "updates"; or (3) expend time and costs to
7 go through Tesla's warranty arbitration program, only to be told that the problems that
8 they are experiencing are not under warranty, despite relying upon Tesla's
9 representations of Tesla having the best warranty program in the world: or (4) purchasing
10 a new vehicle and when attempting to trade-in or sell their current Tesla vehicle to do so,
11 suffer from the significant loss in value that their vehicles suffer from due to the loss in
12 range as a result of Tesla's software "updates."

13 17. Plaintiff David Rasmussen brings this action individually and on behalf of
14 the proposed classes, and all others similarly situated who are owners of Tesla Model S
15 and X vehicles against Defendant Tesla, Inc. ("Tesla"). Plaintiff seeks damages,
16 injunctive relief, and equitable relief for Tesla's conduct in connection with software
17 updates and the batteries in Tesla's all-electric, battery-powered vehicles. Tesla's ability
18 to issue over-the-air software updates is unique and, for the right reasons, may be used as
19 a tool to benefit Tesla owners. However, the problem here is that when this ability is
20 unchecked, unregulated, and conducted in a manner to avoid legal duties and obligations
21 as Tesla does with its warranties, customers like Plaintiff and other members of the
22 putative class are at the short end of the stick and are left helpless and will continue to be
23 harmed by companies like Tesla that operate on the belief that "not telling anyone" is
24 good company policy.

25 18. Specifically, Tesla has violated federal and state laws, which include the
26 Computer Fraud and Abuse Act (18 U.S.C. § 1030 *et seq.*) ("CFAA"), California's
27 Comprehensive Computer Data Access and Fraud Act (Cal. Pen. Code § 502 *et seq.*)
28

1 (CCCDFAF), Magnuson-Moss Warranty Act (15 U.S.C. § 2301, et seq. (“MMWA”);
2 California’s Song-Beverly Consumer Warranty Act (“Song-Beverly”), Cal. Civ. Code §
3 1780 *et seq.*; California’s Unfair Competition Law (Cal. Bus. Prof. Code Section 17200
4 *et seq.*) (“UCL”); California’s Consumer’s Legal Remedies Act (Cal. Civ Code Section
5 1750 *et seq.*) (“CLRA”), California’s Unfair Competition Law (Cal. Bus. Prof. Code
6 Section 17200 *et seq.*) (“UCL”); California’s False Advertising Law (Bus. & Prof. Code
7 § 17500 *et seq.* (“FAL”); breach of express warranty, breach of implied warranty,
8 intentional misrepresentation; negligent misrepresentation; common law fraud; fraud by
9 concealment, trespass to chattels, conversion and violation of consumer protection and
10 warranty laws nationwide.

11 19. Plaintiff seeks, at his election and for that of the putative class members:
12 replacement batteries for the Class Vehicles, return of the money premiums that were
13 paid for cars that were supposedly capable of achieving the rated miles as Tesla
14 represented, calculated at a certain dollar per kilo-watt hour (kWh), refunds to consumers
15 that paid extra for what they should have received to begin with, and any other relief
16 available to Plaintiff and the proposed classes. Plaintiff also seeks punitive and
17 exemplary damages for Tesla’s knowing fraud and unfair business practices, including
18 illicit use of software updates to avoid the legal obligations and duties owed to Plaintiff,
19 the proposed classes, and consumers nationwide.

20 20. Tesla has been operating unchecked at the expense of customers like
21 Plaintiff and the other putative class members for too long. Tesla must be held
22 accountable for its duties and legal obligations that it owes to its customers and cannot be
23 left off the hook for doing what is similarly alleged against companies operating in the
24 technology industry. As alleged herein, Tesla has committed the same type of fraud
25 involved in those cases and has committed what should be referred to as the “battery-
26 gate” of the automotive industry.

II. PARTIES

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2 21. Plaintiff David Rasmussen (“Plaintiff”) is an individual who was, and is at
3 all times relevant herein, a resident of Victorville, California. Plaintiff owns a 2014 Tesla
4 Model S 85 bearing the vehicle identification number 5YJSA1H15EFP51614.

5 22. Plaintiff purchased his Model S 85 as a used vehicle from a private third-
6 party seller. At the time of sale, his Model S had approximately 32,700 miles on the
7 odometer, and currently has approximately 137,000 miles. Plaintiff is, and was at all
8 relevant times herein, a legal, subsequent purchaser and therefore is a rightful owner of a
9 Tesla Model S vehicle, for which all rights and warranties are were transferable and
10 therefore applicable to him.

11 23. Plaintiff has been directly harmed by Tesla’s software updates and
12 subsequent fraudulent acts as alleged and described in this complaint because (1) he was
13 wrongfully and fraudulently denied a warranty battery replacement; (2) he has suffered
14 harm in the form of calculable lost value after Tesla’s actions reduced the maximum
15 battery capacity of his car by approximately 8 kWh; (3) he has suffered from a decrease
16 in range which adds extra time spent charging and more time to his daily commute; (4)
17 continues to be at-risk of harm due to Tesla’s ability to manipulate its software to the
18 detriment of Plaintiff and other consumers; and (5) he has not been informed or advised
19 by Tesla of the defective nature of the batteries in his vehicle, nor has Tesla offered any
20 information with regards to the safety of continued operation of his vehicle. This harm
21 has been suffered as a direct result of Tesla’s underlying motive and intent to escape its
22 legal duties and obligations to Plaintiff and other members of the putative class.
23 Furthermore, Tesla operates under the guise of “safety” for customers yet fails to
24 recognize the harm that has been affected to owners of its vehicles. In addition to Tesla’s
25 attempt to escape its legal obligations and duties owed to customers as warranted, Tesla
26 refuses to provide information in relation to the recent battery fires and fails to notify
27 owners of vehicles that are potentially affected of the same.
28

1 24. Defendant Tesla, Inc. d/b/a/ Tesla Motors, Inc. is a Delaware corporation,
2 with its principal place of business in Palo Alto, California. Tesla is an auto
3 manufacturer of electric vehicles and designs, manufacturers, markets, distributes, and
4 sells exclusively electric vehicles. Since 2012, Defendant Tesla designed, manufactured,
5 distributed, marketed and sold the Tesla Model S electric vehicle (“Model S”) and, later,
6 the Tesla Model X (“Model X”) in the United States and with a large concentration of
7 both vehicles being sold in the State of California.

8 25. Tesla also regularly conducts business throughout the State of California and
9 owns and operates a system of company-owned dealerships and service centers within the
10 jurisdiction of this Court. On information and belief, through Tesla’s publicly filed
11 financial reports and its website, Tesla’s design, testing, and manufacturing of its
12 vehicles, including the Class Vehicles at its headquarters in California and throughout the
13 State of California. Tesla’s advertising, promotional materials, and website are designed
14 to show the operation of various Tesla vehicles in a manner which emanates that its
15 vehicles are from California. Tesla also utilizes promotional videos which are purporting
16 to show the operation of Model S, X and other Tesla vehicles being operated and driven
17 in California.

18 26. Tesla’s authorized dealerships are tightly and highly controlled by Tesla and
19 are structured as agents of Tesla. Tesla controls the marketing practices of Tesla-
20 authorized dealerships, Tesla repair and service facilities, and has full rein over the
21 appearance of these purported dealerships and service centers. Tesla’s control of its
22 dealerships emanates primarily from its headquarters in California.

23 27. At all times relevant to this action, Tesla, marketed, distributed, advertised,
24 leased, sold, and warranted its vehicles, including the Class Vehicles by and through its
25 dealerships and service centers located nationwide with many of them located in
26 California.

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III. JURISDICTION

1
2 28. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
3 because the claims of Plaintiff and the Class involve violations of federal laws, including
4 the Computer Abuse and Fraud Act, 18 U.S.C. § 1030 *et seq.* and the Magnuson-Moss
5 Warranty Act, 15 U.S.C. § 2310 *et seq.* This Court also has supplemental jurisdiction
6 over the state law claims pursuant to 28 U.S.C. § 1367(a) because all of the claims
7 alleged herein form part of the same case or controversy.

8 29. This Court also has subject matter jurisdiction pursuant to the Class Action
9 Fairness Act of 2005, 28 U.S.C. § 1332(a)(1), (d)(1), (d)(2), and (d)(3) because the
10 proposed classes consist of 100 or more members; the amount in controversy exceeds
11 \$5,000,000, exclusive of costs and interest; and minimal diversity exist. Tesla produced
12 over 14,500 Model S and X vehicles in Q2 2019 and delivered 17,722 of these vehicles in
13 the same quarter.⁹ Including the number of deliveries of Tesla's Model 3 vehicles, Tesla
14 delivered 95,356 vehicles and produced 87,048 which surpassed the companies own
15 records.¹⁰

16 30. This Court has both specific and general personal jurisdiction over
17 Defendant Tesla because it maintains minimum contacts with the United States, this
18 judicial district, and this state. Tesla purposefully availed itself of the laws of this state
19 by conducting a substantial amount of its business in the state, including designing,
20 testing, manufacturing, and/or distributing Tesla vehicles, including the Class vehicles, in
21 this state. Tesla also developed, prepared, and disseminated warranty materials for the
22 Class Vehicles within and from its headquarters in this state and specifically within this
23 judicial district. Thousands of Class Vehicles were sold, leased, and delivered at various
24

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26 ⁹ Tesla, "Second Quarter 2019 Update", <https://tesla.gcs-web.com/static-files/1e70a30c-20a7-48b3-a1f6-696a7c517959> (last visited Jul. 25, 2019).

27 ¹⁰ *Id.*

1 Tesla showroom and service center locations throughout this state, and this judicial
2 district.

3 IV. VENUE

4 31. Venue is proper in this judicial district under 28 U.S.C. § 1391 because a
5 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this
6 judicial district. Furthermore, Tesla’s principal place of business in in this judicial
7 district, and it is believed, and therefore alleged, that a substantial amount of the conduct
8 of which Plaintiff’s complaint is based upon comes as a result of Tesla’s acts that
9 occurred in this judicial district. Additionally, the San Jose division of this Court is the
10 proper division for filing given the fact that Tesla’s headquarters is in Palo Alto,
11 California.

12 V. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

13 A. Tesla Literally Catches on Fire Worldwide

14 32. On June 16, 2018, the battery pack of a Tesla Model S caught on fire in Los
15 Angeles, CA while the owner was sitting traffic.



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¹¹ See Electrek, “Tesla says battery fire without crash in LA was ‘extraordinarily unusual occurrence’, still investigating the cause”, September 5, 2018, <https://electrek.co/2018/09/05/tesla-battery-fire-la-without-crash/>, (last visited July 28, 2019).

1 33. Tesla’s public statement following investigation was that the fire was an
 2 “extraordinarily unusual occurrence” amongst further reassurances that Tesla vehicles are
 3 “10 times less likely to catch on fire” than its gas-powered counterparts.¹² Despite
 4 representing to the public that the fire in Los Angeles was extraordinary, at least three
 5 separate fires involving Tesla Model S vehicles sparked worldwide.

6 34. On April 21, 2019, a Tesla Model S vehicle was caught on video bursting
 7 flames while parked in a garage in Shanghai, China.



21 [13]

22 35. After the smoke cleared in Shanghai, Tesla announced its preliminary
 23 finding that the source of the fire was a single battery module located at the front of the
 24

25

26 ¹² *Id.*

27 ¹³ See Electrek, “Tesla gives updates on cause of a battery fire, says single module is
 28 responsible”, <https://electrek.co/2019/06/28/tesla-updates-cause-shanghai-battery-fire/> (last visited Jul. 25, 2019).

1 vehicle. A Tesla Model S battery “pack” contains 16 battery modules similar to one
2 below:



[14]

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11 36. Just after midnight on May 3, 2019, firefighters in San Francisco responded
12 to reports of a residential home garage fire. Responding firefighters reported that a Tesla
13 Model S was parked in the garage, unplugged, and saw smoke coming out from near the
14 right rear tire area of the car.



[15]

25 ¹⁴ *Id.*

26 ¹⁵ ABC 7 San Francisco, “Tesla Model S catches fire in San Francisco Garage” May 3, 2019,
27 <https://abc7news.com/automotive/tesla-model-s-catches-fire-in-sf-garage/5283936/>, (last accessed July
28 29, 2019).

1 37. Just two weeks later, authorities in Hong Kong reported that a Tesla Model
2 S vehicle suddenly caught fire in the parking garage of a shopping mall. Authorities
3 reported that the car was parked for about half an hour before the battery began to emit
4 smoke and then eventually the car burst into flames, which took firefighters over 45
5 minutes to contain.¹⁶

6 38. The most recent case of a Tesla catching fire occurred on July 30, 2019 in
7 Ratingen, Germany. Similar to the other recent incidents of Tesla's catching on fire, the
8 Model S in question was not occupied and started to catch on fire after a loud bang was
9 heard.¹⁷



[18]

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¹⁶ Bloomberg, "Tesla Suddenly Catches Fire in Hong Kong Parking Lot, Times Says" May 13, 2019, updated May 14, 2019, <https://www.bloomberg.com/news/articles/2019-05-14/tesla-suddenly-catches-fire-in-hong-kong-parking-lot-times-says>, (last accessed Jul. 29, 2019).

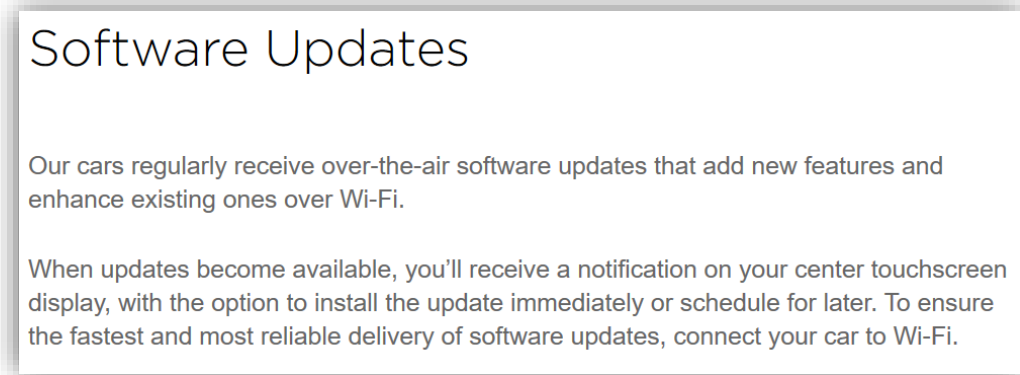
¹⁷ Supertipp, "Cause of fire unclear: Tesla goes up in flames", <https://www.supertipp-online.de/2019/07/30/brandursache-unklar-tesla-geht-in-flammen-auf/> (last accessed Aug 5, 2019).

¹⁸ *Id.*

1 39. To date, Tesla has failed to provide its customers with any further
2 information regarding the cause of these fires and has failed to inform customers as to
3 which vehicles are potentially at risk of catching fire.

4 **B. Tesla’s Solution to the Fires – Software Updates**

5 40. Those who are familiar with Tesla cars are most likely aware of the fact that
6 Tesla routinely updates its cars by pushing out over-the-air software updates, just like
7 most are familiar with cell-phone software updates. Tesla’s website displays as follows:
8



15 [19]

16 41. Just like various mobile electronics and cellular phone companies do by
17 sending users updates which can include new features, games, and sometimes provide
18 security updates and technical bug fixes, Tesla does the same for all of the vehicles in its
19 fleet. In doing so, Tesla claims, markets, advertises, and represents that these software
20 updates are intended to make their cars safer and better as they receive improved
21 capabilities and new functions and features over time. Tesla represents on its website in
22 the FAQ, or frequently asked questions section, the following:

23 ///
24 ///
25 ///

26 _____
27 ¹⁹ Tesla, "Support – Software Updates", <https://www.tesla.com/support/software-updates> (last
28 visited July 25, 2019).

Frequently Asked Questions

What are over-the-air software updates?

Over-the-air software updates introduce new features and updates to your car—making your car safer and more capable over time.

[20]

42. On May 15, 2019, just under one month after having investigated the Shanghai fire, Tesla issued a software update to all Model S and X cars and informed users that the updates were merely “out of an abundance of caution.” Tesla also provided that the over-the-air software update would change some settings in the cars’ battery management software (BMS) that were related to charging and thermal controls. No further details were provided, which is Tesla’s normal protocol when it comes to battery-talk, and as one website stated, “[t]he software of Tesla’s battery management system is one of the company’s most closely guarded trade secrets.”²¹

43. However, Tesla fraudulent concealed information from Plaintiff and the other putative class members by failing to inform which vehicles are potentially affected, nor did Tesla inform customers that their cars would experience a significant decrease in the total amount of range, and other performance issues.

44. Tesla’s deployment of these software “updates” has significantly affected the use and drastically limited the performance of the Class Vehicles. Tesla severely limits the maximum amount of battery capacity available in the Class Vehicles, and essentially took away significant value from these vehicles with one tap on the screen.

45. By issuing the software updates, Tesla operates under the guise of “safety” yet fails to provide customers with any further information relating to whether the continued operation of their vehicles is safe, or whether their vehicles are at risk and potentially life-threatening.

²⁰ *Id.*

²¹ See The Verge, “Tesla pushes battery software update after recent fires”, <https://www.theverge.com/2019/5/16/18627746/tesla-fire-battery-software-update-model-s-x> (last visited Jul. 25, 2019).

1 46. Customers rely on Tesla’s representations and advertisements of their
 2 vehicles and are left at the mercy of Tesla when it comes to ownership of their vehicles.
 3 Plaintiff and other putative class members updated their cars as required by Tesla’s
 4 warranty. Plaintiff and other putative class members were unaware of the fact that the
 5 software updates would effectively limit the maximum amount of battery capacity
 6 available in their cars, which translated into a decrease in the number of miles available, a
 7 decrease in performance and decrease in the charging speed of their cars. All of these
 8 limitations were unlawfully, fraudulently, and deceptively delivered to their cars as part
 9 of Tesla’s so-called software “updates” for said “safety” of their vehicles.

