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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 JOSHUA HORWITZ, Individually and on)
14 Behalf of All Others Similarly Situated,)
15 Plaintiff,)

16 vs.)

17 TESLA, INC. and ELON R. MUSK,)
18 Defendants.)

Case No.

) CLASS ACTION

) COMPLAINT FOR VIOLATION OF THE
FEDERAL SECURITIES LAWS

) DEMAND FOR JURY TRIAL

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1 Plaintiff Joshua Horwitz, individually and on behalf of all others similarly situated, by
2 plaintiff's undersigned attorneys, for plaintiff's complaint against defendants, alleges the following
3 based upon personal knowledge as to plaintiff and plaintiff's own acts and upon information and
4 belief as to all other matters based on the investigation conducted by and through plaintiff's
5 attorneys, which included, among other things, a review of U.S. Securities and Exchange
6 Commission ("SEC") filings by Tesla, Inc. ("Tesla" or the "Company"), public statements on social
7 media and media reports about the Company. Plaintiff believes that substantial additional
8 evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for
9 discovery.

10 NATURE OF THE ACTION

11 1. This is a securities fraud class action on behalf of all purchasers of Tesla securities
12 between August 7, 2018 and August 17, 2018, inclusive (the "Class Period"), seeking to pursue
13 remedies under the Securities Exchange Act of 1934 ("1934 Act"). These claims are asserted
14 against Tesla and its Chairman and Chief Executive Officer ("CEO"), Elon R. Musk ("Musk"), who
15 made materially false and misleading public statements during the Class Period.

16 2. Tesla designs, develops, manufactures and sells electric vehicles and energy
17 generation and storage systems in the United States, China, Norway and internationally.

18 3. On August 7, 2018, defendant Musk, co-founder, CEO and Chairman of the Board of
19 Tesla, issued a tweet on Twitter.com ("Twitter") that stated: "Am considering taking Tesla private at
20 \$420. Funding secured."

21 4. Later that day, Musk issued another tweet stating: "Investor support is confirmed.
22 Only reason why this is not certain is that it's contingent on a shareholder vote."

23 5. As a result, Tesla's stock price rapidly increased, reaching an intra-day high of
24 \$387.46 per share, \$45.47 per share higher than the previous day's closing price, before closing at
25 \$379.57 per share on August 7, 2018, a one-day increase of \$37.58 per share.

26 6. On August 8, 2018, it was announced that the SEC was making inquiries regarding
27 the veracity of the tweets sent by Musk and the reason the disclosures were made via a social media
28 posting rather than a filing with the SEC.

1 7. As a result of this news, Tesla's stock price declined \$9.23 per share to close at
2 \$370.34 per share on August 8, 2018.

3 8. On August 13, 2018, Musk tweeted: "I'm excited to work with Silver Lake and
4 Goldman Sachs as financial advisors, plus Wachtell, Lipton, Rosen & Katz and Munger, Tolles &
5 Olson as legal advisors, on the proposal to take Tesla private."

6 9. On August 14, 2018, *Bloomberg* reported that Goldman Sachs and Silver Lake had
7 not officially signed on when Musk issued his tweet on August 13, 2018.

8 10. Then on August 17, 2018, *The New York Times* published an interview with Musk in
9 which he described the circumstances leading up to the tweet, including his high stress levels and his
10 use of Ambien to cope with the stress. On this news, the price of Tesla stock declined \$29.95 per
11 share to close at \$305.50 per share on August 17, 2018.

12 11. As a result of defendants' wrongful acts and omissions, plaintiff and the Class (as
13 defined below) purchased Tesla securities at artificially inflated prices, suffering significant losses,
14 and were damaged thereby.

15 **JURISDICTION AND VENUE**

16 12. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the 1934
17 Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder
18 by the SEC.

19 13. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
20 §1331 and §27 of the 1934 Act.

21 14. Venue is proper in this District pursuant to §27 of the 1934 Act and 28 U.S.C.
22 §1391(b). Many of the acts charged herein, including the preparation and dissemination of
23 materially false and misleading information, occurred in substantial part in this District.

24 15. In connection with the acts alleged in this complaint, defendants, directly or
25 indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to,
26 the mails, interstate telephone communications and the facilities of the national securities exchange.

