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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 HUGH NGUYEN, an individual, on
12 behalf of himself and all others similarly
13 situated,

14 Plaintiff,

15 v.

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

18 Defendant.
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Case No. 8:19-cv-01442-JLS-JDE

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1
2 1. “How many miles can I drive?” and “How long is the battery going to last?” are
3 perhaps the two most common questions in the minds of consumers when shopping for an
4 all-electric, battery-powered vehicle. For Tesla, the right answer and approach to
5 answering these questions appears to be not to answer these questions at all. Instead, Tesla
6 focuses its efforts on allaying the fears of what some drivers of electric vehicles call “range
7 anxiety” by representing to consumers nationwide that they can rely on Tesla’s promises
8 to take care of them no matter what happens to the batteries of Tesla’s vehicles. As it turns
9 out for many consumers who were led on to believe Tesla’s promises, the fact is that Tesla
10 never actually meant to keep their promises and follow through on their guarantees.

11 2. Tesla owners are met with the harsh reality that not everything is what it seems
12 to be, when they realize that they are not living the dream world that Tesla’s ex-Chairman
13 Elon Musk represents to all consumers. One example of Musk’s dream world is outlined
14 in the blog article titled, “Creating the World’s Best Service and Warranty Program”,
15 where Musk describes what the “best warranty in the world” would be and ultimately
16 goes on by promising that the warranty offered by Tesla equates to “peace of mind” for
17 consumers and purchasers of Tesla vehicles.¹ Displayed prominently at the top of the
18 page are the words “[u]nconditional warranty for Model S battery, even for user error.”



[2]

26 ¹ Tesla, “Creating World’s Best Service and Warranty Program”, [https://www.tesla.com/blog/creating-world's-best-](https://www.tesla.com/blog/creating-world's-best-service-and-warranty-program-0)
27 [service-and-warranty-program-0](https://www.tesla.com/blog/creating-world's-best-service-and-warranty-program-0) (last visited July 3, 2019).

28 ² *Id.*

1 3. With regards to the driving force and arguably the most important component of
2 an all-electric vehicle, the battery, Tesla offers the following warranty:

3 **“Battery Warranty**

4 The battery pack in your car is obviously very important and
5 expensive to replace. In developing the Model S, we took great care to
6 ensure that the battery would protect itself, always retaining a few
7 percent of energy. If something goes wrong, it is therefore our fault,
8 not yours.

9 Except in the cases of a collision, opening of the battery pack by non-
10 Tesla personnel or intentional abuse (lighting the pack on fire with a
11 blowtorch is not covered!), all damage is covered by warranty,
12 including improper maintenance or unintentionally leaving the pack at
13 a low state of charge for years on end. The battery will be replaced at
14 no cost by a factory reconditioned unit with an energy capacity equal
15 to or better than the original pack before the failure occurred.

16 The intent is to provide complete peace of mind about owning your
17 Model S even if you never read or followed the instructions in the
18 manual.”^[3]

19 4. Tesla goes on to reassure consumers even further in a blog article titled, “When
20 Life Gives You Lemons...” where Tesla describes a lemon law claim filed against Tesla
21 by an attorney in Wisconsin⁴. While Tesla was able to find the silver-lining and make
22 “lemonade” as a result of those claims, Tesla’s bold claims and empty guarantees have
23 only served to further induce the reliance of consumers nationwide. Tesla specifically
24 represents in the article:

25 “First, let us state that we believe in lemon laws – they exist to protect
26 customers against cars that repeatedly suffer defects. That’s a worthy
27 thing to address. *We also make a point of going above and beyond in*

28 ³ *Id.*

⁴ Tesla, “*When Life Gives You Lemons*” (Apr. 9, 2014) <https://www.tesla.com/blog/when-life-gives-you-lemons> (last visited Jul. 4, 2017).

1 6. Since April 2015, Tesla has been selling preowned models of their all-electric,
2 battery-powered vehicles to consumers nationwide. Tesla represents that each vehicle in
3 their used vehicle fleet is given a full inspection and that owners of these vehicles will be
4 taken care of for mostly any problems that they might experience. Across the country,
5 thousands of consumers believed Tesla's representations and have purchased over 13,000
6 used Tesla Model S and Tesla Model X vehicles since April 2015 (the "Class Vehicles").
7 For many purchasers of these vehicles, however, is the fact that Tesla inspects these
8 vehicles without providing any type of checklist or written report to disclose the findings
9 of the purported inspections. With regards to the vehicle batteries, for example,
10 purchasers are not told what the battery capacities of the vehicles they are purchasing are,
11 thus leaving purchasers to rely upon Tesla's deceptive marketing and unfair, sometimes
12 unlawful, business practices. To make matters worse, purchasers of Tesla's used,
13 certified pre-owned and fully inspected cars quickly come to learn that what Tesla
14 represents as the "best warranty and service program in the world" isn't what it seems to
15 be. Thousands of purchasers, including Plaintiff, have been denied warranty coverage
16 and have been frustrated by the seemingly endless delay and excuses given by Tesla and
17 their apparent avoidance of having to service these cars.

18 7. Plaintiff Hugh Nguyen and the putative class members make up the individuals
19 who purchased a used Tesla Model S or Tesla Model X Vehicle (the "Class Vehicles")
20 directly from Tesla in the U.S. Tesla induced Plaintiff and other putative class members
21 to purchase the Class Vehicles despite violating federal and state laws and regulations,
22 and induced owners and potential purchasers of Tesla vehicles throughout and across the
23 U.S. that Tesla vehicles would be warrantied. Tesla began selling used vehicles in or
24 around April 2015 and has sold nearly 13,000 used Tesla Model S vehicles in the United
25 States since the inception of its certified preowned program, with nearly 5,000 of those
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1 vehicles having been sold in California alone.⁷ The number of putative class members
2 and Class Vehicles that will be sold is only expected to grow larger in volume, and this
3 action is necessary to prevent further harm.⁸

4 8. By representing that used Tesla vehicles are fully inspected but failing to
5 provide purchasers of the Class Vehicles with results of said inspections, let alone
6 disclose any material facts of these vehicles including the batteries, Tesla violated and
7 continues to violate various state and federal consumer protection and warranty laws.
8 Consumers rely on Tesla's warranties for the Class Vehicles, which include a 4-year,
9 50,000-mile or 2-year, 100,000-mile warranty which cover a list of standard parts and
10 defective items. Additionally, as part of Tesla's representation that it provides the
11 "worlds-best warranty", Tesla offers an 8-year, unlimited mile warranty for the batteries
12 of the Class Vehicles. Despite representing that their warranties are the best in the world,
13 Tesla engages in unfair business practices, deceptive marketing, and fraudulent acts and
14 concealment in order to avoid performance on said warranties. Plaintiff and the putative
15 class members have been damaged by Tesla actions and are left out to dry or are forced
16 to pay out-of-pocket costs for things that should have been and were supposed to have
17 been taken care of by Tesla as promised.

18 **II. NATURE OF THE ACTION**

19
20 9. Plaintiff Hugh Nguyen and additional State Plaintiffs Todd Wolven, E'rika
21 Brock and Ian Ellwood bring this action individually and on behalf of all others similarly
22 situated who purchased a used Tesla Model or Model X vehicle (the "Class Vehicles")
23 and seeks a buy-back for his vehicle, a buyback of the Class Vehicles, including a full
24 refund for any out-of-pocket repairs or replacements made for batteries of the Class
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26 ⁷ <https://ev-cpo.com/hunter/> (Advanced Options Filter – Model S/Model X - Used Inventory – Archived Listings –
U.S.A)

27 ⁸ Tesla Press Release, *Tesla First Quarter 2019 Update* (Jan. 30, 2019), <https://ir.tesla.com/static-files/b2218d34-fbee-4f1f-ac95-050eb29dd42f>

1 Vehicles, damages, injunctive relief, and equitable relief for the conduct of Tesla related
2 to the violations as alleged in this complaint. Plaintiffs and other putative class members
3 allege and seek equitable and monetary relief from Tesla based upon false and deceptive
4 advertising practices employed by Tesla and introduced widely and publicly on its
5 website in order to intentionally and fraudulently mislead potential consumers as to the
6 condition of its certified preowned/used vehicles. Additionally, Plaintiff and other
7 putative class members seeks punitive and exemplary damages for Tesla's knowing fraud
8 that garnered it illicit profits for selling warrantied products without disclosure of
9 inspection reports and failure to provide consumers with the required buyer's guide
10 and/or displaying them as required by federal and state laws, and for fraudulently
11 representing to purchasers that such warranties would be upheld by Tesla.

12 10. Plaintiff's individual claims against Tesla, and the allegations made on behalf
13 of class arise from the same conduct and circumstances alleged herein and based upon the
14 purchase of a Class Vehicle. Upon information and belief, and by investigation of
15 Plaintiff's counsel, it is approximated that there are nearly 13,000 Tesla vehicle owners
16 who are likely to be found to have suffered from Tesla's actions. Tesla's direct control
17 and oversight through the used/preowned purchasing process puts Tesla at a unique and
18 powerful bargaining situation. Tesla's exclusivity and proprietary knowledge regarding
19 the batteries of its vehicles allows Tesla to commit various deceptive acts and/or
20 fraudulently withhold and conceal material information to both potential and actual
21 customers. In fact, Tesla's approach to the used, certified preowned car buying process
22 puts potential and actual customers at risk and leaves them with the shortest end of the
23 bargaining stick. Simply put, there is only one way to buy a used Tesla vehicle from
24 Tesla, and that means there's no choice but to play by Tesla's rules.

25 11. Plaintiff's individual claim arises from the purchase of one of the Class
26 Vehicles, for which Tesla continues to deny replacement of an obviously-defective and/or
27 severely degraded battery under warranty, and unlawfully refuses to provide the proper
28

1 remedies and relief available to consumers in accordance with various state and federal
2 laws such as the Magnuson-Moss Warranty Act (“MMWA”) 15 U.S.C. §§ 2301 *et seq.*,
3 California’s Song-Beverly Warranty Act (“Song-Beverly”) Cal. Civ. Code §§ 1790 *et*
4 *seq.*, California’s Unfair Competition Law (“UCL”) Cal. Bus. Prof. Code §§ 17200 *et*
5 *seq.*, California Consumers Legal Remedies Act (“CLRA”), and both federal and
6 California state laws prohibiting certain acts and establishing requirements for sellers of
7 used vehicles.

8 12. Plaintiff Nguyen brings this action on his own behalf and on behalf of the
9 putative class members because he: (1) paid for a vehicle that was advertised to have
10 approximately 210 miles of range at a full charge per EPA estimates but received a
11 vehicle that could only reach 166 miles at full charge; (2) paid for a vehicle that was
12 advertised to have been fully-inspected by Tesla but was never provided a checklist or
13 written details regarding such inspection; (3) paid for vehicle that Tesla warranted with a
14 2-year, 100,000 limited warranty for which Tesla denies warranty replacement under; (4)
15 paid for a vehicle that was advertised and publicly known to have an 8-year, unlimited
16 mile battery warranty for which Tesla denies warranty replacement under; (5) has been
17 denied a battery replacement despite the fact that his battery is either seriously defective
18 or severely degraded and detrimentally relied upon Tesla’s advertising and marketing
19 practices by believing that critical functions of his vehicle would be covered; (6) relied
20 upon Tesla’s representations that his vehicle was “fully inspected” prior to sale and paid
21 more for his vehicle had Tesla fully disclosed the relevant and material information with
22 regards to the vehicle, and namely, the battery health of the vehicle; (7) was damaged by
23 Tesla’s violations of federal and state laws governing used car sales and deceptive
24 business practices; and (8) for all other acts of Tesla that result in the various federal and
25 state law violations as described herein.

26 13. Tesla has violated and continues to violate various state and federal consumer
27 and warranty protection laws selling cars through its used/preowned car program. As
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1 applicable to Plaintiff and the putative class, Tesla has engaged in unlawful and unfair
2 business practices, false and deceptive advertising, fraudulent concealment, intentional
3 misrepresentation, and specifically failed to disclose the battery health of Plaintiff's
4 vehicle prior to sale. Tesla also breaches various express and implied warranties by
5 failing to provide the proper service and replacement for Plaintiff and the other putative
6 class members' vehicles. Left unchecked, Tesla will continue to engage in the same
7 behavior to the detriment of thousands of consumers nationwide.

8 **III. PARTIES**

9 **A. California Plaintiff**

10 14. Plaintiff Hugh Nguyen ("Plaintiff" or "Plaintiff Nguyen") is an individual who
11 was, and is at all times relevant herein, a resident of Rancho Cucamonga, California.
12 Plaintiff purchased a certified pre-owned/used 2014 Tesla Model S bearing the vehicle
13 identification number 5YJSA1S11EFP32857.

14 15. Plaintiff Nguyen took delivery of the Subject Vehicle on November 17, 2017.
15 The Subject Vehicle was advertised and represented by Tesla to be capable of providing
16 approximately 210 miles of range at a full charge based on estimates provided by the
17 Environmental Protection Agency ("EPA") and relied upon by Plaintiff prior to purchase.
18 At the time of delivery and pickup, Plaintiff's vehicle only contained a maximum range
19 of approximately 165-166 miles at a full charge, over 20% less than what was advertised
20 by Tesla. Plaintiff Nguyen's vehicle was purchased and delivered with a 2-year, 100,000
21 limited warranty, including an 8-year, unlimited mile warranty for the vehicle's battery.

22 16. Plaintiff Nguyen was directly harmed by Tesla's actions as described in the
23 complaint and alleged herein. Plaintiff has been harmed by Tesla's fraudulent acts
24 concealment of material facts, deceptive advertising, unfair and unlawful business
25 practices. Plaintiff Nguyen would not have purchased a Class Vehicle or would have
26 paid a much lesser price, had Tesla provided material information with regards to the
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1 battery health and condition of the battery and the estimated ranged miles that the Class
2 Vehicle would be capable of reaching.

3 **B. Idaho Plaintiff**

4 17. Plaintiff Todd Wolven (“Plaintiff Wolven”) is a citizen of Idaho and domiciled
5 in Moscow, Idaho. On or around July 12, 2019, Plaintiff Wolven purchased a used,
6 certified-preowned 2015 Tesla Model S 85, vehicle identification number
7 5YJSA4H28FFP76955 and picked up his car from Tesla’s showroom location in
8 Portland, Oregon. Prior to purchase his Tesla CPO car, Plaintiff Wolven viewed various
9 listings for used, certified pre-owned Tesla vehicles including the ones listed for sale on
10 Tesla’s website. The listings that Plaintiff Wolven viewed prior to purchasing his Tesla
11 vehicle each contained Tesla’s advertisement of the EPA rated mileage. Plaintiff Wolven
12 relied upon Tesla’s representations of the displayed EPA estimated rated mileage and has
13 been directly harmed by the same. Additionally, Plaintiff Wolven was unable to
14 reasonably discover or determine what the actual rated range mileage was for his vehicle,
15 and Tesla expressly failed to provide any indication of the number of rated range miles
16 let alone provide any material or useful information with regards to the health of the
17 vehicle’s battery.

18 18. The emission representations, in combination with the advertised mileage
19 ratings of his specific Tesla Model S 85 vehicle and the warranties provided to the
20 vehicle by Tesla were all important factors which led to his purchase of the car.
21 Unbeknownst to Plaintiff Wolven however, at the time of acquisition, the Class Vehicle
22 was not capable of achieving the emission standards ratings for ranged miles as Tesla had
23 prominently advertised. In addition, there was no information regarding the battery’s
24 health and estimated rated mileage range at full charge, nor was this information ever
25 provided or disclosed to Plaintiff Wolven before purchase. Consequently, the Class
26 Vehicle could not deliver the advertised combination of rated mileage range and did not
27 meet up with or come close to the emissions standards as advertised. Plaintiff Wolven
28

1 reasonably relied upon the representations by Tesla regarding the EPA estimated mileage
2 rating and was additionally harmed by Tesla's failure to provide any information as
3 required by federal and state laws.

4 19. Plaintiff Wolven has suffered concrete injury as a direct and proximate result
5 of Defendants' conduct, and would not have purchased the Class Vehicle or would have
6 paid a much lesser price, had Tesla provided material information with regards to the
7 battery health and condition of the battery and the estimated ranged miles that the Class
8 Vehicle would be capable of reaching.

9 **C. Oregon Plaintiff**

10 20. Plaintiff Ian Ellwood ("Plaintiff Ellwood") is a citizen of Oregon and
11 domiciled in Oregon. On or around August 11, 2018, Plaintiff Ellwood purchased a used,
12 certified-preowned Tesla Model S 70D vehicle and picked up his car from Tesla's
13 showroom location in Portland, Oregon. Prior to purchasing his Tesla CPO vehicle,
14 Plaintiff Ellwood viewed listings of available cars for sale and researched information
15 regarding electric vehicles.

16 21. Plaintiff Ellwood ultimately purchased his Tesla Model S and was guided in
17 part by Tesla's advertising and representations with regards to the safety, performance,
18 and efficiency of their vehicles. Tesla's advertising, in combination with the warranties
19 and guarantees made by Tesla that the Class Vehicles were certified pre-owned vehicles
20 and would be inspected to pass in good condition induced Plaintiff Ellwood to purchase a
21 Class Vehicle.

22 22. Unbeknownst to Plaintiff Ellwood however, at the time of acquisition, the
23 Class Vehicle was not capable of achieving the emission standards ratings for ranged
24 miles as Tesla had prominently advertised. Plaintiff Ellwood's vehicle had
25 approximately only 170 miles of rated mileage range at the time of purchase, well-short
26 of the 265 EPA estimates that Tesla advertised prominently online.
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1 23. In addition, there was no information regarding the battery's health and
2 estimated rated mileage range at full charge, nor was this information ever provided or
3 disclosed to Plaintiff Ellwood before purchase. Consequently, the Class Vehicle could
4 not deliver the advertised combination of rated mileage range and did not meet up with or
5 come close to the emissions standards as advertised. Plaintiff Ellwood reasonably relied
6 upon the representations by Tesla regarding the EPA estimated mileage rating and was
7 additionally harmed by Tesla's failure to provide any information as required by federal
8 and state laws.

9 24. Plaintiff Ellwood has suffered concrete injury as a direct and proximate result
10 of Defendants' conduct, and would not have purchased the Class Vehicle or would have
11 paid a much lesser price, had Tesla provided material information with regards to the
12 battery health and condition of the battery and the estimated ranged miles that the Class
13 Vehicle would be capable of reaching.

14 **D. Virginia Plaintiff**

15 25. Plaintiff Erika Brock ("Plaintiff Brock") is a citizen of Virginia and domiciled
16 in Woodbridge, Virginia. On or around October 27, 2017, Plaintiff Brock purchased a
17 used, certified-preowned 2013 Tesla Model S 85 vehicle and picked up her car from
18 Tesla's showroom location in Tyson's Corner, Virginia. Prior to purchasing her CPO
19 Tesla vehicle, Plaintiff Ellwood viewed listings of available cars for sale and researched
20 information regarding electric vehicles.