10 **C. Tesla’s Violations of the Computer Fraud and Abuse Act (18 U.S.C. §**
 11 **1030 et seq.)**

12 47. The Computer Fraud and Abuse Act (“CFAA”) 18 U.S.C. § 1030 *et seq.*,
 13 establishes a private cause of action against a person who “knowingly accessed a
 14 computer without authorization or exceeding authorized access,” and whose access
 15 results in damage or loss in excess of \$5,000. 18 U.S.C. 18 U.S.C. § 1030(g)
 16 (referencing 18 U.S.C. § 1030(c)(4)(A)(i)(I)). Under the CFAA, a computer is defined as
 17 one, “which is used in or affecting interstate or foreign commerce or communication.” 18
 18 U.S.C. § 1030(e)(2).

19 48. Tesla vehicles are equipped with an onboard computer known as a media
 20 control unit, or “MCU”, which allows for internet, GPS and Wi-Fi connected capabilities,
 21 and serves as the platform for receiving Tesla’s software updates. There are three
 22 versions of Tesla’s MCU, which consist and are made up of the following:

23 “Display – Main Computer Unit (MCU1) S/X
 24 17” LCD, 1200 x 1920 resolution
 25 Nvidia’s Visual Computing Module VCM...”

26 ///
 27 ///
 28

Display – Main Computer Unit (MCU1) S/X

- 17" LCD, 1200 x 1920 resolution
- Nvidia's Visual Computing Module VCM
- Nvidia Tegra 3 quad-core +1 power-saving core
- Cypress MultiTouch controller ([press release](#))
- Reset by pressing center left and center right scroll buttons at the same time on the steering wheel (safe to do anytime)
- Software – Linux, QT and custom Tesla code ([PC Word interview](#))
- [Our analysis of 7.0 UI](#)
- [Run our MCU1/MCU2 Tester](#) – Run within your Tesla browser by typing: teslatap.com/mcu

Display – Main Computer Unit (MCU2) S/X, Cars made March-2018+

- 17" LCD, 1200 x 1920 resolution
- [Intel Gordon Peak Board](#) using the Atom E3800 series CPU and Intel Apollo Lake system-on-chip ([Electrek](#) & [TeslaTap](#))

[22]

49. Tesla's MCU's are "computers" under the CFAA by virtue of their data processing and communication functions and their operation in conjunction with Plaintiff and the putative class members' vehicles. They are used in and affect interstate and foreign commerce and communication by providing key information to Tesla vehicles, including software updates that may affect the safety and improve upon the reliability of the same.

50. Tesla knowingly and intentionally manipulated its software updates in order to limit the amount of battery capacity and charging speed of its vehicles and did so either without authorization and/or exceeding the authorization of its customers. Tesla failed to provide any information to its customers regarding the fact that such software updates would lead to a significant reduction in charging speed, performance, and severe loss of range for their vehicles.

51. Tesla further acted fraudulently and under the guise of "safety" as the reason for the software updates, to the detriment of its customers. Tesla's violations of the CFAA resulted in a loss of range which equal to a loss in value for the Class Vehicles.

52. By issuing the range-reducing and battery capacity-limiting software updates to the vehicles owned by Plaintiff and the other putative class members, Tesla also

²² Tesla Tap, "List of Undocumented Technical Aspects to Model S, X, and 3 Vehicles", <https://teslatap.com/undocumented/> (last accessed Aug. 8, 2019).

1 violated California's Computer Crime Law, Cal. Pen. Code § 502 *et seq.*, which prohibits
2 similar behavior as provided by its federal counterpart.

3 53. Plaintiff and the putative class members owned their vehicles and possessed
4 the right to use them without interference by Tesla. However, by limiting the range of
5 their vehicles and reducing the charging speed and performance of their vehicles, Tesla
6 has inflicted damages to Plaintiff and the putative class members in the form of
7 substantially reducing the value of their cars.

8 54. Plaintiff and the putative class members have no choice but to abide by
9 Tesla's commands and are forced to accept Tesla's software updates or risk losing the
10 ability to receive warranty repair from Tesla. Plaintiff and the putative class members
11 would not have paid as much as they did for their cars, or would have paid significantly
12 less for their cars had they known that Tesla would introduce range and battery capacity-
13 limiting software that would significantly and severely impact the value and function of
14 their cars after purchase.

15 **D. Tesla Throttles Battery Charging Speeds and Manipulates Range**
16 **Calculations**

17 55. Upon information and belief, and by and through the further investigation of
18 Plaintiff and counsel for Plaintiff, Tesla uses various formulas to determine what the
19 rated mileage range for its vehicles should be. Upon information and belief, Tesla has
20 used a calculation of 295 watt-hours/mile for all Model S 85 RWD vehicles, multiplied
21 by the total amount of usable battery capacity to determine what the total number of rated
22 miles are.

23 56. The relationship between rated range and battery capacity in kWh is well-
24 known in the community to be a fixed constant multiplier of 295wh/mi (for Model S 85
25 kWh RWD cars) and is not related in any way to how the car is driven or the
26 environment. Upon information and belief, this fixed constant multiplier is what Tesla
27 used or uses to determine the estimated mileage ratings for its vehicles. This fixed
28

1 constant variable is relied upon when calculating the EPA range estimates that Tesla
2 prominently advertises, represents, and displays to consumers, and can be seen as
3 displayed on the “Moroney Label” that is displayed on new vehicles for sale.

4 57. Upon information and belief, Tesla has lowered the number for the fixed
5 constant variable, which has the practical effect of giving the illusion that more miles are
6 available. Customers like Plaintiff and the other putative class members relied upon the
7 number of miles that Tesla represented to them. However, what they didn’t know after
8 purchasing the Class Vehicles is that Tesla has the ability to manipulate the number that
9 was used to calculate mileage in order to avoid having to provide warranty battery
10 replacements.

11 58. Upon further information and belief, Tesla fraudulently and unlawfully
12 manipulated and pushed out a software update prior to February 2019 (actual update date
13 is unknown at this time), which contained changes to the battery management system
14 software, by replacing the variable previously used for energy consumption, or, 295
15 Wh/mi. Upon further information and belief, the energy consumption constant was
16 reduced to 276 Wh/mi, for subject vehicles which in effect, would artificially increase the
17 number of rated miles displayed for Plaintiff’s car.²³

18 59. Upon information and belief, and by and through the further investigation by
19 Plaintiff and counsel for Plaintiff, Tesla has used this 295Wh/mi constant to determine
20 the numbers it provides to the Environmental Protection Agency (EPA) and has also used
21 this variable to calculate the fleet-wide average of maximum rated mileage. This fixed
22 constant variable was also used to determine the EPA’s estimated mileage rating of 265
23 miles of rated range. The Tesla Model S 85 is advertised as an “85 battery”, however, it
24 is widely and publicly known that the Model S 85 consists of a battery pack that contains
25

26 ²³ This determination was made by use of a third-party application that can directly read the BMS
27 data directly from the car. It is believed that this information is identical to the information available
28 only to service technicians at Tesla Service Centers.

1 approximately 81 kWh, with only 78.1 kWh available and usable for powering the
2 vehicle.

3 60. Upon investigation of Plaintiff and Plaintiff's counsel it has become
4 apparent that Tesla has fraudulently and/or deceptively lowered the fixed constant
5 variable and now uses a lower watt-hour/mi variable rate a lower watt-hour/mi variable
6 rate. The practical effect of doing so means that the total number of miles in terms of
7 maximum range for Plaintiff's car will display a higher number. If Tesla had used the
8 same fixed variable rate of 295 Wh/mi, then Plaintiff's car would then be calculated as
9 having approximately 204 rated miles. Instead, Tesla fraudulently and unlawfully
10 lowered this fixed variable number in order to give the illusion that Plaintiff's car had
11 more miles at maximum range. Doing so gives Tesla the excuse to avoid its duty and
12 legal obligations to replace the battery of Plaintiff's vehicle, as well as other members of
13 the putative classes.

14 61. Tesla attempts to further escape from its legal obligations by using confusing
15 terms and relies on terms such as "Rated Miles" or "Rated Range", when the actual term
16 that Tesla should be using is Battery Capacity calculated by the kilowatt-hour (kWh).
17 Tesla does not display the amount of battery capacity kWh on any user information
18 display available on the vehicle. Owners are only given access to the displayed
19 percentage and rated range as displayed on the vehicle display.

20 62. Using this data obtained from multiple Tesla Model S 85 vehicles it is clear
21 that the battery in Plaintiff's vehicle and Class Vehicles display their rated Range based
22 on the BMS reporting the Nominal Remaining kWh minus the Battery Brick Buffer (4
23 kWh) divided by the discovered constant of 276 Wh/mile. This calculation has proved
24 consistent with multiple vehicles.

25 63. Upon information and belief, and by investigation of Plaintiff and Plaintiff's
26 counsel, Tesla manipulated the software to limit the maximum amount of battery capacity
27 available, thereby limited the ability for the Class Vehicles to charge fully. Thus, the
28

1 Class Vehicles are unable to reach a full state of charge, which under normal conditions,
2 is approximately 4.2 volts per battery cell (402 volts for the entire battery pack).

3 64. Upon further information and belief, Tesla reduced the ability to charge
4 these battery cells and as a result, the batteries are only capable of charging up to 4.1
5 volts or less. In other words, Plaintiff and the other putative class members are only able
6 to charge their batteries to approximately 85% to 90%. This translates into a decrease in
7 the number of miles available, due to the fact that the batteries are limited by software
8 and prevented from charging to their full capacity.

9 **E. Tesla Knew and Was Fully Aware of the Problems and Cause of**
10 **Potential Fires**

11 65. In a July 24, 2017 article published by Electrek titled “Tesla strangely starts
12 delivering new 85 kWh battery packs software-locked at 75 kWh,” the author goes on to
13 report that Tesla had begun delivering new Model S 75 and Model X 75 vehicles.
14 Tesla’s Model S 75 and Model X 75 vehicles were previously all equipped with Tesla’s
15 base 75 kWh battery pack. The article notes however, that the new “75” vehicle models
16 were equipped with 85 kWh battery packs.

17 66. Tesla knew of the potential problems with its batteries and recognized these
18 issues without informing the public or its customers. As the article states, “[w]hat is
19 particularly strange is that the automaker is not listing the new battery pack as an
20 available option for Model S or Model X nor is it offering it as an upgradeable option
21 who receive the new pack, who are currently left in the dark.” Tesla did not, and has not
22 come forth with an official comment regarding this change and practice of equipping cars
23 with a higher-than advertised battery pack.

24 67. The fact is that Tesla was aware of the fact that its customers and owners
25 fully expected to be able to charge to the maximum battery capacity as paid for.
26 However, Tesla realized the mistakes it had made by fraudulently advertising and selling
27

1 to Plaintiff and the putative class members cars that could not be safely charged to the
2 maximum battery capacity.

3 68. Tesla's failure to inform its customers and the general public and reason it
4 has yet to come forth with an official comment is simple, it did not want to admit to the
5 fact that it had sold a defective product to its customers that would be unable to achieve
6 or operate as sold and intended for use by Plaintiff and the putative class members.
7 Instead of coming clean with the general public, Plaintiff, and the putative class members
8 by informing them about the potential risk of their vehicles catching on fire, Tesla
9 decided to withhold this information and also chose to go behind the backs of its
10 customers and use software updates and throttling of the battery to avoid liability.

11 69. Tesla continues to deny facts that it already knows to be true and cannot
12 continue to operate under the same shroud of secrecy. Tesla has previously used its
13 software updates to enhance and improve the Class Vehicles. However, it cannot
14 continue to do so under the guise of safety where it has been unjustly enriched and
15 received monetary benefit in exchange of the harm suffered by Plaintiff and the other
16 putative class members. Despite having known of the potential risk and problems that
17 would certainly arise, Tesla attempts to continue fraudulently concealing this information
18 and is clearly motivated by greed and supported by a reckless neglect of its customers.

19 **F. Tesla Previously Profited by Selling What It Now Claims as**
20 **“Insignificant” In Value**

21 70. As a result of Tesla's improper and fraudulent methods of calculating,
22 Plaintiff has suffered in at least the following ways: (1) Plaintiff's daily commute has
23 been substantially and significantly affected by Tesla's fraudulent concealment and
24 manipulation of software to the point that Plaintiff is no longer able to drive his car prior
25 to the updates and would be forced to pay out-of-pocket costs for items that should have
26 been replaced under warranty but for Tesla's deceptive acts and unfair business practices;
27 and as warranted.

1 71. Tesla refers to an 8 kWh decrease in battery capacity as a minor and
 2 insignificant amount, yet, hypocritically, offers its customers the ability to increase the
 3 battery capacities of certain vehicles within Tesla’s fleet. Customers have paid anywhere
 4 between \$2000 - \$10,000 in order to add approximately 10 kWh of increased battery
 5 capacity.²⁴ What Tesla brushes off as insignificant here, it charges consumers a premium
 6 to add the same for their cars. The following display shows the option for some Model S
 7 vehicles with 70 kWh batteries to upgrade to 75 kWh on Tesla’s website:



[25]

16 72. Plaintiff’s car experienced a decrease of approximately 8 kWh in the amount
 17 of usable battery kWh capacity in less than two weeks, directly as a result of Tesla’s
 18 software updates. Despite the fact that Tesla profits from customers by offering battery
 19 capacity upgrades, Plaintiff was told that the amount of lost battery capacity he suffered
 20 was not significant.

21 73. On Tesla’s failure to provide a proper remedy in the form of a warranty
 22 battery replacement despite making a large profit from consumers indicates Tesla’s
 23 culpability for the conduct, for which an award of punitive and exemplary damages is
 24 warranted.

25

26 ²⁴ InsideEVs, “Tesla Now Offers Model S 60 kWh To 75 kWh Upgrade For Only \$2,000”,
 27 <https://insideevs.com/news/333892/tesla-now-offers-model-s-60-kwh-to-75-kwh-upgrade-for-only-2000/>, April 17, 2017 (last accessed July 31, 2019).

25

1 **G. Tesla’s Manipulates Its Software to Avoid Replacing Batteries and to**
2 **Escape Its Warranty Obligations**

3 74. Upon close examination of the data available on Plaintiff’s vehicle and the
4 warranty replacement criteria as disclosed by Tesla’s service team, Tesla violates state
5 and federal law warranty statutes and engages in fraudulent and deceptive behavior by
6 manipulating the software for its vehicles. Tesla knew, or should have known, that the
7 software updates issued to Plaintiff and the other putative class members’ vehicles would
8 suffer from significant range loss. Tesla achieves this by, manipulating the calculations
9 for total amount of range that is available.

10 75. That the Class Vehicles had suffered from significant range loss. Rated
11 Range calculation so as to avoid replacing batteries under warranty. Tesla represents
12 through its service technicians that warranty replacements would be available. Tesla
13 technician shared that warranty replacement would be available if the subject vehicle’s
14 battery has degraded at least 10% beyond the fleet-wide average degradation for similar
15 battery module at the same mileage. The technician stated that Plaintiff’s vehicle has
16 battery type “14” and that the original rated range was 265 miles at 295 Wh/mi and that
17 the current fleet-wide average for this battery at about 135,000 miles was 231 miles at
18 295 Wh/mi. The technician also reported that Plaintiff’s vehicle showed 217 miles rated
19 range.

20 76. Had Tesla been using the same constant for all three of the ranges then this
21 would be fair. However, Tesla has changed the constant variable and now uses the 276
22 Wh/mi rate, which results in a substantial over-inflation of mileage. Plaintiff realized
23 that his rated range prior to May 13, 2019 of 247 miles (at 276 Wh/mi) is the same as the
24 231 miles stated as fleet-wide average when using 295 Wh/mi ($247 \times 276 = 231 \times 295$).
25 Both calculations represent a usable capacity of about 68.2 kWh. Thus, the fleet-wide
26 average degradation is approximately 13% ($100 - (231 \text{ miles} / 265 \text{ miles})$) after almost 5
27 years and 135,000 miles.

1 77. Based upon the investigation of Plaintiff and Plaintiff’s counsel, it is
2 believed that by using these calculations and directly reading the data from the BMS, that
3 Plaintiff’s battery has approximately 204 rate miles (at 296 Wh/mile), or 60.2 kWh of
4 usable battery capacity for his vehicle. This amounts to approximately 23% total
5 degradation, or 12% below the fleet-wide average for like vehicles based on Tesla’s
6 representations.

7 78. Tesla’s practice of using misrepresented current rated range knowingly and
8 deceptively places Plaintiff’s vehicle and the vehicles of other putative class members
9 outside of the warranty replacement requirements.

10 79. Plaintiff and every single member in the putative classes are deceived by
11 Tesla into believing that their battery degradation is much less than what has actually
12 occurred by Tesla’s deceptive practice of not showing the battery capacity in kWh.
13 Plaintiff believed prior to May 13, 2019 that his vehicle’s battery had only degraded by
14 7% ($100 - (247/265)$). This understated degradation has been presented in the media and
15 falls in line with “Tesla battery degradation at less than 10% after over 160,000 miles,
16 according to latest data” and Tesla has never publicly refuted such claims.

17 80. If Plaintiff were to purchase a replacement battery from Tesla to restore the
18 plaintiff’s vehicle to its full functionality and usability the price would be approximately
19 \$20,000. Tesla has acted fraudulently and attempts to shift the burden of these costs and
20 label them as out-of-warranty. Plaintiff and other putative class members are left helpless
21 as Tesla sits in the ultimate bargaining position as it has absolute reign over the warranty
22 process and ability to control the variables that are relied upon in determining warranty
23 coverage. Tesla is capable of manipulating its software via updates and can preempt any
24 type of claim for warranty repair.