1 **PARTIES**

2 16. Plaintiff Joshua Horwitz, as set forth in the accompanying certification, purchased
3 Tesla securities during the Class Period and was damaged thereby.

4 17. Defendant Tesla is incorporated in Delaware. The Company’s principal executive
5 offices are located at 3500 Deer Creek Road, Palo Alto, California 94304. Tesla’s shares trade on
6 the NASDAQ under the ticker symbol “TSLA.”

7 18. Defendant Elon R. Musk is, and has been at all relevant times, CEO and Chairman of
8 the Board of Tesla.

9 **FRAUDULENT SCHEME AND COURSE OF BUSINESS**

10 19. Defendants are liable for: (i) making false statements; or (ii) failing to disclose
11 adverse facts known to them about Tesla. Defendants’ fraudulent scheme and course of business
12 that operated as a fraud or deceit on purchasers of Tesla securities was a success, as it: (i) deceived
13 the investing public regarding Tesla’s prospects and business; (ii) artificially inflated the prices of
14 Tesla securities; and (iii) caused plaintiff and other members of the Class to purchase Tesla securities
15 at artificially inflated prices.

16 **DEFENDANTS’ SCIENTER**

17 20. During the Class Period, defendant Musk had the motive and opportunity to commit
18 the alleged fraud. Defendant Musk also had actual knowledge of the misleading statements he made
19 and/or acted in reckless disregard of the truth at the time. In doing so, Musk engaged in a scheme to
20 defraud and committed acts and practices and participated in a course of business that operated as a
21 fraud or deceit on purchasers of Tesla securities during the Class Period.

22 **BACKGROUND**

23 21. Tesla designs, develops, manufactures and sells high-performance fully electric
24 vehicles and energy generation and storage systems, and also installs and maintains such systems
25 and sells solar electricity. Founded in 2003, the Company was formerly known as Tesla Motors, Inc.
26 and changed its name to Tesla in February 2017.

**DEFENDANTS' MATERIALLY FALSE AND MISLEADING
STATEMENTS ISSUED DURING THE CLASS PERIOD**

22. On August 7, 2018, defendant Musk issued a tweet on Twitter that stated: “Am considering taking Tesla private at \$420. Funding secured.”

23. Musk issued another tweet the same day that stated: “Investor support is confirmed. Only reason why this is not certain is that it’s contingent on a shareholder vote.”

24. Subsequently on August 7, 2018, Tesla posted on its corporate blog an e-mail from defendant Musk to the Company’s employees, which stated:

Taking Tesla Private
August 7, 2018

The following email was sent to Tesla employees today:

Earlier today, I announced that I’m considering taking Tesla private at a price of \$420/share. I wanted to let you know my rationale for this, and why I think this is the best path forward.

First, a final decision has not yet been made, but the reason for doing this is all about creating the environment for Tesla to operate best. As a public company, we are subject to wild swings in our stock price that can be a major distraction for everyone working at Tesla, all of whom are shareholders. Being public also subjects us to the quarterly earnings cycle that puts enormous pressure on Tesla to make decisions that may be right for a given quarter, but not necessarily right for the long-term. Finally, as the most shorted stock in the history of the stock market, being public means that there are large numbers of people who have the incentive to attack the company.

* * *

Here’s what I envision being private would mean for all shareholders, including all of our employees.

First, I would like to structure this so that all shareholders have a choice. Either they can stay investors in a private Tesla or they can be bought out at \$420 per share, which is a 20% premium over the stock price following our Q2 earnings call (which had already increased by 16%). My hope is for all shareholders to remain, but if they prefer to be bought out, then this would enable that to happen at a nice premium.

Second, my intention is for all Tesla employees to remain shareholders of the company, just as is the case at SpaceX. If we were to go private, employees would still be able to periodically sell their shares and exercise their options. This would enable you to still share in the growing value of the company that you have all worked so hard to build over time.

Third, the intention is not to merge SpaceX and Tesla. They would continue to have separate ownership and governance structures. However, the structure envisioned for Tesla is similar in many ways to the SpaceX structure: external

1 shareholders and employee shareholders have an opportunity to sell or buy
2 approximately every six months.

3 Finally, this has nothing to do with accumulating control for myself. I own
4 about 20% of the company now, and I don't envision that being substantially
5 different after any deal is completed.