21 26. Plaintiff Brock ultimately purchased his Tesla Model S and was guided in part
22 by Tesla's advertising and representations with regards to the safety, performance, and
23 efficiency of their vehicles. Tesla's advertising, in combination with the warranties and
24 guarantees made by Tesla that the Class Vehicles were certified pre-owned vehicles
25 induced Plaintiff Brock to purchase a Class Vehicle.

26 27. Unbeknownst to Plaintiff Brock however, at the time of acquisition, the Class
27 Vehicle was not capable of achieving the emission standards ratings for ranged miles as
28

1 Tesla had prominently advertised. In addition, there was no information regarding the
2 battery's health and estimated rated mileage range at full charge, nor was this information
3 ever provided or disclosed to Plaintiff Brock before purchase. Consequently, the Class
4 Vehicle could not deliver the advertised combination of rated mileage range and
5 efficiency as advertised. Plaintiff Brock reasonably relied upon the representations and
6 deceptive marketing by Tesla regarding the EPA estimated mileage rating and was
7 additionally harmed by Tesla's failure to provide any information relating to the battery
8 and other components of the car, as required by federal and state laws.

9 28. Plaintiff Brock has suffered concrete injury as a direct and proximate result of
10 Defendants' conduct, and would not have purchased the Class Vehicle or would have
11 paid a much lesser price, had Tesla provided material information with regards to the
12 battery health and condition of the battery and the estimated ranged miles that the Class
13 Vehicle would be capable of reaching.

14 **E. Defendant Tesla, Inc.**

15 29. Defendant Tesla, Inc. d/b/a/ Tesla Motors, Inc. is a Delaware corporation, with
16 its principal place of business in Palo Alto, California. Tesla is an auto manufacturer of
17 electric vehicles and designs, manufacturers, markets, distributes, and sells exclusively
18 electric vehicles. Since 2012, Defendant Tesla designed, manufactured, distributed,
19 marketed and sold the Tesla Model S electric vehicle ("Model S") and, later, the Tesla
20 Model X ("Model X") in the United States and with a large concentration of both
21 vehicles being sold in the State of California.

22 30. Tesla also regularly conducts business throughout the State of California, and
23 as stated above more specifically, owns operates at least two stores and vehicle service
24 centers within the Court's jurisdictional district. On information and belief, through
25 Tesla's publicly filed financial reports and its website, Tesla's design, testing, and
26 manufacturing of its vehicles, including the Class Vehicles at its headquarters in
27 California and throughout the State of California. Tesla's advertising, promotional
28

1 materials, and website are designed to show the operation of various Tesla vehicles in a
2 manner which emanates that its vehicles are from California. Tesla also utilizes
3 promotional videos which are purporting to show the operation of Model S, X and other
4 Tesla vehicles being operated and driven in California.

5 31. Tesla has a system of company-owned Tesla dealerships in states throughout
6 the United States, via which it distributes, markets, advertises, and sells Tesla-branded
7 goods and vehicles, including the Class Vehicles. Tesla's authorized dealerships are
8 tightly and highly controlled by Tesla and are structured as agents of Tesla. Tesla
9 controls the marketing practices of Tesla-authorized dealerships, the repair and service
10 facilities within those dealerships, and has full rein over the appearance of these
11 purported dealerships. Tesla's control of its dealerships emanates primarily from its
12 headquarters in California. At all times relevant to this action, Tesla, marketed,
13 distributed, advertised, leased, sold, and warranted its vehicles, including the Class
14 Vehicles by and through its dealerships located nationwide with many of them located in
15 California.

16 IV. JURISDICTION

17 32. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
18 because the claims of Plaintiff and the Class arise under the Magnuson-Moss Warranty
19 Act, 15 U.S.C. § 2310 et seq., a United States federal law, the FTC's rules and
20 regulations governing the sale of used cars, amongst others. This Court has subject
21 matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §
22 1332(a)(1) and (d), because the proposed classes consist of 100 or more members; the
23 amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal
24 diversity exist. Tesla sold approximately 13,000 used, certified pre-owned Model S and
25 163 Model X vehicles between April 2015 until present.⁹ It is believed, and therefore
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27 ⁹ See <https://ev-cpo.com/hunter/> (Model S and X; Used Inventory; Archived Listings)
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1 alleged that Tesla failed to complete a full inspection, disclose required materials, and
2 honor the warranties for all, or virtually all of the Class Vehicles.

3 33. This Court also has supplemental jurisdiction over the state law claims
4 pursuant to 28 U.S.C. § 1367.

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

14 V. VENUE

15 35. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2). and for
16 all purposes pursuant to the requirements set forth under California Civil Code Section
17 1780 *et seq.* (Cal. Civ. Code § 1780(e)) because a substantial part of the events or
18 omissions giving rise to Plaintiffs' claims occurred in this district and Tesla conducts
19 business within this judicial district and operates two service center and showroom
20 locations in this judicial district, one in Buena Park, CA and in Costa Mesa, CA.
21 Plaintiff's vehicle was purchased and delivered at Tesla's Buena Park location, and
22 Plaintiff's vehicle was mainly serviced in Orange County, California.

23 36. Venue in this judicial district is also is proper because a substantial portion of
24 Tesla's wrongdoing alleged in this Complaint took place in the State of California and in
25 this judicial district; Tesla is authorized to do business in the State of California; Tesla is
26 licensed by the State of California as a dealer of used automobiles; Tesla has sufficient
27 minimum contacts with the State of California and/or otherwise intentionally avails itself
28

1 of the markets in the State of California through the production, promotion, marketing,
2 manufacturing, advertising, and sale of products and services in the State of California.
3 An exercise of jurisdiction by this Court is permissible and reasonable under traditional
4 notions of fair play and substantial justice since over 5,000 of the 13,000 Class Vehicles
5 were sold by Tesla in the State of California alone.

6 **VI. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

7 **A. History of Tesla’s Certified Pre-Owned (“CPO”) Vehicle Program**

8 37. Since April 2015, Tesla has been selling its used cars through its own version
9 of a certified pre-owned (“CPO”) program. To date, Tesla has sold over 13,000 used,
10 certified pre-owned, Model S and Model X cars nationwide, with over 5,000 of those
11 vehicles having been sold in California alone. Tesla provides various express warranties
12 to its used vehicle fleet, which include a 4-year, 50,000-mile and a 2-year, 100,000-mile
13 pre-owned vehicle limited warranty.

14 38. At various times throughout the course of selling the Class Vehicles, Tesla
15 represented that the Class vehicles would receive full inspections to determine whether
16 repairs would be necessary. Throughout the course of selling these Class Vehicles, Tesla
17 has offered various “numbered-point programs” which correlates to the number of parts
18 or items checked before being deemed certified or ready to be sold by Tesla as a used
19 vehicle. Tesla has changed its mind over the past few years and has gone from a 214-
20 point, seven-hour inspection to a 70-point, unknown timing inspection. As of the date of
21 filing this instant action, Tesla offers a “120+ point” inspection as displayed on their
22 website in the frequently asked questions (FAQ) section for used cars:

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1 WARRANTY & CONDITION

2 **What warranties come with a used Tesla?**

3 Every used Tesla vehicle has passed a 120+ point inspection and comes with a bumper-
 4 to-bumper warranty. Model S and X will come with either a 4-year or 50,000 additional
 5 mile warranty or 2-year, up to 100,000 total mile warranty (dependent on age and
 6 mileage at time of purchase). Model 3 will come with the remainder of the original 4-year
 7 or 50,000 mile warranty. The balance of original Battery and Drive Unit Limited warranty
 8 still applies for used cars. Warranty information will be available for all vehicles currently
 9 listed for sale. For the most accurate warranty information for your used Tesla, please
 10 contact **Tesla Service**.

11 [Back to Top](#)

[10]

12 39. What Tesla fails to address here, however, is the fact that consumers,
 13 including Plaintiff and other putative class members, are not provided with any
 14 information regarding the results of the purported inspections. Tesla fraudulently
 15 conceals this information as they did to Plaintiff and other putative class members, with
 16 the intention of tricking them into buying cars that they would not have bought had this
 17 information been shared with them from the start. Plaintiff and other putative class
 18 members have been harmed by Tesla's violations of federal and state laws which require
 19 disclosure of this material information because they were put into an extremely unfair
 20 bargaining position with Tesla. Tesla had and continues to have a duty to consumers to
 21 disclose the results of these inspections so that consumers may be better informed.
 22 Plaintiff, other putative class members, and future consumers are harmed by overpaying
 23 for Tesla cars that are known to be defective or in much worse condition than represented
 24 by Tesla, and they would not have paid so much or would not have purchased at all had
 25 Tesla fulfilled its duty and obligation to inform them of such.

26 40. On March 2, 2017, Tesla announced what was called a "Tesla Infinite Mile
 27 Warranty" which provided most, if not all of Tesla Model S and X vehicles with an 8-

28 ¹⁰ See Tesla, "Ordering a Used Tesla", <https://www.tesla.com/support/used-tesla-support#warranties-used-Tesla> (last visited July 19, 2019).

1 year, infinite mile warranty on both the battery pack and drive unit of its Model S 85kWh
2 vehicles to all future-produced vehicles of the same model, and retroactively to then-
3 existing vehicles as well.¹¹ Customers like Plaintiff and the putative class members relied
4 upon statements by Tesla, such as the “worlds-best warranty program” and the “infinite-
5 mile warranty” as Tesla’s representation that the Class Vehicles and all Tesla vehicles
6 would be taken care of.

7 41. Furthermore, customers like Plaintiff and the putative class members found
8 themselves unable to resist to Tesla’s empty promises, false advertisements, and
9 deceptive marketing strategy. Plaintiff and the putative class members purchased the
10 Class Vehicles with what they believed were covered under warranty by Tesla, or at the
11 very least fully inspected by Tesla. Plaintiff and the putative class members also believed
12 that such inspections would cover an inspection of what is arguably the most important
13 part of a Tesla vehicle, the battery.

14 42. In fact, Tesla maintains the exclusive rights to this information as indicated in
15 the warranty language below:

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

23 43. Tesla’s statements regarding the full-inspection, vehicle, and battery warranties
24 were empty promises to induce consumers to purchase Tesla’s vehicles. They were
25 deceived, however, as Plaintiff and the putative class members soon realized that Tesla

26 ¹¹ See Tesla, “Infinite Mile Warranty” (Mar. 2, 2017), <https://www.tesla.com/blog/infinite-mile-warranty> (last visited
27 July 16, 2019).

28 ¹² Tesla Warranty <https://www.tesla.com/support/vehicle-warranty> (last visited July 19, 2019)

1 failed to honor the represented warranties that were made expressly and impliedly by
2 Tesla. Despite making such grandiose and deceptive promises to consumers without
3 intending to actually repair or provide replacements as warranted, Tesla falls short of its
4 promises. In fact, Tesla failed to provide required material information regarding the
5 results of inspection for all, or for basically all of the Class Vehicles. Tesla knowingly
6 failed to disclose any relevant or useful information of the same results and failed to
7 provide information such as the level of current battery capacity for each of the Class
8 Vehicles.

9 **B. Tesla’s Violations of the FTC’s “Used Car Rule”**

10 44. Federal Trade Commission Act (16 C.F.R. 455), also known as the Used Motor
11 Vehicle Trade Regulation Rule (“FTC Used Car Rule”) requires that used vehicle dealers
12 display a “Buyers Guide” on all used vehicles that are offered for sale. Dealers who fail
13 to comply with the FTC Used Car Rule face penalties of up to \$42,530 per violation in
14 subsequent FTC enforcement actions. The FTC actively enforces this rule against used
15 vehicle dealers, and despite knowing this, Tesla failed to comply with the rule.¹³

16 45. Dealers are required to display the written form prominently and conspicuously
17 on or in a vehicle when a car is available for sale.¹⁴ According to the FTCs’ own words,
18 this means that the Buyer’s Guide form must be “in plain view and both sides must be
19 visible.”¹⁵ Additionally, dealers are required to give buyers the original copy or a copy of
20 the vehicle’s Buyers Guide at the sale. The FTC Used Car Rule is separate from a
21 dealer’s mandatory compliance under state and federal warranty laws.

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25 ¹³ “FTC, Partners Conduct First Compliance Sweep under Newly Amended Used Car Rule” (Jul 12, 2018),
<https://www.ftc.gov/news-events/press-releases/2018/07/ftc-partners-conduct-first-compliance-sweep-under-newly-amended>
(last visited July 12, 2018).

26 ¹⁴ Federal Trade Commission Buyer’s Guide, [https://www.ftc.gov/system/files/documents/plain-
language/cfr_buyers_guides_english.pdf](https://www.ftc.gov/system/files/documents/plain-language/cfr_buyers_guides_english.pdf) (last downloaded July 23, 2019).

27 ¹⁵ Federal Trade Commission website, “Dealer’s Guide to the Used Car Rule”, [https://www.ftc.gov/tips-advice/business-
center/guidance/dealers-guide-used-car-rule](https://www.ftc.gov/tips-advice/business-center/guidance/dealers-guide-used-car-rule) (last visited July 22, 2019).

1 46. Tesla failed to provide Plaintiff with the requisite Buyer's Guide form Tesla
2 further violated federal and state laws requiring used car dealers to display a "Buyer's
3 Guide" on used vehicles. Plaintiff did not see a "Buyer's Guide" placed on the Subject
4 Vehicle and was not aware of any such display throughout the purchase process. On the
5 date of vehicle delivery, the Subject Vehicle did not have a "Buyer's Guide" displayed as
6 required by federal and state laws, nor did Tesla provide a copy of the same.

7 47. Plaintiff and other putative class members never received a buyer's guide form,
8 nor was such form ever displayed on the Subject Vehicle at any time prior to and up until
9 purchase. Plaintiff was never provided a copy of the buyer's guide at any time prior to,
10 during and after the sale of Plaintiff's vehicle w Plaintiff provided a copy of the buyer's
11 guide. Upon further information and belief, Tesla has never actually placed a buyer's
12 guide for any of its used vehicles that have ever been sold by Tesla, which warrants an
13 award of exemplary and punitive damages.¹⁶

14 48. Upon information and belief, and by investigation of Plaintiff's counsel, Tesla
15 has failed to provide over 13,000 buyer's guide forms, the number being the estimated
16 amount of used vehicle purchasers, which represents the entire putative class. Upon
17 information and belief, Tesla continues to fail to provide the requisite written disclosures
18 in violation of the FTC Used Car Rule and therefore thousands of consumers nationwide
19 are subject to harm.

20 **C. Tesla's Violations of California Vehicle Code Section 11713.18(a)(6)**

21 49. California Vehicle Code Section 11713.18, part of the California's Car Buyer's
22 Bill of Rights (FFVR 35), was enacted in 2006 to require mandatory disclosures of items
23 such as warranties and insurance by California-licensed car dealers like Tesla. Tesla has
24 violated various sections of the Car Buyer's Bill of Rights and continues to violate the
25 same at the expense of California consumers.

26
27 ¹⁶ Tesla would be subject to over \$500,000,000 (five-hundred million dollars) if a FTC enforcement action sought the
28 maximum penalty per violation against the estimated 13,000 violations that have already been committed.

1 50. California state law regulates the use of the word “Certified” when selling used
2 vehicles. A dealer cannot “advertise for sale or sell a used vehicle as ‘certified’ or use
3 any similar descriptive term” if the dealer does not comply with the requirements set
4 forth in Vehicle Code section 11713.18. §11713.18(a)(6) states that it is a violation of
5 California law if “[p]rior to sale, the dealer fails to provide the buyer with a completed
6 inspection report indicating all the components inspected.”

7 51. California Vehicle Code § 11713.18(b) provides the remedies for used car
8 purchasers in California, and states that “[a] violation of this section is actionable under
9 the [Consumer Legal Remedies Act (“CLRA”), Civil Code § 1750 *et seq.*], [and] the
10 [Unfair Competition Law (“UCL”), Bus. And Prof. Code §17200 *et seq.*]...” (Ca. Veh.
11 Code. § 11713.18(b).)

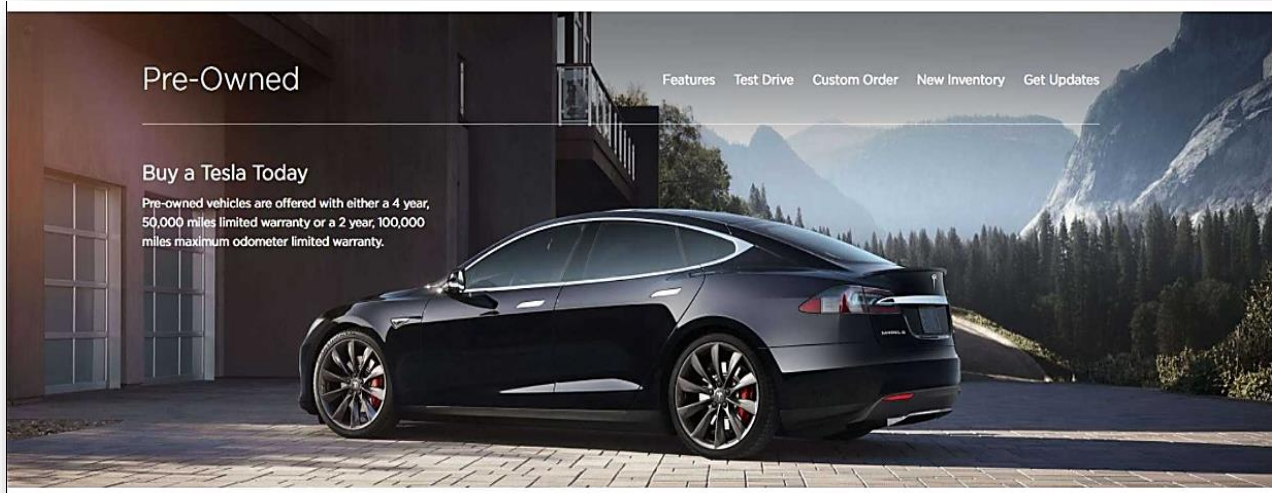
12 52. On June 6, 2017, during a Tesla shareholder meeting held by then-CEO Elon
13 Musk, the topic of a new warranty for higher mileage Tesla Model S vehicles is brought
14 up where Musk goes on by stating the following:

15
16 “...I should mention we are going to really give more prominence to used
17 Teslas on our website. But we are not going to call it pre-owned. That is
18 like a bogus name, that’s really BS – it is used okay. Everyone knows that.
19 Who are we fooling here?”¹⁷

20 53. Meanwhile, as Musk was discussing the obvious differences between a “used”
21 and “preowned” car, Tesla’s webpage displayed, and had been displaying for months
22 prior the following:

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25 ///

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27 ¹⁷ See InsideEVs, “\$40,000 Used CPO Model S EVs Overwhelm Tesla's Pre-Owned Site”,
28 <https://insideevs.com/news/333227/40000-used-cpo-model-s-evs-overwhelm-teslas-pre-owned-site/>, (last visited July 18, 2019).



