

**From:** [REDACTED]  
**To:** [EVOO \(NHTSA\);](#) [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** ODI# 11287033 NOTICE Warranty for Battery Not Charging - 2013 TESLA Model S 60kWh VIN# 5YJSA1CG5D [REDACTED]  
**Date:** Friday, December 6, 2019 1:45:22 PM  
**Attachments:** [Screenshot\\_20191204-144831\\_2.png](#)  
[Screenshot\\_20191204-144837\\_2.png](#)  
[Screenshot\\_20191204-150019\\_2.png](#)  
[Screenshot\\_20191204-150015\\_2.png](#)  
[2019-12-05-screen shots-File a Vehicle Safety Complaint - Safercar - National Highway Traffic Safety Administration \(NHTSA\).pdf](#)  
[Model S-Tesla-5YJSA1CG5Df \[REDACTED\].pdf](#)  
[2019-12-04-National Center for Dispute Settlement-NCDS New Claim.pdf](#)  
[2019-07-22-Gmail - Re: Service for Vehicle 5YJSA1CG5D \[REDACTED\].pdf](#)  
[2019-12-04-Model S-Complaint CA Dept Consumer Affairs.pdf](#)  
[rasmussen-v-tesla-inc\\_1.pdf](#)  
[Tesla Disclosure.pdf](#)  
[tesla-new-vehicle-limited-warranty-en-us.pdf](#)

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RE: NHTSA Action Number: DP19005 - INVESTIGATION Subject : Battery Management Software Updates

Dear Tesla Motors, Inc.,

The battery for the 2013 Model S 60kWh 2013 VIN# 5YJSA1CG5DF [REDACTED] is not charging anywhere near the capacity. Charging the battery takes hours to get to near 65% of what used to be a full charge of 210 miles and now 163 miles is considered a full 100% charge.

This is under warranty and needs to be replaced ASAP. This has severe impacts to daily commutes, value, and ability to utilize the car safely without being stranded.

Our understanding is starting with a software update in May 2019, Tesla capped the max voltage the high voltage battery would charge to. They claim they did this "out of an abundance of caution" after several non-crash fires happened to these models. Tesla took action to downgrade horsepower and range along with all other aspects of performance through a total voltage cap after claiming to be releasing a fire-safety update, but officially no safety update was released. This change happened while the car was parked in my garage and stationary.

This has been reported to various governmental oversight agencies:

1) Department of Consumer Affairs (DCA) Bureau of Automotive Repair (BAR) Tracking Number: [REDACTED]  
[REDACTED]

2) National Center for Dispute Settlement, LLC (NCDS) Claim Reference Code [REDACTED] submitted for free arbitration. Attached warranty information.  
[REDACTED]

Reference  
California Dispute Settlement Program  
P.O. Box 526  
Mt. Clemens, MI 48046  
1-866-629-3204

USA: Tesla, Inc. Attention: New Vehicle Limited Warranty P.O. Box 15430 Fremont, CA 94539 Phone: 1 877 79 TESLA (1-877-798-3752)

Dispute Resolution Through the National Center for Dispute Settlement (NCDS) In the event that an amicable settlement is not reached, Tesla offers an optional dispute settlement program through:  
NATIONAL CENTER FOR DISPUTE SETTLEMENT ("NCDS") P.O. Box 526 Mt. Clemens, MI 48046  
1-866-629-3204 This dispute settlement program administered by NCDS is free of charge to you and is conducted by local NCDS professionals who are trained and experienced in mediation and arbitration.

3) National Highway Traffic Safety Administration Filed complaint 11287033

[REDACTED]

4) You can reach the following State of California representatives who are also included on this email:

Senator Dianne Feinstein

Senator Kamala Harris

Retired Senator Barbara Boxer

Congressman John Garamendi

Congresswoman Doris Matsui

Please provide a best contact to reach an appropriate level person to handle this matter.

Tesla Motors Inc. must honor the battery warranty without any further delays.

Action must be taken ASAP by Friday, December 6, 2019. Any further delays on this will result in further escalation of this issue.

Reference:

[REDACTED]

## MORE TO KNOW

### 1. THIS IS NOT DEGRADATION

This has been officially stated and re-confirmed by Tesla in multiple public statements. If you are unsure of what Degradation is, or whether your battery is losing range due to degradation or downgrade, skip to step 2. All batteries lose range to degradation over time. No batteries should be artificially capped to a software limited reduction in range or power without your consent or knowledge.

Starting with Firmware 2019.16.1 Tesla has begun to reduce kWh capacity and horsepower by reducing the battery's maximum charge voltage. They also reprogram the battery display to make it appear as if the newly lowered charge value appears to be "100%" when it really isn't.

This cap is achieved in exactly the same way Tesla limited some 75kWh battery-equipped cars 60 kWh usable capacity, or 85kWh BTX8 cars to 75kWh, or limit Model 3 SR cars to lower range than Model 3 SR+ even though they share the same battery. The subsequent updates reduced charging speeds substantially for many people, though not all have had their range or power taken away yet. It is important to note that reduction of charging speeds is a separate issue to the capping of the battery. Some owners have been capped but not had their charging rate reduced, and vice versa. And some owners' cars suffer from both conditions.

### 2. AM I AFFECTED?

Degradation is the slow and natural loss of storage capacity batteries experience over time. In simplest terms, it is a slow loss of storage capacity experienced when charging to the same voltage as always. This is different than Tesla's battery capping, which is a voltage limit below "true" 100% that reduces range by not allowing the battery to be fully charged. Unlike degradation, capping has another side effect - it makes your car to perform slower too. Also unlike degradation it can be fixed by a software update to remove the cap.

Here is how you can see whether your battery has lost range due to degradation, or if it has been voltage capped by Tesla:

Model S/X

Charge to 100%. Using CANBUS tools, if your car's cell volts @ 100% are close to 4.2v (real world readings are

usually 4.198 or similar, don't expect true 4.2v but you should be very close) you are OK. If you consistently charge to 4.18v or less @ 100% regardless of temperature, etc., you have probably been capped. Please add yourself to this spreadsheet:

[Tesla battery capacity loss with FW 2019.16.2](#)

Model 3

### 3. IMPORTANT TO FILE AN NHTSA COMPLAINT

Tesla has not stated why they took the range and power the owners paid for. The NHTSA (the U.S. National Highway Transportation Safety Administration) has opened an investigation, but needs examples to move forward. Click the link below to report your losses and ask them to investigate. If this is a Warranty and/or Safety related issue, Tesla is required by law to repair or replace your battery with equal or greater performance than the defective original in accordance with the Magnuson-Moss Warranty Act. They are not legally allowed to reduce range and power!

[File a Vehicle Safety Complaint | Safercar.gov | NHTSA](#)

Include this at the top:

RE: NHTSA Action Number: DP19005 - INVESTIGATION Subject : Battery Management Software Updates

See notes here for what people other owners are saying in their own NHTSA reports: [Sudden Loss Of Range With 2019.16.x Software](#)

### 4. CLASS ACTION

You are already included in the Suit as of right now (October 2019 ) if you own an impacted Tesla. You do not need to "join up" though if you choose to add your input on the google sheet and NHTSA reports it will help.

[REDACTED]

[Docket for \[REDACTED\] v. Tesla, Inc., 5:19-cv-04596 - CourtListener.com](#)

### 5. USEFUL LINKS

GOOGLE SHEET TRACKER (IF YOU ARE CAPPED ADD YOUR CAR TO THE SPREADSHEET OF KNOWN IMPACTED VEHICLES)

[Tesla battery capacity loss with FW 2019.16.2](#)

TESLA'S HACKED BATTERY MANAGEMENT SYSTEM EXPOSES THE REAL USABLE CAPACITY OF ITS BATTERY PACKS

[Tesla's hacked Battery Management System exposes the real usable capacity of its battery packs - Electrek](#)

TESLA OWNERS SEE BATTERY RANGE DROP AFTER SOFTWARE UPDATE TO 'IMPROVE LONGEVITY'

[Tesla owners see battery range drop after software update to 'improve longevity' - Electrek](#)

TESLA PUSHES BATTERY SOFTWARE UPDATE AFTER RECENT FIRES

[Tesla pushes battery software update after recent fires](#)

TESLA ROLLS OUT MODEL S AND X BATTERY SOFTWARE UPDATE AFTER HONG KONG FIRE

[Tesla rolls out Model S and X battery software update after Hong Kong fire](#)

TESLA GIVES UPDATES ON CAUSE OF A BATTERY FIRE, SAYS SINGLE MODULE IS RESPONSIBLE

[Tesla gives updates on cause of a battery fire, says single module is responsible - Electrek](#)

TESLA IS UPDATING ITS BATTERY SOFTWARE FOLLOWING A CAR FIRE, CLAIMS IMPROVE LONGEVITY  
[Tesla is updating its battery software following a car fire, claims improve longevity - Electrek](#)

TESLA OWNER WHO SAW RANGE SLASHED BY SOFTWARE UPDATE FILED CLASS ACTION LAWSUIT  
[Tesla owner who saw range slashed by software update filed class action lawsuit - Electrek](#)

TESLA TO UPDATE BATTERY SOFTWARE FOLLOWING CAR FIRES  
[Tesla to update battery software following car fires](#)

TESLA OWNER LAWSUIT CLAIMS SOFTWARE UPDATE FRAUDULENTLY CUT BATTERY CAPACITY  
[Tesla owner lawsuit claims software update fraudulently cut battery capacity](#)

TESLA CLASS ACTION ALLEGES DEFECTIVE BATTERIES  
[Tesla Class Action Alleges Defective Batteries | Top Class Actions](#)

TESLA'S DISAPPEARING MILES: OWNERS SAY AUTOMATIC SOFTWARE FIX HAS HAD UNWANTED SIDE EFFECTS  
[Tesla's disappearing miles: Owners say automatic software fix has had unwanted side effects](#)

TESLA SAYS SINGLE BATTERY MODULE CAUSED CAR FIRE IN SHANGHAI, HAS CHANGED VEHICLE SETTINGS  
[Tesla says single battery module caused car fire in Shanghai, has changed vehicle settings : teslamotors](#)

FEDERAL SAFETY AGENCY LAUNCHES PROBE OF TESLA BATTERY FIRES  
[Federal safety agency launches probe of Tesla battery fires](#)

TESLA BATTERIES INVESTIGATED FOR POSSIBLE DEFECTS  
[Tesla Batteries Investigated for Possible Defects](#)

FEDERAL SAFETY OFFICIALS PROBE ALLEGED TESLA BATTERY DEFECTS  
<https://www.washingtonpost.com/technology/2019/11/01/federal-safety-officials-probe-alleged-tesla-battery-defects/>

NHTSA, INVESTIGATING TESLA FIRE REPORTS, DEMANDS DATA ON BATTERY SOFTWARE CHANGES  
[NHTSA, Investigating Tesla Fire Reports, Demands Data on Battery Software Changes](#)

TESLA UNDER SCRUTINY BY FEDS FOR BATTERY, SOFTWARE ISSUES  
[Tesla under scrutiny by feds for battery, software issues](#)

UPDATE: Class Action Suit Cites 19 Issues With Tesla Software Update  
[UPDATE: Class Action Suit Cites 19 Issues With Tesla Software Update](#)

WK057'S POSTS

[Sudden Loss Of Range With 2019.16.x Software](#)  
[Sudden Loss Of Range With 2019.16.x Software](#)  
[Sudden Loss Of Range With 2019.16.x Software](#)  
[Calculate usable battery capacity based on rated miles values](#)

BATTERY TECHNICAL LINKS

COMPILATION OF ARTICLES/PAPERS ON LI-ION BATTERIES

[Sudden Loss Of Range With 2019.16.x Software](#)

PREDICTIVE MODELS OF LI-ION BATTERY LIFETIME

TRANSITION METAL DISSOLUTION, ION MIGRATION, ELECTROCATALYTIC REDUCTION AND CAPACITY LOSS IN LITHIUM-ION FULL CELLS

[Transition Metal Dissolution, Ion Migration, Electrocatalytic Reduction and Capacity Loss in Lithium-Ion Full Cells](#)