6 Basically, I'm trying to accomplish an outcome where Tesla can operate at its
7 best, free from as much distraction and short-term thinking as possible, and where
8 there is as little change for all of our investors, including all of our employees, as
9 possible.

10 This proposal to go private would ultimately be finalized through a vote of
11 our shareholders. If the process ends the way I expect it will, a private Tesla would
12 ultimately be an enormous opportunity for all of us. Either way, the future is very
13 bright and we'll keep fighting to achieve our mission.

14 Thanks,
15 Elon

16 25. As a result of these statements, Tesla's stock price rapidly increased, reaching an
17 intra-day high of \$387.46 per share, \$45.47 per share higher than the previous day's closing price,
18 before closing at \$379.57 per share on August 7, 2018, a one-day increase of \$37.58 per share.

19 26. The statements referenced above were materially false and misleading because they
20 misrepresented and/or failed to disclose the following adverse facts pertaining to the Company's
21 business and prospects:

22 (a) Funding for the going-private transaction was not secured at the time of
23 Musk's August 7, 2018 tweets;

24 (b) The Board was not aware of the plan to take Tesla private;

25 (c) Advisors for such a transaction had not been retained; and

26 (d) As a result of the foregoing, defendants' public statements were materially
27 false and misleading at all relevant times.

28 27. On August 8, 2018, it was announced that the SEC was making inquiries regarding
the veracity of the tweets sent by Musk and the reason the disclosures were made via a social media
posting rather than a filing with the SEC. Multiple financial news agencies reported that no
investment banks or technology firms they had contacted were aware of Tesla's potential going-
private transaction and had denied being the source of the "secure" funding that Musk had promised.

1 28. As a result of this news, Tesla’s stock price declined \$9.23 per share to close at
2 \$370.34 per share on August 8, 2018.

3 29. On August 13, 2018, Musk tweeted: “I’m excited to work with Silver Lake and
4 Goldman Sachs as financial advisors, plus Wachtell, Lipton, Rosen & Katz and Munger, Tolles &
5 Olson as legal advisors, on the proposal to take Tesla private.”

6 30. According to a *New York Times* article published on August 13, 2018, entitled “Tesla
7 Board Surprised by Elon Musk’s Tweet on Taking Carmaker Private,” “[a] person with direct
8 knowledge of the Tesla board’s thinking said some members of the board had been totally blindsided
9 by Mr. Musk’s decision to air his plan on Twitter.” This demonstrates that Musk’s abrupt tweet had
10 not been cleared ahead of time by the Company’s Board. Additionally, the *New York Times* article
11 pointed out that “[t]he tweet did not disclose the sum he had supposedly secured, its source, or any
12 terms of the plan,” and therefore Musk knew, or should have known that his tweet would drive up
13 the price of Tesla shares and manipulate the pricing of all Tesla securities based on false and
14 misleading information.

15 31. On August 13, 2018, defendant Musk posted an “Update on Taking Tesla Private” on
16 the Company’s corporate blog, which stated:

17 Update on Taking Tesla Private
18 Elon Musk – August 13, 2018

19 As I announced last Tuesday, I’m considering taking Tesla private because I
20 believe it could be good for our shareholders, enable Tesla to operate at its best, and
21 advance our mission of accelerating the transition to sustainable energy. As I
22 continue to consider this, I want to answer some of the questions that have been
23 asked since last Tuesday.

What has happened so far?

24 On August 2nd, I notified the Tesla board that, in my personal capacity, I
25 wanted to take Tesla private at \$420 per share. This was a 20% premium over the
26 ~\$350 then current share price (which already reflected a ~16% increase in the price
27 since just prior to announcing Q2 earnings on August 1st). My proposal was based
28 on using a structure where any existing shareholder who wished to remain as a
shareholder in a private Tesla could do so, with the \$420 per share buyout used only
for shareholders that preferred that option.

After an initial meeting of the board’s outside directors to discuss my
proposal (I did not participate . . .), a full board meeting was held. During that
meeting, I told the board about the funding discussions that had taken place (more on
that below) and I explained why this could be in Tesla’s long-term interest.

1 At the end of that meeting, it was agreed that as a next step, I would reach out
2 to some of Tesla's largest shareholders. Our largest investors have been extremely
3 supportive of Tesla over the years, and understanding whether they had the ability
4 and desire to remain as shareholders in a private Tesla is of critical importance to me.
5 They are the ones who believed in Tesla when no one else did and they are the ones
6 who most believe in our future. I told the board that I would report back after I had
7 these discussions.