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54. As it later comes to show, Tesla realized that the difference between the two terms isn't as obvious as it seems. Tesla made multiple revisions to its used vehicle sales program, revisions which answers the ex-Tesla Chairman's question of the "who" in the "who are we fooling here?" have clearly been reasonable consumers and purchasers of Tesla used/preowned vehicles. In addition to the lack of foresight of Tesla at the time, and perhaps more alarming, was the failure of Tesla ex-Chairman to recognize that the true issue lies not in the wording description of used or preowned Tesla vehicles, but rather, the fact that the average reasonable consumer would detrimentally rely upon Tesla's lofty representations and fail-proof vehicle warranties when buying a used, certified preowned vehicle and later learn that their vehicles would not be taken care of as promised.

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55. Tesla makes extensive use of marketing terms and advertising tactics to lead consumers to believe that its used vehicles for sale are "certified" and such usage is prevalent throughout its sales, promotions and advertising. On the vehicle purchase page for the Subject Vehicle, Tesla states that the vehicle will receive a "full inspection" in accordance to Tesla standards.

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56. Tesla never provided Plaintiff with a report or checklist of the components that were inspected by way of a "completed inspection report indicating all components

1 inspected” prior to sale, during the sale, or after the sale. Tesla’s failure to disclose a
2 report violates the CLRA and federal laws in the following ways.

3 57. First, Tesla violated the CLRA by publicly advertising that its used vehicles
4 were in some way, shape, or form, “certified” by Tesla standards without providing a
5 completed inspection report *prior to sale*, or at any time thereafter.

6 58. Second, Tesla fraudulently induced Plaintiff and the putative class to rely upon
7 Tesla’s representation that the used vehicles sold by Tesla would receive a “full
8 inspection” prior to sale, yet Tesla did not provide any form of a “completed inspection
9 report.” Plaintiff and the putative class did not receive anything that indicated the
10 components inspected, nor did Plaintiff and the putative class receive any information
11 regarding the status and health of the batteries in the used vehicles.

12 59. Third, Tesla actively suppressed and concealed the results of its vehicle
13 inspection, which it had a duty to disclose to Plaintiff and the putative class members. If
14 Tesla had conducted a “full inspection” on the Subject Vehicle, then Tesla knew or
15 should have known that the car Plaintiff had purchased was only capable of providing
16 approximately 166 miles when charging the battery to 100%.

17 60. Tesla failed to disclose the battery health and true status of the Subject Vehicle
18 to Plaintiff at any time prior to purchase and actual delivery, despite advertising the
19 Environmental Protection Agency’s estimated mileage range prominently on its webpage
20 of 210 EPA estimated miles.

21 61. Tesla’s failure to provide a checklist of the parts and components inspected to
22 Plaintiff and other putative class members violates, at the very least, California Vehicle
23 Code section 11713.18(a)(6). Plaintiff and the putative class members are entitled to
24 relief from Tesla’s violations under the CLRA.

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1 **D. Tesla’s Violations of California Vehicle Code Section 11721**

2 62. In addition to Tesla’s failure to provide a full and completed inspection
3 checklist for its used vehicles, Tesla also fails to disclose and inform customers of their
4 right to return the problem vehicles after purchase.

5 63. California Vehicle Code Section 11721, also part of the California’s Car
6 Buyer’s Bill of Rights (FFVR 35), makes it mandatory for used car dealers like Tesla to
7 provide customers who purchase a used car for less than \$40,000 a two-day contract
8 cancellation option agreement. This law is different than the “cooling off” period that is
9 provided when consumers separately purchase a contract cancellation agreement.

10 64. Plaintiff’s Model S was priced at \$38,000, yet upon delivery and purchase of
11 the vehicle, Plaintiff was completely unaware of the option to cancel the purchase
12 contract and return the vehicle, albeit with a fee.

13 65. At the time of purchase, Tesla provides customers with a final list of
14 documents to sign as part of a “final delivery documents” package, which includes
15 among other documents, a Motor Vehicle Purchase Agreement and payment instructions.

16 66. Plaintiff’s final delivery packet included the items mentioned above, however,
17 it was notably devoid of any mention of a two-day contract cancellation option or
18 agreement.¹⁸ The only mention of any cancellation is made regarding new vehicles and
19 where the deposit for ordering new vehicles is non-refundable after three days elapse
20 from the order date.

21 67. Plaintiff and other putative class members have been harmed by Tesla’s failure
22 to disclose the cancellation option because Plaintiff could have returned the vehicle,
23 albeit with a minor cancellation fee. Plaintiff and the other class members had no idea
24 that this was an option and thousands of consumers are at risk of becoming harmed.
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¹⁸ Tesla Final Delivery Documents Serial: RN9170625-02-20171115234805.

1 68. Tesla’s fraudulent concealment harms consumers and creates profit for Tesla
2 because consumers like Plaintiff and the putative class, are denied material information
3 and are forced to stick with vehicles that they would otherwise have an option of
4 returning. Punitive damages are proper to deter Tesla’s acts, and to deem such as socially
5 unacceptable and discourage the perpetuation of Tesla’s objectionable corporate policies.

6 **E. Tesla’s Violations of California Consumer Legal Remedies Act**

7 69. Tesla violated and continues to violate Federal Trade Commission Act, 16
8 C.F.R. 455, (“FTC Used Car Rule”) by failing to display the requisite use d vehicle
9 “Buyer’s Guide” in accordance with the law. Plaintiff and the putative class members are
10 entitled to relief from Tesla’s violations of the FTC Used Car Rule under the CLRA.

11 70. Plaintiff discovered the true condition of the Subject Vehicle’s battery shortly
12 after purchase, as Plaintiff drove the Subject Vehicle to the Tesla Supercharger station in
13 Victoria Gardens, CA. It was at that time when Plaintiff discovered that the Subject
14 Vehicle charged fully to 100% at 166 miles. This was never disclosed to Plaintiff at any
15 time prior to sale or at the time of purchase and delivery of his Model S vehicle.

16 71. Tesla’s representations that its used cars were fully inspected prior to sale were
17 made in an effort to induce Plaintiff and the other putative class members to rely on such
18 representations to purchase the Class Vehicles. Plaintiff and the other putative class
19 members were harmed by Tesla’s representations.

20 72. In an effort induce Plaintiff and other putative class members to purchase the
21 Class Vehicles, Tesla fraudulently conceals material information regarding the Class
22 Vehicles, including the status of the batteries for the Class Vehicles, at the expense of
23 harm and detriment to Plaintiff and the putative class.

24 73. Plaintiff and the putative class members were damaged by Tesla in at least the
25 following different ways. First, Plaintiff and the putative class did not receive the benefit
26 of their bargain and have suffered harm because they received less than what they paid
27 for. Concerted marketing of “Certified” pre-owned or used vehicles by auto
28

1 manufacturers and dealers to consumers has created an association of high quality.
2 Consequently, the “Certified” label itself has intrinsic perceived value, apart from the
3 qualities of the vehicle itself. In other words, simply calling a vehicle “Certified” or as
4 Tesla refers to as “fully inspected” increases its value and consumers are charged a
5 premium for allegedly certified vehicles. The fact that Tesla’s used vehicles are sold as
6 “certified” in some way, shape, or form by Tesla, is publicly known and relied upon by
7 consumers such as Plaintiff and the putative class.

8 74. “Certified” pre-owned vehicles typically sell for anywhere between a few
9 hundred and a few thousand dollars more for a comparable, non-certified vehicle.
10 Plaintiff paid for a 2014 Tesla CPO Model S 60 with a 210-mile EPA estimated mile
11 range. Instead, Plaintiff received an uncertified 2014 Tesla Model S 60 with severe
12 battery degradation equaling an actual 166-mile range. Had Tesla disclosed to Plaintiff
13 that the battery of the Subject Vehicle could only provide 166 miles at a full, 100%
14 charge, Plaintiff would have paid less and/or not purchased the vehicle in question

15 75. Plaintiff was damaged because he suffered opportunity costs due to Tesla’s
16 misrepresentations and failures to disclose material information. Plaintiff relied on
17 Tesla’s representation that the Subject Vehicle would be “certified” and “fully
18 inspected.” Plaintiff has also been damaged after relying upon Tesla’s representation that
19 the Subject Vehicle could provide or come close to providing the EPA estimated mileage
20 of 210 miles at full charge. Instead, Plaintiff’s ability to use the Subject Vehicle as
21 intended to transport his wife for medical treatment has been severely limited and
22 affected by the limited range of the Subject Vehicle.

23 76. Plaintiff was damaged by Tesla’s fraudulent concealment of the true condition
24 of the Subject Vehicle and its representations regarding the inspection of the same. Had
25 Tesla conducted a “full inspection” as promised, Tesla surely would have figured out that
26 the battery of the Subject Vehicle was defective and/or that the Subject Vehicle could not
27 provide anywhere close to the EPA estimated 210mile rating.
28

1 77. Despite Tesla’s representation that its used vehicles would receive a “full
2 inspection”, Tesla fails to provide any document or purported checklist of any
3 components inspected prior to sale of its used vehicles to Plaintiff and the putative class
4 members. Tesla undermined and continues to undermine protections granted to
5 consumers by federal and state laws. Tesla’s intentional acts harm consumers and creates
6 profit for Tesla because consumers like Plaintiff and the putative class, are denied
7 material information and purchase vehicles that they would not otherwise purchase.
8 Punitive damages are proper to deter Tesla’s acts, and to deem such as socially
9 unacceptable and discourage the perpetuation of Tesla’s objectionable corporate policies.

10 **F. Tesla’s Violations of the Magnuson-Moss Warranty Act and Song-**
11 **Beverly Warranty Act**

12 78. Notwithstanding the fact that Tesla failed to provide material information to
13 Plaintiff and the putative class, Tesla now doubles down on federal and state law
14 violations by failing to honor and/or perform under the express warranties provided to
15 Plaintiff’s vehicle and the Class Vehicles. Tesla has violated the federal Magnuson-Moss
16 Warranty Act (“MMWA”), California’s Song-Beverly Warranty Act (“Song-Beverly”),
17 and other applicable state warranty laws by failing to provide a proper remedy, repair, or
18 replacement for the Subject Vehicle and Class Vehicles.

19 79. Plaintiff’s vehicle was sold with a 2-year, 100,000-mile pre-owned vehicle
20 limited warranty provided by Tesla. The warranty language required that Plaintiff first
21 arbitrate all claims arising out of the warranty. The warranty language further required
22 that the claims be arbitrated and sent through the California Department of Consumer
23 Affairs’ “California Dispute Settlement Program” (“CDSP”) and National Center for
24 Dispute Settlement (“NCDS”).

25 80. On April 5, 2018, Plaintiff submitted a claim to NCDS, which then forwarded
26 the claim to the California Department of Consumer Affairs for arbitration.
27
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1 81. On April 6, 2018, Plaintiff submitted a claim to the California Department of
2 Consumer Affairs. Plaintiff’s claims were set for arbitration on May 4, 2018, and an
3 arbitration was conducted on the same date. Plaintiff asserted that the Subject Vehicle
4 suffered from severe battery degradation, based upon the fact that the battery provided
5 only 166 miles at a 100% full charge. Despite the obvious fact that the battery was
6 severely and abnormally degraded, at over 20% degradation, counsel for Tesla reported
7 that the battery was “not defective” and that the condition of the battery did not
8 substantially affect the vehicle’s use, safety or value. Counsel for Tesla asserted that the
9 battery continues to operate at a reasonable and expected level, essentially admitting to
10 the fact that over 20-plus percent degradation is normal.

11 82. Plaintiff and other putative class members have made repeated, yet
12 unsuccessful attempts to seek help from Tesla to repair and/or inspect the batteries for the
13 Class Vehicles. Despite the Subject Vehicle having suffered from a significant decrease
14 in range due to a defective battery, Tesla failed to address and acknowledge the fact that a
15 24% decrease in battery capacity is abnormal and fails further by not providing the
16 computations for the determination of what severe battery degradation should look like.
17 Instead, Tesla denies proper warranty coverage and replacement of batteries that are
18 clearly degraded from a consumer standpoint and refuses to perform under the express
19 and implied warranties given.

20 83. Electric vehicle researchers in the Netherlands have studied the long-term
21 battery degradation of Tesla vehicles, and one study shows the following:

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23 ///

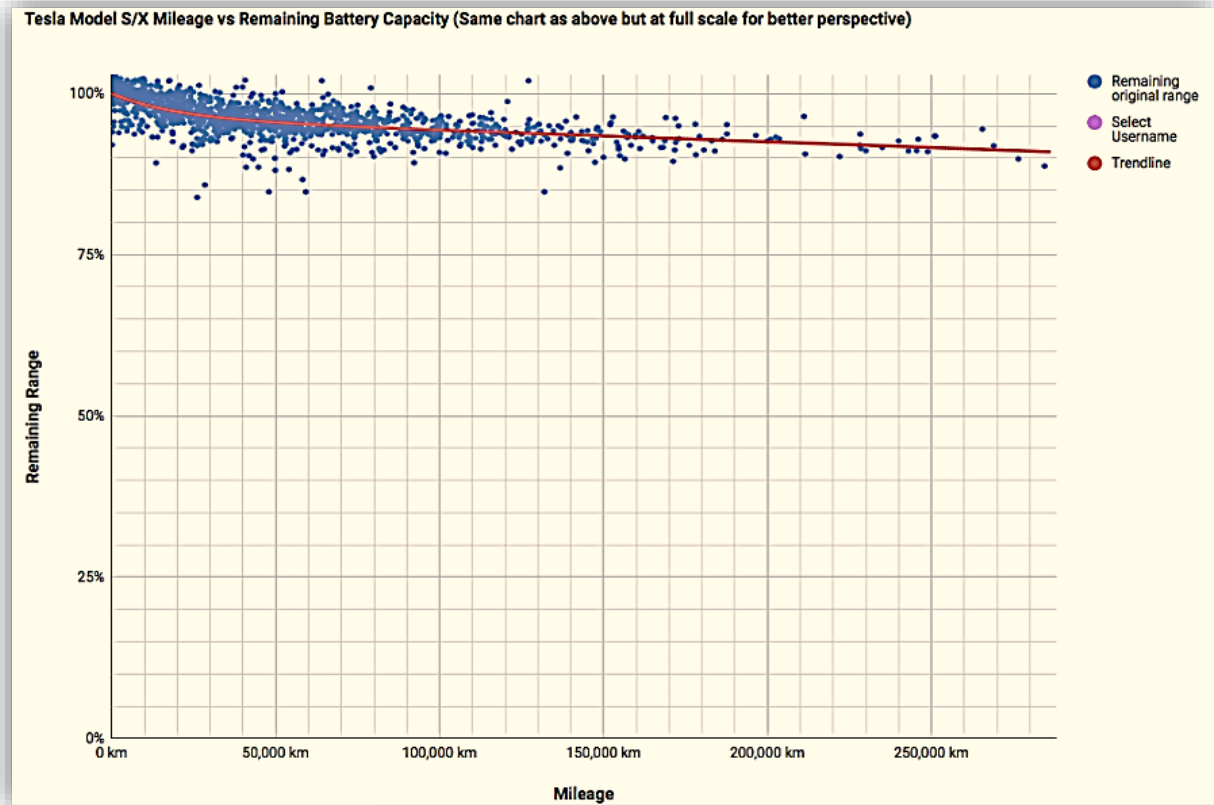
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[19]

84. The graph above represents a collection of data from Tesla owners worldwide and shows the comparison of maximum battery capacity and remaining range for Tesla Model S and X vehicles. Plaintiff's Tesla Model S 60 has a usable battery capacity of 58.5 kilowatts. Plaintiff's vehicle currently has a maximum usable battery capacity of 40.5 kilowatts, which translates into an approximately 30% degradation or 69% maximum battery capacity. Plaintiff's Model S is capable of providing approximately 150 miles as of the filing date of this action. Tesla dismisses the Netherlands study, and disclaims it as unofficial, however, Tesla never addresses the fact that Plaintiff's vehicle is an outlier if plotted on the chart.

85. Tesla's treatment of battery replacements under warranty have been historically inconsistent. Tesla has the ultimate choice and final say in determining

27 ¹⁹ Steinbuch, Maarten, "Tesla Model S degradation data", <https://steinbuch.wordpress.com/2015/01/24/tesla-model-s-battery-degradation-data/> (last visited July 18, 2018).

1 whether consumers are entitled to battery replacements, irrespective of whether the
2 battery should be replaced under warranty. Tesla has a history of replacing batteries for
3 owners who have suffered from a lower percentage of battery degradation than Plaintiff's
4 24%. This type of "pick-and-choose" behavior by Tesla violates some of the basic
5 principles upon which state and federal warranty laws are founded upon.^{20 21} Plaintiff's
6 car currently suffers from nearly 30% degradation, and currently provides approximately
7 150 miles at 100% charge, which has significantly affected the value, safety, and use of
8 the vehicle. Despite these facts, Tesla has failed to remedy, repair, or replace the battery
9 and in failing to do so, violates federal and state warranty and consumer protection laws
10 as alleged herein.