25 81. While Tesla has operated and continues to operate under the guise of
26 “promoting battery longevity” and safety of the Class Vehicles, it is clear that what Tesla
27

1 is really trying to do is to avoid its duties and legal obligations to Plaintiff and the
2 putative class. Tesla's ability to issue software updates and manipulate software without
3 recognizing and reimbursing consumers for lost range and lost value of the vehicles is the
4 culmination of Tesla's ability to operate unchecked for so long. Plaintiff and other
5 putative class members are left holding the bag and are harmed by Tesla's deceptive
6 business practices and fraudulent acts.

7 82. Additionally, Tesla represents that its vehicles are safe, but Tesla has failed
8 to provide any viable information to the public regarding the exact details of the recent
9 car fires. Tesla owes a duty to its customers to disclose any material information
10 regarding the cause of the recent vehicle fires and provide information to owners of the
11 potentially fatal vehicles.

12 83. The fact is that Plaintiff and the putative class members have now been
13 harmed because they have experienced a significant and real monetary loss of value with
14 their vehicles. As alleged herein, Tesla has reaped the profits by using the same logic
15 that it now chooses to ignore when it comes time to return the loss in value that
16 consumers now suffer from.

17 **H. Tesla Owners Have No Choice but To Accept Software Updates**

18 84. In order to be eligible for warranty repair and coverage for Tesla's vehicles,
19 Tesla owners must update their vehicles regularly, and are unable to operate their
20 vehicles without Tesla's software because they do not work as they are intended without
21 the same.

22 85. Though Tesla owners may have the choice to deny software updates, or at
23 the very least, postpone the installation and commencement of such, customers are
24 essentially left helpless based on Tesla's demand and imposition of terms that require
25 owners to comply with Tesla's software updates.

26 86. Consumers must use Tesla's operating system and accept Tesla's software
27 updates if they do not want to risk voiding the warranties that are provided with their
28

1 vehicles. Thus, the terms of Tesla's warranties and motor vehicle purchase agreements
2 are part of the benefit of Plaintiff's and the other putative class members' bargains when
3 purchasing Tesla's vehicles to the extent they apply.

4 87. Consumers like Plaintiff and the other putative class members expect that
5 their cars will operate as advertised and intended upon purchase of the same.

6 88. Tesla's Motor Vehicle Purchase Agreement and New and Used Car Limited
7 Warranties include Tesla's attempts to disclaim certain warranties, and makes the terms
8 and language of such one-sided, fails to allow consumers to negotiate separate terms, are
9 unconscionable contracts of adhesion, and essentially render the vehicles incapable of
10 operation – and from functioning up to the standards of the vehicles as they were
11 intended and marketed to be used.

12 89. Along with Tesla's battery capacity limiting software updates, the
13 limitations period in Tesla's warranties for the vehicles prevented consumers from
14 discovering, or making any claim for any defects regarding the vehicles' batteries within
15 the applicable and unenforceable limitations period, even with the use of diligence, as
16 Tesla is in the exclusive control of information regarding its proprietary software and the
17 batteries of its vehicles.

18 90. Any limitations period in the agreements and warranties from Tesla are thus
19 unconscionable and unenforceable to the extent they are used to deny consumers of
20 lawful and rightful warranty repair, remedy, or replacements.

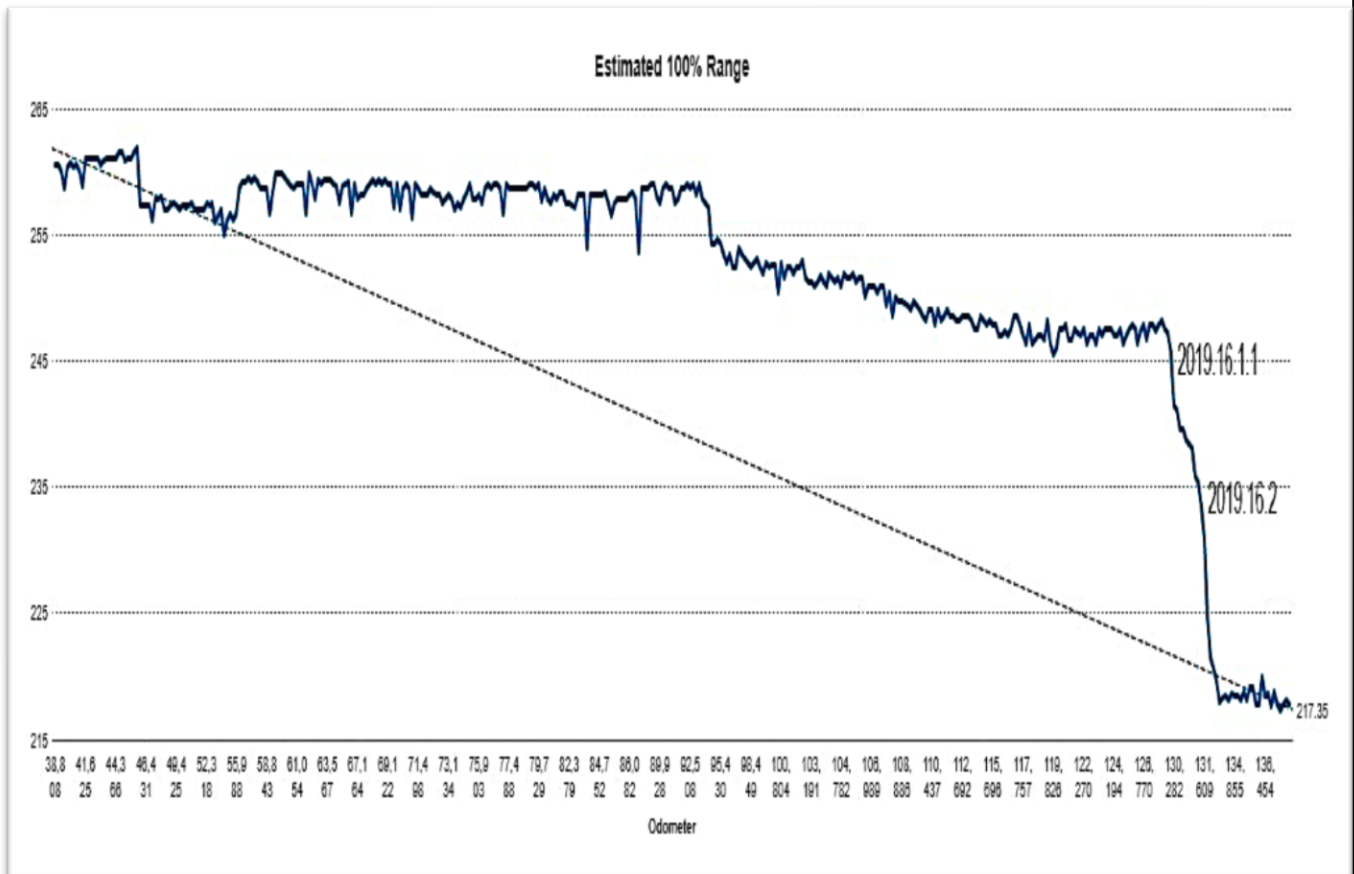
21 91. Any attempts by Tesla to limit liability for its software updates is also
22 unconscionable and unenforceable as Tesla's software updates are necessary in order for
23 consumers to continue the use of their vehicles while still maintaining the full realization
24 and benefit of the consumers' bargains.

25 **I. Plaintiff David Rasmussen's Experience**

26 92. Prior to Tesla May 16, 2019 update, Plaintiff David Rasmussen was familiar
27 with Tesla's unique software update capabilities and relied on his Model S 85 as a daily
28

1 driver for his lengthy 250+ mile commute from his home in Victorville, California to his
 2 workplace in Carlsbad, California.

3 93. Plaintiff recorded information between June 2017 to July 2019 which
 4 consists of the amount available rated range miles on the y axis, and the x axis indicating
 5 time and actual vehicle mileage.



[26]

26 _____
 27 ²⁶ Rasmussen, David, Various Data Points from 2014 Tesla Model S 85 bearing the vehicle identification number
 28 5YJSA1H15EFP51614”

1 94. The chart above illustrates the number of miles available at an estimated
2 100% battery range and at a 100% state of charge for Plaintiff's Model S between June
3 2017 to July 2019.²⁷

4 95. The graph displays what has been considered normal battery degradation by
5 the plaintiff until the drops labeled as 2019.16.1.1 and 2019.16.2. The drops correspond
6 with Tesla's over-the-air software updates bearing those designations. Between January
7 2, 2019 to May 13, 2019, Plaintiff's Model S was averaging approximately 247 rated
8 miles at a full 100% battery charge. After the set of software updates was pushed
9 through to Plaintiff's vehicle, the maximum available rated mile range dropped to
10 approximately 235 miles, and then further down to 217 miles. To date, the maximum
11 number of rated miles for Plaintiff's car when at a full 100% state of charge has remained
12 at approximately 217 miles.

13 96. Prior to and after purchasing his vehicle, Plaintiff understood the basic
14 concepts surrounding battery-powered electric vehicles, which included the
15 comprehension that lithium-ion batteries, such as the ones that are used to power Tesla
16 vehicles, will certainly lose some power over time. Plaintiff understood this as consistent
17 with the wording in Tesla's Battery and Drive Unit Limited Warranty which stated:

18 "The Battery, like all lithium-ion batteries, will experience gradual
19 energy or power loss with time and use. Loss of Battery energy or
20 power over time due to or resulting from Battery usage is NOT covered
21 under this Battery and Drive Unit Limited Warranty."²⁸

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25 ²⁷ Rasmussen, David, "Data collected between June 2017 through July 2019" (Green dots on
26 graph indicating Tesla Software Updates 2019.16.1.1 and 2019.16.2) (x-axis indicates mileage on
27 odometer, y-axis indicates maximum available rated miles with top line at 265).

28 ²⁸ Tesla New Vehicle Limited Warranty
https://www.tesla.com/sites/default/files/pdfs/Model_S_New_Vehicle_Limited_Warranty_201602_en_NA.pdf (last accessed Aug. 7, 2019)

1 97. Plaintiff’s vehicle suffered a drop in both battery energy and power
2 *overnight*, directly as a result of the two software updates from Tesla. As the graph
3 above illustrates, the battery degradation that Plaintiff experienced was neither “gradual”
4 nor was it a loss of energy or power due to “time and use.” This loss of battery energy
5 *and* power was due solely to the software updates from Tesla.

6 98. Although Plaintiff had purchased the car as a used vehicle from a private
7 third-party seller, he knew that his 2014 Model S 85 would be taken care of by Tesla after
8 conducting research about the company and its cars. Plaintiff had seen various marketing
9 ads and relied upon the representations made by Tesla’s ex-chairman, Elon Musk.
10 Plaintiff reasonably relied upon Tesla marketing materials, news websites, and online
11 group forums like www.teslamotorsclub.com, a website that consists of a large online
12 community and gathering of Tesla owners and fanatics alike, who connect with each
13 other to discuss all things Tesla.²⁹

14 99. After researching more about the vehicles offered by Tesla, Plaintiff learned
15 that Tesla had given what was called the “Tesla Infinite Mile Warranty” to As Tesla
16 represented and displayed on their website, the warranty would include an 8-year, infinite
17 mile warranty as to the battery pack and drive train of Tesla’s Model S 85kWh vehicles.
18 In addition, the warranty would apply to all models produced in the future and would
19 apply retroactively to all prior models that were already produced at the time.³⁰ These
20 promises were displayed on Tesla’s website as follows:
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25 ²⁹ Tesla Motors Club (TMC), “About Us - Formed in 2006, Tesla Motors Club (TMC) was the
26 first independent online Tesla community. Today it remains the largest and most dynamic community of
27 Tesla enthusiasts”, www.teslamotorsclub.com/tmc/ (last visited July 28, 2019).

28 ³⁰ See Tesla, “Infinite Mile Warranty” (Aug. 15, 2014), <https://www.tesla.com/blog/infinite-mile-warranty> (last visited July 16, 2019).

Infinite Mile Warranty

Elon Musk, CEO •

August 15, 2014

The Tesla Model S drive unit warranty has been increased to match that of the battery pack. That means the 85 kWh Model S, our most popular model by far, now has an 8 year, infinite mile warranty on both the battery pack and drive unit. There is also no limit on the number of owners during the warranty period.

Moreover, the warranty extension will apply retroactively to all Model S vehicles ever produced. In hindsight, this should have been our policy from the beginning of the Model S program. If we truly believe that electric motors are fundamentally more reliable than gasoline engines, with far fewer moving parts and no oily residue or combustion byproducts to gum up the works, then our warranty policy should reflect that.

To investors in Tesla, I must acknowledge that this will have a moderately negative effect on Tesla earnings in the short term, as our warranty reserves will necessarily have to increase above current levels. This is amplified by the fact that we are doing so retroactively, not just for new customers. However, by doing the right thing for Tesla vehicle owners at this early stage of our company, I am confident that it will work out well in the long term.

– *Elon*

[31]

100. Plaintiff also found records of other Model S owners who reported degradation at various stages of use showing that typical degradation to be 5% in the first year and 1-2% for subsequent years. This collected information shows the actual numbers in real life of batteries in excess of 250,000 miles of use. Plaintiff used this information, which Tesla has never publicly discredited, along with other available information on the web in making his purchase decision.³²

101. Plaintiff had initially considered purchasing a used, certified pre-owned Model S directly from Tesla, as he had believed that doing so would provide him with the best warranty coverage. However, after seeing marketing materials and advertisements online regarding Tesla's warranty program, Plaintiff relied upon Tesla's representations that his car would be taken care of by Tesla under warranty. Consumers like Plaintiff and

³¹ *Id.*

1 other putative class members relied upon statements like these made by Tesla, such as the
2 “Worlds-Best Warranty Program” and the “Infinite-Mile Warranty.”

3 102. Furthermore, consumers like Plaintiff and the other putative class members
4 found themselves unable to resist to Tesla’s empty promises, false advertisements, and
5 deceptive marketing strategies. Plaintiff and the putative class members purchased these
6 vehicles with what they thought were all covered under warranty by Tesla. This would
7 naturally include the batteries of these vehicles.

8 103. As mentioned herein, Tesla has maintained and continues to maintain the
9 position that the information it possesses with regards to the batteries is highly top-secret
10 and proprietary trade information. In fact, Tesla maintains the exclusive rights to this
11 information as indicated in the warranty language below:

12 “The Tesla lithium-ion battery (the “Battery”) and Drive Unit are
13 extremely sophisticated powertrain components designed to withstand
14 extreme driving conditions. You can rest easy knowing that Tesla’s
15 state-of-the-art Battery and Drive Unit are backed by this Battery and
16 Drive Unit Limited Warranty, which covers the repair or replacement
17 of any malfunctioning or defective Battery or Drive Unit...”³³

18 104. Tesla’s statements regarding the full-inspection, vehicle, and battery
19 warranties were empty promises to induce consumers to purchase Tesla’s vehicles.
20 Rather than perform under the warranties that it provides to its vehicles, Tesla relies upon
21 the very same language that is used to market its “state-of-the-art” batteries, as an excuse
22 to deny proper warranty repairs and battery replacements.

23 ///

24 ///

25 ///

26 ³³ Tesla, “New Vehicle Limited Warranty”

27 https://www.tesla.com/sites/default/files/pdfs/Model_S_New_Vehicle_Limited_Warranty_201602_en
28 [NA.pdf](#), (last accessed and downloaded Aug. 7, 2019).

1 **J. Plaintiff Rasmussen is Denied a Warranty Battery Replacement**

2 105. On May 15, 2019, Plaintiff successfully installed the May 15, 2019 software
3 update, version 2019.16.1.1 and on May 29, 2019 version 2019.16.2 was pushed through
4 as an over-the-air software update.

5 106. Over the next two weeks after installing the update 2019.16.1.1, Plaintiff
6 noticed that the total number of maximum rated miles was decreasing from 2 to 5 miles
7 per day from what it had been prior to the software update. Instead of displaying the
8 usual 247 miles rated range at maximum battery capacity, Plaintiff discovered that his car
9 was finally showing just 218 rated miles at full 100% charge.

10 107. On June 10, 2019, Plaintiff notified Tesla of the issue via telephone support
11 of the suspected issue with battery degradation and was advised to take his car in for
12 service and to have a battery inspection performed.

13 108. On June 17, 2019, Plaintiff brought his Model S for service to the Tesla
14 Service Center in Oceanside, CA where a battery diagnostic test was performed. Plaintiff
15 was informed by a Tesla service technician that the battery was operating “normally” and
16 that there were no faults or errors detected with the battery. Plaintiff was sent home and
17 told to return after a few weeks had passed to see if the problem would persist.

18 109. Due to Plaintiff’s long daily commute and the fact that his car was still
19 showing 218 miles of rated range at maximum battery capacity, Plaintiff returned on June
20 20, 2019 and requested another battery diagnostic test. Plaintiff was informed by Tesla
21 service technicians that a higher-level diagnostic test could be performed, also known as
22 a Charge Amperage Capacity (CAC) test, at the cost of \$253.50 to Plaintiff. Plaintiff was
23 further informed if the test results indicated that there was an error with the battery, that
24 he would then be eligible for a battery replacement under warranty.

25 110. Plaintiff declined to have the test performed when the service manager
26 advised plaintiff that the test results would only be shared verbally and no printed copy of
27 the results or otherwise recording on the results would not be allowed.