STRUCTURAL STABILITY OF LINIO2 CYCLED ABOVE 4.2 V

[\[REDACTED\]](#)  
LITHIUM-ION BATTERY CELL PRODUCTION PROCESS

[\[REDACTED\]](#)  
[BATTERY CELL PRODUCTION PROCESS](#)

Whiskers, surface growth and dendrites in lithium batteries

[Whiskers, surface growth and dendrites in lithium batteries | The Source | Washington University in St. Louis](#)

Interactions between Lithium Growths and Nanoporous Ceramic Separators

[\[REDACTED\]](#)  
NASA: Lithium Plating in Lithium-Ion Cells

NHTSA

[File a Vehicle Safety Complaint | Safercar.gov | NHTSA](#)

[Sudden Loss Of Range With 2019.16.x Software](#)

[Sudden Loss Of Range With 2019.16.x Software](#)

CLASS ACTION LAWSUIT

[\[REDACTED\]](#)  
[Docket for \[REDACTED\] v. Tesla, Inc., 5:19-cv-04596 - CourtListener.com](#)

Lieff Cabraser Heimann & Bernstein

[Sudden Loss Of Range With 2019.16.x Software](#)

BATTERY PART#'S

Fabbec's Batteriedecoder

[Fabbec's Batteriedecoder](#)

[Sudden Loss Of Range With 2019.16.x Software](#)

MEMBER DISCUSSIONS

[Sudden Loss Of Range With 2019.16.x Software](#)

[Sudden Loss Of Range With 2019.16.x Software](#)

[Max Power vs State of Charge and Temp](#)

[Sudden Loss Of Range With 2019.16.x Software](#)

[Screenshot\\_20191204-150015~2.png](#)425.1KB

[Screenshot\\_20191204-150019~2.png](#)425.6KB

[Screenshot\\_20191204-144837~2.png](#)377.4KB

[Screenshot\\_20191204-144831~2.png](#)697KB

[2019-12-05-screen shots-File a Vehicle Safety Complaint Safercar National Highway Traffic Safety Administration \(NHTSA\).pdf](#)64.2KB

[Model S-Tesla-5YJSA1CG5D \[REDACTED\].pdf](#)81.3KB

[2019-07-22-Gmail - Re Service for Vehicle 5YJSA1CG5D \[REDACTED\].pdf](#)103.1KB

[2019-12-04-National Center for Dispute Settlement-NCDS New Claim.pdf](#)197.9KB

[2019-12-04-Model S-Complaint CA Dept Consumer Affairs.pdf](#)430.2KB

[rasmussen-v-tesla-inc\\_1.pdf](#)2.6MB

[tesla-new-vehicle-limited-warranty-en-us.pdf](#)1.2MB

[Tesla Disclosure.pdf](#)22.5KB





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8 *Attorney for Plaintiff [REDACTED]*  
9 *And the Proposed Classes*

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

12 [REDACTED], 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.

**CLASS ACTION COMPLAINT**

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

**DEMAND FOR JURY TRIAL**

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I. INTRODUCTION

1. Plaintiff [REDACTED] 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

[1]

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

<sup>1</sup> Musk, Elon, "The Secret Tesla Motors Master Plan (just between you and me)" August 2, 2006, [REDACTED] (last accessed Jul. 29, 2019).

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

- 2 Build sports car
- 3 Use that money to build an affordable car
- 4 Use *that* money to build an even more affordable car
- 5 While doing above, also provide zero emission electric power generation options
- 6 Don't tell anyone.

7  
8 Tags: Environment and Corporate

9 SHARE 

10 [2]

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

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

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

25 <sup>2</sup> *Id.*

26 <sup>3</sup> [REDACTED] “Tesla rolls out improved Model S/X battery thermal management software amid  
27 HK fire investigation,” Teslarati website, [REDACTED]  
28 [REDACTED] (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”<sup>[4]</sup>

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  
26

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27 <sup>4</sup> *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.<sup>5</sup>

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  
26

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27 <sup>5</sup> CNN, "Tesla offers idiot proof warranty", April 26, 2013

[REDACTED] 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:



26  
27 <sup>6</sup> Lambert, Fred, "Tesla starts pushing fix to its 'Dog Mode' in incredible turnaround" August 2, 2019, Electrek,  
28 [REDACTED] (last visited August 5, 2019).

1  
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.”<sup>[7]</sup>

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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<sup>7</sup> *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,<sup>8</sup> 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  
26

27 \_\_\_\_\_  
28 <sup>8</sup>

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 [REDACTED] 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.

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## II. PARTIES

21. Plaintiff [REDACTED] (“Plaintiff”) is an individual who was, and is at all times relevant herein, a resident of Victorville, California. Plaintiff owns a 2014 Tesla Model S 85 bearing the vehicle identification number 5YJSA1H15EF [REDACTED].

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

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

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.

27 ///

**III. JURISDICTION**

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

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

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

<sup>9</sup> Tesla, “Second Quarter 2019 Update”, [REDACTED] (last visited Jul. 25, 2019).

<sup>10</sup> *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.



[11]

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26 <sup>11</sup> See Electrek, “Tesla says battery fire without crash in LA was ‘extraordinarily unusual  
27 occurrence’, still investigating the cause”, September 5, 2018, [REDACTED]  
28 [REDACTED] (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.<sup>12</sup> 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 <sup>12</sup> *Id.*

27 <sup>13</sup> See Electrek, “Tesla gives updates on cause of a battery fire, says single module is  
28 responsible” [REDACTED] 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 <sup>14</sup> *Id.*

26 <sup>15</sup> ABC 7 San Francisco, “Tesla Model S catches fire in San Francisco Garage” May 3, 2019,  
27 [REDACTED] (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.<sup>16</sup>

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.<sup>17</sup>



24 \_\_\_\_\_  
25 <sup>16</sup> Bloomberg, “Tesla Suddenly Catches Fire in Hong Kong Parking Lot, Times Says” May 13,  
2019, updated May 14, 2019 [REDACTED]

[REDACTED] (last accessed Jul. 29, 2019).

26 <sup>17</sup> Supertipp, “Cause of fire unclear: Tesla goes up in flames” [REDACTED]

[REDACTED] (last accessed Aug 5, 2019).

27 <sup>18</sup> *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



9 [19]

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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 ///  
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26 \_\_\_\_\_  
27 <sup>19</sup> Tesla, "Support – Software Updates", [REDACTED] (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.”<sup>21</sup>

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.

<sup>20</sup> *Id.*

<sup>21</sup> See The Verge, “Tesla pushes battery software update after recent fires”

[REDACTED] (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 ///

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 T.O UI
- Run our MCU1/MCU2 Tester - Run within your Tesla browser by typing teslatep.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 or 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

<sup>22</sup> Tesla Tap, "List of Undocumented Technical Aspects to Model S, X, and 3 Vehicles", [REDACTED] (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.<sup>23</sup>

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

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26 <sup>23</sup> 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  
28

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.  
28

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.<sup>24</sup> 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 <sup>24</sup> InsideEVs, “Tesla Now Offers Model S 60 kWh To 75 kWh Upgrade For Only \$2,000”,

27 [REDACTED] 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 under stated 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.

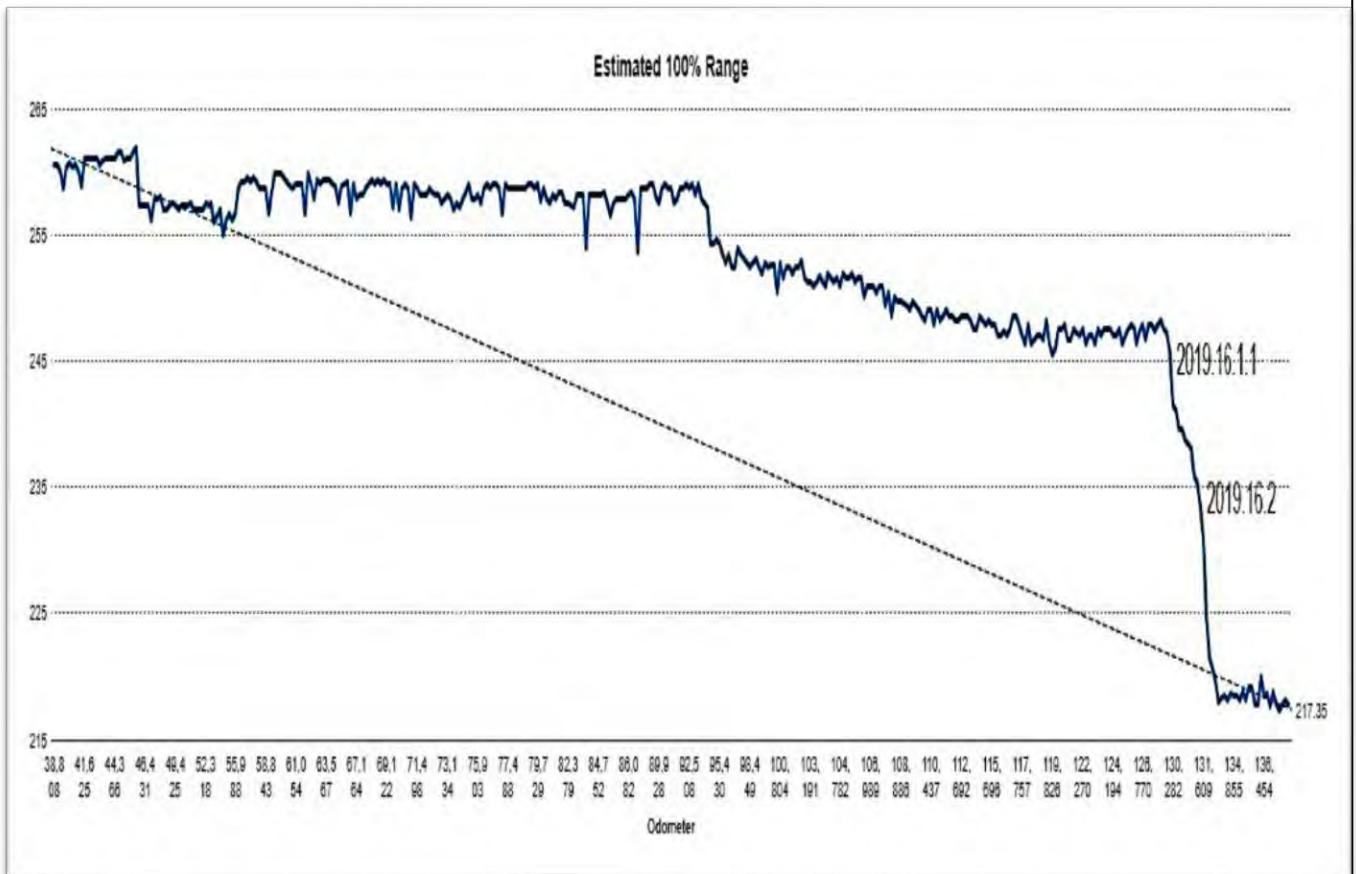
21 91. Any attempts by Tesla to limit liability for its software updates is also  
22 unconscionable and unenforceable as Tesla’s software updates are necessary in order for  
23 consumers to continue the use of their vehicles while still maintaining the full realization  
24 and benefit of the consumers’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

25 **I. Plaintiff [REDACTED] Experience**

26 92. Prior to Tesla May 16, 2019 update, Plaintiff [REDACTED] 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 <sup>26</sup> [REDACTED], Various Data Points from 2014 Tesla Model S 85 bearing the vehicle identification number  
28 SYJSAIH15EF [REDACTED].”

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.<sup>27</sup>

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

23  
24  
25 <sup>27</sup> [REDACTED], "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  
odometer, y-axis indicates maximum available rated miles with top line at 265).