8 **Why did I make a public announcement?**

9 The only way I could have meaningful discussions with our largest
10 shareholders was to be completely forthcoming with them about my desire to take
11 the company private. However, it wouldn't be right to share information about going
12 private with just our largest investors without sharing the same information with all
13 investors at the same time. As a result, it was clear to me that the right thing to do
14 was announce my intentions publicly. To be clear, when I made the public
15 announcement, just as with this blog post and all other discussions I have had on this
16 topic, I am speaking for myself as a potential bidder for Tesla.

17 **Why did I say "funding secured"?**

18 Going back almost two years, the Saudi Arabian sovereign wealth fund has
19 approached me multiple times about taking Tesla private. They first met with me at
20 the beginning of 2017 to express this interest because of the important need to
21 diversify away from oil. They then held several additional meetings with me over
22 the next year to reiterate this interest and to try to move forward with a going private
23 transaction. Obviously, the Saudi sovereign fund has more than enough capital
24 needed to execute on such a transaction.

25 Recently, after the Saudi fund bought almost 5% of Tesla stock through the
26 public markets, they reached out to ask for another meeting. That meeting took place
27 on July 31st. During the meeting, the Managing Director of the fund expressed
28 regret that I had not moved forward previously on a going private transaction with
them, and he strongly expressed his support for funding a going private transaction
for Tesla at this time. I understood from him that no other decision makers were
needed and that they were eager to proceed.

I left the July 31st meeting with no question that a deal with the Saudi
sovereign fund could be closed, and that it was just a matter of getting the process
moving. This is why I referred to "funding secured" in the August 7th
announcement.

Following the August 7th announcement, I have continued to communicate
with the Managing Director of the Saudi fund. He has expressed support for
proceeding subject to financial and other due diligence and their internal review
process for obtaining approvals. He has also asked for additional details on how the
company would be taken private, including any required percentages and any
regulatory requirements.

Another critical point to emphasize is that before anyone is asked to decide
on going private, full details of the plan will be provided, including the proposed
nature and source of the funding to be used. However, it would be premature to do
so now. I continue to have discussions with the Saudi fund, and I also am having
discussions with a number of other investors, which is something that I always
planned to do since I would like for Tesla to continue to have a broad investor base.

1 It is appropriate to complete those discussions before presenting a detailed proposal
2 to an independent board committee.

3 It is also worth clarifying that most of the capital required for going private
4 would be funded by equity rather than debt, meaning that this would not be like a
5 standard leveraged buyout structure commonly used when companies are taken
6 private. I do not think it would be wise to burden Tesla with significantly increased
7 debt.

8 Therefore, reports that more than \$70B would be needed to take Tesla private
9 dramatically overstate the actual capital raise needed. The \$420 buyout price would
10 only be used for Tesla shareholders who do not remain with our company if it is
11 private. My best estimate right now is that approximately two-thirds of shares owned
12 by all current investors would roll over into a private Tesla.

13 **What are the next steps?**

14 As mentioned earlier, I made the announcement last Tuesday because I felt it
15 was the right and fair thing to do so that all investors had the same information at the
16 same time. I will now continue to talk with investors, and I have engaged advisors to
17 investigate a range of potential structures and options. Among other things, this will
18 allow me to obtain a more precise understanding of how many of Tesla's existing
19 public shareholders would remain shareholders if we became private.

20 If and when a final proposal is presented, an appropriate evaluation process
21 will be undertaken by a special committee of Tesla's board, which I understand is
22 already in the process of being set up, together with the legal counsel it has selected.
23 If the board process results in an approved plan, any required regulatory approvals
24 will need to be obtained and the plan will be presented to Tesla shareholders for a
25 vote.

26 32. On August 14, 2018, *Bloomberg* published an article, entitled "Goldman's Missing
27 Mandate Adds to Clues Musk Tweeted Out of Turn," reporting that neither Goldman Sachs nor
28 Silver Lake were yet working with Musk pursuant to a signed agreement or in an official capacity
when Musk said on Twitter late Monday, August 13, 2018, that both firms were working with him as
financial advisers.