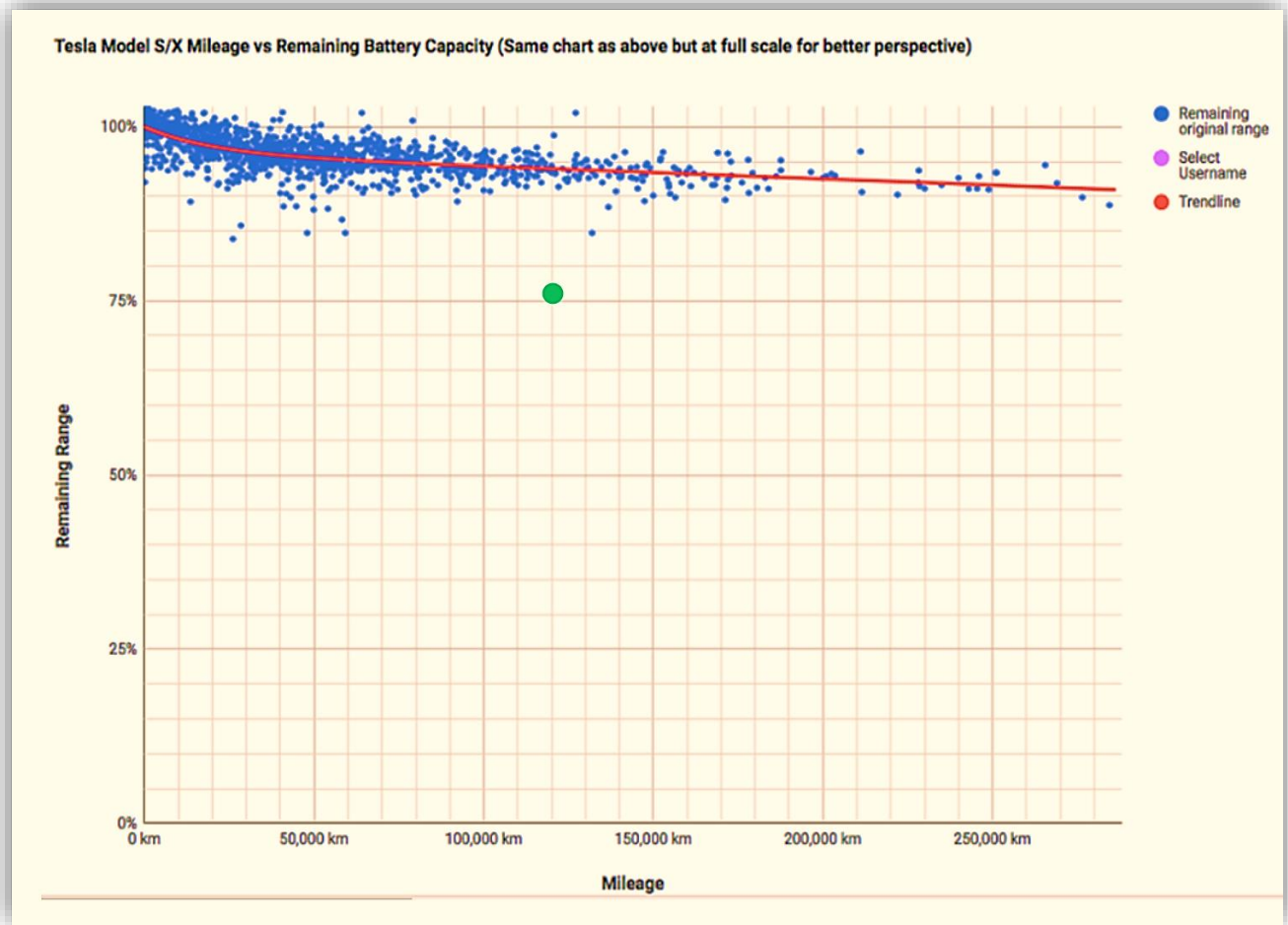
11 86. Tesla fails to perform under the express and implied warranties given to the
12 Class Vehicles despite having knowledge of specific defects, including the battery health
13 and status of the same. At the time of purchase, Plaintiff's car did not have anywhere
14 close to the battery capacity as advertised, nor was it ever disclosed to Plaintiff that his
15 car would only be capable of reaching 166 miles at a full 100% charge.

16 87. Using the same graph with the data collected from the Netherlands study
17 above, it is clear that Plaintiff's car was sold with a battery that is substantially and more
18 severely degraded than other vehicles of similar make and model. If one were to plot the
19 battery condition for Plaintiff's car at the time of purchase, it would something like the
20 following chart:

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23 ///
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26 ²⁰ "Tesloop's Tesla Model S Surpasses 400,000 miles" <https://www.tesloop.com/blog/2018/7/16/tesloops-tesla-model-s-surpasses-400000-miles-643737-kilometers> (Last accessed on July 12, 2019)

27 ²¹ See Tesla Forums, post titled "2013 s60 battery replacement", <https://forums.tesla.com/forum/forums/2013-s60-battery-replacement> (Oct. 31. 2018).



[22]

88. Tesla’s failure to honor the express and implied warranties offered to the Class Vehicles have harmed and continue to harm Plaintiff and other putative class members. Tesla’s treatment of Plaintiff and other putative class members has been inconsistent, and consumers nationwide are subject to the harm and damage if Tesla’s actions are not curbed and if they are allowed to continue operating this way.

G. Plaintiff Hugh Nguyen’s Experience

89. Plaintiff Hugh Nguyen was introduced to Tesla in 2017 after hearing from a friend that Tesla was offering used, “certified pre-owned” (“CPO”) vehicles. During the same year, Plaintiff received the unfortunate news that his wife had been diagnosed with

²² See fn. 16, which green dot representing Plaintiff Hugh Nguyen’s Tesla Model S 60 at approximately 76% remaining battery capacity on the date it was purchased with approximately 120,000 miles on the odometer at time of purchase.

1 Pancreatic Neuroendocrine Tumor (PNET) and started to undergo treatment of the
2 terminal cancer. Plaintiff’s wife requires medical treatment from various medical
3 facilities in Los Angeles and Orange County, which Plaintiff has been taking her to
4 receive treatment from their home in Rancho Cucamonga, California. Plaintiff’s wife
5 requires treatment at least three, sometimes four, times per week, Plaintiff decided it was
6 time for a more efficient and effective means of transportation. Thus, Plaintiff began
7 shopping for a hybrid or all-electric vehicle and intended it to be a gift for his wife’s
8 birthday.

9 90. Plaintiff was impressed by the fact that Tesla CPO vehicles were fully
10 inspected prior to sale and would be covered under warranty by Tesla. After researching
11 and learning more about Tesla’s CPO vehicles, Plaintiff chose to purchase a 2014 Model
12 S 60, bearing the vehicle identification number 5YJSA1S11EFP32857 (the “Subject
13 Vehicle”). Tesla’s website and advertisement for Plaintiff’s vehicle provided and
14 displayed the following:

15
16 “60 (illus.) 60 kWh Battery 210 miles range (EPA) 5.9 seconds 0-60
17 mph 2014 | 5,712 miles | P32857 \$38,000”

18 “This Model S will receive a full inspection, remaining battery and
19 drive warranty and a two year, 100,000 miles maximum odometer pre-
20 owned limited warranty with 24 hour roadside assistance.”

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60
Model S


60 kWh Battery
210 miles range (EPA)
5.9 seconds 0-60 mph

2014 | 75,712 miles | P32857

\$38,000
Calculate transportation fee

BUY

Requires a \$1,000 deposit
Request a callback



Features

- Red Multi-Coat Paint
- Body Color Roof
- 19" Wheels
- Black Nappa Leather Seats
- Piano Black Décor
- Standard Headliner
- Standard Suspension
- Tech Package

The Tech Package adds a host of features to an already advanced car.

- Onboard maps and navigation for North America with free updates for 7 years
- Daytime LED running lights
- LED cornering lights
- Automatic keyless entry
- Lighted door handles
- Electrochromatic mirrors
- Power folding, heated side mirrors
- Power liftgate
- GPS enabled Homelink
- Memory seats, mirrors, and driver profile

This Model S will receive a full inspection, remaining battery and drive warranty and a two year, 100,000 miles maximum odometer pre-owned **limited warranty** with 24 hour roadside assistance.

This Model S is available for pickup. Shipment to your nearest service center may require a transportation fee up to \$2,000. Shipment to Alaska or Hawaii may cost up to \$5,000.

For more information on this Model S, call (888) 518-3752 or **request a callback**.

[23]

²³ Tesla Model S, VIN# 5YJSA1S11EFP32857

1 91. Plaintiff and other putative class members understood and relied upon this to
2 mean that the Subject Vehicle would be fully inspected by Tesla and be in full
3 compliance with Tesla’s standards. Plaintiff further relied upon multiple sources and
4 various website when he researched the Tesla used CPO program further. All of the
5 marketing materials that Plaintiff saw in the news, be it Tesla.com and/or
6 Teslamotorsclub.com and/or other car-buying and automotive websites indicated that the
7 used CPO vehicles sold by Tesla were given a 270-point inspection and that it was
8 customary for Tesla to take care of repairs and issues with their vehicles.²⁴

9 92. Plaintiff had every reason to believe that this vehicle was being sold as a
10 certified-preowned vehicle by Tesla. Indeed, Plaintiff learned from various online
11 sources and reputable webpages that Tesla’s program was indeed a used vehicle, certified
12 preowned vehicle program.^{25, 26} After careful consideration, Plaintiff placed a \$1000
13 (one-thousand dollars) deposit on October 27, 2017 to reserve his Model S. Shortly
14 thereafter, Plaintiff was contacted by a Tesla Used Vehicle Sales Advisor (“UVSA”) who
15 communicated with Plaintiff and arranged the purchase and delivery date of the Subject
16 Vehicle. Plaintiff paid a total purchase price of \$40,287.00, to Tesla, Inc. and arranged
17 for delivery and pickup of the vehicle.

18 93. During and between the date that Plaintiff placed the initial deposit until the
19 actual delivery date on November 17, 2017, at Tesla’s showroom and service center
20 location in Buena Park, CA, Tesla never disclosed any information regarding the battery
21 health of his Model S. In fact, Tesla failed to mention anything to Plaintiff with regards
22 to inspection that was supposedly done, nor did Tesla provide Plaintiff with a checklist of
23

24
25 ²⁴ See Voelker, John, “Used Tesla Electric Cars: Certified Previously Owned (CPO) Program Coming, Company
26 Confirms” (Oct. 6, 2014) Green Car Reports, [https://www.greencarreports.com/news/1094785_used-tesla-electric-cars-
certified-previously-owned-cpo-program-coming-company-confirms](https://www.greencarreports.com/news/1094785_used-tesla-electric-cars-certified-previously-owned-cpo-program-coming-company-confirms) (last visited July 17, 2019).

27 ²⁵ See Tesla Motors CPO Car Prices, NADA Guides, [https://www.nadaguides.com/Cars/Certified-pre-owned/Tesla-
Motors](https://www.nadaguides.com/Cars/Certified-pre-owned/Tesla-Motors) (last visited July 16, 2019).

28 ²⁶ See Trop, Jaelyn “Tesla CPO Buying Guide”, [https://www.autotrader.com/car-shopping/cpo-program-review-tesla-
239862](https://www.autotrader.com/car-shopping/cpo-program-review-tesla-239862) (last visited July 16, 2019).

1 components inspected and parts checked as required by law. Plaintiff relied upon Tesla's
2 marketing, advertisements, and representations that his Model S would be fully inspected
3 and essentially, certified, as a used Tesla vehicle and would conform to Tesla's standards
4 accordingly. Plaintiff additionally relied upon the Tesla marketing and advertisement of
5 their cars and reasonably believed that the Subject Vehicle would provide for
6 approximately 200 miles per full charge at 100% battery capacity, close to the 210 EPA
7 mile rating displayed on Tesla's website.

8 94. After taking delivery of the vehicle, Plaintiff drove his Model S home and
9 learned for the first time after charging his car's battery to 100% that the maximum rated
10 range was only 166 miles. Plaintiff drove and charged the Subject Vehicle to 100%
11 battery capacity several times, yet still received approximately 165 - 166 rated miles each
12 time. Plaintiff took reasonable steps to notify Tesla that there was an issue with the
13 battery and that it was only providing 160-or so miles per full charge. This maximum
14 range capacity was never disclosed to Plaintiff, nor was there a reasonable way for
15 Plaintiff to discover this issue until after purchasing the car and taking it home.

16 95. On December 16, 2017, after informing Tesla about the battery capacity and
17 severely limited mileage range on his vehicle, Plaintiff brought his car to the Tesla
18 service center for the first time in Buena Park, CA. Plaintiff reiterated the issues to
19 Tesla's service center technicians and that his car was only showing 166 miles of range at
20 maximum battery capacity of 100%. Tesla attempted to repair this issue by making a
21 correction to the "Battery Management System (BMS) (HV Battery 1.0/1.5)" which did
22 not fix the issues with the battery. Plaintiff was told to report back to the service center
23 after driving around with the car and after "cycling" the battery, which refers to the
24 practice of charging to 100% and discharging the battery to low levels for purposes of
25 recalibrating the battery.

26 96. Between December 2017 to July 2018, Plaintiff brought his Model S to Tesla
27 on at least 5 separate occasions. During these visits, Tesla performed tests and conducted
28

1 further inspection of the battery. However, Tesla has been unable repair these issues and
2 continues to avoid providing Plaintiff with a proper remedy. Instead, Tesla has relied
3 upon its own discretion and “pick-and-choose” behavior to determine whether Plaintiff’s
4 car will receive a battery replacement under warranty. Tesla has blatantly refused to
5 provide Plaintiff with a proper remedy as warranted and continues to fraudulently
6 deceive consumers like Plaintiff.

7 97. On one particular occasion, Tesla service center technicians attempted to
8 downplay the issues that Plaintiff was experiencing with his Model S. The notes
9 incorrectly state that Plaintiff’s Model S battery shows 166-rated miles at 90% batter
10 charge. This is number is blatantly incorrect, and Tesla has fraudulently attempted to
11 cover this up subsequently as evident in later versions of the repair invoicing. If this
12 mistake were to be taken out in a different context, then it could be said that Tesla’s
13 mistake here was unintentional. However, Tesla relied upon this incorrect calculation
14 and proffered the information during a later arbitration between Plaintiff and Tesla on the
15 same battery issue.

16 98. During the initial arbitration between Plaintiff and Tesla, Tesla contended that
17 Plaintiff’s Model S was only experiencing normal battery degradation. As evidenced in a
18 service repair order on March 6, 2018, Tesla service technicians incorrectly indicated that
19 Plaintiff’s car was only suffering from 11% degradation. Tesla technicians failed to
20 record the actual correct numbers, as Plaintiff’s vehicle was actually only charging up to
21 165/166 miles at 100% battery capacity. Tesla blatantly lied and made the fraudulent
22 representation that the battery was charging up to 165/166 miles at 90%. If it weren’t for
23 Tesla’s fraudulent motives, concealment and deceptive behavior, the true battery
24 degradation of 24%, not 11%, would have been noted by Tesla.

25 99. On April 20, 2018, Plaintiff brought the vehicle for more battery diagnostic
26 testing. The battery was purportedly tested by the technicians at the Tesla Service Center
27 in Costa Mesa, CA, and it was once again ultimately concluded that the battery was
28

1 “normal” and indicating a battery degradation of 11%. In good faith, Plaintiff informed
2 Tesla service technicians of their mistaken numbers and pointed out the errors in the
3 previous service invoice. Tesla intended to fraudulently cover up this mistake by issuing
4 subsequent invoicing that deleted any mention of the prior miscalculations.

5 100. Tesla has continued to make the fraudulent assertions that Plaintiff’s vehicle
6 suffers only from normal battery degradation, despite the fact that the vehicle was
7 suffering from approximately 25% degradation before Plaintiff had ever set foot in the
8 vehicle. Tesla ultimately prevailed during the arbitration despite the arbitrator having
9 based the decision upon false and misleading statements, as well as completely false and
10 incorrect data.²⁷ Despite having followed Tesla’s instructions under the warranty terms,
11 Tesla has continued to deny Plaintiff’s request for a replacement battery, or repurchase
12 the Model S as allowed and proper under federal and state lemon law.

13 101. Despite the fact that Tesla warrantied Plaintiff’s vehicle with a 2-year,
14 100,000 mile limited warranty, and the fact that it provided a 8-year, unlimited mile
15 battery warranty, Tesla has failed its duty to Plaintiff by unlawfully, improperly, and
16 fraudulently denying proper service and repair of Plaintiff’s vehicle.

17 102. Upon information and belief, and upon investigation by Plaintiff’s counsel,
18 Tesla has denied, and will continue to deny purchasers of its vehicles lawful and proper
19 remedies under warranty. Tesla also fails to provide or disclose any material information
20 regarding the vehicle inspections that it purportedly conducts prior to selling its used
21 vehicles, and therefore Plaintiff and other putative class members were unaware of any
22 issues prior to purchase and have been harmed as a result thereof. Tesla continues to
23 engage in this fraudulent scheme of tricking consumers and leading them to believe that
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25
26 ²⁷ Tesla in-house counsel, Ryan McCarthy stated during the initial arbitration that it was normal for a car similar to
27 Plaintiff’s to be suffering from the level of degradation that Plaintiff was experiencing. Plaintiff concedes that 11%
28 degradation is normal and given the circumstances beyond reasonable, however, Plaintiff’s vehicle suffers from
approximately 25% degradation, not 11%.

1 these issues will be taken care of by Tesla, and thousands of consumers are at risk of
2 Tesla's fraudulent and dishonest acts as alleged herein.

3 **G. Additional State Plaintiffs**

4 103. In addition to Plaintiff Nguyen's experience with Tesla's used, CPO car sales
5 program and issues stemming from the same, Plaintiffs Wolven, Ellwood, and Brock and
6 other putative class members have had a similar experience with and were harmed by the
7 deceptive marketing, fraudulent advertising, unfair and unlawful business practices as
8 alleged herein.

9 104. Tesla failed to provide the requisite forms and did not display the required
10 Used Car Buyer's Guide as described above for each of the named Plaintiffs. Tesla's
11 advertisements consisted of the same or similar webpage listings for the vehicles of each
12 of the named Plaintiffs, and included the misleading estimated EPA rated range mileage.
13 Tesla failed to provide any material information regarding the actual health and condition
14 of the batteries for the vehicle purchased by the named Plaintiffs, nor did Tesla provide
15 any information as to the actual rated mileage range for their CPO vehicles.

16 105. Each of the named Plaintiffs discovered issues with the Class Vehicles shortly
17 after purchasing them and could not have reasonably discovered the same prior to
18 purchase. Each of the named Plaintiffs were subjected to Tesla's deceptive advertising
19 practices and would not have purchased, or at the very least, would have paid a lower
20 amount of monies for the Class Vehicles had the true condition of their batteries been
21 disclosed to them.

22 106. Tesla's treatment and attitude toward the named plaintiffs is consistent with
23 similar to Plaintiff Nguyen's experience after having made the problems clear to Tesla.
24 Requests made by the named Plaintiffs' to Tesla that sought for replacement of the
25 battery as warranted by Tesla were denied. Furthermore, Tesla's response to the
26 Plaintiffs and putative class members has been similar with the fact that Tesla fails to
27 accept liability for its actions and instead blames the individual owners.
28

VII. CLASS ACTION ALLEGATIONS

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

Nationwide Class

All persons or entities who purchased or will purchase a used, certified preowned Tesla Model S or X vehicle (the “Class Vehicles”) directly from Tesla in the United States. Class Vehicles include Tesla Model S and X vehicles from 2012-present and include the following models:

Model S 60	Model S 70D	Model S P85+
Model S 60D	Model S 85	Model S 90D
Model S 75	Model S P85	Model S 85D
Model S 70	Model S 90D	Model S P90D
Model S 75D	Model S 90 (2015)	Model S P85D
Model S 70D	Model S P100D	Model S 100D
Model X 60D	Model X 70D	Model X 75D
Model X 90D	Model X P90D	Model X 100D
Model X P100D		

108. Alternatively, if California law does not apply to all owners of Class Vehicles and the other putative class members, Plaintiff brings this action individually, and on behalf of the following proposed classes:

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

4 112. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the
5 classes proposed herein are so numerous and geographically dispersed that individual
6 joinder of all proposed class members is impracticable. While Plaintiff believes that there
7 are thousands of members of the proposed classes, the precise number of class members
8 is unknown to them but may be ascertained from Tesla's books and records. Based upon
9 information, belief, and investigation by Plaintiff's counsel, it is estimated that nearly
10 13,000 used, certified preowned Tesla Model S Vehicles and approximately 163 Tesla
11 Model X vehicles were sold to members of the Nationwide Class, with the majority of
12 Class Vehicles, over 5,000, having been sold to members of the California Classes. Class
13 members may be notified of the pendency of this action by recognized, court-approved
14 notice dissemination methods, which may include U.S. Mail, electronic mail, Internet
15 postings, and/or published notice.