<sup>28</sup> Tesla New Vehicle Limited Warranty

27 [REDACTED]  
28 [REDACTED] (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 [REDACTED], 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.<sup>29</sup>

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.<sup>30</sup> These  
20 promises were displayed on Tesla's website as follows:

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25 <sup>29</sup> 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", [REDACTED] (last visited July 28, 2019).

28 <sup>30</sup> See Tesla, "Infinite Mile Warranty" (Aug. 15, 2014), [REDACTED]  
[REDACTED] (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.<sup>32</sup>

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

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<sup>31</sup> *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  
13 “The Tesla lithium-ion battery (the “Battery”) and Drive Unit are  
14 extremely sophisticated powertrain components designed to withstand  
15 extreme driving conditions. You can rest easy knowing that Tesla’s  
16 state-of-the-art Battery and Drive Unit are backed by this Battery and  
17 Drive Unit Limited Warranty, which covers the repair or replacement  
18 of any malfunctioning or defective Battery or Drive Unit...”<sup>33</sup>

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

24 ///

25 ///

26 ///

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27 <sup>33</sup> Tesla, “New Vehicle Limited Warranty”

[REDACTED], (last accessed and downloaded Aug. 7, 2019).

1           **J. Plaintiff [REDACTED] 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.

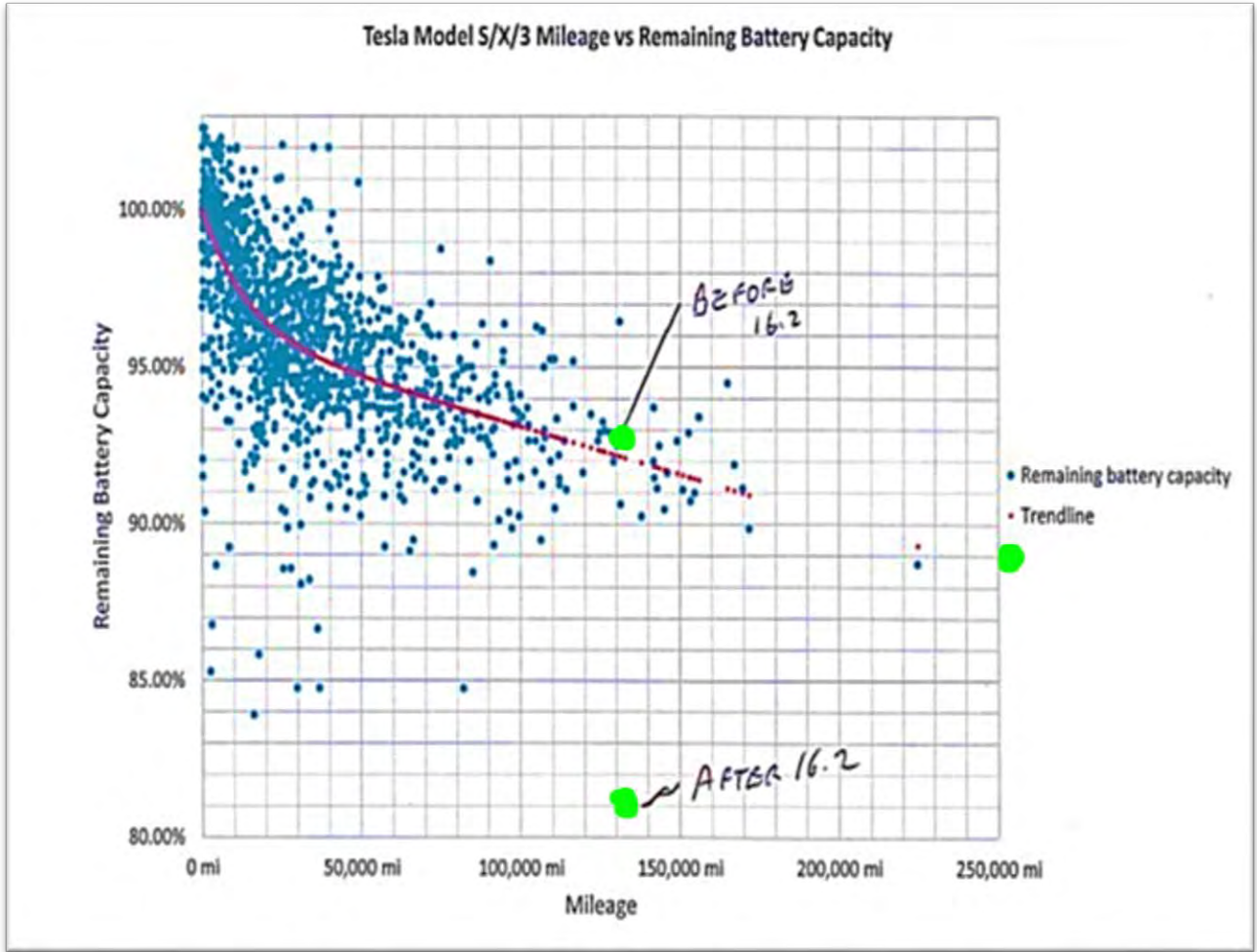
1           111. Plaintiff returned again on July 2, 2019 to have the HV Battery Test (CAC  
2 test) performed (work order number [REDACTED]) and accept that the results would  
3 only be explained but no printed results would be provided. Plaintiff was informed that  
4 the test results were negative 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.  
25  
26  
27  
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[34]

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

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

<sup>34</sup> Steinbuch, Maarten, “Tesla Model S degradation data,” [REDACTED] (last visited July 18, 2018) (G

1 expressly required by Tesla’s warranty.<sup>35</sup> 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:



12 [36]

13  
14  
15  
16  
17 119. Other comments from members on the same thread of this specific forum  
18 post describe having similar experiences with their cars:

- 19  
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%.”<sup>37</sup>

24 <sup>35</sup> Tesla. “New Vehicle Limited Warranty” [REDACTED] (last  
25 accessed and downloaded Aug. 7, 2019).

26 <sup>36</sup> Tesla Motors Club Forum. “Sudden Loss of Range with 2019.16.x Software”. June 3, 2019,  
27 [REDACTED] (last  
visited Aug. 7, 2019).

28 <sup>37</sup> *Id.* Post [REDACTED] 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.”<sup>38</sup>
- 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...”<sup>39</sup>
- 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?”<sup>40</sup>
- 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?”<sup>41</sup>

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<sup>38</sup> *Id.* Post #2675

<sup>39</sup> *Id.* Post #2574, August 3, 2019

<sup>40</sup> *Id.* Post #2597, August 4, 2019

<sup>41</sup> *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.<sup>42</sup>

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.<sup>43</sup>

#### 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

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25  
26 <sup>42</sup> 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.

<sup>43</sup> *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.

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

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

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  
28

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.<sup>44</sup> 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

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26 <sup>44</sup> Business Insider, "Tesla is updating its battery software after 2 seemingly spontaneous fires",  
27 May, 16, 2019, website [REDACTED]  
28 [REDACTED] 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  
28

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 e. By forcing customers like Plaintiff and the other putative class  
7 members to accept Tesla's software updates as a condition of  
8 eligibility for warranty service, when Tesla failed its duties and legal  
9 obligations to Plaintiff and other putative class members by denying  
10 warranty battery replacements;
- 11 f. By manipulating the software and variables used to calculate the  
12 amount of maximum rated miles which thereby artificially raised  
13 mileage range and therefore effectively bar Plaintiff and other  
14 putative class members from receiving warranty battery  
15 replacements;
- 16 g. Designing, manufacturing, marketing and selling the Class Vehicles  
17 to consumers that contained material and fundamental defects  
18 without disclosing such defects to consumers;
- 19 h. Marketing and selling Class Vehicles that were not merchantable for  
20 the purpose of providing reliable and safe transportation.
- 21 i. Marketing and selling Class Vehicles while concealing material  
22 facts from Plaintiff and other putative class members regarding  
23 defects in the batteries that would be subsequently updated with  
24 software that would serve as the basis for denial of warranty battery  
25 replacements;
- 26 j. Concealing from Plaintiff and the other putative class members that  
27 Tesla intended to manipulate its software, including by changing the  
28 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 l. 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.  
28

1 245. Plaintiff, individually and on behalf of the putative class, further seek an  
2 order enjoining Tesla’s unfair or deceptive acts or practices, costs of court, attorneys’  
3 fees under Cal. Civ. Code § 1780(e), and any other just and proper relief available under  
4 the CLRA.

5 **COUNT 7**  
6 **VIOLATIONS OF CALIFORNIA’S FALSE ADVERTISING LAW**  
7 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

8 246. Plaintiff realleges and incorporates by reference all paragraphs as though  
9 fully set forth herein.

10 247. Plaintiff brings this count on his own behalf and on behalf of the Nationwide  
11 Classes. In the alternative, Plaintiff brings this count on his own behalf and on behalf of  
12 the California Subclasses.

13 248. California Business & Professions Code (“Unfair Competition Law”) or  
14 “UCL”) §§17500 states: “[i]t is unlawful for any...corporation...with intent directly or  
15 indirectly to dispose of real or personal property...to induce the public to enter into any  
16 obligation relating thereto, to make or disseminate or cause to be made or  
17 disseminated...from this state before the public in any state, in any newspaper or other  
18 publication, or any advertising device...or in any other manner or means whatever,  
19 including over the Internet, any statement...which is untrue or misleading, and which is  
20 known, or which by the exercise of reasonable care should be known, to be untrue or  
21 misleading.”

22 249. Tesla represents that utilizes over-the-air software updates to provide safety  
23 and increased functionality but fails to disclose that the updates are detrimental to range  
24 and performance of the Class Vehicles. Tesla advertises the estimated EPA rated range  
25 which Tesla knows is false. Tesla caused to be made or disseminated throughout  
26 California and the United States, through advertising, marketing, and other publications  
27 emanating from its headquarters in California, statements that were untrue or misleading,  
28

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.  
27  
28



1 260. Tesla impaired the condition, quality, and usefulness of Plaintiff and the  
2 putative class members' vehicles, or parts of them, without their knowledge or consent.  
3 Such acts constituted an intentional interference with the use and enjoyment of the  
4 vehicles.

5 261. Tesla acted intentionally, because it knew that Plaintiff and the putative class  
6 members were downloading and installing software onto their vehicles that reduced the  
7 performance and maximum mileage range and usable battery capacity of the vehicles.  
8 Plaintiff and other putative class members only consented to the installation of software  
9 updates that would improve performance, not diminish performance.

10 262. Tesla engaged in deception to gain access to the vehicles and install new  
11 computer software or updates, including 2019.16.1 and 2019.16.2.

12 263. The software updates issued by Tesla effectively throttled the performance  
13 of the Class Vehicles, and Tesla removed the ability for Plaintiff and the other putative  
14 class members to utilize and charge the vehicle to maximum battery capacity. In doing  
15 so, Tesla took Plaintiff and the other putative class members battery capacity, measurable  
16 in the amount of kWh.

17 264. Plaintiff and class members suffered actual damages as a result of Tesla's  
18 actions in an amount to be determined at trial.

19 265. Furthermore, Plaintiff seeks punitive damages because Tesla's trespass was  
20 committed from wanton or malicious motives, or reckless disregard of the rights of  
21 Plaintiff and the putative classes, for the purpose of concealing the defective batteries and  
22 escaping its legal obligations and duties it owed to Plaintiff and the putative classes.

23  
24 **COUNT 9**  
25 **COMMON LAW FRAUD**  
26 **(California Law)**

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

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  
28

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  
27  
28

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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1 289. Tesla breached its duty to Plaintiff and the putative class members to make  
2 full disclosures of the effects of the software updates, the potential results of installing the  
3 same, and the batteries and their defective nature.

4 290. Plaintiff and the putative class members sustained damages as a result of  
5 their reliance on Tesla's omissions and misrepresentations, and Tesla's breach of its  
6 duties, thus causing Plaintiff and the putative class members to sustain actual losses and  
7 damages in a sum to be determined at trial.