33. Following this news, the price of Tesla stock fell \$8.77 per share to close at \$347.64
per share on August 14, 2018, a decline of 2.5%.

34. On August 17, 2018, *The New York Times* published an interview with Musk that
revealed the stress he had been under, his use of Ambien, and the manner in which the August 7,
2018 tweet had been conceived:

Asked if the exhaustion was taking a toll on his physical health, Mr. Musk
answered: "It's not been great, actually. I've had friends come by who are really
concerned."

1 The events set in motion by Mr. Musk's tweet have ignited a federal
2 investigation and have angered some board members, according to people familiar
3 with the matter. Efforts are underway to find a No. 2 executive to help take some of
4 the pressure off Mr. Musk, people briefed on the search said. And some board
5 members have expressed concern not only about Mr. Musk's workload but also
6 about his use of Ambien, two people familiar with the board said.

7 * * *

8 In the interview, Mr. Musk provided a detailed timeline of the events leading
9 up to the Twitter postings on Aug. 7 in which he said he was considering taking the
10 company private at \$420 a share. He asserted that he had "funding secured" for such
11 a deal – a transaction likely to be worth well over \$10 billion.

12 That morning, Mr. Musk woke up at home with his girlfriend, the musician
13 known as Grimes, and had an early workout. Then he got in a Tesla Model S and
14 drove himself to the airport. En route, Mr. Musk typed his fateful message.

15 Mr. Musk has said he saw the tweet as an attempt at transparency. He
16 acknowledged Thursday that no one had seen or reviewed it before he posted it.

17 * * *

18 What Mr. Musk meant by "funding secured" has become an important
19 question. Those two words helped propel Tesla's shares higher.

20 But that funding, it turned out, was far from secure.

21 Mr. Musk has said he was referring to a potential investment by Saudi
22 Arabia's government investment fund. Mr. Musk had extensive talks with
23 representatives of the \$250 billion fund about possibly financing a transaction to take
24 Tesla private – maybe even in a manner that would have resulted in the Saudis'
25 owning most of the company. One of those sessions took place on July 31 at the
26 Tesla factory in the Bay Area, according to a person familiar with the meeting. But
27 the Saudi fund had not committed to provide any cash, two people briefed on the
28 discussions said.

* * *

The S.E.C. investigation appears to be intensifying rapidly. Just days after the
agency's request for information, Tesla's board and Mr. Musk received S.E.C.
subpoenas, according to a person familiar with the matter. Board members and Mr.
Musk are preparing to meet with S.E.C. officials as soon as next week, the person
said.

* * *

To help sleep when he is not working, Mr. Musk said he sometimes takes
Ambien. "It is often a choice of no sleep or Ambien," he said.

But this has worried some board members, who have noted that sometimes
the drug does not put Mr. Musk to sleep but instead contributes to late-night Twitter
sessions, according to a person familiar with the board's thinking. Some board
members are also aware that Mr. Musk has on occasion used recreational drugs,
according to people familiar with the matter.

1 35. On this news, Tesla’s stock declined \$29.95 per share to close at \$305.50 per share on
2 August 17, 2018.

3 36. Later developments have confirmed that funding was not secured as of August 7,
4 2018, contrary to Musk’s tweet. On August 24, 2018, *CNBC* published an article that stated in part:

5 Tesla CEO Elon Musk’s hiring of Morgan Stanley this week is just a small
6 step in his ongoing quest to take Tesla private.

7 But it has a larger, more damning implication: he probably didn’t have
8 funding secured, even in the most loose sense of the phrase.

9 Musk is on the verge of hiring Morgan Stanley because the bank excels in
10 rounding up financing from a wide array of sources, according to a person familiar
11 with the matter. Musk has already retained Goldman Sachs to advise his attempt at
12 taking the company private, first announced in an August 7 tweet. Morgan Stanley
13 will be brought in the same capacity – to raise money for a potential deal.

14 Musk wouldn’t need to hire Morgan Stanley if he had secured funding at this
15 point. The board’s special committee still hasn’t retained an investment bank, and
16 there is no indication anything will happen quickly with regard to a privatization,
17 said two people familiar with the matter, who asked not to be named because the
18 discussions are private.