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

- 19
- 20 a. Whether Tesla engaged in the conduct alleged herein;
 - 21 b. Whether Tesla designed, advertised, marketed, distributed,
22 leased, sold, or otherwise placed the Class into the stream of
23 commerce in the United States;
 - 24 c. Whether Tesla provided the requisite materials and disclosures
25 pursuant to federal laws, including the FTC Used Car Rule;
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- 1 d. Whether Tesla’s violations of the FTC’s Used Car Rule
2 constitutes a *per se* violation, actionable under state consumer
3 and warranty protection laws;
- 4 e. Whether Tesla’s violations of California’s Car Buyer’s Bill of
5 Rights, Cal. Veh. Code §§ 11713.18(a)(6) constitutes a *per se*
6 violation, actionable under state consumer and warranty
7 protection laws;
- 8 f. Whether Tesla’s violations of California’s Car Buyer’s Bill of
9 Rights, Cal. Veh. Code §§ 11713.21 constitutes a *per se*
10 violation, actionable under state consumer and warranty
11 protection laws;
- 12 g. Whether Tesla knew the health and status of the batteries for
13 Class Vehicles prior to purchase and delivery by Plaintiff and
14 the proposed classes;
- 15 h. Whether it was Tesla’s intent and/or policy to refuse to provide
16 the required disclosures to Plaintiff and the proposed classes
17 including, but not limited to, an inspection list containing
18 requisite and material information, a buyer’s guide pursuant to
19 FTC’s Used Car Rule, amongst others in a fraudulent,
20 deceptive, or unfair manner so as to trick Plaintiff and the
21 proposed classes?
- 22 i. Whether it was Tesla’s intent and/or policy to refuse to provide
23 the required disclosures to Plaintiff and the proposed classes
24 including, but not limited to, an inspection list containing
25 requisite and material information, a buyer’s guide pursuant to
26 FTC’s Used Car Rule, amongst others;
- 27 j. Whether Plaintiff and proposed classes were denied battery
28 replacements or wrongfully denied a vehicle “buyback” despite
Tesla’s failure to provide any relevant information regarding
the Class Vehicles and Class Vehicles regarding the health or
status of its batteries;
- k. Whether Tesla’s actions including the blog posts on its website,
as well as other display mediums, are misleading, false, and

1 therefore violating consumer protection statutes, false
2 advertising laws, and any other laws as asserted herein;

3 l. Whether Tesla had a duty to Plaintiff and the proposed classes
4 to disclose the battery health and status of battery capacity prior
5 to sale of the Class Vehicles;

6 m. Whether Tesla knew about the violations, and if so, for how
7 long;

8 n. Whether Tesla breached their express and implied warranties;

9 o. Whether the advertisements and statements made by Tesla were
10 and are false and/or had and have had a tendency to deceive
11 customers by either failing to disclose the current level of
12 maximum battery capacity or battery health for the Class
13 Vehicles, or misrepresenting that the Class Vehicles would be
14 capable of reaching or, close to reaching EPA mileage ratings
15 for the Class Vehicles.

16 p. Whether Tesla's conduct violates nationwide consumer
17 protection statutes, false advertising laws, sales contracts, and
18 other laws as asserted herein;

19 q. Whether Plaintiff and proposed class members overpaid for the
20 Class Vehicles;

21 r. Whether Plaintiff and the proposed class members overpaid for
22 the Class Vehicles;

23 s. Whether Plaintiff and putative class members are entitled to
24 equitable relief, including, but not limited to, restitution or
25 injunctive relief;

26 t. Whether Plaintiff and putative class members are entitled to
27 damages and other monetary relief for Tesla's violations of the
28 applicable laws as alleged herein, and, if so, in what amount;
and

1 u. Whether Plaintiff and putative class members are entitled to an
2 award of punitive or exemplary damages based on Tesla's
3 conduct and violations as alleged herein and if so, in what
4 amount.

5 114. Typicality. Federal Rule of Civil Procedure 23(a)(3): Plaintiff's claims are
6 typical of the putative class members' claims because, among other things, all such class
7 members were comparably injured through Tesla's wrongful conduct as described above.

8 115. Adequacy. Federal Rule of Civil Procedure 23(a)(4): Plaintiff is an adequate
9 proposed class representative because Plaintiff's interests do not conflict with the
10 interests of the other members of the proposed classes they seek to represent; Plaintiff has
11 retained counsel competent and experienced in complex litigation and the technology and
12 subject matter in regards to the underlying suit; and Plaintiff intends to prosecute this
13 action vigorously. The interests of the proposed classes will be fairly and adequately
14 protected by Plaintiff and Plaintiff's counsel.

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

19 117. Superiority. Federal Rule of Civil Procedure 23(b)(3): Class actions are a
20 superior means for the fair and efficient adjudication of this controversy and action, when
21 compared to any other available means. It is unlikely that there will be any difficulties or
22 problems encountered with regards to management of this class action. A class action is
23 superior here also where damages, financial detriment, or any other harm that Plaintiff
24 and the other putative class members have suffered is small in comparison and relation to
25 the large burden, unnecessary expense and costs spent if individual litigants proceeded
26 against Tesla instead of together as a class. Individual litigation and individual claims
27 sought against Tesla would make it impracticable for the members of the proposed
28

1 classes to individually seek redress for Tesla’s wrongful conduct. Despite the likely fact
2 that individual class members have the means to and could afford to litigate as separate
3 individual actions, doing so would place unnecessary burden on the court and would not
4 promote judicial efficiency. Furthermore, individualized litigation creates a potential for
5 inconsistent or contradictory judgments, and it increases the delay and expense to all
6 parties and the court system. Undoubtedly here, the class action device presents far fewer
7 management difficulties and provides the benefits of single adjudication, economy of
8 scale, as well as comprehensive supervision by a single court.

9 **VIII. FEDERAL CAUSES OF ACTION**

10 **COUNT I**

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

12 **(15 U.S.C. § 2301 *et seq.*)**

13 118. Plaintiffs reallege and incorporate by reference all preceding paragraphs as
14 though fully set forth herein.

15 119. Plaintiff brings this count on his own behalf, the Nationwide Class, and the
16 California Classes.

17 120. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301
18 by virtue of 15 U.S.C. § 2310(d).

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

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

23 123. Tesla is a “warrantor” and “supplier” as defined by the terms in 15 U.S.C. §
24 2301(4) and (5).

25 124. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is
26 damaged by the failure of a warrantor to comply with an implied or written warranty.
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1 125. As described herein, Tesla provided Plaintiff and the other Class members
2 with “implied warranties” and “written warranties” as those terms are defined in 15
3 U.S.C. § 2301 et seq.

4 126. Tesla provided warranties to the Class Vehicles consisting of either a either a
5 48-month, 50,000-mile new vehicle warranty or a 24-month, 100,000-mile limited
6 warranty against defects in materials or workmanship to the Affected Vehicles.

7 127. Tesla also provided an 8-year, unlimited mile battery warranty for the Class
8 Vehicles. The Class Vehicles were provided these express and implied warranties by
9 Tesla.

10 128. Tesla breached these written and implied warranties as described in the
11 allegations herein, with respect to the batteries of the Class Vehicles and by failing to
12 acknowledge that Plaintiff’s battery and those of other Class members were defective and
13 eligible to be replaced under Tesla’s written and implied warranties.

14 129. By Tesla’s conduct described and alleged herein, including Tesla’s
15 knowledge that the batteries of the Class Vehicles were abnormally degraded or
16 otherwise defective, Tesla has failed to comply with its obligations under their written
17 and implied promises, warranties, and representations.

18 130. In its capacity as a warrantor, and by the conduct and allegations described
19 herein, any attempts by Tesla to limit the implied warranties in a manner that would
20 exclude coverage is unconscionable and any such effort to disclaim, or otherwise limit
21 liability is null and void.

22 131. The transactions by which Plaintiff and the putative class members purchased
23 the Affected Vehicles were transactions for the sale of goods and at all times relevant,
24 Tesla was the seller of the Affected Vehicles and placed these products into the stream of
25 commerce throughout the United States, including California. At all times relevant,
26 Tesla maintained showroom stores and vehicle service centers in California.
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1 132. Plaintiff and putative class members purchased the Class Vehicles by placing
2 a deposit online for a specific vehicle, and Tesla would provide a delivery date for the
3 Class Vehicles whereby Plaintiff and putative class members would take possession of
4 the vehicles.

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

9 134. The Class Vehicles, however, were non-conforming goods and/or goods that
10 were not the same quality as those generally accepted in the trade, were of poor or below
11 average quality within the description and/or did not conform to affirmations of fact
12 disseminated by Tesla because they did not achieve the advertised and displayed
13 estimated approximate mileage range as displayed by Tesla for the Affected Vehicles.

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

17 136. The Class Vehicles, at all times relevant herein, did not and do not have the
18 quality that a buyer would reasonably expect.

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

21 138. All jurisdictional prerequisites have been satisfied.

22 139. Plaintiff and the other Class members are in privity with Tesla in that they
23 purchased the Class Vehicles from Tesla or its agents.

24 140. As a result of Tesla's breach of warranties, Plaintiff and the other Class
25 members are entitled to revoke their acceptance of the Class Vehicles, obtain damages
26 and equitable relief, and obtain costs pursuant to 15 U.S.C. § 2310.
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1 **COUNT II**
2 **VIOLATION OF FEDERAL TRADE COMMISSION ACT**
3 **(Used Motor Vehicle Trade Regulation Rule, 16 C.F.R. 455 et seq.)**

4 141. Plaintiffs reallege and incorporate by reference all paragraphs as through fully
5 set forth herein.

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

8 143. Plaintiff and the putative class members are “consumers” and tesla is a
9 “dealer” of used cars as defined by Federal Trade Commission Act 16 CFR §455.1.

10 144. 16 CFR §455.1 (“FTC Used Car Rule”) provides that it is a deceptive act or
11 practice for any used vehicle dealer to: (1) misrepresent the mechanical condition of a
12 used vehicle; (2) misrepresent the terms of any warranty offered in connection with the
13 sale of a used vehicle; and (3) represent that a used vehicle is sold with a warranty when
14 the vehicle is sold without any warranty. 16 CFR § 455.1.

15 145. The FTC Used Car Rule also requires that used vehicle dealer’s display a
16 “Buyers Guide” that is “displayed prominently and conspicuously in any location on a
17 vehicle and in such a fashion that both sides are readily readable...” 16 CFR § 455.2(1).
18 Amongst other stylistic requirements for the form, the rule specifies the exact wording,
19 punctuation and font size for the buyer’s guide form.

20 146. Tesla has violated, and upon information and belief, continues to violate these
21 sections of the FTC Used Car Rule by misrepresenting the mechanical condition of the
22 Class Vehicles to Plaintiff and the putative class members. Plaintiff and the putative
23 class members were led on by Tesla to believe that, at the very least, the batteries of the
24 Class Vehicles were in a sound mechanical condition free of any major defects or severe
25 battery degradation.

26 147. Tesla has violated, and upon information and belief continues to violate the
27 FTC Used Car Rule by failing to provide Plaintiff and the putative class members with
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1 the requisite buyer’s guide, let alone place such form for display on the Class Vehicles at
2 any time prior to purchase.

3 148. Plaintiff and the putative class members suffered harm and have been
4 damaged as a result of Tesla’s misrepresentations regarding the mechanical condition of
5 the Class Vehicles. Specifically, Tesla’s misrepresentation regarding the battery health
6 and maximum capacity for Plaintiff’s vehicle and the other Class Vehicles has caused
7 damage to Plaintiff and the putative class members because they would not have, or
8 would not have paid as much for the Class Vehicles as they did.

9 149. Tesla is subject to penalties of up to \$42,530 per violation of the FTC Used
10 Car Rule in FTC enforcement actions.

11 150. Plaintiff and the putative class members seek relief provided by the federal
12 and state consumer protection and warranty laws as provided for herein.

13 151. Based upon Tesla’s deceptive and fraudulent acts that have garnered Tesla
14 significant profits at the expense of Plaintiff and the putative class members, Plaintiff and
15 the putative class members seek an award of exemplary and punitive damages against
16 Tesla for the violations and acts as alleged herein.

17 **IX. CALIFORNIA STATE CAUSES OF ACTION**

18 **COUNT I**

19 **VIOLATION OF CALIFORNIA’S SONG-BEVERLY CONSUMER WARRANTY**

20 **ACT (“SONG-BEVERLY”)**

21 **(Cal. Civ. Code § 1790 *et seq.*)**

22 152. Plaintiff realleges and incorporates by reference all preceding paragraphs as
23 though fully set forth herein.

24 153. Plaintiff brings this count on his own behalf, the Nationwide Class, and the
25 California Classes.

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

3 155. Plaintiff and the other Class members are considered “buyers” of consumer
4 goods under Song-Beverly.

5 156. Tesla is a “seller” and “retailer” under Song-Beverly.

6 157. Tesla provided warranties to the Class Vehicles consisting of either a either a
7 48-month, 50,000-mile new vehicle warranty or a 24-month, 100,000-mile limited
8 warranty against defects in materials or workmanship to the Affected Vehicles.

9 158. Tesla also provided an 8-year, unlimited mile battery warranty for the Class
10 Vehicles. The Class Vehicles were provided these express and implied warranties by
11 Tesla.

12 159. Plaintiff’s vehicle was a Class Vehicle that was delivered to Plaintiff with
13 serious defects and nonconformities, including but not limited to a defective,
14 malfunctioning, or otherwise abnormally degraded battery.

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

19 161. Tesla’s provided the aforementioned warranties in consideration for the
20 purchase of the Class Vehicles, and said warranties became part of the basis of the
21 bargain, because it was incorporated into the purchase agreements of the Class Vehicles.

22 162. Plaintiff and the putative class members learned about the existence of such
23 warranties pre-purchase/pre-lease, and as reasonable persons, relied on the existence of
24 such warranties. Plaintiff and the putative class members conduct of purchasing the
25 Class Vehicles was in accordance with their reliance on the described warranties.

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

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

11 165. Defendants have and continue to breach said express warranties by failing to
12 repair the defects in materials and workmanship in the Affected Vehicle batteries and by
13 failing to disclose the maximum battery capacity and corresponding mileage range prior
14 to the purchase and delivery of the Class Vehicles.

15 166. Furthermore, Tesla represented on their website for each of the Class
16 Vehicles, the Environmental Protection Agency (“EPA”) estimated mileage for Plaintiff’s
17 vehicle, and for the Affected Vehicles to Plaintiff and the putative class members.

18 167. Tesla further represented on their advertising for each of the Affected
19 Vehicles that there would be a “full inspection” of the Class Vehicles prior to purchase
20 and delivery.

21 168. Tesla’s representations regarding the battery capacity and approximate
22 mileage range were false representations of fact, that were known by Tesla to be untrue at
23 the time they were made and were intended to create reliance by Plaintiff and the putative
24 class members.

25 169. Tesla’s representations about the estimated mileage range and that the Class
26 Vehicles would be subject to a “full inspection” thus, creating express warranties that the
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1 Affected vehicles would contain approximately the stated mileage range as advertised by
2 Tesla.

3 170. Tesla's failure to recognize the severe battery degradation in Plaintiff's
4 vehicle, and the other Class Vehicles and continued denial of a warranty battery
5 replacement caused Plaintiff to be harmed.

6 171. Tesla breached the express warranties by selling the Class Vehicles, which
7 failed to contain the estimated and advertised approximate mileage range, by failing to
8 repair and fix the mileage range in Plaintiff's vehicle and the Class Vehicles, and failing
9 to repair/fix the flaws in Plaintiff's vehicle and to the putative class members.

10 172. Tesla's breach caused injury to Plaintiff and putative class members, because
11 Plaintiff and putative class members did not get the benefit of their bargain, which
12 included, inter alia, a battery that would provide approximately the same estimated
13 mileage range as represented by Tesla marketing and advertising for the Class Vehicles.

14 173. Tesla breached and continues to breach the express warranties as alleged
15 herein, because Affected Vehicles do not meet the mileage range as estimated and
16 advertised by Tesla; because Tesla fails to repair/fix the flaws in the Class Vehicles'
17 batteries; because Tesla fails to recognize the fact that Plaintiff's vehicle is equipped with
18 a defective battery.

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

25 175. Plaintiff and the other Class members are entitled under Song-Beverly to
26 recover as part of the judgment a sum equal to the aggregate amount of costs and
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1 expenses, including attorneys’ fees, reasonably incurred in connection with the
2 commencement and prosecution of this action.

3 **COUNT II**

4 **VIOLATION OF CALIFORNIA VEHICLE CODE SECTION 11713**

5 **(CA Veh. Code §11713 *et seq.*)**

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

8 177. Plaintiff brings this count on behalf of himself and the California Classes.

9 178. Plaintiff is a purchaser within the meaning of California Vehicle Code section
10 11713 (CA Veh. Code §11713 *et seq.*). Fraud, as the term is used in Vehicle Code
11 §11713 *et seq.*, is the same fraud as commonly defined in the law. As set forth herein,
12 Defendant Tesla has committed fraud within the common law meaning of the term fraud
13 in violation of §11713.18.

14 179. Vehicle Code §11713.18(a) provides that it is a violation for the holder of a
15 dealer’s license to “advertise for sale or sell a used vehicle as “certified” or use any
16 similar descriptive term in the advertisement or the sale of a used vehicle that implies the
17 vehicle has been certified to meet the terms of a used vehicle certification program” for
18 certain acts.

19 180. Specifically, Vehicle Code §11713.18(a)(6) provides that a violation occurs
20 where “[p]rior to sale, the dealer fails to provide the buyer with a completed inspection
21 report including all the components inspected.” CA Veh. Code §11713.18(a)(6).

22 181. Tesla offered these vehicles and used deceptive advertisement and made
23 fraudulent representations to consumers to induce Plaintiff and the putative class
24 members to rely on such advertising and representation in purchasing the Class Vehicles.

25 182. Tesla violated the vehicle code sections herein by failing to provide Plaintiff
26 and the putative class members with any form of inspection or checklist of any vehicle
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1 parts that were inspected as defined by and required under the sections of the vehicle
2 code sections herein.

3 183. Plaintiff and the putative class members were harmed by Tesla’s violations, in
4 that they would not have purchased, or would have purchased the Class Vehicles for
5 much lower price had Tesla provided them with an inspection checklist.

6 184. Violations under this California vehicle code section is actionable under the
7 California Consumer Legal Remedies Act (CLRA), California’s Unfair Competition
8 Law, false advertising statutes, or any other applicable state or federal law. Cal. Veh.
9 Code § 11713.18(b) for which Plaintiff and the California Classes seek all proper relief
10 for as alleged herein.