8  
9 **COUNT 11**  
10 **FRAUDULENT INDUCEMENT**  
11 **(California Law)**

12 291. Plaintiff realleges and incorporates by reference all paragraphs as though  
13 fully set forth herein.

14 292. Plaintiff brings this count on his own behalf and on behalf of the Nationwide  
15 Class. In the alternative, Plaintiff brings this count on his own behalf and on behalf of  
16 the California Subclasses.

17 293. At the time Plaintiff and the putative class members purchased their  
18 vehicles, Tesla did not disclose, but instead concealed and misrepresented, the defective  
19 batteries and other related defects and issues as discussed herein.

20 294. Further, Tesla represented that its software updates, including 2019.16.1 and  
21 2019.16.2 to its vehicles were designed to improve the vehicles performance and safety  
22 and the "battery life longevity" as it represented.

23 295. Tesla omitted that the software updates were actually designed to further  
24 conceal the defective batteries and would limit the charging speed and usable battery  
25 kWh capacity in a way that would allow Tesla to avoid and escape its warranty liabilities  
26 and legal obligations to repair, fix, or replace as warranted. Further, Tesla omitted and  
27 affirmatively misrepresented the true reason for the software updates, as discussed herein.  
28

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.  
26  
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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  
28

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.  
28

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.  
28

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.  
27  
28

1 392. Tesla's acts were done maliciously, oppressively, deliberately, with intent to  
2 defraud, and in reckless disregard of Plaintiff and the other putative class members' rights  
3 and well-being, and as part of efforts to enrich itself in California at the expense of  
4 consumers. Tesla's conduct warrants an assessment of punitive damages sufficient to  
5 deter such conduct in the future, the amount which shall be determined according to  
6 proof.

7  
8 **COUNT 19**  
9 **QUASI CONTRACT/RESTITUTION/UNJUST ENRICHMENT**  
10 **(California Law)**

11 393. Plaintiff realleges and incorporates by reference all paragraphs as though  
12 fully set forth herein.

13 394. Plaintiff brings this count on his own behalf and on behalf of the Nationwide  
14 Class and California Classes.

15 395. Tesla intentionally and recklessly made misrepresentations and concealed  
16 facts about the Class Vehicles to Plaintiff and the putative class members with an intent  
17 to induce them to purchase the Class Vehicles.

18 396. In reliance on Tesla's misrepresentations and concealment, Plaintiff and the  
19 putative class members believed that Tesla's vehicles contained safe and effective  
20 batteries that were not severely degraded or defective, and that they would be repaired or  
21 replaced under warranty as legally obligated to do so by Tesla. Plaintiff and the putative  
22 class members relied upon Tesla's false statements and representations that the software  
23 updates, including 2019.16.1 and 2019.16.2 issued to its vehicles were for safety and to  
24 increase the battery health and longevity. Plaintiff and the putative class members relied  
25 upon Tesla's false statements and representations that the software updates would  
26 enhance their vehicles and were deceived by Tesla's fraudulent denial of warranty battery  
27 replacements following the damage caused by Tesla's acts.  
28

1 397. Plaintiff and the putative class members made monetary payments to Tesla  
2 to purchase the vehicles or are deemed as legally rightful subsequent owners of the  
3 vehicles, for which Tesla received and has been unjustly enriched by accepting such  
4 payments for.

5 398. Plaintiff and the putative class members are entitled to restitution based on  
6 the contract and the quasi contract between Plaintiff and the putative class members and  
7 Tesla, and each of them, to be determined at trial.

8 399. Furthermore, Tesla's conduct was willful, intentionally deceptive, and  
9 intended to cause economic injury to Plaintiff and the putative class members. Tesla is  
10 therefore liable to pay punitive damages as allowable and to the full extent permitted  
11 under California law.

12 **IX. REQUEST FOR RELIEF**

13 400. WHEREFORE, Plaintiff [REDACTED], individually and on  
14 behalf of the putative class members and the proposed classes, respectfully requests that  
15 the Court enter judgment in their favor and against Defendant Tesla, Inc., as follows:

16 A. Certification of the proposed classes, including appointment of Plaintiff's  
17 counsel as class counsel;

18 B. An order temporarily and permanently enjoining Tesla from continuing  
19 the unlawful, deceptive, fraudulent, and unfair business practices alleged in this  
20 complaint;

21 C. Injunctive relief in the form of a recall, as applicable to the CLRA cause  
22 of action only;

23 D. Equitable relief in the form of buyback of a buyback of the Class  
24 Vehicles; or an order requiring Tesla to offer battery replacements as warranted by Tesla  
25 at no cost to Plaintiff and the putative class members;

26 E. Costs, restitution, damages, including punitive and exemplary damages,  
27 penalties, and disgorgement in an amount to be determined at trial;

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

LAW OFFICES OF EDWARD C. CHEN

10 By /s/ Edward C. Chen  
11 Edward C. Chen (SBN 312533)

12 1 Park Plaza, Suite 600  
13 Irvine, CA 92614  
14 Telephone: (949) 287-4278  
15 Facsimile: (626) 386-6060  
16 Email: [Edward.Chen@edchenlaw.com](mailto:Edward.Chen@edchenlaw.com)

17 *Attorney for Plaintiff [REDACTED] and the*  
18 *Proposed Classes*

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

[REDACTED], an individual, on behalf of himself and all others

(b) County of Residence of First Listed Plaintiff SAN BERNARDINO COUNTY, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Edward C. Chen, Law Offices of Edward C. Chen 1 Park Plaza, Suite 600, Irvine CA 92614 / (949) 287-4278

DEFENDANTS

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

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business in This State
2 2 Incorporated and Principal Place of Business in Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 18 U.S.C. § 1030; 15 U.S.C. § 2301

Brief description of cause:

Class action arising from software updates motor vehicle safety / electric vehicle battery defects

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000+

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND X SAN JOSE EUREKA-MCKINLEYVILLE

DATE 08/07/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Edward C. Chen

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Tesla Vehicles Worth Less After Rollout of Battery Update to Hide Lithium-Ion Battery Problems](#)



Model S



163 mi

Charging Complete



CLIMATE

Interior 70°F



CONTROLS



CHARGING



LOCATION

4361 Granite Drive, Rocklin





# Model S



Interior 70°F



**CONTROLS**



**CHARGING**



**LOCATION**

4361 Granite Drive, Rocklin



**SCHEDULE SERVICE**



**ROADSIDE ASSISTANCE**

**MODEL S**  
**60**

95,670 mi

VIN: 5YJSA1CG5DF

Version: 2019.32.12.2 58f3b76





# CHARGING

Charging Complete



UNLOCK CHARGE PORT

## Nearby Superchargers

Rocklin, CA





# CHARGING

Charging Complete



UNLOCK CHARGE PORT

## Nearby Superchargers

Rocklin, CA



**NOTICE TO CONSUMERS  
OF  
CALIFORNIA**

Pursuant to California Civil Code Section 1793.2(d), if this vehicle does not conform to its applicable warranties, and Tesla has not repaired the vehicle after a reasonable number of repair attempts, you may be entitled to a replacement or refund under the Song-Beverly Consumer Warranty Act, less an offset for the mileage accumulated before the first repair of the nonconformity.

California Civil Code Section 1793.22(b) presumes that a manufacturer has had a reasonable number of repair attempts to conform the vehicle to its applicable warranties if within the first 18 months from delivery or the first 18,000 miles on the odometer, whichever occurs first, (1) Tesla has made at least two unsuccessful repair attempts on a nonconformity that results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven; OR (2) Tesla has made four or more unsuccessful repair attempts on the same nonconformity (i.e., a defect or condition that substantially impairs the use, value or safety of the vehicle); OR (3) the vehicle has been out of service for the repair of nonconformity for more than 30 calendar days. In the case of (1) or (2) above, if you want the presumption to apply, you must send written notice of the need to repair the nonconformity or non-conformities directly to Tesla at the address listed below.

Tesla offers its customers a third-party dispute resolution through an arbitration program called the California Dispute Settlement Program (CDSP) as administered by the National Center for Dispute Settlement. To be eligible for the process, the vehicle must be purchased or leased in California OR purchased or leased by a member of the armed forces who was stationed or residing in California at the time of purchase/lease or at the time the claim is filed. Whether or not you decide to submit your dispute to CDSP, you are free to pursue other legal remedies. However, certain presumptions under California's Lemon Law (Civil Code 1793.22(b)) may not be available to you if you do not use the program before pursuing other legal remedies.

For additional information about the CDSP, see the New Vehicle Limited Warranty for your vehicle or contact Tesla at the address or toll-free number indicated below. You may also contact the CDSP directly at:

**California Dispute Settlement Program  
P.O. Box 526  
Mt. Clemens, MI 48046  
1-866-629-3204**

The CDSP is certified by the California Department of Consumer Affairs Arbitration Certification Program (ACP). To request additional information regarding California lemon law remedies and the offset for use, refer to the ACP's "Lemon-Aid for Consumers" booklet. You may request a copy from the ACP at 1-800-952-5210 or download it from [www.LemonLaw.ca.gov](http://www.LemonLaw.ca.gov).

**Additional information regarding arbitration of disputes in California is included with your new vehicle at delivery. Such information can also be obtained from:**

**Tesla Motors, Inc.  
3500 Deer Creek Road  
Palo Alto, California 94304  
Attention: Vehicle Service  
1-877-79-TESLA (1-877-798-3752)**

Tesla is fully committed to your satisfaction. From your first phone call or visit to a Tesla Store or Tesla's website, through the purchase and delivery of your new Tesla, to after-sales service, your satisfaction is of utmost importance to us. If you should experience a problem which has not been resolved to your satisfaction through a Tesla Service Center or our customer service team, additional assistance may be available through the California Dispute Settlement Program (CDSP) administered by the National Center for Dispute Settlement (NCDS), an independent dispute settlement service organization. CDSP will resolve your complaint through arbitration—a process by which two or more parties authorize a third party to resolve the dispute. This procedure is offered to you at no charge. The decision is binding upon Tesla, but not on you.

#### *What is the dispute settlement program?*

CDSP maintains an active panel of neutrals who are trained and experienced in the process. CDSP will investigate your case by reviewing the facts, inspecting the vehicle if necessary, and rendering a fair and equitable decision. You have the option of having an oral hearing either in person or via teleconference before an arbitrator, or you can have your dispute decided based upon a review of documents only before an arbitration panel.

#### *What types of disputes are eligible?*

CDSP arbitrates disputes involving alleged product reliability or warranty performance problems concerning your Tesla vehicle which arise during four years or 50,000 miles from the date of original delivery, whichever is earlier, or the applicable provision of Tesla's New Vehicle Limited Warranty.

However, CDSP will not arbitrate claims involving:

- A non-Tesla product
- A vehicle sales transaction
- A request for reimbursement of consequential expenses, unless incidental to a service or product complaint being reviewed
- Items not covered by your warranty
- Personal injury
- Property damage where such damage is significant when compared to the economic loss alleged under the warranty dispute
- Cases currently in litigation

You must file a request for arbitration with CDSP within six (6) months of the expiration of the eligibility period, provided the concern or alleged defect was brought to the attention of Tesla or a Tesla Service Center during the eligibility period. You may obtain a copy of the program's written operating procedures upon request and without charge by writing to CDSP at the address above or by calling 1-866-629-3204.

#### *How do I request arbitration?*

If you believe your concern qualifies for arbitration:

1. Fill out a customer claim form
2. Complete all of the information requested
3. Attach legible copies of any Repair Orders, reports of inspections, technical service bulletins or other documents related to your concern
4. Mail to: CDSP  
P.O. Box 526  
Mt. Clemens, MI 48046

#### *How does the arbitration process work?*

1. When CDSP receives your claim, it will be reviewed to determine whether your concern is eligible for arbitration. If it is determined that your concern is eligible for CDSP, a copy of your request will be forwarded to Tesla for response. CDSP will send an acknowledgment letter assigning a case number. Should your case not be eligible, CDSP will mail a letter of explanation of why your concern is not eligible. Should you feel that the determination of eligibility was made in error, you have the right to appeal the determination within thirty (30) days of the notice of ineligibility to an

independent three (3) member arbitration panel. The panel will consider and review any written appeals contesting the lack of eligibility at their next board meeting.