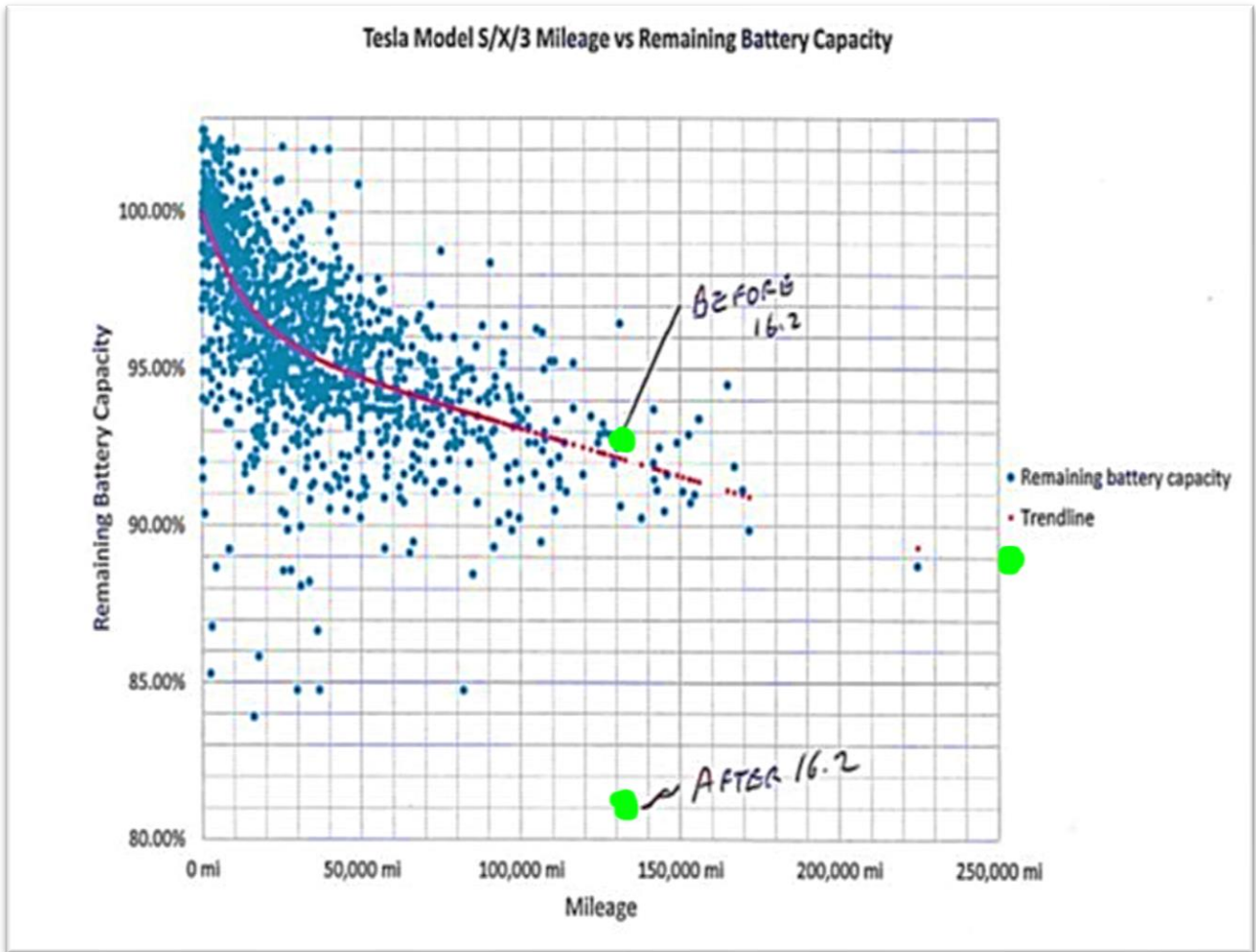
1 111. Plaintiff returned again on July 2, 2019 to have the HV Battery Test (CAC
2 test) performed (work order number 3000S0000166387) and accept that the results would
3 only be explained but no printed results would be provided. Plaintiff was informed that
4 the test results were negative and that there was no indication of any significant battery
5 errors. Plaintiff asked whether he could see the results, or obtain a copy of the same,
6 however, he was repeatedly denied access to them and was ultimately allowed to glimpse
7 the results on a computer screen with explanations provided by the service technician.

8 112. Plaintiff was informed by a Tesla service center technician that the “fleet-
9 wide average” for 135,000 miles of use has a maximum rated range of approximately 231
10 miles. Plaintiff was further informed that the amount of maximum rated range for his car
11 at 217 miles was only 7% lower than the fleet-wide average, and that if his car had been
12 10% or more, lower than the fleet-wide average, he would then be eligible for a warranty
13 battery replacement.

14 113. On July 12, 2019, per the instructions provided by Tesla’s written warranty,
15 Plaintiff filed a claim with the National Center for Dispute Settlement (NCDS) to seek a
16 warranty battery replacement.

17 114. On July 15, 2019, NCDS refused to adjudicate Plaintiff’s claims with the
18 reasons being that Plaintiff’s claim for the battery were not covered by the warranty
19 provided by Tesla.

20 115. The graph below illustrates the data collected by a researcher in the
21 Netherlands and the green dots are representative of where Plaintiff’s car belongs in
22 relation to the data collected from other vehicles. As the graph illustrates, there is a
23 significant drop in the amount of “remaining battery capacity” that occurred following
24 the 2019.16.2 software update from Tesla.
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[34]

18 116. Despite the fact that Plaintiff's car had suffered from a decrease of nearly 30
19 miles in available range, or in other words, a loss of approximately 8 kWh of battery
20 capacity immediately following Tesla's 2019.16.1 and 2019.16.2 software updates, Tesla
21 maintains that the decrease is "normal" and insignificant.

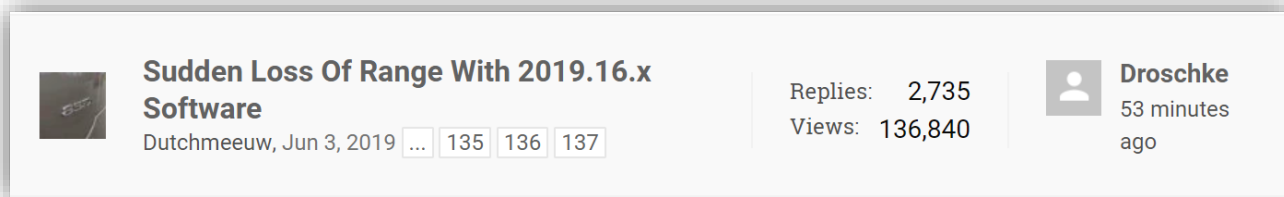
22 117. Plaintiff complied with all requirements including the acceptance, download,
23 and installation of Tesla's software updates, bringing his car to a Tesla Service Center
24 after being instructed by Tesla to do so, and submitting the claim to NCDS arbitration as

25
26 ³⁴ Steinbuch, Maarten, "Tesla Model S degradation data,"
27 <https://steinbuch.wordpress.com/2015/01/24/tesla-model-s-battery-degradation-data/> (last visited July
28 18, 2018) (G)

1 expressly required by Tesla’s warranty.³⁵ Based upon the arbitrator’s decision that
 2 Plaintiff’s claims are not arbitrable, and the fact that Plaintiff is, indeed, “not satisfied
 3 with the arbitrator’s decision or Tesla’s compliance” he now brings this action to pursue
 4 all of and “any other legal remedies available” to him on behalf of himself and the other
 5 putative class members located throughout the nation.

6 **K. Complaints and Comments from Tesla Owners Worldwide**

7 118. After the software updates were issued, customers began to complain about
 8 the range loss and battery issues on the popular Tesla Motors Club online forum website.
 9 One particular discussion titled “Sudden Loss of Range With 2019.16.x Software” has
 10 garnered nearly 3,000 replies from hundreds of members worldwide and has been viewed
 11 over 136,000 times, shown below:



[36]

18 119. Other comments from members on the same thread of this specific forum
 19 post describe having similar experiences with their cars:

- 20 a. “So about two months ago I was stuck on 2019.4 because my MCU was
 21 dying and unable to connect to Wi-Fi to update and eventually died from
 22 the e-MMC issue. My replacement MCU came with 2019.24 installed and
 23 after driving my car for less than 50 miles I dropped from 221 rated miles
 at 90% to 199 rated miles at 90%.”³⁷

24 ³⁵ Tesla, “New Vehicle Limited Warranty”
 25 https://www.tesla.com/sites/default/files/pdfs/Model_S_New_Vehicle_Limited_Warranty_201602_en_NA.pdf, (last
 accessed and downloaded Aug. 7, 2019).

26 ³⁶ Tesla Motors Club Forum, “Sudden Loss of Range with 2019.16.x Software”, June 3, 2019,
 27 <https://teslamotorsclub.com/tmc/threads/sudden-loss-of-range-with-2019-16-x-software.154976/>, (last
 visited Aug. 7, 2019).

28 ³⁷ *Id.* Post #2696, August 5, 2019.

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- b. “When I complained to Tesla about immediately losing 10% range they also gave me a chart claiming there was nothing wrong I was just imaging it. Over time, and challenges, Tesla admitted there is a loss. Last week I was told by Tesla service manager that "Tesla made a conscious decision to reduce charging capacity to 90% to avoid fires and Tesla regards that as a reasonable compromise." I feel this makes the car unsellable since Tesla hasn't fully explained why my specific battery pack I need to disclose it to a buyer. And, I am not confident that the issue is resolved. It also confirms that my (our) battery pack is defective since Tesla thought it dangerous enough to secretly download a "fix". The reduced range is accompanied by longer charge time. Even if I accept the defective battery pack condition and drive the car I now am faced with increased time to actually get any range.”³⁸
- c. “Well, my 254 miles has been cut to 238 miles at full charge.:(This is especially bad for those of us that tow... We need the longer range and can't afford to have it shortened. Tesla better be upfront and explain why I have to sacrifice 14 miles...”³⁹
- d. “I think the issue is communication from the manufacturer. They are lying/hiding/not forthcoming/whatever you want to call it with information about this update. For example, if they released this software update to prevent battery fires, what happens to owners that have been refusing to go on V9 software and do updates?”⁴⁰
- e. Are they now at risk of having a car fire in their garage while they sleep? If it's not about the fires, then why do this cap at all? Prevent future degradation? Well they just degraded them now instead of the future, what's the point in that? I can't see how you can say this is about expectation. The manufacturer physically capped battery capacity of vehicles they do not own without an explanation. How can you possibly view this as being ok?”⁴¹

³⁸ *Id.* Post #2675

³⁹ *Id.* Post #2574, August 3, 2019

⁴⁰ *Id.* Post #2597, August 4, 2019

⁴¹ *Id.*

1 120. Plaintiff is aware of, and upon information and belief hereon alleges that
2 similar owners that have experienced the same issues as alleged herein, in the State of
3 California, Minnesota, Georgia, and Florida at the very least. Plaintiff will seek
4 amendment to include these owners as necessary, and upon a full investigation, thorough
5 review, and consideration of those claims have been completed by Plaintiff's counsel.⁴²

6 121. Plaintiff is aware of, and upon information and belief hereon alleges that
7 owners of Tesla's vehicles are affected worldwide, and further alleges that at least one
8 owner in Norway has been affected by Tesla's conduct and acts as alleged herein.
9 Plaintiff will seek amendment to include the worldwide owners as necessary, and upon a
10 full investigation, thorough review, and consideration of those claims have been
11 completed by Plaintiff's counsel.⁴³

12 **L. Civil RICO Investigation**

13 122. Since the first reports of standalone battery fires, meaning fires that occurred
14 that were not the result of a collision or accident, and at the very least since June 2018,
15 Tesla shared information about potential battery defects with its US Service Center
16 Locations nationwide, jointly and secretly; investigated the possible causes of the battery
17 fires; delayed and/or prevented the release of inculpatory information; misled regulatory
18 authorities; and maintained a consistent public posture as to the scope of the vehicles
19 affected by the defective batteries, and the safety risks that the Class Vehicles posed.

20 123. Tesla's close cooperation with its nationwide US Service Center locations
21 on issues surrounding the battery defects, and joint participation in the predicate acts
22 described below, evidence not only the formation of a common purpose to conduct the
23 enterprise through a pattern of racketeering activity, but also a conspiracy to participate in
24 an enterprise by conducting the affairs of such an enterprise through a pattern of

25
26 ⁴² Plaintiff's counsel is currently and actively investigating claims of Tesla owners that involve
27 the allegations asserted herein, namely the reduction in miles, limited battery capacity, decreased
28 charging rates, and decreased performance of the Class Vehicles nationwide and worldwide.

⁴³ *Id.*

1 racketeering activity as prohibited by the Racketeer Influenced and Corrupt
2 Organizations Act (RICO), 18 U.S.C. §§ 1961-1968 *et seq.*, and these acts are still being
3 investigated by Plaintiff and Plaintiff’s counsel.

4
5 **VI. CLASS ACTION ALLEGATIONS**

6 124. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure
7 23(a), 23(b)(2), and 23(b)(3), individually, and on behalf of the following proposed
8 classes:

9 **Nationwide Class**

10 All persons or entities who, nationwide, purchased, or otherwise own,
11 a Tesla Model S or Model X vehicle (the “Class Vehicles”).

12 **Nationwide Software Affected Subclass**

13 All members of the Nationwide Class who purchased, or otherwise
14 own, a Tesla Model S or Model X vehicle with batteries that were
15 limited by Tesla’s over-the-air (OTA) software updates versions
16 2019.16.1.1 and 2019.16.2 after May 15, 2019 and as a result, suffered
17 from a reduction of and loss in the number of rated range miles
18 available for the vehicles.

19 125. Alternatively, if California law does not apply to all owners of the Class
20 Vehicles, Plaintiff brings this action individually, and on behalf of the following
21 proposed classes:

22 **California Class**

23 All persons or entities who, in the State of California, purchased, or
24 otherwise own, a Tesla Model S or Model X vehicle (the “Class
25 Vehicles”).

26 **California Software Affected Subclass**

27 All members of the California Class, who purchased, or otherwise own,
28 a Tesla Model S or Model X vehicle with batteries that were limited by
Tesla’s over-the-air (OTA) software updates versions 2019.16.1.1 and

1 2019.16.2 after May 15, 2019 and as a result, suffered from a reduction
2 of and loss in the number of rated range miles available for the vehicles.

3 126. Excluded from the proposed classes are Tesla, its employees, officers,
4 directors, legal representatives, heirs, successors, wholly or partly owned, and its
5 subsidiaries and affiliates, Tesla dealers, and the judicial officers and their immediate
6 family members and associated court staff assigned to this case, and all persons who
7 make a timely election to be excluded from the proposed classes.

8 127. Certification of Plaintiff's claims for class-wide treatment is appropriate
9 because Plaintiff can prove the elements of the claims on a class-wide basis using the
10 same evidence as would be used to prove those elements in individual actions alleging
11 the same claims.

12 128. This action has been brought and may be properly maintained on behalf of
13 the classes proposed herein under Federal Rule of Civil Procedure 23. There is a well-
14 defined community of interest in the litigation and the proposed class is ascertainable.

15 129. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the
16 classes proposed herein are so numerous and geographically dispersed that individual
17 joinder of all proposed class members is impracticable. While Plaintiff believes that there
18 are thousands of members of the proposed classes, the precise number of class members
19 is unknown to them but may be ascertained from Tesla's books and records. Class
20 members may be notified of the pendency of this action by recognized, court-approved
21 notice dissemination methods, which may include U.S. Mail, electronic mail, Internet
22 postings, and/or published notice.

23 130. Commonality and Predominance. Federal Rule of Civil Procedure 23(a)(2)
24 and (b)(3): This action involves common questions of law and fact, which predominate
25 over any questions affecting individual class members, including, without limitation:

26 a. Whether Tesla engaged in the conduct alleged herein;
27
28

- b. Whether Tesla designed, advertised, marketed, distributed, leased, sold, or otherwise placed the Class into the stream of commerce in the United States;
- c. Whether Tesla's acts and practices constitute unfair methods of competitions;
- d. Whether Tesla engaged in unfair acts or business practices in the conduct of trade;
- e. Tesla's motives for devising, manipulating, and executing the software updates to its vehicles;
- f. Whether and to what extent Tesla profited from the initial sale of battery capacity kWh to customers who purchased the upgrade from Tesla;
- g. Whether Tesla engaged in deceptive business practices by altering the fixed constant variable it uses to calculate and market the total number of miles available for its vehicles after customers purchase the vehicles;
- h. Whether Tesla's violated and continues to violate the Computer Fraud and Abuse Act (18 U.S.C. § 1030 *et seq.*);
- i. Whether Tesla violated and continues to violate the California Computer Crime Law;
- j. Whether Tesla's conduct constitutes trespass to chattels and/or conversion;
- k. Whether Tesla manipulated its software update to include changes in the method of calculating energy consumption;
- l. Whether Tesla knew about the negative effects that the May 15, 2019 software update has had on the Class Vehicles, including a decrease in the amount of maximum rated mileage range and a decrease in the amount of usable battery capacity;

- 1 m. Whether software updates which lead to a decrease in the amount
2 of usable battery capacity constitutes loss in value of the Class
3 Vehicles;
- 4 n. Whether Tesla manipulated the software as a way to avoid and
5 deny warranty battery replacements to Plaintiff and the other
6 putative class members;
- 7 o. Whether Tesla's conduct violates consumer protection statutes,
8 false advertisement laws, unfair business and trade practices
9 laws, and other laws as asserted herein;
- 10 p. Whether Tesla's unlawful, unfair, deceptive and fraudulent
11 practices harmed Plaintiff and the putative class members;
- 12 q. Whether Plaintiff and other putative class members are entitled
13 to equitable relief, including, but not limited to, restitution or
14 injunctive relief;
- 15 r. Whether Plaintiff and other putative class members are entitled
16 to damages and other monetary relief and, if so, in what amount;
- 17 s. Whether Plaintiff and the putative class members are entitled to
18 an award of punitive and exemplary damages based on Tesla's
19 conduct and violations as alleged herein and if so, in what
20 amount.