19 Musk said in that tweet he had “funding secured” to take Tesla private at
20 \$420 a share. He followed that tweet up with a public statement on August 13 saying
21 he’d met with the Saudi Arabian sovereign wealth fund several times, which
22 prompted him to tweet that he had secured financing. Musk is also using private
23 equity firm Silver Lake as an adviser, which the New York Times reported could be
24 interested in a private investment.

25 The Saudi Public Investment Fund hasn’t made a public comment supporting
26 Musk’s claim in the nearly two weeks that have followed his statement. It’s still
27 unclear exactly how much money Musk will need to raise from outside investors –
28 that will depend on how many existing shareholders roll over their investments into a
theoretically privatized company. Musk suggested two-thirds of investors might do
so, which would result in a need for about \$24 billion in outside capital at \$420 per
share.

 Musk wrote in his August 13 blog post that the managing director of the
Saudi fund needed more detail before moving forward with an investment,
“including the proposed nature and source of the funding to be used.” Musk
acknowledged in his post he planned to speak to other investors. Morgan Stanley and
Goldman will help him find them. They have not started this task, the people said.

 The board will also have to vet that \$420 number, which may have to rise
after the special committee does its due diligence, including calling around to outside
parties that may be willing to pay more.

1 37. As a result of defendants' wrongful acts and omissions, plaintiff and the Class
2 purchased Tesla securities at artificially inflated prices, suffering significant losses, and were
3 damaged thereby.

4 **LOSS CAUSATION AND ECONOMIC LOSS**

5 38. During the Class Period, as detailed herein, defendants engaged in a scheme to
6 deceive the market and a course of conduct that artificially inflated the prices of Tesla securities and
7 operated as a fraud or deceit on purchasers of Tesla securities. As detailed above, when the truth
8 was revealed, the value of the Company's securities declined precipitously as the prior artificial
9 inflation no longer propped up the securities' prices. The declines in Tesla's share price were the
10 direct result of the nature and extent of defendants' fraud finally being revealed to investors and the
11 market. The timing and magnitude of the share price declines negate any inference that the losses
12 suffered by plaintiff and other members of the Class were caused by changed market conditions,
13 macroeconomic or industry factors, or Company-specific facts unrelated to defendants' fraudulent
14 conduct. The economic loss, *i.e.*, damages, suffered by plaintiff and other Class members was a
15 direct result of defendants' fraudulent scheme to artificially inflate the prices of the Company's
16 securities and the subsequent significant decline in the value of the Company's securities when
17 defendants' prior misrepresentations and other fraudulent conduct were revealed.

18 39. At all relevant times, defendants' materially false and misleading statements or
19 omissions alleged herein directly or proximately caused the damages suffered by plaintiff and other
20 Class members. Those statements were materially false and misleading through their failure to
21 disclose a true and accurate picture of Tesla's business and prospects as alleged herein. Throughout
22 the Class Period, defendants issued materially false and misleading statements and omitted material
23 facts necessary to make defendants' statements not false or misleading, causing the prices of Tesla's
24 securities to be artificially inflated. Plaintiff and other Class members purchased Tesla securities at
25 those artificially inflated prices, causing them to suffer damages as complained of herein.

26 **APPLICABILITY OF PRESUMPTION OF RELIANCE**

27 40. Plaintiff will rely upon the presumption of reliance established by the fraud-on-the-
28 market doctrine in that, among other things:

1 (a) Defendants made public misrepresentations or failed to disclose material facts
2 during the Class Period;

3 (b) The omissions and misrepresentations were material;

4 (c) The Company's securities traded in an efficient market;

5 (d) The misrepresentations and omissions alleged would tend to induce a
6 reasonable investor to misjudge the value of the Company's securities; and

7 (e) Plaintiff and other members of the Class purchased Tesla securities between
8 the time defendants misrepresented or failed to disclose material facts and the time the true facts
9 were disclosed, without knowledge of the misrepresented or omitted facts.

10 41. At all relevant times, the market for Tesla securities was efficient for the following
11 reasons, among others:

12 (a) Tesla stock met the requirements for listing and was listed and actively traded
13 on the NASDAQ, a highly efficient market;

14 (b) As a regulated issuer, Tesla filed periodic public reports with the SEC; and

15 (c) Tesla regularly communicated with public investors via established market
16 communication mechanisms, including through the regular dissemination of press releases on major
17 news wire services and through other wide-ranging public disclosures, such as communications with
18 the financial press, securities analysts and other similar reporting services.