2. There is no cost to you for submitting your request to CDSP.
3. To assess your situation, CDSP will request a written statement from Tesla. You will be provided with copies of all documents CDSP receives throughout the administration of your case. Review all documents carefully when you receive them. If you find information you believe is contradictory to your original application or information you believe requires further explanation by you, **promptly** (CDSP must receive this information no later than 48 hours before your scheduled hearing) submit any additional written materials directly to CDSP at the address you received with your case or fax it to CDSP. Be sure to include your case number.
4. If you have elected an oral hearing either in person or via teleconference hearing, all evidence is admissible. In an oral hearing, you and a Tesla representative will present both sides of the case to the arbitrator. Both of you will have an opportunity to present testimony and provide documents. Then you and Tesla will be given time for rebuttal. If you request an oral hearing and if either party to the dispute fails to appear, the other party to the dispute may still present their case before the arbitrator. If you elected a “documents only” hearing, your case will be decided based upon all available information.
5. During the period that your dispute is pending, Tesla may contact you directly or through CDSP to see if your case can be settled by agreement. If a settlement is offered to you, you will be asked to sign a form that contains that settlement so that your arbitration case can be closed. There is no requirement for you to participate in this settlement process. Unless you reach settlement, your participation will not affect the handling of your case or decision of the arbitrator.
6. If the arbitrator determines that an independent technical evaluation of your vehicle is necessary to make a decision, CDSP will arrange with you for such inspection. These arrangements will be made to minimize any inconvenience to you.
7. If a technical evaluation was made, the technical expert will forward an evaluation report to CDSP. At the oral hearing, the arbitrator will listen to all testimony and review all of the available information and the applicable legal standards and render a decision within ten (10) days of a closed hearing.

The entire dispute settlement process, from the time CDSP receives your request to the time the arbitrator makes a decision, will normally take no longer than forty (40) days. To inquire about the status of your dispute, you may call toll free, 1-866-629-3204.

*What types of decisions are rendered, and how do I know if Tesla will abide by the dispute settlement program decision?*

Decisions are based on what the arbitrator believes is fair and appropriate under the circumstances after applying the appropriate legal standards. Remedies include, but are not limited to, repairs; reimbursement for repair or incidental expenses, such as towing costs; or repurchase or replacement of your vehicle. The decision is binding on Tesla, but not on you. Tesla must comply with the decision within thirty (30) days after you accept it. CDSP will contact you within ten (10) days after scheduled performance to ensure that Tesla has timely complied.

*Are there limits on the scope of the dispute settlement program decision?*

The CDSP decision will not award consequential expenses such as lost wages, punitive damages or attorney fees. The arbitrator cannot alter the terms of the New Vehicle Limited Warranty.

*What other recourse do I have?*

You may reject the decision and pursue any other legal remedies which you may have, including small claims court. Arbitration decisions are admissible as evidence in subsequent legal proceedings.



**MODEL S  
MODEL X  
MODEL 3**

**NEW VEHICLE LIMITED WARRANTY**

EFFECTIVE DATE: FEB 1, 2019

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TESLA TESLA MOTORS

TESLA  
ROADSTER

MODEL S  
MODEL 3

MODEL X

TESLA





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# General Warranty Provisions

Tesla, Inc. ("Tesla") will provide repairs to the vehicle during the applicable warranty period in accordance with the terms, conditions and limitations defined in this New Vehicle Limited Warranty. Your rights and Tesla's obligations under this New Vehicle Limited Warranty apply within the Warranty Region where your Tesla vehicle was purchased new. The terms of this New Vehicle Limited Warranty will not apply if you bring your Tesla vehicle to a different Warranty Region, unless otherwise required by local law. The Warranty Regions are listed below.

## Who is the Warrantor?

The Warranty Region, summarized below, is based on where the vehicle was first purchased from Tesla.

Warranty Region	Contact Information
USA and Canada	<p>USA:            Tesla, Inc.            Attention: New Vehicle Limited Warranty            P.O. Box 15430            Fremont, CA 94539            Phone: 1 877 79 TESLA (1 877 798 3752)</p> <p>Canada:            Tesla Motors Canada ULC            1325 Lawrence Ave East            Toronto, ON Canada M3A 1C6            Phone: 1 877 79 TESLA (1 877 798 3752)</p>
Europe	<p>Tesla Motors Netherlands B.V.            Burgemeester Stramanweg 122, 1101 EN            Amsterdam, Netherlands            Phone: 020 365 00 08</p>
Australia	<p>Tesla Motors Australia, Pty Ltd.            10 Herbert Street            St. Leonards NSW 2065, Australia            Phone: 61 2 8015 2834</p>
China	<p>Tesla Motors (Beijing) Co., Ltd.            8F, Tower 3 China Central Place            No.77 Jianguo Road            Chaoyang District, Beijing            Phone: 86 400 910 0707</p>
Hong Kong	<p>Tesla Motors HK Limited            Kong Nam Industrial Building            603-609 Castle Peak Road            Tsuen Wan, New Territories, Hong Kong            Phone: 852 3974 0288</p>
Japan	<p>Tesla Motors Japan            8-5-41, Akasaka, Minato-ku            Tokyo, Japan            Phone: 0120 975 214</p>



Jordan	Tesla Jordan Car Trading, LLC 61 Al-Ummal Street 1118 Bayader Wadi Seer Amman, Jordan Phone: 962 06 580 3130
Korea	Tesla Korea Limited Attention: Vehicle Service Yangcheon-ro 66-gil Gangseo-gu, Seoul, South Korea Phone: 080 822 0309
Macau	Tesla Energia Macau Limitada Lower Ground Floor, the Venetian Macao Estrada da Bala de Nossa Senhora da Esperanca, Macau Phone: 853 2857 8038
Mexico	Tesla Mexico Av. Paseo De La Reforma 404 Piso 13 Col. Juarez, Cuauhtemoc Distrito Federal 06600 Phone: 01 800 228 8145
New Zealand	Tesla New Zealand ULC 501 Karangahape Road Auckland, North Island New Zealand Phone: 4 831 8723
Taiwan	Tesla Motors Taiwan, Ltd. No. 6, Lane 11, Section 6 Minquan East Road Nehu District Taipei City 114, Taiwan Phone: 0809 007518
United Arab Emirates	Tesla Motors Netherlands B.V. (Dubai Branch) 146 Sheikh Zayed Road Al Wasi, P.O. Box 73076 Dubai, United Arab Emirates Phone: 971 (0) 4 521 7777

## What Vehicles are Covered?

This New Vehicle Limited Warranty applies to vehicles sold by Tesla in your specific Warranty Region. For purposes of this New Vehicle Limited Warranty, your Tesla specific Warranty Region is defined as the region that your vehicle is first registered in, provided that you return to your specific Warranty Region in order to receive warranty service. Any subsequent purchasers or transferees must return to your specific Warranty Region in order to obtain warranty service regardless of the country in which such purchaser or transferee may have purchased the vehicle.

## Multiple Warranty Conditions

This New Vehicle Limited Warranty contains warranty terms and conditions that may vary depending on the part or system covered. A warranty for specific parts or systems is governed by the coverage set forth in that warranty section as well as other provisions in this New Vehicle Limited Warranty.

## Limitations and Disclaimers

THIS NEW VEHICLE LIMITED WARRANTY IS THE ONLY EXPRESS WARRANTY MADE IN CONNECTION WITH YOUR TESLA VEHICLE. All other implied or express warranties or conditions are disclaimed to the fullest extent allowed by the law in your Warranty Region, including, but not limited to, implied warranties and conditions of merchantability, fitness for a particular purpose, durability, or those arising out of a course of dealing or usage of trade. Some Warranty Regions do not allow limitations on implied warranties or conditions and/or how long an implied warranty or condition lasts, so the above limitations may not apply to you.

The performance of necessary repairs and parts replacement by Tesla is the exclusive remedy under this New Vehicle Limited Warranty or any implied warranties. Tesla does not authorize any person or entity to create for it any other obligations or liability in connection with this New Vehicle Limited Warranty. The decision of whether to repair or replace a part or to use a new, reconditioned, or remanufactured part will be made by Tesla, in its sole discretion.

## Your Rights Under Local Laws

This New Vehicle Limited Warranty provides you with rights that are in addition to the statutory warranty rights that you may have under applicable local law according to the Warranty Region where your vehicle was first purchased. These statutory warranty rights can not be modified, affected or substituted. Tesla also refers you to [Dispute Resolution and Country-Specific Consumer Disclosures](#) on page 11.

## Ownership Transfer

This New Vehicle Limited Warranty is transferable at no cost to any person(s) who subsequently and lawfully assume(s) ownership of the vehicle after the first retail purchaser within the described limitations of this New Vehicle Limited Warranty ("subsequent purchaser").

## Who Can Enforce this New Vehicle Limited Warranty?

The first retail purchaser, or subsequent purchaser, of a new vehicle sold in your specific Warranty Region, titled or registered in the name of the first retail purchaser, or subsequent purchaser, according to the laws in your specific Warranty Region, can enforce this New Vehicle Limited Warranty subject to the terms of this New Vehicle Limited Warranty.

## When Does the Warranty Period Begin and End?

This New Vehicle Limited Warranty begins on the first day a new vehicle is delivered by Tesla to the first retail or corporate purchaser(s) or lessor(s), or the day it is first put into service (for example used as a demonstrator or company vehicle), whichever comes first, and provides coverage for the period based on the specified warranty as described in the Warranty Coverage section of this New Vehicle Limited Warranty. Parts repaired or replaced, including replacement of the vehicle, under this New Vehicle Limited Warranty are covered only until the applicable warranty period of this New Vehicle Limited Warranty ends, or as otherwise provided by applicable law.



This New Vehicle Limited Warranty includes the Basic Vehicle Limited Warranty, the Supplemental Restraint System ("SRS") Limited Warranty, and the Battery and Drive Unit Limited Warranty, each as described below.

Without prejudice to your rights as described in [Your Rights Under Local Laws](#) on page 4 and [Dispute Resolution and Country-Specific Consumer Disclosures](#) on page 11, the exclusive remedy available to you under this New Vehicle Limited Warranty is the repair or replacement of new or re-manufactured parts by Tesla for the covered defects. Subject to the exclusions and limitations described in this New Vehicle Limited Warranty, such repair or parts replacement will be performed without cost to you by Tesla when Tesla is notified of the covered defect within the applicable warranty period. Repairs will be performed using new, reconditioned, or re-manufactured parts at the sole discretion of Tesla. All replaced parts or other components are the exclusive property of Tesla unless otherwise provided under applicable law.

### Basic Vehicle Limited Warranty

Subject to separate coverage for certain parts and the exclusions and limitations described in this New Vehicle Limited Warranty, the Basic Vehicle Limited Warranty covers the repair or replacement necessary to correct defects in the materials or workmanship of any parts manufactured or supplied by Tesla that occur under normal use for a period of 4 years or 50,000 miles (80,000 km), whichever comes first.

### Supplemental Restraint System (SRS) Limited Warranty

Subject to the exclusions and limitations described in this New Vehicle Limited Warranty, the SRS Limited Warranty covers the repair or replacement necessary to correct defects in the materials or workmanship of the vehicle's seat belts or air bag system manufactured or supplied by Tesla that occur under normal use for a period of 5 years or 60,000 miles (100,000 km), whichever comes first.