21 131. Typicality. Federal Rule of Civil Procedure 23(a)(3): Plaintiff's claims are
22 typical of the putative class members' claims because, among other things, all such class
23 members were comparably injured through Tesla's wrongful conduct as described above.
24 The relief that Plaintiff seeks is typical of the relief sought for the absent Class members.

25 132. Adequacy. Federal Rule of Civil Procedure 23(a)(4): Plaintiff is an adequate
26 proposed class representative because Plaintiff's interests do not conflict with the
27 interests of the other members of the proposed classes they seek to represent; Plaintiff has
28 retained counsel competent and experienced in complex litigation and the technology and
subject matter in regards to the underlying suit; and Plaintiff intends to prosecute this

1 action vigorously and have the financial resources to do so. The interests of the proposed
2 classes will be fairly and adequately protected by Plaintiff and Plaintiff's counsel.

3 133. Declaratory and Injunctive Relief. Federal Rule of Civil Procedure
4 23(b)(2): Tesla has acted or refused to act on grounds generally applicable to Plaintiff and
5 the other members of the proposed classes, thereby making appropriate final injunctive
6 relief and declaratory relief, as described below, with respect to the proposed classes as a
7 whole.

8 134. Injunctive relief is particularly necessary in this case because: (1) Plaintiff
9 and the other members of the putative classes desire to purchase products with the same
10 qualities and attributes as Tesla advertises its vehicles to have; (2) if Tesla actually
11 manufactured its vehicles with the qualities and attributes as deceptively represented,
12 Plaintiff and the other members of the putative classes would purchase the same; (3)
13 Plaintiff and the other putative class members do not have the ability to determine
14 whether Tesla's representations are true concerning the vehicles if they purchase vehicles
15 from Tesla in the future; and (4) Plaintiff and the other putative class members do not
16 have the ability to determine whether Tesla will attempt to, or actually commit the same
17 violations as alleged herein. Plaintiff and the other putative class members will likely
18 want to purchase Tesla's vehicles and continue driving electric vehicles such as the ones
19 that Tesla manufactures, however, they expect that Tesla will not misrepresent or conceal
20 defects in those vehicles, or subsequent variations thereof, and will provide clear
21 explanations regarding the software updates it issues without concealing or misrepresenting
22 the fact of what the software updates will do.

23 135. Superiority. Federal Rule of Civil Procedure 23(b)(3): Class actions are a
24 superior means for the fair and efficient adjudication of this controversy and action, when
25 compared to any other available means. It is unlikely that there will be any difficulties or
26 problems encountered with regards to management of this class action. A class action is
27 superior here also where damages, financial detriment, or any other harm that Plaintiff
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1 and the other putative class members have suffered is small in comparison and relation to
2 the large burden, unnecessary expense and costs spent if individual litigants proceeded
3 against Tesla instead of together as a class. Individual litigation and individual claims
4 sought against Tesla would make it impracticable for the members of the proposed
5 classes to individually seek redress for Tesla's wrongful conduct. Despite the likely fact
6 that individual class members have the means to and could afford to litigate as separate
7 individual actions, doing so would place unnecessary burden on the court and would not
8 promote judicial efficiency. Furthermore, individualized litigation creates a potential for
9 inconsistent or contradictory judgments, and it increases the delay and expense to all
10 parties and the court system. Undoubtedly here, the class action device presents far fewer
11 management difficulties and provides the benefits of single adjudication, economy of
12 scale, as well as comprehensive supervision by a single court.

13 136. Plaintiff is not aware of any obstacles likely to be encountered in the
14 management of this action that would preclude its maintenance as a class action. Federal
15 Rule of Civil Procedure Rule 23 provides the Court with the authority and flexibility to
16 maximize the efficiencies and benefits of the class mechanism and reduce management
17 challenges. The Court may, on motion of Plaintiffs, or on its own determination, certify
18 nationwide, statewide and/or multistate classes for claims sharing common legal
19 questions, utilize the provisions of Rule 23(c)(4) to certify any particular claims, issues,
20 or common questions of fact or law, for class-wide adjudication; certify and adjudicate
21 bellwether class claims; and utilize Rule 23(c)(5) to divide any Class into Subclasses.

22 **VII. TOLLING OF STATUTE OF LIMITATIONS**

23 **A. Fraudulent Concealment**

24 137. Tesla has known of the issues relating to the batteries of its vehicles since at
25 least June 16, 2018, after a Tesla Model S Vehicle caught on fire and exploded in Los
26 Angeles, CA. Tesla obtained further knowledge of the defects contained in certain Class
27 Vehicles of its Model S and Model X fleet. Tesla, however, has concealed from, or failed
28

1 to notify, Plaintiff, members of the putative classes, and the general public of the full and
2 complete nature of the battery defects or cause of the vehicle fires worldwide. Although
3 Tesla acknowledged that there are battery defects in the Class Vehicles, Tesla has not
4 determined a cause for recent fires, including the ones in Hong Kong and Shanghai.

5 138. However, Tesla knew or should have known that a heightened risk of battery
6 fires could potentially occur as evidenced by Tesla's software updates where it updated
7 the thermal management software for its vehicles' batteries.⁴⁴ As described above, Tesla
8 maintains nearly absolute exclusivity regarding its software updates and the batteries of
9 their vehicles. Tesla represents that its "team of battery experts uses...data to thoroughly
10 investigate incidents that occur and understand the root cause." As recently as May 2019,
11 Tesla represents that it is still continuing investigations into the root cause of the battery
12 fires. To this day, Tesla has failed to provide, inform, or notify its customers of the root
13 cause for the battery issues, and Tesla refuses to acknowledge that the batteries in its
14 vehicles are defective, or initiate a recall of the Class Vehicles.

15 139. Thus, any applicable statute of limitations has therefore been tolled by
16 Tesla's knowledge, active concealment, and denial of the facts alleged herein, for which
17 Tesla continues to operate with the ongoing fraudulent behavior.

18 **B. Estoppel**

19 140. Tesla was, and is, under a continuous duty to disclose to Plaintiff and the
20 putative class members the true character, quality, and nature of the Class Vehicles.
21 Tesla actively concealed the true character, quality, and nature of the vehicles, and
22 knowingly made misrepresentations about the quality, reliability, characteristics and
23 performance of the vehicles. Plaintiff and members of the proposed classes reasonably
24 relief upon Tesla's knowing, and affirmative misrepresentations and/or active
25

26 44 Business Insider, "Tesla is updating its battery software after 2 seemingly spontaneous fires",
27 May, 16, 2019, website <https://www.businessinsider.com/tesla-updates-battery-software-after-a-shanghai-hong-kong-fires-2019-5>, (last accessed Aug. 3, 2019).

1 concealment of these facts. Based on the foregoing, Tesla is estopped from relying on
2 any statute of limitations or asserting the same in defense of this action.

3 **C. Delayed Discovery Doctrine**

4 141. The causes of action alleged herein did not accrue until Plaintiff and
5 members of the proposed classes discovered that their vehicles had the defective and
6 potentially lethal batteries. Plaintiff and the other proposed class members had no
7 realistic or reasonable ability to determine that their vehicles' batteries were defective
8 until after updating experiencing the severe drop in rated mile range, loss in performance
9 and supercharging speeds. Plaintiff and the proposed class members would have had no
10 reason to discover their causes of action, given the fact that Tesla maintains near-
11 complete exclusivity regarding any battery information, tesla's fraudulent
12 misrepresentations, active concealment and deceit which clearly show that Tesla has
13 actually engaged in unlawful business practice amongst other violations alleged herein.

14 **VIII. CAUSES OF ACTION**

15 **COUNT 1**

16 **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**
17 **(18 U.S.C. § 1030 *et seq.*)**

18 142. Plaintiff realleges and incorporates by reference all paragraphs as though
19 fully set forth herein.

20 143. Plaintiff brings this count on his own behalf and on behalf of the Nationwide
21 Classes. In the alternative, Plaintiff brings this count on his own behalf and on behalf of
22 the California Subclasses.

23 144. The federal Consumer Fraud and Abuse Act ("CFAA") establishes a private
24 cause of action against a person who "knowingly accessed a computer without
25 authorization or exceeding authorized access," and whose prohibited access results in
26 damage or loss in excess of \$5,000 in any 1-year period 18 U.S.C. § 1030(a)(4).
27
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1 145. The CFAA also establishes liability against whomever: “knowingly causes
2 the transmission of a program, information, code or command, and as a result of such
3 conduct, intentionally causes damage without authorization to a protected computer” (§
4 1030(a)(5)(A)); “intentionally accesses a protected computer without authorization, and
5 as a result of such conduct, recklessly causes damage (§ 1030(a)(5)(B)); or “intentionally
6 accesses a protected computer without authorization, and as a result of such conduct,
7 causes damage and loss. (§1030(a)(5)(C)).

8 146. Lastly, as applicable here, the CFAA establishes liability against whomever,
9 “with intent to extort from any person any money or other thing of value, transmits in
10 interstate or foreign commerce any communication containing any demand or request for
11 money or other thing of value in retaliation to damage to a protected computer, where
12 such damage was caused to facilitate the extortion.

13 147. The term “computer” means “an electronic, magnetic, optical,
14 electrochemical, or other high speed data processing device performing logical,
15 arithmetic, or storage functions, and includes any data storage facility or communications
16 facility directly related to or operating in conjunction with such device[.]” 18 U.S.C. §
17 1030(e)(1).

18 148. A “protected computer” is defined, in relevant part, as a computer “which is
19 used in or affecting interstate or foreign commerce or communication.” 18 U.S.C. §
20 1030(e)(2)(B).

21 149. “[E]xceeds authorized access” means “access[ing] a computer with
22 authorization and to use such access to obtain or alter information in the computer that
23 the accesser is not entitled to obtain or alter...” 18 U.S.C. § 1030(e)(6).

24 150. “Loss” means any reasonable cost to any victim, including the cost of
25 responding to an offense, conducting a damage assessment, and restoring the data,
26 program, system or information to its condition prior to the offense, and any revenue lost,
27
28

1 cost incurred, or other consequential damages incurred because of interruption of
2 service.” 18 U.S.C. § 1030(e)(11).

3 151. Damage means “any impairment to the integrity or availability of data, a
4 program, a system, or information.” 18 U.S.C. § 1030(e)(8).

5 152. The term “loss” is defined as “any reasonable cost to any victim, including
6 the cost of responding to an offense, conducting a damage assessment, and restoring the
7 data, program, system, or information to its condition prior to the offense, and any
8 revenue lost, cost incurred, or consequential damages incurred because of interruption of
9 service. 18 U.S.C. § 1030(e)(11).

10 153. The term “person” means any individual, firm, corporation, educational
11 institution, financial institution, governmental entity, or legal or other entity.” 18 U.S.C. §
12 1030(e)(12).

13 154. The Class vehicles are “computers” in under the CFAA by virtue of Tesla’s
14 vehicles containing Media Control Unit” (MCU) which provides data processing, GPS,
15 communication functions, amongst others and serves as the receiving end of Tesla’s
16 over-the-air software updates.

17 155. The Class vehicles are also “protected computers” under the CFAA because
18 they are used in and affect interstate and foreign commerce and communication,
19 including through contact and communication with remote servers, personal and business
20 usages that affect interstate and foreign commerce, and because Tesla’s vehicles are
21 powered and maintained by computers which ensure that Tesla vehicles can operate and
22 drive in furtherance of the stream of interstate and foreign commerce.

23 156. Tesla caused Plaintiff and the putative class members to download and
24 install software updates to their vehicles without informing them that the updates
25 contained code that would diminish performance, lower the maximum amount of usable
26 battery capacity, throttle or lower the rate of charging speed, lower the amount of voltage
27 for battery cells from 4.2 volts to a lower number, modify and manipulate the fixed
28

1 constant variable used when advertising its cars to Plaintiff and the putative class
2 members and modifying the same where it sent the same numbers to the EPA to calculate
3 EPA estimated mileage ratings, in order to avoid its warranty obligations and conceal the
4 defective nature of the vehicles and batteries. Plaintiff and the other putative class
5 members did not give permission for Tesla to install the updates, including updates
6 2019.16.1 and 2019.16.2, as Tesla failed to provide material information to Plaintiff and
7 the putative class members regarding the updates.

8 157. Tesla violated 18 U.S.C. § 1030(a) by knowingly causing the transmission
9 of vehicle software updates 2019.16.1 and 2019.16.2 to Plaintiff and the putative class
10 members' vehicles to access, collect, and transmit information to vehicles, which are
11 protected computers as defined above. By transmitting information and software updates
12 to the vehicles, Tesla intentionally caused damage without authorization, or at the very
13 least, exceeded the authorization to Plaintiff and the other putative class members'
14 vehicle by impairing the ability of the vehicles to operate as warranted, represented, and
15 advertised by Tesla.

16 158. Tesla knowingly and intentionally exceed its authorized access to Plaintiff
17 and the other putative class members' vehicles. Plaintiff and the other putative class
18 members did not consent to Tesla's manipulations with their vehicles Battery
19 Management System, nor did Plaintiff and the other putative class members consent to
20 Tesla limiting the maximum charge voltage and usable amount of battery capacity which
21 lead to significant amounts of range loss and performance of these vehicles.

22 159. By exceeding its authorized access, Tesla obtained and altered the
23 information, function and other unknown variables and failed to inform Plaintiff and
24 other owners of the Class Vehicles of the reduced battery capacity and software limited
25 charging capabilities. Tesla's did so with an intent to defraud Plaintiff and the other
26 putative class members and furthered the fraudulent intent to avoid its duties and legal
27 obligations to provide Plaintiff and the putative class members with battery replacements
28

1 under warranty. The cost of an out-of-pocket battery replacement is approximately
2 \$20,000 to \$25,000, and therefore Tesla's fraudulent intent and conduct as alleged herein
3 constitutes a violation of 18 U.S.C. § 1030(a)(4).

4 160. Tesla's acts have also caused actual monetary loss in terms of lost kWh
5 battery capacity. Tesla charges consumers and its customers actual money in order to
6 unlock battery capacity yet denies reimbursement of monies for the same when it takes
7 the same away from customers like Plaintiff.

8 161. As alleged above and herein, Tesla knowingly caused the transmission of "a
9 program, information, code, or command..." to a protected computer" and as a result of
10 that conduct, intentionally caused damage to Plaintiff and the putative class. 18 U.S.C. §
11 1030(a)(5)(A).

12 162. Tesla's software updates caused damage and loss to Plaintiff and other
13 putative class members, including a significant decrease in range and usable battery
14 capacity, impairment of Plaintiff and the other putative class members ability to use their
15 own property, forcing Plaintiff and the other putative class members to expend time,
16 money, and labor in conduction with their vehicles and to investigate and determine what
17 the right fix would be for the Class Vehicles. Tesla caused damages and loss to Plaintiff
18 and the putative class members during a one-year period that exceeds \$5,000 in value in
19 the aggregate.

20 163. Unless Tesla is retrained and enjoined, Tesla will continue to commit such
21 acts. Plaintiff's remedy at law is thus inadequate to compensate for these intentionally
22 inflicted and threatened injuries, therefore entitling Plaintiff and the putative class to
23 remedies including injunctive relief as provided for by § 1030(g).

24 164. Therefore, Plaintiff and the putative class members are entitled to obtain
25 compensatory damages, injunctive relief, or other equitable relief as provided under 18
26 U.S.C. § 1030(g).

27 ///

COUNT 2
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT (“MMWA”)
(15 U.S.C. § 2301 *et seq.*)

1
2
3 165. Plaintiff realleges and incorporates by reference all preceding paragraphs as
4 though fully set forth herein.

5 166. Plaintiff brings this count on his own behalf, the Nationwide Class, and the
6 California Classes.

7 167. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301
8 by virtue of 15 U.S.C. § 2310(d).

9 168. The Class Vehicles are a “consumer product” as defined by the term in 15
10 U.S.C. § 2301(1).

11 169. Plaintiff and the other Class members are “consumers” as defined by the
12 term in 15 U.S.C. § 2301(3).

13 170. Tesla is a “warrantor” and “supplier” as defined by the terms in 15 U.S.C. §
14 23014) and (5).

15 171. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is
16 damaged by the failure of a warrantor to comply with an implied or written warranty.

17 172. As described herein, Tesla provided Plaintiff and the other Class members
18 with “implied warranties” and “written warranties” as those terms are defined in 15
19 U.S.C. § 2301 *et seq.*

20 173. Tesla provided warranties to the Class Vehicles consisting of either a either
21 a 48-month, 50,000-mile new vehicle warranty or a 24-month, 100,000-mile limited
22 warranty against defects in materials or workmanship to the Class Vehicles.

23 174. Tesla also provided an 8-year, unlimited mile battery warranty for the Class
24 Vehicles. The Class Vehicles were provided these express and implied warranties by
25 Tesla.
26
27
28

1 175. Tesla breached these written and implied warranties as described in the
2 allegations herein, with respect to the batteries of the Class Vehicles and by failing to
3 acknowledge that Plaintiff's battery and those of other Class members were defective and
4 eligible to be replaced under Tesla's written and implied warranties.

5 176. By Tesla's conduct described and alleged herein, including Tesla's
6 knowledge that the batteries of the Class Vehicles were abnormally degraded or
7 otherwise defective, Tesla has failed to comply with its obligations under their written
8 and implied promises, warranties, and representations.

9 177. In its capacity as a warrantor, and by the conduct and allegations described
10 herein, any attempts by Tesla to limit the implied warranties in a manner that would
11 exclude coverage is unconscionable and any such effort to disclaim, or otherwise limit
12 liability is null and void.

13 178. The transactions by which Plaintiff and the putative class members
14 purchased the Class Vehicles were transactions for the sale of goods and at all times
15 relevant, Tesla was the original seller of the Class Vehicles and placed these products
16 into the stream of commerce throughout the United States, including California. At all
17 times relevant, Tesla maintained showroom stores and vehicle service centers in
18 California.