11 185. Based upon Tesla’s deceptive and fraudulent acts that have garnered Tesla
12 significant profits at the expense of Plaintiff and the putative class members, Plaintiff and
13 the putative class members seek an award of exemplary and punitive damages against
14 Tesla for the violations and acts as alleged herein.

15 **COUNT III**

16 **VIOLATION OF CALIFORNIA VEHICLE CODE SECTION 11713.21**

17 **(California Car Buyer’s Bill of Rights, FFVR 35)**

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

20 187. Plaintiff brings this count on behalf of himself and the California Subclass.

21 188. California Vehicle Code Section 11713.21, part of the California Car Buyer’s
22 Bill of Rights, FFVR 35, provides that a dealer “shall not sell a used vehicle, as defined
23 in Section 665 and subject to registration under this code, at retail to an individual for
24 personal, family, or household use without offering the buyer a contract cancellation
25 option agreement that allows the buyer to return the vehicle without cause. This section
26 does not apply to a used vehicle having a purchase price of forty thousand dollars
27 (\$40,000) or more...” Ca. Veh. Code §11713.21(a)(1).
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1 189. Plaintiff is an individual as defined by vehicle code 11713.21, and the Class
2 Vehicles that had a purchase price of \$40,000 or less are used vehicles as defined by
3 vehicle code 11713.21.

4 190. Plaintiff and other California Subclass members were never offered a contract
5 cancellation option agreement as required by the vehicle section referenced above.

6 191. Tesla's failure to offer or provide any disclosures to Plaintiff and the California
7 Subclass members constitutes fraud and shows Tesla's intent to defraud Plaintiff and other
8 Subclass members by letting them believe that they had no viable options to deal with the
9 Class Vehicles after purchase.

10 192. Violations under this California vehicle code section is actionable under the
11 California Consumer Legal Remedies Act (CLRA), California's Unfair Competition
12 Law, false advertising statutes, or any other applicable state or federal law. Cal. Veh.
13 Code § 11713.18(b) for which Plaintiff and the California Classes seek all proper relief
14 for as alleged herein.

15 193. Based upon Tesla's deceptive and fraudulent acts that have garnered Tesla
16 significant profits at the expense of Plaintiff and the putative class members, Plaintiff and
17 the putative class members seek an award of exemplary and punitive damages against
18 Tesla for the violations and acts as alleged herein.

19 **COUNT IV**

20 **VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT**

21 **(Cal. Civ. Code § 1750 *et seq.*)**

22 194. Plaintiff realleges and incorporates by reference all paragraphs as though
23 fully set forth herein.

24 195. Plaintiff brings this count on behalf of himself, the Nationwide Class and the
25 California Classes.

26 196. California Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750
27 *et seq.*, proscribes "unfair methods of competitions and unfair or deceptive acts or
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1 practices undertaken by any person in a transaction intended to result or which results in
2 the sale or lease of goods or services to any consumer.”

3 197. The Class Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

4 198. Plaintiff and other putative Nationwide class members are “consumers” as
5 defined in Cal. Civ. Code § 1761(d), and Plaintiff, the other class members, and Tesla are
6 “persons” as defined in Cal. Civ. Code § 1761(c).

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

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

16 201. 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 a. Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or
20 certification goods;

21 b. Cal. Civ. Code § 1770(a)(5): Representing that goods have
22 sponsorship, approval, characteristics, uses, benefits, or quantities
23 which they do not have;

24 c. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a
25 particular standard, quality, or grade, if they are of another;

26 d. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to
27 sell them as advertised;

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2 e.Cal. Civ. Code § 1770(a)(16): Representing that goods have been
3 supplied in accordance with a previous representation when they have
4 not;

5 f.By deceptively, falsely, and fraudulently advertising on Tesla’s
6 website that the Affected Vehicle’s would receive a “full inspection”
7 when the Affected Vehicles were not inspected;

8 g.By violating state laws, including California Vehicle Code Section
9 11713 et seq., for failing to disclose material information in violation
10 of Section 11713.18(a)(6) which requires disclosure of material
11 information by used car dealers as defined by statute and California
12 Vehicle Code Section 11713.21 by failing to disclose the required
13 two-day contractcancellation option to the California Subclass.

14 h.By violating federal laws, including the Used Motor Vehicle Trade
15 Regulation Rule, 16 CFR Part 455 et seq. for failing to disclose
16 material information including the written form “Buyer’s Guide” to
17 Plaintiff and the putative class members.

18 202. California Vehicle Code Section 11713.18(a)(6), Cal. Veh. Code §
19 11713.18(a)(6) requires used car dealers, like Tesla, to provide an “inspection report”
20 which conforms to one that is within the commonly understood meaning of the term in
21 the automobile industry, namely, “a report that lists the components inspected, with a
22 space corresponding to each component in which the inspector designates whether or not
23 that component is functional”.

24 203. Furthermore, § 11713.18(a)(6) prohibits car dealers from advertising or
25 selling a used car as “certified” (or any similar word) unless before the sale, the dealer
26 provides the buyer with “a completed inspection report indicating all components
27 inspected.”

28 204. Tesla advertised and marketed that the Class Vehicles would receive a “full
inspection” by Tesla. Tesla failed to provide Plaintiff, the Nationwide Class, and the

1 Defective Battery Class with an “inspection report” as required by Cal. Veh. Code §
2 11713.18(a)(6). Tesla never disclosed the outcome or details regarding any inspection of
3 the Class Vehicles or specific parts that were inspected prior to Plaintiff’s purchase.

4 205. Plaintiff, the Nationwide Class, and the Defective Battery Class relied upon
5 Tesla’s representation that the Class Vehicles would receive a “full inspection” prior to
6 purchase. Plaintiff would not have purchased the product, or would have paid
7 significantly less for the product, but for Tesla’s unlawful conduct. Nationwide Class
8 and Defective Battery Class members were likely to also have relied upon Tesla’s
9 deceptive labeling and advertising. Plaintiff, the Nationwide Class, California Classes
10 and putative class members acted reasonably when they purchased the Affected Vehicles
11 under the mistaken belief that the cars they purchased would be fully inspected.

12 206. Due to Tesla’s failure to complete a “full inspection” of the Class Vehicles
13 and failure to provide Plaintiff with the requisite inspection reports, let alone anything
14 related to the status of the inspected vehicle parts, Plaintiff was never aware that the
15 Subject Vehicle would only provide an estimated 150 mile range at a full charge.

16 207. Tesla had a duty to disclose the material information regarding the Class
17 Vehicles, including the status of the batteries, maximum capacity and current level of
18 estimated mileage range for the Class Vehicles to Plaintiff and the putative class
19 members. Tesla is in the sole and exclusive position to conduct tests and it does so under
20 its “full inspection” of the Class Vehicles prior to sale. Plaintiff and the putative class
21 members did not have access to this information, nor was it reasonably or readily
22 accessible to them.

23 208. The facts concealed and omitted by Tesla in its interaction with Plaintiff and
24 the putative class members are material in that a reasonable consumer would have
25 considered them to be important in deciding whether to purchase the Class Vehicles or
26 pay a lower price for the Class Vehicles. Had Plaintiff and other class members known
27 about the defective nature of the Class Vehicles, or had Tesla provided the required
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1 material information disclosure, they would not have purchased, or they would not have
2 paid the prices they paid for the Class Vehicles.

3 209. By failing to disclose material information regarding the Class Vehicles to
4 Plaintiff and the other class members, the entire purchase transaction was tainted by
5 Tesla's CLRA violations because Plaintiff and the other class members were damaged by
6 purchasing a product that they would not have, and/or not getting the benefit of their
7 bargain.

8 210. Plaintiff provided Tesla with notice of its violations of the CLRA pursuant to
9 Cal. Civ. Code § 1782(a). The notice was transmitted to Tesla on April 24, 2019.
10 Plaintiff's letter was sent via Certified Mail, advising Tesla of the multiple violations of
11 the CLRA, UCL, federal and state warranty and consumer protection statutes, as well as
12 Tesla's deceptive and fraudulent business practices. Plaintiff informed Tesla that his
13 vehicle did not provide the advertised and displayed mileage range of 210, and that the
14 mileage range of the Subject Vehicle was beyond what is acceptable, normal, and
15 expected. Plaintiff demanded that Tesla comply with a buyback of the vehicle, including
16 payment of costs incurred and attorneys' fees incurred as provided for by the CLRA.

17 211. Following the original April 24, 2019 notice, Plaintiff discovered additional
18 violations that Tesla had committed, in violation of the CLRA and actionable by Plaintiff
19 and the putative class members. Specifically, it was discovered by Plaintiff that Tesla has
20 failed, and upon information and belief, continues to fail to display and provide the
21 requisite buyer's guide on the Class Vehicles, in addition to failure to provide Plaintiff
22 and the putative class members with any form of an inspection checklist.

23 212. On July 23, 2019, Plaintiff, individually and on behalf of the putative class,
24 provided notice to Tesla based on the newly discovered violations of the CLRA including
25 Tesla's violations of Cal. Veh. Code Section 11713.18(a)(6) and the Used Motor Vehicle
26 Trade Regulation Rule, 16 CFR Part 455 *et seq.*

1 213. In accordance with Cal. Civ. Code § 1780(a), the requisite notices were
2 mailed to Tesla by which Plaintiff and the putative class members now hereby seek
3 compensatory and punitive damages because Plaintiff and the putative class members
4 have suffered injury in fact and actual damages resulting from Tesla’s material omissions
5 and misrepresentations because Plaintiff and putative class members would not have
6 purchased the Class Vehicles or would have paid significantly less, had Tesla been
7 compliant with the relevant federal and state laws. Plaintiff and the putative class
8 members were damaged by not getting the benefit of their bargain and overpaid for the
9 Class Vehicles.

10 214. Following a notice sent to Tesla on July 23, 2019, Plaintiff hereby seeks an
11 additional award against Tesla, pursuant to Cal. Civ. Code § 1780(b) of up to \$5,000 for
12 each Class member who qualifies as a “senior citizen” or “disabled person” under the
13 CLRA on behalf of the putative class members. Tesla knew or should have known that
14 its conduct was directed to one or more putative class members who are senior citizens
15 or disabled persons. Tesla’s conduct caused putative class members who are senior
16 citizens or disabled persons to suffer a substantial loss of property set for retirement or
17 for personal or family care and maintenance, or assets essential to the health or welfare of
18 the senior citizen or disabled person. One or more putative class members who are senior
19 citizens or disabled persons are substantially more vulnerable to Tesla’s conduct because
20 of age, poor health or infirmity, impaired understanding, restricted mobility, or disability,
21 and each of them suffered substantial physical, emotional, or economic damage resulting
22 from Tesla’s conduct.

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

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COUNT V

VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW

(Cal. Bus. & Prof. Code § 17200 *et seq.*)

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

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

218. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act and unfair, deceptive, untrue or misleading advertising.”

219. Tesla’s conduct, as described herein, was performed in and emanated from California and is in violation of the UCL. Tesla’s conduct violates the UCL in at least the following ways:

- a. By deceptively and fraudulently advertising to Plaintiff and the other class members that the Affected Vehicles would be “fully inspected” and certified by Tesla prior to purchase and delivery of the Affected Vehicles;
- b. By violating federal laws, including the Used Motor Vehicle Trade Regulation Rule, 16 CFR Part 455 *et seq.* for failing to disclose material information in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. section 45(a).
- c. By violating state laws, including California Vehicle Code Section 11713 *et seq.*, for failing to disclose material information such as a written inspection checklist and/or requisite “Buyer’s Guide”, in violation of Section 11713.18(a)(6) which requires disclosure of material information by used car dealers as defined by statute and Section 11713.21 which requires an offer by dealers to purchasers of used cars under \$40,000 with a two-day contract cancellation option;

- 1 d. By failing to disclose material information regarding the health of
2 the battery for the Class Vehicles, including the estimated mileage
3 range of the Class Vehicles, maximum battery capacity level, and
4 failure to provide any written inspection report regarding the status
5 of the batteries of the Class Vehicles;
- 6 e. By marketing the Affected Vehicles with the Environmental
7 Protection Agency (EPA) estimated mileage range, therefore
8 misrepresenting the actual mileage range of the Class Vehicles
9 with the intent for Plaintiff and the other class members to rely on
10 such fraudulent advertising;
- 11 f. By deceptively advertising and fraudulently representing to
12 Plaintiff and the other class members, by stating that the Class
13 Vehicles would be fully inspected by Tesla standards prior to
14 purchase and delivery of the Class Vehicles;
- 15 g. By violating federal and state laws requiring that used vehicle
16 dealers display and disclose material information, including a
17 “buyers guide” and an inspection checklist prior to and after the
18 purchase of used vehicles;
- 19 h. By violating other California laws, including California laws
20 governing false advertising and consumer protection.

21 220. Tesla’s misrepresentations, omissions, and fraudulent act alleged herein,
22 which emanated from its headquarters in California and multiple showroom store and
23 service center locations in California, caused Plaintiff and putative class members to
24 make their purchases of the Class Vehicles. Absent these misrepresentations and
25 omissions, Plaintiff and the other class members would not have purchased the Affected
26 vehicles, would not have purchased or leased these Affected Vehicles at the prices they
27 paid, and/or would have purchased or leased less expensive alternative vehicles that did
28 not contain the defects described herein, namely, defective battery units.

1 disseminated...from this state before the public in any state, in any newspaper or other
2 publication, or any advertising device...or in any other manner or means whatever,
3 including over the Internet, any statement...which is untrue or misleading, and which is
4 known, or which by the exercise of reasonable care should be known, to be untrue or
5 misleading.”

6 228. Tesla caused to be made or disseminated throughout California and the
7 United States, through advertising, marketing, and other publications emanating from its
8 headquarters in California, statements that were untrue or misleading, and which were
9 known, or which by exercise of reasonable care should have been known to Tesla, to be
10 untrue and misleading to consumers, including Plaintiff and putative class members.

11 229. Tesla has violated Cal. Bus. & Prof. Code §§17500 *et seq.* because the
12 misrepresentations and omissions regarding the safety, reliability, and functionality of the
13 Class Vehicles, as set forth in this complaint, were material and likely to deceive a
14 reasonable consumer.

15 230. Plaintiff and other putative Nationwide class members have suffered an injury
16 in fact, including the loss of money or property, as a result of Tesla’s unfair, unlawful,
17 and/or deceptive practices. In purchasing the Class Vehicles, Plaintiff and putative class
18 members relied on the misrepresentations and/or omissions with respect to the safety,
19 performance, and reliability of the Class Vehicles, including representations as to the
20 battery health, condition, capacity, and mileage range. Tesla’s representations turned out
21 not to be true because the Class Vehicles were sold with batteries that were abnormally
22 degraded, dangerously defective, faulty, inoperable, unsafe or otherwise not capable of
23 reaching close to the maximum battery capacity as advertised and represented by Tesla.
24 Had Plaintiff and putative class members known about this, they would not have
25 purchased the Class Vehicles, or would not have paid as much for them. Accordingly,
26 Plaintiff and putative class members overpaid for the Class Vehicles and did not receive
27 the benefit of their bargain.
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1 238. The Warranties were provided in consideration for the purchase of the Class
2 Vehicles, became part of the basis of the bargain, because they were incorporated into the
3 purchase agreements of all Class Vehicles.

4 239. Plaintiff and the putative class members learned about the existence of such
5 Warranties pre-purchase, and as reasonable consumers, relied on the existence of such
6 warranties. Plaintiff and the putative class members conduct of purchasing the Class
7 Vehicles is in accordance with their reliance on said Warranties.

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

16 241. Plaintiff and the putative class members substantially performed all of their
17 obligations under the Warranties, by presenting the Class Vehicles to authorized Tesla
18 repair facilities during the warranty coverage period and/or by accepting all of the over-
19 the-air updates provided by Tesla. Plaintiff and the putative class members heeded to the
20 advice of Tesla technicians by recalibrating the batteries of the Class Vehicles.

21 242. Tesla breached and continues to breach said express warranties by failing to
22 repair the defects in materials and workmanship in the severely degraded batteries.

23 243. Tesla's representations about the way in which consumers would be able to
24 use the Class Vehicles without paying much attention to the batteries created express
25 warranties that the Class Vehicles would not have severely degraded batteries.
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1 253. Plaintiff and the putative class members purchased the Class Vehicles and for
2 the purpose and usage of the vehicles for transportation that would achieve approximately
3 similar mileage to EPA estimates.

4 254. Plaintiff and the putative class members purchased the Class Vehicles with
5 the intent that they could be driven to the full range allowable and as advertised and
6 displayed on for sale by Tesla.

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

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

15 257. This became a part of the basis of the bargain between the parties.

16 258. The Class Vehicles were non-conforming goods and/or goods that were not
17 the same quality as those generally accepted in the trade, were of poor or below average
18 quality as those generally accepted in the trade, because other vehicles similarly situated
19 and sold by Tesla are capable of reaching the estimated EPA mileage range, or at the very
20 least, do not suffer from 24% battery degradation.

21 259. The Class Vehicles were of poor or below average quality within the
22 description of electric vehicles provided by Tesla and did not possess the qualities that a
23 buyer would have reasonably expected. The Class Vehicles were not suitable for these
24 purposes.

25 260. Plaintiff and the other putative class members purchased the Class Vehicles
26 believing it had the qualities that were sought, based on the deceptive advertising and
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1 fraudulent acts of Tesla, but the Class Vehicles were not of the same quality as similar
2 products in the product category generally acceptable in the trade.

3 261. The Class Vehicles were not acceptable commercially and breached the
4 implied warranty because they did not conform to the promises or affirmations of fact
5 made Tesla's website and other marketing materials, Cal. Comm. Code § 2314(2)(f), and
6 other grounds as set forth in Commercial Code section 2314(2).

7 262. As a result of Tesla's breach, Plaintiff and other putative class members did
8 not receive goods as impliedly warranted by Tesla.

9 263. As a direct and proximate result of the foregoing, Plaintiff and the putative
10 class members sustained losses and damage by not receiving the benefit of their bargain.

11 264. Plaintiff and the putative class are entitled to injunctive and equitable relief,
12 restitution, and an order for the disgorgement of the funds by which have been unjustly
13 enriched by Tesla.

14 **COUNT IX**

15 **INTENTIONAL MISREPRESENTATION**

16 **(Cal. Civ. Code §§ 1709-1710)**

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

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

21 267. Tesla represented to Plaintiff and the putative class members that the Class
22 Vehicles would be fully inspected and that such inspection would cover the battery health
23 of the Class Vehicles. Tesla also represented to Plaintiff and the putative class members
24 that Tesla used/preowned vehicles would come close to approximately the same mileage
25 rating provided by the EPA estimates.