### Battery and Drive Unit Limited Warranty

The Tesla lithium-ion battery (the "Battery") and Drive Unit are extremely sophisticated powertrain components designed to withstand extreme driving conditions. You can rest easy knowing that Tesla's state-of-the-art Battery and Drive Unit are backed by this Battery and Drive Unit Limited Warranty, which covers the repair or replacement of any malfunctioning or defective Battery or Drive Unit, subject to the limitations described below.

If your Battery or Drive Unit requires warranty repair, Tesla will repair the unit, or replace it with a new, reconditioned or re-manufactured part at the sole discretion of Tesla. The warranty replacement may not restore the vehicle to a "like new" condition, but when replacing a Battery, Tesla will ensure that the energy capacity of the replacement Battery is at least equal to that of the original Battery before the failure occurred while taking into consideration other factors, including the age and mileage of the vehicle.

To provide you with even more assurance, this Battery and Drive Unit Limited Warranty will also cover damage to your vehicle from a Battery fire even if it is the result of driver error. (Coverage will not extend to damage that had already been sustained before a Battery fire occurred, or to any damage if the Battery fire occurred after your vehicle had already been totaled.)

Your vehicle's Battery and Drive Unit are covered under this Battery and Drive Unit Limited Warranty for a period of:

- Model S and Model X - 8 years (with the exception of the original 60 kWh battery manufactured before 2015 that is covered for a period of 8 years or 125,000 miles/200,000 km, whichever comes first).
- Model 3 with Standard or Mid-Range Battery - 8 years or 100,000 miles (160,000 km), whichever comes first, with minimum 70% retention of Battery capacity\* over the warranty period.



## Warranty Coverage

- Model 3 with Long Range Battery - 8 years or 120,000 miles (192,000 km), whichever comes first, with minimum 70% retention of Battery capacity\* over the warranty period.

\*For warranty claims specific to Battery capacity, the replacement Battery will be in a condition appropriate to the age and mileage of the vehicle sufficient to achieve or exceed the minimum Battery capacity for the remainder of the warranty period of the original Battery. Note that the vehicle's range estimates are an imperfect measure of Battery capacity because they are affected by additional factors separate from Battery capacity. The measurement method used to determine Battery capacity, and the decision of whether to repair, replace, or provide reconditioned or re-manufactured parts, and the condition of any such replaced, reconditioned or re-manufactured parts, are at the sole discretion of Tesla.

Despite the breadth of this warranty, damage resulting from intentional actions (including intentionally abusing or destroying your vehicle or ignoring active vehicle warnings or service notifications), a collision or accident (excluding from Battery fires as specified above), or the servicing or opening of the Battery or Drive Unit by non-Tesla or non-certified personnel, is not covered under this Battery and Drive Unit Limited Warranty.

In addition, the Drive Unit is subject to the exclusions and limitations described in this New Vehicle Limited Warranty. Damage to the Battery resulting from the following activities is also not covered under this Battery and Drive Unit Limited Warranty:

- Damaging the Battery or intentionally attempting, either by physical means, programming, or other methods, to extend (other than as specified in your owner manual and any documentation provided by Tesla) or reduce the life of the Battery;
- Exposing the Battery to direct flame (excluding from Battery fires as specified above); or
- Flooding the Battery.

The Battery, like all lithium-ion batteries, will experience gradual energy or power loss with time and use. Loss of Battery energy or power over time or due to or resulting from Battery usage is NOT covered under this Battery and Drive Unit Limited Warranty, except to the extent specified in this Battery and Drive Unit Limited Warranty. See your owner documentation for important information on how to maximize the life and capacity of the Battery, failure to follow these recommended battery maintenance and charging procedures shall void this Battery and Drive Unit Limited Warranty.

### Body Rust Limited Warranty

This Body Rust Limited Warranty covers rust perforation (hole through the body panel from the inside outwards) resulting from a defect in material or workmanship for a period of 12 years and unlimited miles, excluding the following:

- Vehicles treated against rust, i.e., procedures commonly referred to as rustproofing or undercoating;
- Corrosion from defects in non-Tesla manufactured or supplied materials or workmanship causing perforation in body panels or the chassis from the inside out;
- Surface or cosmetic corrosion causing perforation in body panels or the chassis from the outside in, such as stone chips or scratches;
- Corrosion caused by, due to, or resulting from accidents, abuse, neglect, improper maintenance or operation of the vehicle, installation of an accessory, exposure to chemical substances, or damages resulting from an act of God or nature, fire, or improper storage.

For more information on other paint, rust or corrosion concerns that are excluded from this New Vehicle Limited Warranty, see [Additional Limitations and Exclusions](#) on page 7.



## Warranty Limitations

This New Vehicle Limited Warranty does not cover any vehicle damage or malfunction directly or indirectly caused by, due to or resulting from normal wear or deterioration, abuse, misuse, negligence, accident, improper maintenance, operation, storage or transport, including, but not limited to, any of the following:

- Failure to take the vehicle to, or make repairs or service recommended by, a Tesla Service Center or Tesla authorized repair facility upon discovery of a defect covered by this New Vehicle Limited Warranty;
- Accidents, collisions, or objects striking the vehicle;
- Any repair, alteration or modification of the vehicle that was made inappropriately, or the installation or use of fluids, parts or accessories, made by a person or facility not authorized or certified to do so;
- Improper repair or maintenance, including use of fluids, parts or accessories other than those specified in your owner documentation;
- Any damage to your vehicle's hardware or software, or any loss or harm to any personal information/data uploaded to your vehicle resulting from unauthorized access to vehicle data or software from any source, including non-Tesla parts or accessories, third party applications, viruses, bugs, malware, or any other form of interference or cyber attack;
- Towing the vehicle;
- Improper winch procedures;
- Theft, vandalism, or riot;
- Fire, explosion, earthquake, windstorm, lightning, hail, flood, or deep water;
- Driving off-road (applies only to Model S and Model 3);
- Driving over uneven, rough, damaged or hazardous surfaces, including but not limited to, curbs, potholes, unfinished roads, debris, or other obstacles, or in competition, racing or autocross or for any other purposes for which the vehicle is not designed;
- Overloading the vehicle;
- Using the vehicle as a stationary power source; and
- The environment or an act of God, including, but not limited to, exposure to sunlight, airborne chemicals, tree sap, animal or insect droppings, road debris (including stone chips), industry fallout, rail dust, salt, hail, floods, wind and (thunder)storms, acid rain, fire, water, contamination, lightning and other environmental conditions.

## Additional Limitations and Exclusions

In addition to the above exclusions and limitations, this New Vehicle Limited Warranty does NOT cover:

- Any corrosion or paint defects including, but not limited to, the following:
  - Corrosion from defects in non-Tesla manufactured or supplied materials or workmanship causing perforation (holes) in body panels or the chassis from the inside out;
  - Surface or cosmetic corrosion causing perforation in body panels or the chassis from the outside in, such as stone chips or scratches;
  - Corrosion and paint defects caused by, due to, or resulting from accidents, paint matching, abuse, neglect, improper maintenance or operation of the vehicle, installation of an accessory, exposure to chemical substances, or damages resulting from an act of God or nature, fire, or improper storage;
- Non-genuine Tesla parts or accessories or their installation, or any damage directly or indirectly caused by, due to, or resulting from, the installation or use of non-genuine Tesla parts or accessories;



# Exclusions and Limitations

- Parts, accessories and charging equipment that were not included in the purchase of the vehicle; these items have their own warranties and are subject to their own terms and conditions, which will be provided to you as applicable;
- Tires, which have their own warranties and are subject to their own terms and conditions, which will be provided to you as applicable;
- Windshield or window glass that is broken, chipped, scratched, or cracked, other than as a result of a defect in material or workmanship of a Tesla manufactured or supplied windshield or window glass;
- General appearance or normal noises and vibrations, including, but not limited to, brake squeal, general knocks, creaks, rattles, and wind and road vibration for which there are no malfunctioning parts requiring replacement; and
- Maintenance services, including, but not limited to, the following:
  - Wheel alignment or balancing;
  - Appearance care (such as cleaning and polishing);
  - Expendable maintenance items (such as wiper blades/inserts, brake pads/linings, filters, etc.); and
  - Minor adjustments, including addition of sealant, insulation, or replacing and/or re-torquing of nuts and bolts (or the like).

## Voided Warranty

You are responsible for the proper operation of the vehicle and for receiving and maintaining detailed and accurate records of your vehicle's maintenance, including the 17-digit Vehicle Identification Number ("VIN"), servicing center name and address, mileage, date of service or maintenance and description of service or maintenance items, which should be transferred to each subsequent purchaser. You may void this New Vehicle Limited Warranty if you do not follow the specific instructions and recommendations regarding the use and operation of the vehicle provided in your owner documentation, including, but not limited to:

- Installing the vehicle's software updates after notification that there is an update available;
- Complying with any recall advisories;
- Carrying passengers and cargo within specified load limits; and
- Making all repairs.

Although Tesla does not require you to perform all service or repairs at a Tesla Service Center or Tesla authorized repair facility, this New Vehicle Limited Warranty may be voided or coverage may be excluded due to improper maintenance, service or repairs. Tesla Service Centers and Tesla authorized repair facilities have special training, expertise, tools and supplies with respect to your vehicle and, in certain cases, may employ the only persons or be the only facilities authorized or certified to work on certain parts of your vehicle. Tesla strongly recommends that all maintenance, service and repairs be done at a Tesla Service Center or Tesla authorized repair facility in order to avoid voiding, or having coverage excluded under, this New Vehicle Limited Warranty.

The following will also void this New Vehicle Limited Warranty:

- Vehicles that have had the VIN defaced or altered or the odometer or other related system disconnected, altered or rendered inoperative so that it is difficult to determine the VIN number or actual mileage;
- Vehicles that have been designated, labeled or branded as dismantled, fire-damaged, flood-damaged, junk, rebuilt, salvage, reconstructed, irreparable or a total loss; and
- Vehicles that have been determined to be a total loss by an insurance company.

## Damages

Tesla hereby disclaims any and all indirect, incidental, special and consequential damages arising out of or relating to your vehicle, including, but not limited to, transportation to and from a Tesla Service Center, loss of vehicle value, loss of time, loss of income, loss of use, loss of personal or



commercial property, inconvenience or aggravation, emotional distress or harm, commercial loss (including but not limited to lost profits or earnings), towing charges, bus fares, vehicle rental, service call charges, gasoline expenses, lodging expenses, damage to tow vehicle, and incidental charges such as telephone calls, facsimile transmissions, and mailing expenses.

Tesla shall not be liable for any direct damages in an amount that exceeds the fair market value of the vehicle at the time of the claim.

The above limitations and exclusions shall apply whether your claim is in contract, tort (including negligence and gross negligence), breach of warranty or condition, misrepresentation (whether negligent or otherwise) or otherwise at law or in equity, even if Tesla is advised of the possibility of such damages or such damages are reasonably foreseeable. In jurisdictions that do not allow the exclusion or limitation of indirect, direct, special, incidental or consequential damages, the above limitations or exclusions may not apply to you.



## Obtaining Warranty Service

To obtain warranty service, you must notify Tesla within the applicable warranty period, and deliver the vehicle, at your expense (except where Tesla is obligated to undertake towing), during regular business hours to a Tesla Service Center in your warranty region. The location of the nearest Tesla Service Center may be obtained by visiting Tesla's web site for your region. The location of Tesla Service Centers is subject to change at any time. The updated list of service centers is and will remain published on Tesla's web site for your region.

When you contact Tesla, please be prepared to provide the Vehicle Identification Number (VIN), current mileage, and a description of the defect. The VIN, located on the upper dashboard on the driver's side of the vehicle, is visible through the windshield. It is also available on the vehicle registration and title documentation.

In the event of a change of your address, please contact Tesla at the address or phone number specified in the [Who is the Warrantor?](#) section of this New Vehicle Limited Warranty.

### Payment of Tax for Repairs

Some jurisdictions and/or local governments may require that tax be collected on warranty repairs. Where applicable law allows, you are responsible for payment of these taxes.