19 179. The Class Vehicles came with an implied warranty that any parts thereof
20 were merchantable, were the same quality as those generally accepted in the trade, were
21 not of poor or below average quality within the description and/or conformed to the
22 affirmations of fact made by Tesla.

23 180. The Class Vehicles, however, were non-conforming goods and/or goods that
24 were not the same quality as those generally accepted in the trade, were of poor or below
25 average quality within the description and/or did not conform to affirmations of fact
26 disseminated by Tesla because they did not achieve the advertised and displayed
27 estimated approximate mileage range as displayed by Tesla for the Class Vehicles.
28

1 181. The Class Vehicles, at all times relevant herein, were of poor or below
2 average quality within the description of electric vehicles with the same capacity battery
3 for similar Tesla Model S and X vehicles.

4 182. The Class Vehicles, at all times relevant herein, did not and do not have the
5 quality that a buyer would reasonably expect.

6 183. As a direct and proximate result of the foregoing, Plaintiff and the putative
7 class members sustained loss and damage and did not receive the benefit of their bargain.

8 184. All jurisdictional prerequisites have been satisfied.

9 185. Plaintiff and the other Class members are in privity with Tesla in that they
10 purchased the Class Vehicles from Tesla or its agents or are otherwise covered as
11 subsequent legal owners of Class Vehicles.

12 186. Plaintiff satisfied the duties required under the New Vehicle Limited
13 Warranty, including updating his car with Tesla's software updates without delay, and by
14 first submitting his claim for warranty battery replacement to the NCDS arbitration as
15 required by the warranty.

16 187. As a result of Tesla's breach of warranties, Plaintiff and the other Class
17 members are entitled to revoke their acceptance of the Class Vehicles, obtain damages
18 and equitable relief, and obtain costs pursuant to 15 U.S.C. § 2310 *et seq.*

19
20 **COUNT 3**
21 **VIOLATION OF CALIFORNIA'S SONG-BEVERLY CONSUMER WARRANTY**
22 **ACT ("SONG-BEVERLY")**
23 **(Cal. Civ. Code § 1790 *et seq.*)**

24 188. Plaintiff realleges and incorporates by reference all preceding paragraphs as
25 though fully set forth herein.

26 189. Plaintiff brings this count on his own behalf, the Nationwide Class, and the
27 California Classes.
28

1 190. Pursuant to California’s Song Beverly Consumer Warranty Act (“Song-
2 Beverly”) Cal. Civ. Code §1790 et seq., the Class Vehicles are “consumer goods”
3 purchased primarily for family or household purposes and Plaintiff and the other Class
4 members have used the Class Vehicles primarily for those purposes.

5 191. Plaintiff and the other Class members are considered “buyers” of consumer
6 goods under Song-Beverly.

7 192. Tesla is a “seller” and “retailer” under Song-Beverly.

8 193. Tesla provided warranties to the Class Vehicles consisting of either a either
9 a 48-month, 50,000-mile new vehicle warranty or a 24-month, 100,000-mile limited
10 warranty against defects in materials or workmanship to the Class Vehicles.

11 194. Tesla also provided an 8-year, unlimited mile battery warranty for the Class
12 Vehicles. The Class Vehicles were provided these express and implied warranties by
13 Tesla and are fully transferable to all subsequent legal owners.

14 195. Plaintiff’s vehicle was a Class Vehicle that Plaintiff legally obtained with
15 serious defects and nonconformities, including but not limited to a defective,
16 malfunctioning, or otherwise abnormally degraded battery.

17 196. The foregoing defects and nonconformities to the warranty manifested
18 themselves within the applicable implied and express warranty periods. The
19 nonconformities substantially impair the use, value and/or safety of the vehicle and
20 violate the implied warranty of merchantability.

21 197. Tesla provided the aforementioned warranties in consideration for the
22 purchase of the Class Vehicles, and said warranties became part of the basis of the
23 bargain, because it was incorporated into the purchase agreements of the Class Vehicles.

24 198. Plaintiff and the putative class members learned about the existence of such
25 warranty’s pre-purchase/pre-lease, and as reasonable persons, relied on the existence of
26 such warranties. Plaintiff and the putative class members conduct of purchasing the
27 Class Vehicles was in accordance with their reliance on the described warranties.
28

1 199. Plaintiff’s vehicle has a defective battery, such that it is a defect in materials
2 and/or workmanship and is expressly covered under the warranty. Applying any
3 warranty limitation period to avoid the need to repair this particular defect would be
4 unconscionable in that, inter alia, the vehicles at issue contain a defect at the time of
5 deliver, Tesla was either aware of or consciously and/or recklessly disregarded this defect
6 which could not be discovered by Plaintiff and putative class members at the time of such
7 purchase of the Class Vehicles, and said purchasers lacked any meaningful choice with
8 respect to the warranty terms.

9 200. Plaintiff and the putative class members substantially performed all of their
10 obligations under the warranty, by presenting the Class Vehicles to authorized Tesla
11 repair facilities during the warranty coverage period and/or by accepting all of the over-
12 the-air updates provided by Tesla.

13 201. Defendants have and continue to breach said express warranties by failing to
14 repair the defects in materials and workmanship in the Class Vehicle batteries despite the
15 Class Vehicles sudden and significant decrease in range and ability to charge at
16 maximum battery capacity as a result of Tesla’s software updates, including 2019.16.1
17 and 2019.16.2

18 202. Furthermore, Tesla represented on their website for each of the Class
19 Vehicles, the Environmental Protection Agency (“EPA”) estimated mileage for Plaintiff’s
20 vehicle, and for the Class Vehicles to Plaintiff and the putative class members.

21 203. Tesla’s representations that Plaintiff and the other putative class members’
22 vehicles batteries were experiencing normal degradation and that Tesla did not
23 manipulate its software updates to throttle the performance of the Class Vehicles,
24 including lowering the maximum amount of battery capacity available and decreasing the
25 rate of charge for the batteries were false representations of fact, that were known by
26 Tesla to be untrue at the time they were made and were intended to create reliance by
27 Plaintiff and the putative class members.
28

1 204. Tesla's failure to recognize the fact that the severe battery degradation in
2 Plaintiff's vehicle was sudden and not normal degradation as Tesla falsely represented.
3 Plaintiff and the other putative class members were harmed by Tesla's failure to
4 recognize the sudden and significant decrease in performance of the Class Vehicles as
5 well as Tesla's refusal to provide repairs or replacements as warranted.

6 205. Tesla breached the express warranties by maliciously and fraudulently
7 pushing its software updates to the Class Vehicles, which resulted in a decrease in
8 performance, significantly lower range mileage, and a slower speed of battery charging in
9 the Class Vehicles. Tesla further breached the express warranties by refusing to repair,
10 fix, replace, or remedy the damage it caused to the Class Vehicles.

11 206. Tesla's breach caused injury to Plaintiff and putative class members,
12 because Plaintiff and putative class members did not get the benefit of their bargain,
13 which included, inter alia, a battery that would not be capable of charging to the
14 maximum amount of full battery capacity as advertised by Tesla for the Class Vehicles.

15 207. Tesla breached and continues to breach the express warranties as alleged
16 herein, because: the Class Vehicles do not meet the mileage range as estimated and
17 advertised by Tesla; because Tesla fails to repair/fix the flaws in the Class Vehicles'
18 batteries; because Tesla fails to recognize the fact that Plaintiff's vehicle suffered from a
19 sudden and significant range loss due to Tesla's manipulations of the vehicle's software
20 and limiting the maximum amount of usable battery capacity and lowering the rate at
21 which the batteries can be charged.

22 208. As a result of Tesla's breach of express warranties as set forth above,
23 Plaintiff and other putative class members have suffered and will continue to suffer
24 damages in an amount to be determined at trial. Plaintiff and the other Class members are
25 entitled to and seek damages and other legal and equitable relief, including, but not
26 limited to, all incidental, consequential and general damages resulting from Tesla's
27 failure to comply with its warranty obligations under Song-Beverly.
28

1 215. Tesla provided the software updates to Plaintiff and the putative class
2 members as part of a scheme or artifice to defraud and deceive, because it provided the
3 updates instead of informing them of the defects and battery issues that were inherent
4 with the vehicles. Tesla could have informed consumers that the battery problems and
5 other related issues they were having with their vehicles could be resolved via battery
6 replacements under warranty. Instead, Tesla chose to fraudulently conceal any issues and
7 throttled the batteries and vehicles' performance via installation of nefarious and
8 unauthorized installation.

9 216. Tesla offered the software updates not because they wanted to increase the
10 battery longevity and for safety precautions as it had fraudulently represented, but rather,
11 to escape and avoid the duties and legal obligations it had warranted and promised to
12 Plaintiff and the other putative class members. Tesla did so to avoid costs and drive up
13 profits from customers and the putative class members by having them purchase
14 replacement batteries.

15 217. By offering software updates 2019.16.1 and 2019.16.2 to Plaintiff and the
16 other putative class members, Tesla disrupted or caused the disruption of vehicle
17 capabilities when it improperly and unlawfully throttled the batteries of the vehicles and
18 manipulated the calculations and coding for the BMS of the Class Vehicles. Plaintiff and
19 the putative class members did not consent to having their battery capacities and charging
20 capabilities throttled, and had they known that the software updates would result in the
21 significant decrease in rated mileage range and usable battery capacity in their vehicles,
22 they would not have installed the software updates.

23 218. As a result of Tesla's unlawful conduct, Plaintiff and the other putative class
24 members were damaged in an amount to be determined at trial.

25 219. Plaintiff and the putative class members seek all monetary and non-
26 monetary relief allowed by law, including damages and punitive damages, an order
27
28

1 enjoining the acts and practices described above, attorneys' fees, and costs under the
2 CDAFA.

3 **COUNT 5**
4 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
5 **(Cal. Bus. & Prof. Code § 17200 et seq.)**

6 220. Plaintiff realleges and incorporates by reference all paragraphs as though
7 fully set forth herein.

8 221. Plaintiff brings this count on his own behalf and on behalf of the Nationwide
9 Classes. In the alternative, Plaintiff brings this count on his own behalf and on behalf of
10 the California Subclasses.

11 222. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §
12 17200, et seq., proscribes acts of unfair competition, including "any unlawful, unfair or
13 fraudulent business act and unfair, deceptive, untrue or misleading advertising."

14 223. Tesla's conduct, as described herein, was performed in and emanated from
15 California and constitutes various different violations of the UCL. Tesla's conduct
16 violates the UCL in at least the following ways:

- 17 a. By manipulating its software and calculations for Plaintiff and the
18 other putative class members' vehicles Battery Management System
19 in order to avoid its duties and legal obligations to Plaintiff and the
20 other putative class members
- 21 b. By engaging in conduct under the guise of "improving battery life
22 and longevity" despite knowing that vehicles would be affected by
23 limiting the maximum voltage charge capacity of the Class
24 Vehicles;
- 25 c. By reducing the amount of available battery capacity (kWh) of
26 Plaintiff's vehicle and vehicles owned by the other putative class
27 members, and failing to acknowledge that the decrease in range of
28 these vehicles resulted in actual monetary loss and other harm to
Plaintiff and the putative class members;

- 1 d. By failing to inform or take reasonable steps to inform Plaintiff and
2 the putative class members that the software updates would lead to
3 said decrease in maximum usable battery capacity, limit the charge
4 voltage of the batteries, lower the maximum charging speed and
5 performance of Plaintiff's vehicle, as well as other Class Vehicles;
6
7 e. By forcing customers like Plaintiff and the other putative class
8 members to accept Tesla's software updates as a condition of
9 eligibility for warranty service, when Tesla failed its duties and legal
10 obligations to Plaintiff and other putative class members by denying
11 warranty battery replacements;
12
13 f. By manipulating the software and variables used to calculate the
14 amount of maximum rated miles which thereby artificially raised
15 mileage range and therefore effectively bar Plaintiff and other
16 putative class members from receiving warranty battery
17 replacements;
18
19 g. Designing, manufacturing, marketing and selling the Class Vehicles
20 to consumers that contained material and fundamental defects
21 without disclosing such defects to consumers;
22
23 h. Marketing and selling Class Vehicles that were not merchantable for
24 the purpose of providing reliable and safe transportation.
25
26 i. Marketing and selling Class Vehicles while concealing material
27 facts from Plaintiff and other putative class members regarding
28 defects in the batteries that would be subsequently updated with
software that would serve as the basis for denial of warranty battery
replacements;
j. Concealing from Plaintiff and the other putative class members that
Tesla intended to manipulate its software, including by changing the
fixed constant variable rate when calculating rated miles for
Plaintiff's vehicle so that Tesla could avoid its duties and legal
obligations to Plaintiff and the putative class;
k. Fraudulently representing to Plaintiff and the putative class
members that the software updates were intended for either safety
or battery life and longevity, which were fraudulent representations

1 because Tesla knew, or should have known that the Class Vehicles
2 would suffer from a severe decrease in range and that Tesla would
3 deny rightful warranty coverage to the Class Vehicles;

- 4 1. Concealing from Plaintiff and other putative class members that
5 Tesla was in breach and intended to breach its warranty obligations
6 by, among other things: (1) manipulating the fixed constant variable
7 rate of 295 Wh/mi to 276 Wh/mi; (2) by using other means to
8 artificially inflate Plaintiff and the other class members' vehicles
9 rate miles; (3) by refusing to acknowledge and perform under the
10 warranties it provided; (4) by fraudulently representing that the
11 batteries in Plaintiff and the other class members' vehicles were not
12 severely degraded, and therefore ineligible for warranty battery
13 replacement; (5) by creating administrative hassles for Plaintiff and
14 the other putative class members to seek arbitration with the
15 National Center for Dispute Resolution and knowing that Plaintiff
16 and the putative class members' warranty claims would not be
17 resolved, to adjudicate warranty claims when Tesla knew that it
18 would maintain the improper position that the batteries were not
19 eligible for warranty replacement or repair; and (6) misleading
20 Plaintiff and the other putative class members that the software
21 updates to their vehicles would not affect the value of their vehicles;
- 22 m. By limiting the amount of maximum battery capacity usable by the
23 cars in a way to prevent performance under its duties to Plaintiff and
24 other putative class members as warranted;
- 25 n. By throttling the rate of charge for the Class Vehicles' batteries, and
26 manipulating its software to cause an overall decrease in
27 performance of the Class Vehicles;
- 28 o. By knowingly, and fraudulently denying Plaintiff and other putative
class members warranty battery replacements despite having the
exclusive knowledge and information regarding the batteries;
- p. By failing, and potentially putting Plaintiff and other putative class
members at life-threatening risks where Tesla has the exclusive
knowledge regarding the batteries of its vehicles yet has failed to
inform owners of the Class Vehicles;

- 1 q. By intentionally misrepresenting to Plaintiff and other putative class
2 members that there was no affect or decrease in value following
3 software updates that reduced the maximum usable battery
4 capacities for these vehicles;
- 5 r. By denying rightful reimbursement and monetary payment for the
6 sudden loss of maximum usable battery capacity despite having
7 been unjustly enriched from the profits of selling the same;
- 8 s. By violating the federal Computer Fraud Abuse Ac, 18 U.S.C. 1030
9 § *et seq.*, and California’s Computer Crime Law, Cal. Pen. Code §
10 502 *et seq* where Tesla committed acts in violation of these laws as
11 alleged herein; and
- 12 t. By violating other California laws, including California laws
13 governing false advertising, consumer protection, and warranties.

14 224. As alleged herein, Tesla’s conduct in committing these violations of the
15 UCL are immoral, unethical, oppressive, unscrupulous, and substantially injurious to
16 Plaintiff and the putative class members.

17 225. Tesla’s misrepresentations, omissions, and fraudulent act alleged herein,
18 which emanated from its headquarters in California and multiple showroom store and
19 service center locations in California, caused Plaintiff and putative class members to
20 suffer from loss in value for what they had paid for.

21 226. As a direct and proximate result of Tesla’s unfair, unlawful and fraudulent
22 acts and practices, Plaintiff and other putative class members have suffered injury in fact,
23 including lost money or property, as a result of Tesla’s misrepresentations and omissions.
24 Plaintiff and the other putative class members have also suffered injury in fact, in the
25 form of actual loss of battery capacity kWh for their vehicles, resulting in significant
26 decreases in mileage range, slower rate of charging speeds, and an overall decrease of
27 performance with their vehicles.
28

1 234. Plaintiff and other putative Nationwide class members are “consumers” as
2 defined in Cal. Civ. Code § 1761(d), and Plaintiff, the other class members, and Tesla are
3 “persons” as defined in Cal. Civ. Code § 1761(c).

4 235. As alleged above, Tesla made numerous representations concerning the
5 quality, performance, effectiveness, performance, safety, and status of the Class Vehicles,
6 that were misleading, all of which emanated from Tesla’s headquarters in California, as
7 well as Tesla’s showroom stores and service centers throughout California, and publicly
8 displayed on Tesla’s website.

9 236. In purchasing the Class Vehicles, Plaintiff and other putative Nationwide
10 class members were deceived by Tesla’s fraudulent and deceptive advertising, and for
11 failing to disclose certain material facts regarding the Class Vehicles as required by
12 federal and state laws.

13 237. Tesla knew that the batteries of the Class Vehicles were defective and that
14 they would be unable to be safely used as intended, advertised, and as purchased by
15 Plaintiff and the other putative class members.