26 268. Tesla knew that such a representation was false, at least to Plaintiff, that the
27 battery of Plaintiff's vehicle would be similar to the EPA estimated mileage rating. Tesla
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1 intended that Plaintiff and the putative class members rely on Tesla's intentional
2 misrepresentations regarding the Class Vehicles.

3 269. Plaintiff, and the putative class members, reasonably relied upon Tesla's
4 representations regarding the Class Vehicles. More specifically, Plaintiff reasonably
5 believed and relied upon Tesla's representation that his vehicle was fully inspected.

6 270. Plaintiff, and the putative class members, were damaged by Tesla
7 misrepresentations, and or, Tesla's failure to disclose material information regarding the
8 condition and status of the Class Vehicles' batteries prior to purchasing the Class
9 Vehicles because Plaintiff and members of the proposed classes did not get their benefit
10 of the bargain, which included, inter alia, vehicles that could reach, or come
11 approximately close to reaching EPA rated mileage ratings.

12 **COUNT X**

13 **NEGLIGENT MISREPRESENTATION**

14 **(Cal. Civ. Code §§ 1709-1710)**

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

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

19 273. Tesla represented to Plaintiff and the putative class members that they were
20 selling the Class Vehicles that would receive full inspections prior to sale, and that would
21 provide mileage that would be approximately close to the EPA estimated mileage ratings.

22 274. Tesla had no reasonable grounds to believe that the Class Vehicles would be
23 capable of reaching the EPA estimated mileage rating, especially after having the
24 exclusive ability to test and inspect the Class Vehicles.

25 275. Tesla intended for Plaintiff and the putative class members to rely on their
26 representations about the Class Vehicles.
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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.

4 283. 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.

11 284. 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.

17 285. 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 Class members. Tesla failed to disclose and/or fraudulently
25 concealed material information regarding the batteries of the Class Vehicles, which are
26 material concerns to consumers because they directly impact the safety, performance, and
27 value of the Class Vehicles.
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1 286. 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 Class members.

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

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

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

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

4 **COUNT XII**

5 **QUASI CONTRACT/RESTITUTION/UNJUST ENRICHMENT**

6 **(California Law)**

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

9 292. Plaintiff brings this count on his own behalf and on behalf of the Nationwide
10 Class and California Classes.

11 293. Tesla intentionally and recklessly made misrepresentations and concealed
12 facts about the Class Vehicles to Plaintiff and the putative class members with an intent
13 to induce them to purchase the Class Vehicles.

14 294. In reliance on Tesla's misrepresentations and concealment, Plaintiff and the
15 putative class members believed that the Class Vehicles contained safe and effective
16 batteries that were not severely degraded or defective, and that would be capable of
17 reaching approximately close to, or actual EPA estimated mileage as represented by
18 Tesla.

19 295. Plaintiff and the putative class members made monetary payments to Tesla to
20 purchase the Class Vehicles, for which Tesla received and has been unjustly enriched by
21 accepting such payments.

22 296. Plaintiff and the putative class members are entitled to restitution based on the
23 contract and the quasi contract between Plaintiff and the putative class members and
24 Tesla, and each of them.

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X. IDAHO CAUSES OF ACTION
COUNT I

VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT
(Idaho Code § 48-601, et seq.)

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297. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

298. Plaintiff Wolven (for the purpose of this section, “Plaintiff”) brings this action on behalf of himself and the Idaho Class against Defendant Tesla, Inc.

299. Tesla is a “person” under the Idaho Consumer Protection Act (“Idaho CPA”), Idaho Code Idaho Code § 48-602(1).

300. Tesla’s acts or practices as set forth above and herein occurred in the conduct of “trade” or “commerce” under Idaho Code § 48-602(2).

301. Tesla made active misrepresentations that were misleading, false, or consisted of acts of deception in violation of the Idaho CPA.

302. During the course of its used, certified-preowned vehicle sales business, Tesla concealed and actively suppressed important material facts concerning the Class Vehicles. Tesla actively advertised the Class Vehicles as certified-preowned which then reasonably led consumers like Plaintiffs to believe that the condition of the Class Vehicles would be approved and subject to inspection and other certification methods prior to sale. Most importantly, Tesla failed to, and continues to violate federal and state laws which require certain disclosures of material information with regards to the sale of used CPO cars.

303. Tesla chose to advertise the EPA estimated range mileage for the Class Vehicles as new and failed to provide any material information with regards to the condition or health of the batteries for the Class Vehicles.

304. Plaintiff Wolven and other putative class members reasonably relied upon Tesla’s representation of the quality and condition of the Class Vehicles and were unable

1 to reasonably obtain the already-mandatory list of required documents to be disclosed
2 prior to sale of the Class Vehicles.

3 305. Tesla has violated the Idaho CPA by, at minimum: (1) representing that the
4 Class Vehicles have characteristics, uses, and benefits which they do not have; (2)
5 representing that the Class Vehicles are of a particular standard, quality, and grade when
6 they are not; (3) advertising the Class Vehicles with the intent not to sell them as
7 advertised; (4) engaging in acts or practices which are otherwise misleading, false, or
8 deceptive to the consumer; and (5) engaging in any unconscionable method, act or
9 practice in the conduct of trade or commerce. See Idaho Code § 48-603.

10 306. Defendant Tesla knew and was in the best position of knowing the true
11 condition and health of the Class Vehicle batteries, but concealed this information from
12 Plaintiff and other putative class members prior to selling the cars. Defendant
13 intentionally and knowingly misrepresented material facts regarding the rated range miles
14 of the Class Vehicles, and at all times, had the intent to mislead Plaintiff Wolven and the
15 putative class members.

16 307. Defendant Tesla knew or should have known that such conduct violated the
17 Idaho CPA.

18 308. Defendant Tesla owed Plaintiff Wolven and the other putative class members
19 the duty to disclose the actual condition of the Class Vehicles, in addition to the
20 necessary requirements imposed by federal law governing used CPO car sales.

21 309. Plaintiff Wolven and other putative class members Plaintiffs and the Idaho
22 Class suffered ascertainable loss and actual damages as a direct and proximate result of
23 Defendants' misrepresentations and its concealment of and failure to disclose material
24 information. Plaintiff Wolven and the Idaho Class members who purchased or leased the
25 Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles'
26 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—
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1 would have paid significantly less for them. Plaintiffs also suffered diminished value of
2 their vehicles, as well as lost or diminished use.

3 310. All owners of the Class Vehicles suffered ascertainable loss in the form of the
4 diminished value of their vehicles as a result of Tesla's deceptive and unfair acts and
5 practices made in the course of Tesla's business.

6 311. Tesla's violations present a continuing risk to Plaintiffs as well as to the
7 general public. Defendants' unlawful acts and practices complained of herein affect the
8 public interest.

9 312. As a direct and proximate result of Defendants' violations of the Idaho CPA,
10 Plaintiff Wolven and the Idaho Class have suffered injury-in-fact and/or actual damage.

11 313. Pursuant to Idaho Code § 48-608, Plaintiffs and the Idaho Class seek
12 monetary relief against Defendants measured as the greater of (a) actual damages in an
13 amount to be determined at trial and (b) statutory damages in the amount of \$1,000 for
14 each Plaintiff and each Idaho Class member.

15 314. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
16 deceptive practices, attorneys' fees, and any other just and proper relief available under
17 the Idaho CPA.

18 315. Plaintiff and the Idaho Class members also seek punitive damages against
19 Tesla because Tesla's conduct evidences an extreme deviation from reasonable
20 standards.

21 316. Tesla flagrantly, maliciously, and fraudulently misrepresented the safety and
22 reliability of the Class Vehicles, deceived Class members by concealing important
23 material facts that only they knew, and repeatedly promised Class members that they
24 would be covered and taken care of with warranty repairs.

25 317. Tesla's unlawful conduct constitutes malice, oppression, and fraud warranting
26 punitive damages.

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COUNT II

BREACH OF EXPRESS WARRANTY

(Idaho Code §§ 28-2-313 and 28-12-210)

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4 318. Plaintiffs reallege and incorporate by reference all paragraphs as though fully
5 set forth herein.

6 319. Plaintiff Wolven (for the purpose of this section, “Plaintiff”) brings this Count
7 on behalf of himself and the Idaho Class, against Defendant Tesla, Inc.

8 320. Tesla is and was at all relevant times “merchants” with respect to motor
9 vehicles under Idaho Code §§ 28-2-104(1) and 28-12-103(3), and “sellers” of motor
10 vehicles under § 28-2-103(1)(d).

11 321. The Class Vehicles are and were at all relevant times “goods” within the
12 meaning of Idaho Code §§ 28-2-105(1) and 28-12-103(1)(h). 1271. In connection with
13 the purchase or lease of each one of the Class Vehicles, Tesla provides an express Used
14 Vehicle Limited Warranty for a period of either two years or 100,000 miles, or a period
15 of four years or 50,000, whichever occurs first.

16 322. The warranties cover any repairs to cover or correct manufacturers defects in
17 materials or workmanship. Tesla also provides an 8-year, unlimited mile warranty with
18 regards to any defects with the drivetrain and batteries of the Class Vehicles.

19 323. Tesla’s warranties formed a basis of the bargain that was reached when
20 Plaintiffs and other Idaho Class members purchased or leased their Class Vehicles.

21 324. Plaintiff and the Idaho Class members experienced defects within the
22 warranty period. Despite the existence of warranties, Tesla failed to repair or otherwise
23 replace the batteries of the Class Vehicles, despite the defective nature of the batteries
24 and other components.

25 325. Tesla further breached the express warranties promising to repair and correct
26 a manufacturing defect or materials or workmanship of any parts they supplied. Tesla has
27 not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles’
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1 materials and workmanship defects, specifically relating to the batteries of the Class
2 Vehicles.

3 326. Furthermore, the limited warranty promising to repair and/or correct a
4 manufacturing defect fails in its essential purpose because the contractual remedy is
5 insufficient to make Plaintiffs and the other Idaho Class members whole and because the
6 Tesla failed and/or has refused to adequately provide the promised remedies within a
7 reasonable time.

8 327. Accordingly, recovery by Plaintiff and the other Idaho Class members is not
9 restricted to the limited warranty promising to repair and/or correct a manufacturing
10 defect, and Plaintiffs, individually and on behalf of the other Idaho Class members, seek
11 all remedies as allowed by law.

12 328. Also, as alleged in more detail herein, at the time Tesla warranted and sold or
13 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective
14 and did not conform to their warranties; and further, Tesla had wrongfully and
15 fraudulently concealed material facts regarding the Class Vehicles. Plaintiff and the other
16 Idaho Class members were therefore induced to purchase or lease the Class Vehicles
17 under false and/or fraudulent pretenses.

18 329. Moreover, many of the injuries flowing from the Class Vehicles cannot be
19 resolved through the limited remedy of “replacements or adjustments,” as many
20 incidental and consequential damages have already been suffered because of Tesla’s
21 fraudulent conduct as alleged herein, and because of its failure and/or continued failure to
22 provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’
23 and the other Idaho Class members’ remedies would be insufficient to make Plaintiff and
24 the other Idaho Class members whole.

25 330. Finally, because of Tesla’s breach of warranty as set forth herein, Plaintiff and
26 the other Idaho Class members assert, as additional and/or alternative remedies, the
27 revocation of acceptance of the goods and the return to Plaintiff and the other Idaho Class
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1 members of the purchase or lease price of all Class Vehicles currently owned or leased,
2 and for such other incidental and consequential damages as allowed.

3 331. Tesla was provided notice of these issues by numerous complaints filed
4 against them, including the instant Complaint, within a reasonable amount of time after
5 filing of the same.

6 332. As a direct and proximate result of Tesla’s breach of express warranties,
7 Plaintiff and the other Idaho Class members have been damaged in an amount to be
8 determined at trial.

9 **COUNT III**

10 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

11 **(Idaho Code §§ 28-2-314 and 28-12-212)**

12 333. Plaintiffs reallege and incorporate by reference all allegations of the preceding
13 paragraphs as though fully set forth herein.

14 334. Plaintiff Wolven (for the purpose of this section, “Plaintiff”) brings this Count
15 on behalf of the Idaho Class, against Defendant Tesla, Inc.

16 335. Tesla is, and at all relevant times was, a “merchant” with respect to motor
17 vehicles under Idaho Code §§ 28-2-104(1) and 28-12-103(3), and a “seller” of motor
18 vehicles under § 28-2-103(1)(d). 1292. With respect to leases, Tesla is and was at all
19 relevant times a “lessor” of motor vehicles under Idaho Code § 28-12-103(1)(p).

20 336. The Class Vehicles are and were at all relevant times “goods” within the
21 meaning of Idaho Code §§ 28-2-105(1) and 28-12-103(1)(h). 1294. A warranty that the
22 Class Vehicles were in merchantable condition and fit for the ordinary purpose for which
23 vehicles are used is implied by law pursuant to Idaho Code §§ 28-2- 314 and 28-12-212.

24 337. The Class Vehicles, when sold or leased and at all times thereafter, were not
25 in merchantable condition and are not fit for the ordinary purpose for which vehicles are
26 used. Specifically, the batteries of the Class Vehicles were not adequately designed,
27 manufactured, and tested; the batteries of the Class Vehicles were of a lower standard
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1 and/or quality from what was advertised; and the batteries were incapable of achieving,
2 or coming close to the estimated rated mileage range as advertised by Tesla.

3 338. Tesla was provided notice of these issues by the investigations conducted by
4 the Federal Trade Commission to enforce the Used Car Rule, by the instant Complaint
5 and by the numerous individual complaints sent by Plaintiffs and putative class members
6 that arise from Tesla's CPO car sales business.

7 339. As a direct and proximate result of Tesla's breach of the implied warranty of
8 merchantability, Plaintiff and the other Idaho Class members have been damaged in an
9 amount to be proven at trial.

10 **XI. OREGON STATE CAUSES OF ACTION**

11 **COUNT I**

12 **VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT**

13 **(Or. Rev. Stat. §§ 646.605, et seq.)**

14 340. Plaintiffs incorporate by reference each preceding paragraph as though fully
15 set forth herein.

16 341. Plaintiff Ellwood (for the purpose of this section, "Plaintiff") brings this
17 action on behalf of himself and the Oregon Class against Defendant Tesla, Inc.

18 342. Plaintiff and the Oregon Class are "persons" within the meaning of Or. Rev.
19 Stat. § 646.605(4).

20 343. Tesla is engaged in "trade" or "commerce" within the meaning of Or. Rev.
21 Stat. § 646.605(8).

22 344. The Oregon Unfair Trade Practices Act ("Oregon UTPA") prohibits "unfair
23 or deceptive acts conduct in trade or commerce" Or. Rev. Stat. § 646.608(1).

24 345. In the course of Tesla's business and sales of its used, certified pre-owned
25 vehicles, Tesla intentionally or negligently concealed and suppressed material facts
26 concerning the true condition and/or health of the batteries of the Class Vehicles at all
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1 times prior to purchase and delivery of the same to Plaintiff and the Oregon Class
2 members.

3 346. Tesla deceptively and fraudulently marketed and advertised the EPA
4 estimated mileage range, but failed to provide any relevant or material information with
5 regard to the actual health and condition of the batteries for the Class Vehicles actually
6 being purchased by Plaintiff and the Oregon Class members.

7 347. Plaintiff and the Oregon Class members had no way of discerning that Tesla's
8 representations were false and misleading and were otherwise persuaded and tricked by
9 Tesla into thinking that any defects or problems would be covered under Tesla's
10 warranty.

11 348. Tesla violated the provisions of the Oregon UTPA, at a minimum by: (1)
12 representing that the Class Vehicles have characteristics, uses, benefits, and qualities
13 which they do not have; (2) representing that the Class Vehicles are of a particular
14 standard, quality, and grade when they are not; (3) advertising the Class Vehicles with the
15 intent not to sell them as advertised; (4) failing to disclose information concerning the
16 Class Vehicles with the intent to induce consumers to purchase or lease the Class
17 Vehicles.

18 349. Tesla engaged in misleading, false, unfair or deceptive acts or practices that
19 violated the Oregon UTPA by installing, failing to disclose and/or actively concealing the
20 true and actual health and condition of the batteries for the Class Vehicles, including the
21 estimated rated mileage rating for the same.

22 350. Tesla doubled down on the deception by repeatedly asserting that the Class
23 Vehicles were certified, pre-owned vehicles that were subject to various-point safety and
24 condition inspections prior to sale. Tesla furthered the deception by tricking consumers
25 like Plaintiff and the Oregon Class that any issues or defects relating to the batteries of
26 the Class Vehicles would be covered under warranty.
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1 351. The FTC Used Car Rule requires disclosures and display of certain materials
2 for sales of used vehicles.

3 352. Tesla violated federal and state law by failing to provide the mandatory
4 disclosures or failure to display the requisite information needed to comply with the
5 same.

6 353. Tesla knew that the batteries of the Class Vehicles were defective and/or of
7 subpar condition because it conducts inspections of its preowned cars before sale. Tesla
8 was in the superior and only position to know such information with regards to the
9 batteries as Tesla does not disclose this information prior to sale.

10 354. Tesla intentionally and knowingly misrepresented material facts regarding the
11 Class Vehicles with intent to mislead Plaintiffs and the Oregon Class.

12 355. Tesla knew or should have known that its conduct violated the Oregon UTPA.

13 356. Defendants owed Plaintiffs and Oregon Class members a duty to disclose,
14 truthfully, all the facts concerning the health and condition of the batteries for the Class
15 Vehicles because Tesla: a. possessed exclusive knowledge that they were manufacturing,
16 selling, and distributing vehicles throughout the United States that did not comply with
17 federal and state regulations; b. intentionally concealed the foregoing from consumers,
18 prospective purchasers, Plaintiffs, and other putative class members; and/or c. Made
19 incomplete or negligent representations about the certification of their preowned vehicles
20 and the condition/health of the batteries for the Class Vehicles, while purposefully
21 withholding material facts from Plaintiffs that contradicted these representations.

22 357. Defendants' unfair or deceptive acts or practices were likely to and did in fact
23 deceive regulators and reasonable consumers, including Plaintiffs and Oregon Class
24 members, about the nature of Tesla's certified pre-owned vehicle sales and cars.

25 358. Plaintiffs and Oregon Class members suffered ascertainable loss and actual
26 damages as a direct and proximate result of Tesla's misrepresentations and its
27 concealment of and failure to disclose material information. Plaintiffs and the Oregon
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1 Class members who purchased or leased the Class Vehicles would not have purchased or
2 leased them at all and/or—if the Vehicles’ true nature had been disclosed and
3 mitigated— or would have paid significantly less for them. Plaintiffs also suffered
4 diminished value of their vehicles, as well as lost or diminished use.

5 359. Tesla had an ongoing duty to all owners of the Class Vehicles to refrain from
6 unfair and deceptive practices under the Oregon UTPA in the course of its business.

7 360. Tesla’s violations present a continuing risk to Plaintiffs as well as to the
8 general public. Defendants’ unlawful acts and practices complained of herein affect the
9 public interest.