19 **NO SAFE HARBOR**

20 42. Defendants' false or misleading statements during the Class Period were not forward-
21 looking statements ("FLS"), or were not identified as such by defendants, and thus did not fall within
22 any "Safe Harbor."

23 43. Tesla's verbal "Safe Harbor" warnings accompanying its oral FLS issued during the
24 Class Period were ineffective to shield those statements from liability.

25 44. Defendants are also liable for any false or misleading FLS pleaded because, at the
26 time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was
27 authorized and/or approved by an executive officer of Tesla who knew that the FLS was false.
28 Further, none of the historic or present-tense statements made by defendants were assumptions

1 underlying or relating to any plan, projection or statement of future economic performance, as they
2 were not stated to be such assumptions underlying or relating to any projection or statement of future
3 economic performance when made.

4 **CLASS ACTION ALLEGATIONS**

5 45. Plaintiff brings this action on behalf of all purchasers of Tesla securities during the
6 Class Period who were damaged thereby (the “Class”). Excluded from the Class are defendants and
7 their immediate families, the officers and directors of the Company and their immediate families,
8 their legal representatives, heirs, successors or assigns, and any entity in which any of the defendants
9 have or had a controlling interest.

10 46. The members of the Class are so numerous that joinder of all members is
11 impracticable. Throughout the Class Period, Tesla securities were actively traded on the NASDAQ.
12 While the exact number of Class members is unknown to plaintiff at this time and can only be
13 ascertained through appropriate discovery, plaintiff believes that there are hundreds or thousands of
14 members in the proposed Class. Record owners and other members of the Class may be identified
15 from records maintained by Tesla or its transfer agent and may be notified of the pendency of this
16 action by mail, using the form of notice similar to that customarily used in securities class actions.
17 Upon information and belief, these shares are held by hundreds or thousands of individuals located
18 geographically throughout the country. Joinder would be highly impracticable.

19
20 47. Plaintiff’s claims are typical of the claims of the members of the Class as all members
21 of the Class are similarly affected by defendants’ wrongful conduct in violation of the federal laws
22 complained of herein.

23
24 48. Plaintiff will fairly and adequately protect the interests of the members of the Class
25 and has retained counsel competent and experienced in class and securities litigation. Plaintiff has
26 no interests antagonistic to or in conflict with those of the Class.

1 (b) Made untrue statements of material fact or omitted to state material facts
2 necessary in order to make the statements made, in light of the circumstances under which they were
3 made, not misleading; or

4 (c) Engaged in acts, practices and a course of business that operated as a fraud or
5 deceit upon plaintiff and others similarly situated in connection with their purchases of Tesla
6 securities during the Class Period.

7 54. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of
8 the market, they paid artificially inflated prices for Tesla securities. Plaintiff and the Class would
9 not have purchased Tesla securities at the prices they paid, or at all, if they had been aware that the
10 market prices had been artificially and falsely inflated by defendants' misleading statements.

11 55. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the
12 other members of the Class suffered damages in connection with their purchases of Tesla securities
13 during the Class Period.

14 **COUNT II**

15 **For Violation of §20(a) of the 1934 Act**
16 **Against All Defendants**

17 56. Plaintiff incorporates ¶¶1-55 by reference.

18 57. During the Class Period, defendants acted as controlling persons of Tesla within the
19 meaning of §20(a) of the 1934 Act. By virtue of his positions and his power to control public
20 statements about Tesla, defendant Musk had the power and ability to control the actions of Tesla and
21 its employees. Tesla controlled Musk and its other officers and employees. By reason of such
22 conduct, defendants are liable pursuant to §20(a) of the 1934 Act.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, plaintiff prays for judgment as follows:

25 A. Determining that this action is a proper class action, designating plaintiff as Lead
26 Plaintiff and certifying plaintiff as Class representative under Rule 23 of the Federal Rules of Civil
27 Procedure and plaintiff's counsel as Lead Counsel;

28 B. Awarding plaintiff and the members of the Class damages and interest;

- 1 C. Awarding plaintiff's reasonable costs, including attorneys' fees; and
2 D. Awarding such equitable/injunctive or other relief as the Court may deem just and
3 proper.

4 **JURY DEMAND**

5 Plaintiff demands a trial by jury.

6 DATED: August 28, 2018

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