16 238. Tesla’s conduct as described herein was and is in violation of the CLRA.
17 Tesla’s conduct emanates from its headquarters in California and violates at least the
18 following enumerated CLRA provisions:

- 19
- 20 a. Cal. Civ. Code § 1770(a)(6): Representing that goods have
21 sponsorship, approval, characteristics, uses, benefits, or
22 quantities which they do not have;
 - 23 b. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a
24 particular standard, quality, or grade, if they are of another;

25 239. Had Tesla disclosed to Plaintiff and the putative class members that it
26 misrepresented the batteries of its vehicles and operating software, omitted material
27 information regarding the defects and battery issues, omitted material information
28

1 regarding the operating software, and was otherwise engaged in common business
2 practices that ultimately hurt consumers, Tesla would have been unable to continue in
3 business and it would have been forced to disclose the uniform defects in its vehicles and
4 their batteries.

5 240. Tesla knew as early as July 2017, that the batteries of the Class Vehicles
6 were defective and that the batteries would need to be throttled in order to prevent risk of
7 fire and life-threatening harm to Plaintiff and the putative class members. Tesla failed to
8 inform Plaintiff and the putative class members of the defects and subsequent
9 manipulations of software and instead, represented that its vehicles were continually
10 improving in speed and performance and performed better than other similar gasoline
11 cars in the market, and that the software updates were issued to improve the health and
12 longevity of the batteries.. Plaintiff and the other putative class members acted
13 reasonably in relying on Tesla's misrepresentations and omissions, the truth of which
14 they could not have discovered.

15 241. Plaintiff provided Tesla with notice of its violations of the CLRA pursuant
16 to Cal. Civ. Code § 1782(a). The notice was transmitted to Tesla on July 28, 2019.
17 Plaintiff's letter was sent via Certified Mail, advising Tesla of the multiple violations of
18 the CLRA, UCL, federal and state warranty and consumer protection statutes, as well as
19 Tesla's deceptive and fraudulent business practices. Plaintiff demanded that Tesla
20 comply with its duties under the laws asserted herein, to include a replacement battery
21 under warranty, or payment in the amount to compensate Plaintiff and the putative class
22 members for the loss in value, and to cease any further updates that would negatively
23 affect the value of the vehicles, amongst other forms of corrective action, including
24 payment of costs incurred and attorneys' fees incurred as provided for by the CLRA.

25 242. In accordance with Cal. Civ. Code § 1780(a) Plaintiff and members of the
26 putative class seek only injunctive relief for Tesla's violations of the CLRA at this
27 juncture.
28

1 243. While Plaintiff and the putative class members do not seek to recover
2 damages under the CLRA in this Complaint, after mailing appropriate notice and demand
3 in accordance with Cal. Civ. Code § 1782(a) & (d) on July 28, 2019, Plaintiff will
4 subsequently amend this Complaint to also include a request for compensatory and
5 punitive damages because Plaintiff and the putative class members have suffered injury
6 in fact and actual damages resulting from Tesla's material omissions and
7 misrepresentations because Plaintiff and putative class members would not have
8 purchased the Class Vehicles or would have paid significantly less, had Tesla been
9 compliant with the relevant federal and state laws. Plaintiff and the putative class
10 members were damaged by not getting the benefit of their bargain and overpaid for the
11 Class Vehicles. Plaintiff and the putative class members also have suffered actual money
12 injury in that they have lost actual usable battery capacity as a result of Tesla's acts,
13 and/or they are forced to pay monies out-of-pocket for battery replacements through
14 Tesla.

15 244. In an amendment to this complaint, and following the notice sent on July 28,
16 2019, Plaintiff will seek an additional award against Tesla, under Cal. Civ. Code §
17 1780(b) of up to \$5,000 for each Class member who qualifies as a "senior citizen" or
18 "disabled person" under the CLRA on behalf of the putative class members. Tesla knew
19 or should have known that its conduct was directed to one or more putative class
20 members who are senior citizens or disabled persons. Tesla's conduct caused putative
21 class members who are senior citizens or disabled persons to suffer a substantial loss of
22 property set for retirement or for personal or family care and maintenance, or assets
23 essential to the health or welfare of the senior citizen or disabled person. One or more
24 putative class members who are senior citizens or disabled persons are substantially more
25 vulnerable to Tesla's conduct because of age, poor health or infirmity, impaired
26 understanding, restricted mobility, or disability, and each of them suffered substantial
27 physical, emotional, or economic damage resulting from Tesla's conduct.

1 and which were known, or which by exercise of reasonable care should have been known
2 to Tesla, to be untrue and misleading to consumers, including Plaintiff and putative class
3 members.

4 250. Tesla has violated Cal. Bus. & Prof. Code §§17500 *et seq.* because the
5 misrepresentations and omissions regarding the safety, reliability, and functionality of the
6 Class Vehicles, as set forth in this complaint, were material and likely to deceive
7 reasonable consumers like Plaintiff and the putative class members.

8 251. Plaintiff and other putative class members have suffered an injury in fact,
9 including the loss of money or property, as a result of Tesla's unfair, unlawful, and/or
10 deceptive practices. In purchasing the Class Vehicles, Plaintiff and putative class
11 members relied on the misrepresentations and/or omissions with respect to the safety,
12 performance, and reliability of the Class Vehicles, including representations as to the
13 battery health, condition, capacity, and mileage range.

14 252. Tesla's representations turned out not to be true because the Class Vehicles
15 were sold with batteries that were abnormally degraded, dangerously defective, faulty,
16 inoperable, unsafe or otherwise not capable of reaching close to the maximum battery
17 capacity as advertised and represented by Tesla.

18 253. Tesla knew as early as July 2017 that the batteries in the Class Vehicles
19 were defective and unable to be charged to the maximum amount of usable battery
20 capacity without the risk of serious harm or injury. Tesla failed to advise or inform
21 Plaintiff and the putative class members that their batteries would later be throttled to
22 reduce the available miles and battery capacity usable in their vehicles. Had Plaintiff and
23 putative class members known about this, they would not have purchased the Class
24 Vehicles, or would not have paid as much for them. Accordingly, Plaintiff and putative
25 class members overpaid for the Class Vehicles and did not receive the benefit of their
26 bargain.
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1 267. Plaintiff brings this count on his own behalf and on behalf of the Nationwide
2 Class. In the alternative, Plaintiff brings this count on his own behalf and on behalf of
3 the California Subclasses.

4 268. At the time Plaintiff and the other putative class members purchased their
5 vehicles, Tesla did not disclose, but instead concealed and misrepresented, the battery
6 defects and issues with the vehicles as discussed herein.

7 269. Further, Tesla represented that software updates to its vehicles were
8 designed to improve their vehicles' performance, and otherwise resolve issues that could
9 have a negative impact and potential safety risks or damage to Plaintiff and the other
10 putative class members' vehicles.

11 270. Tesla omitted that the software updates, including 2019.16.1 and 2019.16.2
12 were actually designed to further conceal the defective nature of the vehicles and their
13 defective batteries. Tesla further omitted and affirmatively misrepresented the true
14 reason for the updates, that such were designed to limit the maximum charge and usable
15 battery capacity of the vehicles, limit the charging speed, and decrease the performance
16 in order to disguise the fundamental defects and their greedy intent to escape and avoid
17 their liabilities as warranted.

18 271. Tesla knew, or should have known, that the updates, including 2019.16.1
19 and 2019.16.2 were falsely portrayed to the consumer public and/or concealed from
20 them.

21 272. Tesla knew that its omissions and misrepresentations regarding the software
22 updates and its vehicles were material, and that a reasonable consumer would rely upon
23 Tesla's representations (and related omissions) when making purchasing decisions.

24 273. Tesla, by its clear admissions in May 2019, in fact intended to limit the
25 charging speed and battery capacities for Plaintiff and the putative class members'
26 vehicles.

1 274. Plaintiff and the putative class members did not know—nor could they have
2 known through reasonable diligence—about the battery defects and other related issues
3 with the vehicles, nor could they have known about what the software updates, including
4 2019.16.1 and 2019.16.2 were designed to throttle the performance of their vehicles and
5 take away mileage range and limit the maximum amount of battery capacity available for
6 their vehicles. Plaintiff and the putative class members were or would have been
7 reasonable in relying on Tesla’s misrepresentations (and corresponding omissions) in
8 making their purchasing decisions and downloading and installing the software updates
9 for their vehicles.

10 275. Plaintiff and the putative class members had a right to rely upon Tesla’s
11 representations (and corresponding omissions) as Tesla maintained a monopolistic and
12 exclusive control over its vehicle software updates, vehicle batteries, and battery
13 management system of the vehicles. This included what information was actually
14 available in software updates 2019.16.1 and 2019.16.2, and any results of any battery
15 tests conducted by Tesla but paid for by customers. Tesla knew as early as July 2017 of
16 the defective nature of the Class Vehicles and knew that the batteries would need to be
17 capped and throttled in order to avoid life-threatening harm and risk of injury to Plaintiff
18 and the putative class members.

19 276. Rather than disclose these defects to Plaintiff, the putative class members,
20 and the general public, Tesla chose to conceal this material information and tried to cover
21 up their prior mistakes by using software updates to limit the capacity of the batteries and
22 throttle the performance and charging speed of the Class Vehicles. Tesla acted with the
23 fraudulent intent and motive to limit the cost in terms of having to replace the batteries of
24 the Class Vehicles as warranted and wanted to avoid the cost of harming its reputation
25 with consumers worldwide.

26 277. Tesla and the putative class members sustained damages as a result of their
27 reliance on Tesla’s omissions and misrepresentations, thus causing Tesla and the putative
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1 class members to sustain actual losses and damages in a sum to be determined at trial,
2 including punitive damages.

3 **COUNT 10**
4 **CONSTRUCTIVE FRAUD**
5 **(California Law)**

6 278. Plaintiff realleges and incorporates by reference all paragraphs as though
7 fully set forth herein.

8 279. Plaintiff brings this count on his own behalf and on behalf of the Nationwide
9 Class. In the alternative, Plaintiff brings this count on his own behalf and on behalf of
10 the California Subclasses.

11 280. At the time Plaintiff and the putative class members purchased their
12 vehicles, Tesla did not disclose, but instead concealed and misrepresented, the battery
13 defects and other related issues with the vehicles as discussed herein.

14 281. Further, Tesla represented that software updates to its vehicles were
15 designed to improve their vehicles' performance, and otherwise resolve issues that could
16 have a negative impact to their vehicles and to the safety of Plaintiff and the putative
17 class members.

18 282. Tesla fraudulently omitted that its software updates, especially 2019.16.1
19 and 2019.16.2 were actually designed to further conceal the battery defects and related
20 vehicle issues. Tesla omitted and affirmatively misrepresented the true reason for the
21 updates — that such were designed to throttle and otherwise limit the charging speed,
22 battery capacity, performance, and mileage range of the vehicles, in order to disguise the
23 defects as discussed herein.

24 283. Tesla knew, or should have known, that these updates were falsely portrayed
25 to the consumer public, Plaintiff, and the putative class members for the purpose of
26 increasing battery longevity and health. Tesla knew as early as July 2017 that it would
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1 have to manipulate its software to throttle the Class Vehicles and reduce the usable
2 battery capacity of the Class vehicles.

3 284. Tesla also knew that its omissions and misrepresentations regarding the
4 updates were material, and that a reasonable consumer would rely upon Tesla's
5 representations (and corresponding omissions) in making purchasing decisions.

6 285. Tesla had an obligation and duty not to omit or misrepresent battery defects,
7 or the effects of the software updates because: (a) it was in the sole and exclusive
8 possession of such information; (b) it made partial representations regarding of the
9 vehicles batteries, and quality and safety of the vehicles; (c) Plaintiff and the putative
10 class members relied upon Tesla to make full disclosures based upon the relationship
11 between Plaintiff and the putative class members, who relied upon Tesla's
12 representations and omissions, and were reasonable in doing so, with Tesla's full
13 knowledge that they did and would have been reasonable in doing so.

14 286. Plaintiff and the putative class members did not know—nor could they have
15 known through reasonable diligence—about what the software updates 2019.16.1 and
16 2019.16.2 would do, let alone the defective nature of the batteries in their vehicles.

17 287. Plaintiff and the putative class members were, and would have been,
18 reasonable in relying on Tesla's misrepresentations (and corresponding omissions) in
19 making their purchasing decisions and downloading and installing the software updates,
20 including 2019.16.1 and 2019.16.2.

21 288. Plaintiff and the putative class members had a right to rely upon Tesla's
22 representations (and corresponding omissions) as Tesla maintained a monopolistic and
23 exclusive control over what the software updates would actually do, the codes it
24 contained, the throttling that it would cause on charging and battery capacity, and any
25 other relevant and material information regarding the batteries or their defective nature.
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1 296. Tesla knew, or should have known, that the software updates and reasons for
2 them were falsely portrayed to the consumer public, Plaintiff, and the putative class.

3 297. Tesla also knew that its omissions and misrepresentations regarding battery
4 defects and software updates were material, and that a reasonable consumer would rely
5 upon Tesla's representations (and corresponding omissions) in making purchasing
6 decisions.

7 298. Tesla, by its clear admissions in May 2019, in fact intended to deceive
8 Plaintiff and the putative class members.

9 299. Plaintiff and the putative class members did not know—nor could they have
10 known through reasonable diligence—about the defects and the potential negative effects
11 of software updates 2019.16.1 and 2019.16.2, nor could they have known about what the
12 software updates were designed to really do.

13 300. Plaintiff and the putative class members were or would have been reasonable
14 in relying on Tesla's misrepresentations (and corresponding omissions) in making their
15 purchasing decisions and downloading the software updates.

16 301. Plaintiff and the putative class members had a right to rely upon Tesla's
17 representations (and corresponding omissions) as Tesla maintained a monopolistic and
18 exclusive control over what the software updates did or any other relevant and material
19 information regarding the batteries and the defects as discussed herein.

20 302. Tesla intended to induce—and did, indeed, induce—Plaintiff and the
21 putative class members from purchasing their vehicles and downloading and installing
22 the software updates, including 2019.16.1 and 2019.16.2 based upon its affirmative
23 representations and omissions.

24 303. Tesla knew that the Class Vehicles contained defective batteries as early as
25 July 2017, and failed to inform Plaintiff, the putative class members, and the general
26 public of the defects.
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1 313. The software updates 2019.16.1 and 2019.16.2 limited the maximum usable
2 battery capacity and throttled the performance and decreased the rate of charge of the
3 batteries in the Class Vehicles. These updates resulted in significant and severe drops in
4 the number of rated miles available in Plaintiff and the other putative class members'
5 vehicles.

6 314. Tesla did not inform Plaintiff and the putative class members of the harm
7 and negative effects that the software updates would cause to the Class Vehicles. Tesla
8 further failed to inform Plaintiff and the putative class members that they could replace
9 the batteries in the Class Vehicles under warranty battery replacement.

10 315. Despite its contractual promises and representations to the general public
11 that the software updates would “increase longevity” and protect the batteries, Tesla
12 instead purposefully took actions to reduce the amount of battery capacity available,
13 lowered the charging speeds, and decreased the performance of the Class Vehicles, and
14 purposefully failed to notify customers that the software updates would cause significant
15 and severe damage to the Class Vehicles. Tesla also purposefully failed to honor its
16 promises and guarantees as warranted, by failing to recognize the fact that Plaintiff and
17 the putative class members were eligible for warranty battery replacement.

18 316. Tesla’s actions were objectively unreasonable given Tesla’s promises.

19 317. Tesla’s conduct evaded and fraudulently took advantage of the bargain made
20 between Tesla and the Plaintiff and other putative class members.

21 318. As a result of Tesla’s misconduct and breach of its duty of good faith and
22 fair dealing, Plaintiff and the other putative class members suffered damages. Plaintiff
23 and the other putative class members did not receive their benefit of the bargain for
24 which they contracted and for which they paid valuable consideration for.

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COUNT 13
MONEY HAD AND RECEIVED
(California Law)

319. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

320. Plaintiff brings this count on his own behalf and on behalf of the Nationwide Class. In the alternative, Plaintiff brings this count on his own behalf and on behalf of the California Subclasses.

321. As a result of the Plaintiff's and class members' purchase of the vehicles, Tesla obtained money for its own use and benefit, and, as a result of its breaches of contract and breaches of the good faith and fair dealing implied and required by those agreements, became indebted to the Plaintiff and other putative class members in an amount to be determined at trial.

322. No part of any of the monies due and owing to Plaintiff and the putative class members has been repaid, although Plaintiff and the putative class members demand repayment, which leaves the balance due, owing, and unpaid by Tesla in an amount to be determined at trial with interest.

COUNT 14
BREACH OF EXPRESS WARRANTY
(Cal. Comm. Code § 2313)

323. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

324. Plaintiff brings this count on his own behalf and on behalf of the Nationwide Class. In the alternative, Plaintiff brings this count on his own behalf and on behalf of the California Subclasses.

1 325. Tesla provided all nationwide purchasers of the Class Vehicles with a 48
2 month or 50,000-mile limited warranty and a 24 month or 100,000-mile warranty (the
3 “Warranties”) against defects in materials and/or workmanship.

4 326. Tesla also provided all Class Vehicles with an 8-year, unlimited-mile
5 warranty which would cover the Class Vehicle’s drivetrain and batteries.

6 327. The Warranties were provided in consideration for the purchase of the Class
7 Vehicles, became part of the basis of the bargain, because they were incorporated into the
8 purchase agreements of all Class Vehicles.

9 328. Plaintiff and the putative class members learned about the existence of such
10 Warranties pre-purchase, and as reasonable consumers, relied on the existence of such
11 warranties. Plaintiff and the putative class members conduct of purchasing the Class
12 Vehicles is in accordance with their reliance on said Warranties.

13 329. The severe battery degradation defect complained of herein is a defect in
14 materials and/or workmanship and is covered under the Warranties. Applying any
15 warranty limitation period to avoid the need to repair this particular defect would be
16 unconscionable in that, inter alia, the Class Vehicles contained a defect at the time of
17 delivery, Tesla was either aware of or consciously and/or recklessly disregarded this
18 defect which could not have been discovered by Plaintiff and putative class members at
19 the time of such purchase, and purchasers lacked any meaningful choice with respect to
20 the terms provided by the Warranties.