10 361. Pursuant to Or. Rev. Stat. § 646.638, Plaintiffs and the Oregon Class seek an
11 order enjoining Tesla’s unfair and/or deceptive acts or practices, damages, punitive
12 damages, and attorneys’ fees, costs, and any other just and proper relief available under
13 the Oregon UTPA.

14 **COUNT II**

15 **BREACH OF EXPRESS WARRANTY**

16 **(Or. Rev. Stat. §§ 72.3130 and 72a.2100)**

17 362. Plaintiffs reallege and incorporate by reference all preceding allegations as
18 though fully set forth herein.

19 363. Plaintiff Ellwood (for the purpose of this section, “Plaintiff”) brings this
20 Count on behalf of the Oregon Class, against Defendant Tesla, Inc.

21 364. Tesla is and was at all relevant times “merchants” with respect to motor
22 vehicles under Or. Rev. Stat. §§ 72.1040(1) and 72A.1030(1)(t), and a “seller” of motor
23 vehicles under § 72.1030(1)(d).

24 365. With respect to leases, Tesla is and was at all relevant times a “lessor” of
25 motor vehicles under Or. Rev. Stat. § 72A.1030(1)(p).

26 366. The Class Vehicles are and were at all relevant times “goods” within the
27 meaning of Or. Rev. Stat. §§ 72.1050(1) and 72A.1030(1)(h).
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1 367. The Class Vehicles are and were at all relevant times “goods” within the
2 meaning of Idaho Code §§ 28-2-105(1) and 28-12-103(1)(h).

3 368. In connection with the purchase or lease of each one of the Class Vehicles,
4 Tesla provides an express Used Vehicle Limited Warranty for a period of either two
5 years or 100,000 miles, or a period of four years or 50,000, whichever occurs first.

6 369. The warranties cover any repairs to cover or correct manufacturers defects in
7 materials or workmanship. Tesla also provides an 8-year, unlimited mile warranty with
8 regards to any defects with the drivetrain and batteries of the Class Vehicles.

9 370. Tesla’s warranties formed a basis of the bargain that was reached when
10 Plaintiffs and other Oregon Class members purchased or leased their Class Vehicles.

11 371. Plaintiff and the Oregon Class members experienced defects within the
12 warranty period. Despite the existence of warranties, Tesla failed to repair or otherwise
13 replace the batteries of the Class Vehicles, despite the defective nature of the batteries
14 and other components. Tesla

15 372. Tesla further breached the express warranties promising to repair and correct
16 a manufacturing defect or materials or workmanship of any parts they supplied. Tesla has
17 not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles’
18 materials and workmanship defects, specifically relating to the batteries of the Class
19 Vehicles.

20 373. Furthermore, the limited warranty promising to repair and/or correct a
21 manufacturing defect fails in its essential purpose because the contractual remedy is
22 insufficient to make Plaintiff and the other Oregon Class members whole and because the
23 Tesla failed and/or has refused to adequately provide the promised remedies within a
24 reasonable time.

25 374. Accordingly, recovery by Plaintiff and the other Oregon Class members is not
26 restricted to the limited warranty promising to repair and/or correct a manufacturing
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1 defect, and Plaintiffs, individually and on behalf of the other Oregon Class members,
2 seek all remedies as allowed by law.

3 375. Also, as alleged in more detail herein, at the time Tesla warranted and sold or
4 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective
5 and did not conform to their warranties; and further, Tesla had wrongfully and
6 fraudulently concealed material facts regarding the Class Vehicles. Plaintiff and the other
7 Oregon Class members were therefore induced to purchase or lease the Class Vehicles
8 under false and/or fraudulent pretenses.

9 376. Moreover, many of the injuries flowing from the Class Vehicles cannot be
10 resolved through the limited remedy of “replacements or adjustments,” as many
11 incidental and consequential damages have already been suffered because of Tesla’s
12 fraudulent conduct as alleged herein, and because of its failure and/or continued failure to
13 provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’
14 and the other Oregon Class members’ remedies would be insufficient to make Plaintiffs
15 and the other Oregon Class members whole.

16 377. Finally, because of Tesla’s breach of warranty as set forth herein, Plaintiff and
17 the other Oregon Class members assert, as additional and/or alternative remedies, the
18 revocation of acceptance of the goods and the return to Plaintiff and the other Oregon
19 Class members of the purchase or lease price of all Class Vehicles currently owned or
20 leased, and for such other incidental and consequential damages as allowed.

21 378. Tesla was provided notice of these issues by numerous complaints filed
22 against them, including the instant Complaint, within a reasonable amount of time after
23 filing of the same.

24 379. As a direct and proximate result of Tesla’s breach of express warranties,
25 Plaintiffs and the other Oregon Class members have been damaged in an amount to be
26 determined at trial.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Or. Rev. Stat. § 72.3140 and 72A.2120)

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4 380. Plaintiffs reallege and incorporate by reference all allegations of the preceding
5 paragraphs as though fully set forth herein.

6 381. Plaintiff Ellwood (for the purpose of this section, “Plaintiff”) brings this
7 Count on behalf of the Oregon Class, against Defendant Tesla, Inc.

8 382. Tesla is and was at all relevant times a “merchant” with respect to motor
9 vehicles under Or. Rev. Stat. §§ 72.1040(1) and 72A.1030(1)(t), and a “seller” of motor
10 vehicles under § 72.1030(1)(d).

11 383. With respect to leases, the Tesla is and was at all relevant times a “lessor” of
12 motor vehicles under Or. Rev. Stat. § 72A.1030(1)(p).

13 384. The Class Vehicles are and were at all relevant times “goods” within the
14 meaning of Or. Rev. Stat. §§ 72.1050(1) and 72A.1030(1)(h). 2674. A warranty that the
15 Class Vehicles were in merchantable condition and fit for the ordinary purpose for which
16 vehicles are used is implied by law pursuant to Or. Rev. Stat. §§ 72.3140 and 72A-2120.

17 385. The Class Vehicles, when sold or leased and at all times thereafter, were not
18 in merchantable condition and are not fit for the ordinary purpose for which vehicles are
19 used. Specifically, the batteries of the Class Vehicles were not adequately designed,
20 manufactured, and tested; the batteries of the Class Vehicles were of a lower standard
21 and/or quality from what was advertised; and the batteries were incapable of achieving,
22 or coming close to the estimated rated mileage range as advertised by Tesla.

23 386. Tesla was provided notice of these issues by the investigations conducted by
24 the Federal Trade Commission to enforce the Used Car Rule, by the instant Complaint
25 and by the numerous individual complaints sent by Plaintiffs and putative class members
26 that arise from Tesla’s CPO car sales business.
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1 387. As a direct and proximate result of the Tesla’s breach of the implied warranty
2 of merchantability, Plaintiff and the other Oregon Class members have been damaged in
3 an amount to be proven at trial.

4 **XII. VIRGINIA STATE CAUSES OF ACTION**

5 **COUNT I**

6 **VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT**

7 **(Va. Code Ann. §§ 59.1-196, et seq.)**

8 388. Plaintiffs incorporate by reference each preceding paragraph as though fully
9 set forth herein.

10 389. Plaintiff Brock (for the purpose of this section, “Plaintiff”) brings this action
11 on behalf of herself and the Virginia Class against Defendant Tesla, Inc.

12 390. Plaintiff and the Virginia Class are “persons” within the meaning of Va. Code
13 § 59.1-198.

14 391. Tesla is a “supplier” within the meaning of Va. Code § 59.1-198.

15 392. The Virginia Consumer Protection Act (“Virginia CPA”) makes unlawful
16 “fraudulent acts or practices.” Va. Code § 59.1-200(A).

17 393. In the course of Tesla’s business, Tesla intentionally or negligently concealed
18 and suppressed material facts concerning the true status and health/condition of the
19 batteries for the Class Vehicles prior to sale. Tesla withheld or otherwise failed to
20 disclose any relevant information regarding the actual mileage range for the Class
21 Vehicles prior to sale. Plaintiff and the Virginia Class members had no way of discerning
22 what the actual mileage range was prior to purchase of the Class Vehicles nor did they
23 have any way of discerning that Tesla did not intend to perform under their warranties for
24 the Class Vehicles.

25 394. Tesla violated the Act, at a minimum by: (1) misrepresenting the source,
26 sponsorship, approval, or certification of goods or services; (2) misrepresenting that
27 goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
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1 (3) misrepresenting that goods or services are of a particular standard, quality, grade,
2 style or model; (4) advertising goods or services with intent not to sell them as
3 advertised; and (5) using any other deception, fraud, false pretense, false promise, or
4 misrepresentation in connection with a consumer transaction. Va. Code § 59.1-200(A).

5 395. Tesla engaged in misleading, false, unfair or deceptive acts or practices that
6 violated the Virginia CPA by installing, failing to disclose and/or actively concealing the
7 true and actual health and condition of the batteries for the Class Vehicles, including the
8 estimated rated mileage rating for the same.

9 396. Tesla doubled down on the deception by repeatedly asserting that the Class
10 Vehicles were certified, pre-owned vehicles that were subject to various-point safety and
11 condition inspections prior to sale. Tesla furthered the deception by tricking consumers
12 like Plaintiff and the Virginia Class that any issues or defects relating to the batteries of
13 the Class Vehicles would be covered under warranty.

14 397. The FTC Used Car Rule requires disclosures and display of certain materials
15 for sales of used vehicles.

16 398. Tesla violated federal and state law by failing to provide the mandatory
17 disclosures or failure to display the requisite information needed to comply with the
18 same.

19 399. Tesla knew that the batteries of the Class Vehicles were defective and/or of
20 subpar condition because it conducts inspections of its preowned cars before sale. Tesla
21 was in the superior and only position to know such information with regards to the
22 batteries as Tesla does not disclose this information prior to sale.

23 400. Tesla intentionally and knowingly misrepresented material facts regarding the
24 Class Vehicles with intent to mislead Plaintiffs and the Oregon Class.

25 401. Tesla knew or should have known that its conduct violated the Virginia CPA.

26 402. Tesla owed Plaintiff and the Virginia Class members a duty to disclose,
27 truthfully, all the facts concerning the health and condition of the batteries for the Class
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1 Vehicles because Tesla: a. possessed exclusive knowledge that they were manufacturing,
2 selling, and distributing vehicles throughout the United States that did not comply with
3 federal and state regulations; b. intentionally concealed the foregoing from consumers,
4 prospective purchasers, Plaintiffs, and other putative class members; and/or c. Made
5 incomplete or negligent representations about the certification of their preowned vehicles
6 and the condition/health of the batteries for the Class Vehicles, while purposefully
7 withholding material facts from Plaintiffs that contradicted these representations.

8 403. Tesla’s unfair or deceptive acts or practices were likely to and did in fact
9 deceive regulators and reasonable consumers, including Plaintiff and Virginia Class
10 members, about the nature of Tesla’s certified pre-owned vehicle sales and cars.

11 404. Plaintiff and Virginia Class members suffered ascertainable loss and actual
12 damages as a direct and proximate result of Tesla’s misrepresentations and its
13 concealment of and failure to disclose material information. Plaintiff and the Virginia
14 Class members who purchased or leased the Class Vehicles would not have purchased or
15 leased them at all and/or—if the Vehicles’ true nature had been disclosed and
16 mitigated— or would have paid significantly less for them. Plaintiffs also suffered
17 diminished value of their vehicles, as well as lost or diminished use.

18 405. Tesla had an ongoing duty to all owners of the Class Vehicles to refrain from
19 unfair and deceptive practices under the Virginia CPA in the course of its business.

20 406. Tesla’s violations present a continuing risk to Plaintiffs as well as to the
21 general public. Tesla’s unlawful acts and practices complained of herein affect the public
22 interest.

23 407. Pursuant to Va. Code § 59.1-204(A)–(B), Plaintiff and the Virginia Class are
24 entitled to the greater of actual damages or \$500 for each Virginia Class member,
25 attorneys’ fees, and costs. Because Tesla’s actions were willful, Plaintiff and the Virginia
26 Class should each receive the greater of treble damages or \$1,000. Va. Code § 59.1-204
27 (A) – (B).
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COUNT II

BREACH OF EXPRESS WARRANTY

(Va. Code §§ 8.2-313 and 8.2a-210)

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4 408. Plaintiffs reallege and incorporate by reference all preceding allegations as
5 though fully set forth herein

6 409. Plaintiff Brock (for the purpose of this section, “Plaintiff”) brings this Count
7 on her own behalf and on behalf of the Virginia Class, against Defendant Tesla, Inc.

8 410. Tesla is and was at all relevant times a “merchant” with respect to motor
9 vehicles under Va. Code § 8.2-104(1) and 8.2A-103(1)(t), and a “seller” of motor
10 vehicles under § 8.2-103(1)(d). 3175.

11 411. With respect to leases, Tesla is and was at all relevant times, a “lessor” of
12 motor vehicles under Va. Code § 8.2A-103(1)(p).

13 412. The Class Vehicles are and were at all relevant times “goods” within the
14 meaning of Va. Code §§ 8.2-105(1) and 8.2A-103(1)(h).

15 413. In connection with the purchase or lease of each one of the Class Vehicles,
16 Tesla provides an express Used Vehicle Limited Warranty for a period of either two
17 years or 100,000 miles, or a period of four years or 50,000, whichever occurs first.

18 414. The warranties cover any repairs to cover or correct manufacturers defects in
19 materials or workmanship. Tesla also provides an 8-year, unlimited mile warranty with
20 regards to any defects with the drivetrain and batteries of the Class Vehicles.

21 415. Tesla’s warranties formed a basis of the bargain that was reached when
22 Plaintiff and other Virginia Class members purchased or leased their Class Vehicles.

23 416. Plaintiff and the Virginia Class members experienced defects within the
24 warranty period. Despite the existence of warranties, Tesla failed to repair or otherwise
25 replace the batteries of the Class Vehicles, despite the defective nature of the batteries
26 and other components.
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1 417. Tesla further breached the express warranties promising to repair and correct
2 a manufacturing defect or materials or workmanship of any parts they supplied. Tesla has
3 not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles’
4 materials and workmanship defects, specifically relating to the batteries of the Class
5 Vehicles.

6 418. Furthermore, the limited warranty promising to repair and/or correct a
7 manufacturing defect fails in its essential purpose because the contractual remedy is
8 insufficient to make Plaintiff and the other Virginia Class members whole and because
9 the Tesla failed and/or has refused to adequately provide the promised remedies within a
10 reasonable time.

11 419. Accordingly, recovery by Plaintiff and the other Virginia Class members is
12 not restricted to the limited warranty promising to repair and/or correct a manufacturing
13 defect, and Plaintiffs, individually and on behalf of the other Virginia Class members,
14 seek all remedies as allowed by law.

15 420. Also, as alleged in more detail herein, at the time Tesla warranted and sold or
16 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective
17 and did not conform to their warranties; and further, Tesla had wrongfully and
18 fraudulently concealed material facts regarding the Class Vehicles. Plaintiff and the other
19 Virginia Class members were therefore induced to purchase or lease the Class Vehicles
20 under false and/or fraudulent pretenses.

21 421. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacements or adjustments,” as many
23 incidental and consequential damages have already been suffered because of Tesla’s
24 fraudulent conduct as alleged herein, and because of its failure and/or continued failure to
25 provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’
26 and the other Virginia Class members’ remedies would be insufficient to make Plaintiff
27 and the other Virginia Class members whole.
28

1 422. Finally, because of Tesla’s breach of warranty as set forth herein, Plaintiff and
2 the other Virginia Class members assert, as additional and/or alternative remedies, the
3 revocation of acceptance of the goods and the return to Plaintiff and the other Virginia
4 Class members of the purchase or lease price of all Class Vehicles currently owned or
5 leased, and for such other incidental and consequential damages as allowed.

6 423. Tesla was provided notice of these issues by numerous complaints filed
7 against them, including the instant Complaint, within a reasonable amount of time after
8 filing of the same.

9 424. As a direct and proximate result of Tesla’s breach of express warranties,
10 Plaintiffs and the other Virginia Class members have been damaged in an amount to be
11 determined at trial.

12 **COUNT III**

13 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

14 **(Va. Code §§ 8.2-314 and 8.2a-212)**

15 425. Plaintiffs reallege and incorporate by reference all allegations of the preceding
16 paragraphs as though fully set forth herein.

17 426. Plaintiff Brock (for the purpose of this section, “Plaintiff”) brings this Count
18 on behalf of herself and the Virginia Class, against Defendant Tesla, Inc.

19 427. Tesla is and was at all relevant times a “merchant” with respect to motor
20 vehicles under Va. Code § 8.2-104(1) and 8.2A-103(1)(t), and a “seller” of motor
21 vehicles under § 8.2-103(1)(d).

22 428. With respect to leases, the Tesla is and was at all relevant times a “lessor” of
23 motor vehicles under Va. Code § 8.2A-103(1)(p).

24 429. The Class Vehicles are and were at all relevant times “goods” within the
25 meaning of Va. Code §§ 8.2-105(1) and 8.2A-103(1)(h).
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1 430. A warranty that the Class Vehicles were in merchantable condition and fit for
2 the ordinary purpose for which vehicles are used is implied by law pursuant to Va. Code
3 §§ 8.2-314 and 8.2A-212.

4 431. The Class Vehicles, when sold or leased and at all times thereafter, were not
5 in merchantable condition and are not fit for the ordinary purpose for which vehicles are
6 used. Specifically, the batteries of the Class Vehicles were not adequately designed,
7 manufactured, and tested; the batteries of the Class Vehicles were of a lower standard
8 and/or quality from what was advertised; and the batteries were incapable of achieving,
9 or coming close to the estimated rated mileage range as advertised by Tesla.

10 432. Tesla was provided notice of these issues by the investigations conducted by
11 the Federal Trade Commission to enforce the Used Car Rule, by the instant Complaint
12 and by the numerous individual complaints sent by Plaintiffs and putative class members
13 that arise from Tesla's CPO car sales business.

14 433. As a direct and proximate result of the Tesla's breach of the implied warranty
15 of merchantability, Plaintiff and the other Virginia Class members have been damaged in
16 an amount to be proven at trial.

17 **XIII. REQUEST FOR RELIEF**

18 434. Wherefore, Plaintiff Hugh Nguyen and the additional State Plaintiffs, on
19 behalf of themselves individually and on behalf of the putative class members and the
20 proposed classes, respectfully requests that the Court enter judgment in their favor and
21 against Defendant Tesla, Inc., as follows:

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

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

26 C. Injunctive relief in the form of a recall;

27 D. Equitable relief in the form of buyback of the Class Vehicles;
28

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

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

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

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

7 **XIV. DEMAND FOR JURY TRIAL**

8 435. Plaintiff hereby demands a jury trial for all claims so triable.
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10
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12

13 Dated: November 4, 2019

By: /s/ Edward C. Chen
Edward C. Chen (SBN 312553)
LAW OFFICES OF EDWARD C. CHEN
*Attorneys for Plaintiffs and the Proposed
Classes*