### Reasonable Time for Repairs

You must allow Tesla a reasonable time for completion of repairs and/or service. Upon notification by Tesla of the completion of the vehicle repairs and/or service, you are responsible for immediately picking up the vehicle, at your own expense.

### Roadside Assistance

Tesla Roadside Assistance is a service intended to minimize inconvenience when your Tesla vehicle is inoperable. This service is available to you 24/7 by contacting your local Tesla support number. For vehicle malfunctions due to warrantable issues, transportation services, provided by Roadside Assistance, are covered by Tesla for the first 500 miles (800 km) to the nearest Tesla Service Center. You are responsible for transportation costs beyond 500 miles (800 km) or any additional transportation from such locations to any additional location. The vehicle must be covered by a Tesla New Vehicle, or Used Vehicle Limited Warranty and located in the your specific Region at the time Roadside Assistance is requested, however, Roadside Assistance is a separate service and is not provided under a Tesla New Vehicle, or Used Vehicle Limited Warranty. Flat tires are not covered under warranty; however Tesla will cover the cost of a tow, provided by Roadside Assistance, for the first 50 miles (80 km) to the nearest Tesla Service Center, while the vehicle is covered by a Tesla New Vehicle or Used Vehicle Limited Warranty. The cost of towing for a flat tire beyond 50 miles (80 km) and the cost of the replacement tire(s) are at your expense. Please refer to our Roadside Assistance policy for full details and disclosures.

### Modifications and Waivers

No person or entity, including, but not limited to, a Tesla employee or authorized representative, can modify or waive any part of this New Vehicle Limited Warranty. Tesla may occasionally offer to pay a portion or all of the cost of certain repairs that are no longer covered by this New Vehicle Limited Warranty for specific vehicle models (i.e., "adjustment programs"). In such circumstances, Tesla will notify all known registered owners of affected vehicles. You may also inquire to Tesla directly regarding the applicability of such programs, if any, to your vehicle. Tesla may also occasionally offer to pay a portion or all of the cost of certain vehicle repairs that are no longer covered by this New Vehicle Limited Warranty on an ad hoc case-by-case basis. Tesla reserves the right to do the above and to make changes to vehicles manufactured or sold by Tesla and the applicable warranties, at any time, without incurring any obligation to make the same or similar payment or changes for vehicles Tesla previously manufactured or sold, or applicable warranties including this New Vehicle Limited Warranty.



Many jurisdictions have laws, commonly called "Lemon Laws," that provide you with certain rights if you experience problems with your vehicle. These laws vary depending on the jurisdiction. Your vehicle and its safety items comply with applicable provincial and territorial motor vehicle laws.

To the fullest extent allowed by the law of your jurisdiction, Tesla requires that you first provide Tesla, during the applicable warranty period specified in this New Vehicle Limited Warranty, with written notification of any defects you have experienced within a reasonable time to allow Tesla an opportunity to make any needed repairs, and to submit to our dispute settlement program, before you pursue any remedy under these laws. Please send written notification seeking dispute resolution to the address for your region as specified in the **Who is the Warrantor?** section of this New Vehicle Limited Warranty.

Please send your written notification to your local address applicable to your Warranty Region. Please include the following information:

- Your name and contact information;
- VIN;
- Name and location of the Tesla Store and/or Tesla Service Center nearest you;
- Vehicle delivery date;
- Current mileage;
- Description of the defect; and
- History of the attempts you have made with a Tesla Store or a Tesla representative to resolve the concern, or of any repairs or services that were not performed by a Tesla Service Center or Tesla authorized repair facility.

In the event any disputes, differences or controversies arise between you and Tesla related to this New Vehicle Limited Warranty, Tesla will explore all possibilities for an amicable settlement. In case an amicable settlement is not reached, Tesla and you shall submit any such dispute, difference, or controversy to the appropriate venue in your jurisdiction. See specific rules for your region below (if any).

## Australia

This New Vehicle Limited Warranty contains warranty terms and conditions that may vary depending on the part or system covered. A warranty for specific parts or systems is governed by the coverage set forth in that warranty section and the other provisions in this New Vehicle Limited Warranty, in addition to any applicable statutory guarantees under the Australian Consumer Law.

## Canada

Customers with vehicles registered in Canada will be referred by NCDS to the Canadian Motor Vehicle Arbitration Program ("CAMVAP") and subject to CAMVAP eligibility, procedures and remedies. In the event CAMVAP declines to hear your dispute, Tesla invites you to exhaust all informal dispute resolution means directly with Tesla before initiating litigation. The dispute settlement program may be changed at any time without prior notice. Contact NCDS at the above listed address or phone number for the most current information concerning the dispute settlement program.

## Mexico

Without prejudice of the vehicle owner's right to first submit a claim or complaint before the Consumers Protection Federal Agency, any dispute related to the interpretation, compliance and execution of this New Vehicle Limited Warranty, shall be submitted to the jurisdiction of the competent courts of Mexico City, Mexico, waiving any other jurisdiction which may correspond as a result of present or future domicile or for any other reason.



# Dispute Resolution and Country-Specific Consumer Disclosures

## U.S.A.

Any dispute, claim or controversy between you and Tesla arising out of, or related to, this New Vehicle Limited Warranty is subject to binding arbitration on an individual basis in accordance with the terms of the Agreement to Arbitrate in your Vehicle Order Agreement and reproduced in the section Warranty Enforcement Laws and Dispute Resolution in this New Vehicle Limited Warranty.

In the U.S., the Magnuson-Moss Warranty Act is the federal law which governs this New Vehicle Limited Warranty. Many jurisdictions have laws, commonly called "Lemon Laws," that provide you with certain rights if you have problems with your new vehicle. These laws vary depending on the state, province or territory. Your new vehicle and its safety items comply with applicable provincial and territorial motor vehicle laws.

To the fullest extent allowed by the law of your jurisdiction, Tesla requires that you first provide Tesla, during the applicable warranty period specified in this New Vehicle Limited Warranty, with written notification of any defects you have experienced within a reasonable time to allow Tesla an opportunity to make any needed repairs before you pursue any remedy under these laws.

Tesla offers a dispute settlement program that proceeds in two steps.

- First, if you choose, you may submit your dispute to an optional dispute settlement program through the National Center for Dispute Settlement ("NCDS"), as described below.
- Second, if you prefer not to submit your dispute to the NCDS, or if you are not satisfied with the outcome of the NCDS procedure, you agree to resolve your dispute with Tesla through binding arbitration or small claims court under the terms of the Agreement to Binding Arbitration that appears below. Please also refer to the Owner's Rights Notification provided to you for state-specific information.

### Dispute Resolution Through the National Center for Dispute Settlement (NCDS)

In the event that an amicable settlement is not reached, Tesla offers an optional dispute settlement program through:

NATIONAL CENTER FOR DISPUTE SETTLEMENT ("NCDS")  
P.O. Box 526  
Mt. Clemens, MI 48046  
1-866-629-3204

This dispute settlement program administered by NCDS is free of charge to you and is conducted by local NCDS professionals who are trained and experienced in mediation and arbitration.

NCDS resolves disputes involving this New Vehicle Limited Warranty which arise during the applicable warranty period specified in this New Vehicle Limited Warranty. However, NCDS will not arbitrate claims involving a vehicle used primarily for commercial purposes unless the "Lemon Law" of your state covers (1) vehicles used for commercial purposes, or (2) claims that an air bag failed to deploy or deployed when it should not have. You must file a request for arbitration with NCDS within 60 days (or 6 months in certain jurisdictions) of the expiration of the applicable warranty period, provided you sent written notice to Tesla, as specified above, of the alleged defect during the applicable warranty period.

To initiate arbitration, you must contact NCDS at 1-866-629-3204 or P.O. Box 526, Mt. Clemens, MI 48046, and complete an NCDS customer claim form and mail it to NCDS. Please also provide a copy of your written notification sent to Tesla and/or all information required in such notification specified above, your desired resolution, and all receipts if requesting reimbursement. Upon receipt of your request, NCDS will contact you regarding the status of your case and provide you with additional details about the program.

NCDS may only resolve disputes between you and Tesla on an individual basis. In other words, you may initiate an arbitration against Tesla through NCDS only in your individual capacity and not as a plaintiff or class member in any class or representative action.

# Dispute Resolution and Country-Specific Consumer Disclosures



When NCDS receives your request, it will be forwarded to Tesla for response. After analyzing all information pertaining to your case, NCDS will schedule a technical evaluation if applicable. If you request it, an oral hearing will be held prior to a decision being rendered. At this hearing, all evidence is admissible. After considering all testimony and documents, the arbitrator will review the applicable legal standards and render a decision. A settlement satisfactory to all parties may be negotiated at any time, including prior to or after the arbitrator's decision.

NCDS's decision is binding on Tesla but not on you. If you accept NCDS's decision, Tesla will comply with the decision in a reasonable time not to exceed 30 days after Tesla receives notice of your acceptance. Remedies include but are not limited to repairs; reimbursement for repairs and incidental expenses, such as transporting costs; and repurchase or replacement of your vehicle. NCDS decisions do not include attorney fees or punitive, multiple, or consequential damages, except incidental damages as required by applicable law.

If you are not satisfied with the arbitrator's decision or Tesla's compliance, you may pursue your claim in binding arbitration on an individual basis in accordance with the Agreement to Binding Arbitration provided below.

## Agreement to Binding Arbitration

All disputes not resolved by NCDS will be arbitrated under the terms of the Agreement to Arbitrate in your Vehicle Order Agreement. Under that Agreement, you agreed to resolve disputes with Tesla by arbitration rather than by litigation in court. Please see the Vehicle Order Agreement for more details. If you prefer not to submit your dispute to NCDS, you may proceed directly to binding arbitration or small claims court under the terms of the Vehicle Order Agreement. For your convenience, the Agreement to Arbitrate is reproduced here:

**Agreement to Arbitrate.** Please carefully read this provision, which applies to any dispute between you and Tesla, Inc. and its affiliates (together "Tesla").

If you have a concern or dispute, please send a written notice describing it and your desired resolution to [resolutions@tesla.com](mailto:resolutions@tesla.com).

If not resolved within 60 days, you agree that any dispute arising out of or relating to any aspect of the relationship between you and Tesla will not be decided by a judge or jury but instead by a single arbitrator in an arbitration administered by the American Arbitration Association (AAA) under its Consumer Arbitration Rules. This includes claims arising before this Agreement, such as claims related to statements about our products.

We will pay all AAA fees for any arbitration, which will be held in the city or county of your residence. To learn more about the rules and how to begin an arbitration, you may call any AAA office or go to [www.adr.org](http://www.adr.org).

The arbitrator may only resolve disputes between you and Tesla and may not consolidate claims without the consent of all parties. The arbitrator cannot hear class or representative claims or requests for relief on behalf of others purchasing or leasing Tesla vehicles. In other words, you and Tesla may bring claims against the other only in your or its individual capacity and not as a plaintiff or class member in any class or representative action. If a court or arbitrator decides that any part of this agreement to arbitrate cannot be enforced as to a particular claim for relief or remedy (such as injunctive or declaratory relief), then that claim or remedy (and only that claim or remedy) shall be severed and must be brought in court and any other claims must be arbitrated.

If you prefer, you may instead take an individual dispute to small claims court.

You may opt out of arbitration within 30 days after signing this Agreement by sending a letter to: Tesla, Inc.; P.O. Box 15430; Fremont, CA 94539-7970, stating your name, Vehicle Identification Number, and intent to opt out of the arbitration provision. If you do not opt out, this agreement to arbitrate overrides any different arbitration agreement between us, including any arbitration agreement in a lease or finance contract.

TESLA



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**Re: Service for Vehicle 5YJSA1CG5DF** [REDACTED]

---

Sat, Jul 20, 2019 at 10:52 AM

To: [REDACTED] <[REDACTED]>

Cc: RocklinService@tesla.com, Customer Support Tesla <customersupport@tesla.com> [REDACTED]  
[REDACTED]

It is absolutely correct NO response from Tesla so far, what is happening with your customer service department??.  
Best [REDACTED].