21 330. Tesla further breached the express warranties by issues software updates
22 2019.16.1 and 2019.16.2 as alleged herein. Tesla knew, or failed to utilize due diligence
23 in knowing, that these software updates would lead to a substantial decrease in the
24 number of rated miles available in the vehicles of Plaintiff and the putative class
25 members.
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1 331. Tesla intentionally manipulated the software coding to avoid its duties and
2 legal obligations as warranted by manipulating the number of miles that were displayed
3 on Plaintiff and the putative class members' vehicles.

4 332. Plaintiff and the putative class members substantially performed all of their
5 obligations under the Warranties, by presenting the Class Vehicles to authorized Tesla
6 repair facilities during the warranty coverage period and/or by accepting all of the over-
7 the-air updates provided by Tesla. Plaintiff and the putative class members heeded to the
8 advice of Tesla technicians by recalibrating the batteries of the Class Vehicles.

9 333. Tesla breached and continues to breach said express warranties by failing to
10 repair the defects in materials and workmanship in the batteries of the Class Vehicles and
11 by failing to replace the batteries despite having intentionally caused the significant harm
12 and damage that it further caused by issuing the software updates as discussed herein.

13 334. Tesla's representations about the way in which consumers would be able to
14 operate the Class Vehicles without paying much attention to the batteries created express
15 warranties that the Class Vehicles would not have severely degraded batteries.

16 335. Tesla's representations about the way in which it would issue over-the-air
17 software updates to improve battery longevity and enhance the existing features created
18 express warranties that the software updates 2019.16.1 and 2019.16.2 would not impact
19 the already defective batteries' range and ability to charge the batteries at full charging
20 speeds.

21 336. Plaintiff and the putative class members have been injured as a result of
22 Tesla's breach, as they did not get the benefit of their bargain, which included, inter alia,
23 effective and not defective batteries that Tesla will not provide warranty batter
24 replacements for.

25 337. Tesla breached and continues to breach, said express warranties as alleged
26 herein, because their vehicles are sold to purchasers with said battery defects and severe
27 degradation, because Tesla fails to fix/repair the batteries through over-the-air updates
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1 and in-store, and because Tesla fails to provide battery replacements to Plaintiff and the
2 putative class members as warrantied.

3 338. As a result of Tesla's breach of express warranties as set forth above and
4 herein, Plaintiff and putative class members similarly situated have suffered and will
5 continue to suffer damages in an amount to be determined at trial.

6 339. Plaintiff and the putative class members are entitled to injunctive and
7 equitable relief, restitution, and an order for the disgorgement of the funds that Tesla was
8 unjustly enriched with, and reasonable attorneys' fees and costs under California Code of
9 Civil Procedure § 1021.5.

10
11 **COUNT 15**
12 **BREACH OF IMPLIED WARRANTIES**
13 **(Cal. Comm. Code § 2314)**

14 340. Plaintiff realleges and incorporates by reference all paragraphs as though
15 fully set forth herein.

16 341. Plaintiff brings this count on his own behalf and on behalf of the Nationwide
17 Class. In the alternative, Plaintiff brings this count on his own behalf and on behalf of
18 the California Subclasses.

19 342. The Class Vehicles are manufactured goods.

20 343. The transactions by which Plaintiff and the putative class members
21 purchased the Class Vehicles were transactions for the sale of goods and at all times
22 relevant, Tesla was the seller of the Class Vehicles and placed these products into the
23 stream of commerce throughout the United States, including California.

24 344. Plaintiff and the putative class members purchased the Class Vehicles online
25 and picked them up at Tesla showroom locations after purchase.

26 345. Plaintiff and the putative class members purchased the Class Vehicles and
27 for the purpose and usage of the vehicles for transportation that would achieve
28 approximately similar mileage to EPA estimates.

1 346. Plaintiff and the putative class members purchased the Class Vehicles with
2 the intent that they could be driven to the full range allowable and as advertised and
3 displayed on for sale by Tesla.

4 347. Each of the Class Vehicles were sold with implied warranties that any parts
5 thereof were merchantable, were the same quality as those generally accepted in the
6 trade, were not of poor or below average quality within the description and/or conformed
7 to the affirmations of fact made by Tesla.

8 348. At the time of purchase of the Class Vehicles, Tesla knew or had reason to
9 know that Plaintiff and other putative class members were relying on Tesla's skill and
10 judgment to inspect and certify the Class Vehicles for the particular purposes, and
11 Plaintiff justifiably relied on Defendant's skill and judgment.

12 349. Plaintiff and the putative class members were also aware that Tesla would
13 issue software updates to their vehicles, for reasons such as improving and enhancing
14 existing features, and as Tesla expressly represented, "to help further protect the battery
15 and improve battery longevity."

16 350. This became a part of the basis of the bargain between the parties.

17 351. The Class Vehicles were non-conforming goods and/or goods that were not
18 the same quality as those generally accepted in the trade, were of poor or below average
19 quality as those generally accepted in the trade, because other vehicles similarly situated
20 and sold by Tesla have not been affected by a sudden and significant decrease in the
21 number of rated miles available as a result of the 2019.16.1 and 2019.16.2 software
22 updates.

23 352. The Class Vehicles and their batteries were of poor or below average quality
24 within the description of electric vehicles provided by Tesla and did not possess the
25 qualities that a buyer would have reasonably expected. The Class Vehicles were not
26 suitable for these purposes, and the software updates did not possess the qualities that
27 Tesla represented they would.

1 353. Plaintiff and the other putative class members purchased Tesla’s vehicles
2 believing that they had the qualities that were sought for, based on the deceptive
3 advertising and fraudulent acts of Tesla, but the vehicles were not of the same quality as
4 similar products in the product category generally acceptable in the trade.

5 354. The Class Vehicles were not acceptable commercially and breached the
6 implied warranty because they did not conform to the promises or affirmations of fact
7 made Tesla’s website and other marketing materials, Cal. Comm. Code § 2314(2)(f), and
8 other grounds as set forth in Commercial Code section 2314(2). The software updates
9 also breached the implied warranties that it would improve or enhance existing features
10 of the vehicles, when in reality, the software updates caused significant harm.

11 355. As a result of Tesla’s breach, Plaintiff and other putative class members did
12 not receive goods as impliedly warranted by Tesla.

13 356. As a direct and proximate result of the foregoing, Plaintiff and the putative
14 class members sustained losses and damage by not receiving the benefit of their bargain.
15 Plaintiff and the putative class members have also sustained losses and damages due to
16 the decrease in charging speeds, decrease in performance, and limited usable battery
17 capacity which leads to a significantly decrease of rated miles and range available for the
18 vehicles.

19 357. Plaintiff and the putative class are entitled to injunctive and equitable relief,
20 restitution, and an order for the disgorgement of the funds by which have been unjustly
21 enriched by Tesla.

22
23 **COUNT 16**
24 **INTENTIONAL MISREPRESENTATION**
25 **(Cal. Civ. Code §§ 1709-1710)**

26 358. Plaintiff realleges and incorporates by reference all paragraphs as though
27 fully set forth herein.
28

1 359. Plaintiff brings this count on his own behalf and on behalf of the Nationwide
2 Class. In the alternative, Plaintiff brings this count on his own behalf and on behalf of
3 the California Subclasses.

4 360. At all relevant times, Tesla was engaged in the business of designing,
5 manufacturing, distributing, and selling the Class Vehicles.

6 361. Tesla, acting through its representatives or agents, delivered the Class
7 Vehicles to retail stores, distributors, and other distribution channels.

8 362. Tesla willfully, falsely and knowingly omitted various material facts
9 regarding the quality and character of the vehicles, the defective batteries, and the
10 software updates.

11 363. Rather than inform Plaintiff and the putative class members of the trust
12 regarding the battery defects, and that the software updates 2019.16.1 and 2019.16.2
13 would significantly decrease their vehicles' performance, lose rate of charging speeds,
14 and ultimately lose a significant percentage of rated mileage range, Tesla misrepresented
15 the true content of the software updates, and that downloading and installing the same
16 would cause severe and significant damages to the vehicles.

17 364. Tesla did so to avoid and escape its legal duties and obligations to Plaintiff
18 and the putative class to provide warranty battery replacements.

19 365. Tesla represented to Plaintiff and the putative class members that it would
20 provide warranty battery replacements under certain conditions. Tesla also represented to
21 Plaintiff and the putative class members that software updates would improve, not
22 negatively affect, the overall functionality of the vehicles and related features.

23 366. Tesla knew that such a representation was false, at least to Plaintiff, that the
24 software updates were issued to improve battery longevity and protect the batteries of the
25 Class Vehicles.

26 367. Plaintiff, and the putative class members, reasonably relied upon Tesla's
27 representations regarding the software updates and safety of the Class Vehicles' batteries.
28

1 368. Plaintiff and the putative class members could not have discovered the
2 misleading nature of Tesla's misrepresentations on their own, because Tesla is in
3 exclusive possession of such information, including the software update coding and
4 material information exclusive to Tesla with regards to the batteries of the Class
5 Vehicles.

6 369. Tesla had a duty to ensure the accuracy of its statements published with
7 regards to software updates 2019.16.1 and 2019.16.2, and was obligated to ensure the
8 accuracy of the information it represented, and/or that these software updates would
9 essentially cripple and take away battery capacity from Plaintiff and the other putative
10 class members.

11 370. Tesla misrepresented material facts partly to pad and protect its profits, as it
12 saw that profits and sales for its vehicles were falling and tried to maintain and grow its
13 reputation as the best electric car manufacturer in the world. Tesla attempted to cut costs
14 by denying rightful warranty battery replacements, despite having been the reason and
15 cause of the harm and damages suffered by Plaintiff and the putative class members.
16 Such benefits came at the expense of Plaintiff and the putative class members.

17 371. Plaintiff and the putative class members were unaware of these material
18 misrepresentations, and they would not have acted as they did had they known the truth.
19 Plaintiff's and the putative class members' actions were justified given Tesla's
20 misrepresentations. Tesla was in the exclusive control of material facts, and such facts
21 were not known to the public.

22 372. Due to Tesla's misrepresentations, Plaintiff and the putative class members
23 sustained injury due to the purchase of Tesla's vehicles that did not live up to
24 performance representations, and the installation of the software updates that served to
25 limit the battery capacity, decrease charging speeds, and decrease performance of said
26 vehicles. Plaintiff and the class members are entitled to recover full or partial refunds
27 for their vehicles, or battery replacements that they purchased due to Tesla's
28

1 misrepresentations, or they are entitled to damages for the diminished value of their
2 vehicles, with amounts to be determined at trial.

3 373. Tesla's acts were done maliciously, oppressively, deliberately, and with
4 intent to defraud, and in reckless disregard of Plaintiff's and the putative class members'
5 rights and well-being, and in part to enrich itself in California at the expense of
6 consumers worldwide. Tesla's acts were done to gain commercial advantage over
7 competitors, and to drive consumers away from consideration of competitor vehicles.
8 Tesla's conduct warrants an assessment of punitive damages in an amount sufficient to
9 deter such conduct in the future.

10
11 **COUNT 17**
12 **NEGLIGENT MISREPRESENTATION**
13 **(Cal. Civ. Code §§ 1709-1710)**

14 374. Plaintiff realleges and incorporates by reference all paragraphs as though
15 fully set forth herein.

16 375. Plaintiff brings this count on his own behalf and on behalf of the Nationwide
17 Class and California Classes.

18 376. Tesla negligently and recklessly omitted certain material facts regarding the
19 vehicles, their batteries, and the impact that the software updates, including 2019.16.1
20 and 2019.16.2 would have on their vehicles.

21 377. Tesla failed to warn Plaintiff and the putative class members that their
22 vehicles contained material and potentially-life endangering defects, that resulted in car
23 fires and resulted in their vehicles not operating or performing as warranted or advertised.
24 Additionally, Tesla failed to warn its customers that the software updates that were
25 disguised as an improvement on battery longevity and safety would actually degrade the
26 performance of the Class Vehicles, limit the number of rated miles available, increase the
27 amount of time needed to charge the vehicles, and result in the placement of a charge
28 limitation and reduction of the usable maximum battery capacity of the vehicles.

1 378. The advertisements and warranties, which were made expressly through
2 uniform representations from Tesla that emanated from its corporate headquarters in
3 California, were material and would have been considered by a reasonable consumer in
4 making purchasing decisions.

5 379. Plaintiff and the putative class members acquired Tesla's vehicles,
6 downloaded and installed Tesla's software updates, including 2019.16.1 and 2019.16.2
7 with the belief that the batteries would not be limited in range, charging speed, and
8 performance, and that operation of their vehicles would function as advertised and
9 represented to Plaintiff and the putative class members.

10 380. As a result, Plaintiff and the putative class members were directly and
11 proximately injured by Tesla's negligence in failing to inform Plaintiff and the putative
12 class members of the material defects in the batteries of the Class Vehicles and that the
13 software would improve the battery health and longevity of the Class Vehicles.

14
15 **COUNT 18**
16 **FRAUD BY CONCEALMENT**
17 **(Cal. Civ. Code § 3294)**

18 381. Plaintiff realleges and incorporates by reference all paragraphs as though
19 fully set forth herein.

20 382. Plaintiff brings this count on his own behalf and on behalf of the Nationwide
21 Class and California Classes.

22 383. Tesla concealed and suppressed material facts concerning the battery health
23 and status of the Class Vehicle batteries.

24 384. More specifically, Tesla concealed and suppressed material facts concerning
25 the design, safety, performance, and quality of the Class Vehicles and the batteries in the
26 Class Vehicles. As alleged herein, notwithstanding its promises regarding the batteries of
27 the Class Vehicles and warranties both express and implied regarding the same, Tesla
28 knowingly and intentionally represented to consumers that the Class Vehicles would

1 receive full inspections prior to sale. Tesla conducted full inspections of the Class
2 Vehicles, which would include testing the batteries of the Class Vehicles to determine the
3 maximum battery capacity of the Class vehicles.

4 385. Tesla fraudulently concealed the results of any inspection performed on the
5 Class Vehicles, including any results from testing of the batteries and maximum battery
6 capacity of the Class Vehicles. Tesla did so in order to boost sales of the Class Vehicles
7 and in order to falsely assure consumers that the Class Vehicles were fully inspected and
8 performing as promised. The false representations were material to consumers, both
9 because they concerned the safety and performance of the Class Vehicles, and because
10 the representations played a significant role in the value of the Class Vehicles.

11 386. Plaintiff and the other Class members viewed advertising on Tesla's website,
12 read promotional materials, and heard a plethora of Tesla information regarding the
13 safety, performance, and quality of Tesla vehicles and Class Vehicles, including the
14 battery health and maximum battery capacity. They had no way of knowing that Tesla's
15 representations were false and gravely misleading and there was no way that Plaintiff and
16 the other Class members could have unraveled Tesla's deception.

17 387. Tesla failed to provide any inspection checklist or report for any of the Class
18 Vehicles, nor did Tesla provide any type of written disclosure regarding the battery health
19 and maximum battery capacity of the Class Vehicles. Tesla had a duty to disclose the
20 true battery health and maximum battery capacity of the Class Vehicles because the tests
21 could only have been conducted by Tesla. Tesla had readily available access to this
22 information, superior knowledge, and understood this information. Tesla knew that these
23 facts would be difficult and nearly impossible for this information to be discovered by
24 Plaintiff and the other putative class members. Tesla failed to disclose and/or
25 fraudulently concealed material information regarding the batteries of the Class Vehicles,
26 which are material concerns to consumers because they directly impact the safety,
27 performance, and value of the Class Vehicles.

1 388. Tesla actively concealed and/or suppressed these material facts, including
2 facts regarding the batteries and degradation of the Class Vehicles, in whole or in part, to
3 pad and protect its profits and to burnish the perception that its vehicles were the leading
4 edge of electric vehicle and battery technology, which perception would enhance the
5 brand's image and garner Tesla more money and profits. However, Tesla did so at the
6 expense of Plaintiff and the other putative class members.

7 389. Plaintiff and the other putative class members were unaware of these omitted
8 material facts and would not have acted as they did if they had known of the concealed
9 and/or suppressed facts, in that they would not have purchased Class Vehicles
10 manufactured by Tesla, would not have paid a premium for a Class Vehicle sold by or
11 through Tesla, and would not have continued to drive the Class Vehicles. Tesla was in
12 exclusive control of the material facts, and such facts were not known to the public,
13 Plaintiff, or the other Class members. This includes the results and testing information of
14 the batteries of the Class vehicles and any information regarding the capacity of the
15 batteries.

16 390. Based on the concealment and/or suppression of the material facts, Plaintiff
17 and the other Class members sustained damages because they did not receive the value
18 for: (1) the Class Vehicles that should have been operating at close, or near to the
19 approximate mileage rating for the Class Vehicles; and (2) the value of purchased a Class
20 Vehicle that was provided a warranty by Tesla. Had Plaintiff and the other putative class
21 members been aware of the severely deteriorated, defective, faulty, and abnormally
22 degraded health and significantly lower than advertised mileage ratings of the Class
23 Vehicles, they would certainly have paid less for the Class Vehicles, or they would not
24 have purchased or leased them at all.

25 391. Accordingly, Tesla is liable to Plaintiff and the putative class members for
26 damages in an amount to be proven at trial.
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28

1 F. An order requiring Tesla to pay both pre- and post-judgment interest on
2 any amounts awarded;

3 G. An award of costs and attorneys' fees to Plaintiff's counsel; and

4 H. Such other or further relief as may be appropriate.

5 **X. DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands a jury trial for all claims so triable.
7

8
9 Dated: August 7, 2019

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11 By /s/ Edward C. Chen
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Proposed Classes
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