On Fri, Jun 28, 2019, 1:44 PM [REDACTED] <[REDACTED]> wrote:

Hi [REDACTED]

It appears that you have not received any response from Tesla regarding the following email. Please confirm if so.

Thanks,  
Dr. Gorban

Copy of the email sent June 20 and no response  
Dear service manager,

We own 3 Teslas, 2 Model 3 and one S. We are very satisfied about the Model 3s and are in the processes of buying two more for our children.  
That being said, We are very unhappy about the S model with a constant issues with the break system and the battery NOT charging up to the capacity at all. In fact it fills up to 187 miles , nearly 35% less than the full capacity even if we let it stay at the super charger station for ever. This is quite disturbing and MUST be addressed ASAP.

Regards,  
[REDACTED]

On Sat, Jun 22, 2019 at 10:53 AM [REDACTED] wrote:

Dear service manager,

We own 3 Teslas, 2 Model 3 and one S. We are very satisfied about the Model 3s and are in the processes of buying two more for our children.  
That being said, We are very unhappy about the S model with a constant issues with the break system and the battery NOT charging up to the capacity at all. In fact it fills up to 187 miles , nearly 35% less than the full capacity even if we let it stay at the super charger station for ever. This is quite disturbing and MUST be addressed ASAP.

Regards,  
[REDACTED]

On Thu, Jun 20, 2019 at 8:05 PM [REDACTED] <[REDACTED]> wrote:

Dear Service Team,

My tesla model S continues to have issue with the brake system and shakes too much during braking. This has been an on going issue and needs to be fixed as soon as possible.

Our Model 3 does the same when backing out.

Please advise.

Thanks,

[REDACTED]



You can now [Print this page](#) for your records.

### Bureau of Automotive Repair Complaint Form

Tracking Number: [REDACTED]

**Person Filing Complaint:**

Last Name: [REDACTED]

First Name: [REDACTED]

Address (Number and Street): [REDACTED]

Apt:

City: El Dorado Hills

State: CA

Zip Code: [REDACTED]

Phone Number (8AM-5PM): ([REDACTED])

Alternate Phone Number: [REDACTED]

Please enter the email address: [REDACTED]

How did you hear about BAR?: Internet

Date of Service/Repair: 06/20/2019

Vehicle Year: 2013

Vehicle Make: Tesla

Vehicle Model: Model S

Vehicle License Number: 5YJSA1CG5DF [REDACTED]

**Business / Professional You Want To File A Complaint Against:**

Complaint Filed Against: Tesla Motors, Inc.

License Number: [REDACTED]

Address (Number and Street): [REDACTED]

City: Rocklin

State: CA

Zip Code: [REDACTED]

Phone Number (8AM-5PM): ([REDACTED])



# Please Review Your Complaint and Enter the Validation Data

## Person Filing Complaint:

Your Name: [REDACTED]

Address (Number and Street): [REDACTED]

City: El Dorado Hills

State: CA

Zip Code: [REDACTED]

Phone Number: ([REDACTED]) [REDACTED]

Alternate Phone Number: ([REDACTED]) [REDACTED]

Email Address: [REDACTED]

How did you hear about BAR?:

Internet

Date of Service/Repair: 06/20/2019

**Vehicle Year:** 2013

**Vehicle Make:** Tesla

**Vehicle Model:**

Model S

**Vehicle License Number:** 5YJSA1CG5DF [REDACTED]



## Business / Professional You Want To File A Complaint Against:

Complaint Filed Against: Tesla Motors, Inc.

License Number: [REDACTED]

Address (Number and Street): [REDACTED]

City: Rocklin

State: CA

Zip: [REDACTED]

Phone Number: [REDACTED] [REDACTED]

[REDACTED]

### Please briefly describe your complaint:

Constant issues with the brake system and the battery NOT charging anywhere near the capacity. Battery c than 65% less of the full charge and the battery is under warranty. The company refuses to acknowledge o under warranty.

### Please read the following before clicking on the submit button

By clicking on the **SUBMIT** button, I hereby certify under penalty of perjury under the laws of the State of California that, to the best of my knowledge, all of the above statements are true and correct.

By clicking on the **SUBMIT** button, I have read and understand the [DCA Disclaimer](#) and [Privacy Policy](#).

I'm not a robot

reCAPTCHA  
Privacy - Terms

SUBMIT






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[Contact Us](#)   [Web Accessibility Certification](#)

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## Claim Successfully Submitted

Thank you for your claim submission. You will receive a confirmation email which indicates we have received your claim. A NCDS Case Administrator will determine if your vehicle and the problem(s) or concern(s) listed qualify for the NCDS arbitration program. This typically takes 1 - 2 business days. NCDS will email and mail you either an Ineligible or Eligible Letter and packet containing a copy of the Program Rules and Instructions for preparing for your case.

Claim Reference Code: 

Please write down your Claim Reference Code and refer to that code in all correspondence with NCDS.

## Upload Instructions

### **UPLOADING FILES:**

You have the option to upload supporting documents which describe in greater detail your vehicle's concern(s) at this time or after the determination of the eligibility of your claim. Additionally, you can upload Repair Order(s), Repair Receipts, or Other files pertaining to this matter at this time.

**We encourage you to upload this information at this time in order to expedite the handling of your claim.**

### **FILE UPLOAD INSTRUCTIONS:**

Please click the Upload Document Button to upload one or more files related to your Concern(s) and select the appropriate description of the file(s). Note, you can upload multiple files of scanned Repair Orders or a single file containing multiple Repair Orders. NCDS supports the following file formats:

- Adobe Acrobat (.pdf)
- MS Word (.doc and .docx)
- Image Files (.jpg and .png)
- Text File (.txt)
- Video File (.mov, .mpg, mp4, wmv)

## Additional Documentation Upload

Upload Document

Your document upload has completed successfully. You can close this page or upload additional documents.

What type of document are you uploading?

### Document type:

- Repair Receipt (A receipt showing that you paid for a repair made to your vehicle concerning one or more issues for which you are submitting this arbitration claim.)
- Repair Order (A document from the dealership showing that you took the vehicle to a dealer for a repair attempt of one or more issues that are relevant to this arbitration claim.)
- Description of issue (A document describing, or summarizing, the issues you are having with your vehicle that are relevant to this arbitration claim.)
- Other

Other

Select Document(s) to Upload

Select Document(s) to Upload

Select Document(s) to Upload

2019-07-22-Gmail - Re\_ Service for Vehicle

5YJSA1CG5DF [REDACTED].pdf

(103.07 KB)

Other

100%

Upload successful

## NCDS CLAIM FORM

### Vehicle Information

**How did you find the NCDS Dispute Settlement Program?**

Owners Manual

**Which Manufacturer Representatives, if any, have you worked with about your vehicle issues (select all that apply)?**

Manufacturer Contact Center, Manufacturer Field Representative, Technical Field Specialist

**VIN**

5YJSA1CG5DF [REDACTED]

**Year Make Model**

2013 Tesla Model S

### Owner/Representative Information

**Owner Name**

[REDACTED]

**Owner/Representative Contact Information**

**Address**

[REDACTED]

El Dorado Hills, CA [REDACTED]

**Primary Phone**

[REDACTED]

Is Mobile Phone

**Alternate Phone**

Is Mobile Phone

**Email**

[REDACTED]

### Vehicle Details

**Is this a leased vehicle?**

No

**What was the condition of the vehicle at the time of lease or purchase?**

New

**Which state was the vehicle leased or purchased?**

CA

**Which state is the vehicle currently registered?**

CA

**Is vehicle used by a business?**

No

**Has the vehicle been involved in an accident?**

No

**Name(s) that appear on the vehicle title**

[REDACTED]

**Purchase Date**

Aug 10, 2013

**Current Mileage**

95670

**Selling Dealer and Address**

**Tesla Sacramento**

Rocklin, CA

**Primary Servicing Dealer**

**Tesla Sacramento**

Rocklin, CA

**Issues**

**Primary Issue**

Battery -- Won't Hold Charge

Does the issue still exist? Yes

**Repair History:**

Repair Date	Dealership	Repair Order Number	Mileage
	Tesla Sacramento		

**Additional Issues**

**Description of Complaint**

*Please provide a narrative which describes the problem(s) or concern(s) you are have having with your vehicle*

Three times in in past 2 months I have took this car to the Tesla service center to determine and fix the issue with the battery and each time the service manager, David, stressed that all was normal and refuses to acknowledge the issue.

**Specific Arbitration Defect(s)**

*Please summarize the specific defect(s) you would like Arbitrator to address. Please be as succinct as possible.*

The battery for the 2013 Tesla Model S 60kWh 2013 VIN# 5YJSA1CG5DF [REDACTED] is not charging anywhere near the capacity. Battery takes hours to get to near 65% of a full charge. The battery is under warranty and needs to be replaced ASAP. This has severe impacts to my daily commute, value for resell, and safety ability to utilize the car without being stranded.

**Vehicle Impairment**

*In your opinion, the concern(s) listed above represent a defect(s) that create a substantial impairment to the vehicle:*

Use, Value, Safety

**Resolution**

**Resolution Sought**

Repair, Repurchase, Replacement

**Hearing Type requested**

Teleconference Hearing

**Are you represented by an attorney?**

No

**Please print a copy of this page for your records before you submit your claim. Once you submit your claim you will not be able to print this page.**



## Complaint Number: 11287033

Vehicle Identification Number: 5YJSA1CG5DF [REDACTED]

Your Vehicle's Make Model and Model Year: TESLA MODEL S 2013

Note: Your VIN, make, model, and year are all protected under the Privacy Act

What part of your car was affected? Fuel/Propulsion System

### What happened?

RE NHTSA Act on Number DP19005 INVESTIGATION Subject Battery Management Software Updates The battery for the 2013 Model S 60kWh 2013 is not charging anywhere near the capacity Charging the battery takes hours to get to near 65% of what use to be full charge and is now considered a 100% charge This is under warranty and needs to be replaced ASAP This has severe impact to daily commute and ability to utilize the car My understanding is starting with a software update in May 2019, Tesla capped the maximum range the high voltage battery would charge to They claim they did this "out of an abundance of caution" after several non-crash fires happened to these models Tesla took action to downgrade horsepower and range along with other aspects of performance through a total range cap after claiming to be releasing a fire safety update, but officially no safety update was released This change happened while the car was parked in my garage and stationary

### Files you uploaded.

Screenshot\_20191204 144831~2.png

Screenshot\_20191204 144837~2.png

Screenshot\_20191204 150015~2.png

Screenshot\_20191204 150019~2.png

When did this happen? 12/05/2019

Was there a Crash? No

Was there a Fire? No

Was there an injury or fatality? No

How fast were you going? (in mph) 0

About how many miles were on your vehicle at the time of the incident? 95670

First Name: [REDACTED]

Last Name: [REDACTED]

Email: [REDACTED]

Address 1: [REDACTED]

Address 2:

City: E Dorado Hills

State: CALIFORNIA

ZIP Code: [REDACTED]

Phone: [REDACTED]

Alt. Phone:

Selections made -

NHTSA may share my complaint with the vehicle manufacturer prior to the start of an investigation or recall, and in the interest of safety.: Yes (box unchecked)

I wish to receive safety recall alerts from NHTSA: Yes (box unchecked)



[Back to Vehicle Page](#)



## Model S

VIN: 5YJSA1CG5DF [redacted]

[Owner's Manual](#)

### Exterior

Solid White Paint

19" Wheels

### Options

No Battery Performance

No Driver's Assistance

### Supercharging Status

[Learn More](#)

No Supercharging Capability

### Warranty

[Learn More](#)

### Battery and Drive Unit

8 years

### New Vehicle Limited Warranty

4 years or 50,000 miles, whichever comes first

[Remove this car from your account](#) ⓘ

[Get Started](#)