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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

19 MATTHEW AMANS, and BABAK
20 MALEK, individually and on behalf of all
similarly situated individuals,

21 *Plaintiffs,*

22 v.

24 TESLA, INC., a Delaware corporation,

25 *Defendant.*

Case No. 3:21-cv-03577-VC

Hon. Vince Chhabria

CLASS ACTION SETTLEMENT
AGREEMENT

1 This Class Action Settlement Agreement (“Settlement Agreement” or “Agreement”) is
2 entered into by and among Plaintiffs Matthew Amans and Babak Malek (“Plaintiffs”), for
3 themselves individually and on behalf of the Settlement Class, and Tesla, Inc. (“Defendant” or
4 “Tesla”). (Plaintiffs and Defendant are referred to individually as a “Party” and collectively
5 referred to as the “Parties.”) This Settlement Agreement is intended by the Parties to fully, finally,
6 and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and
7 conditions hereof, and is subject to the approval of the Court.

8 RECITALS

9 A. On May 12, 2021, Plaintiff Matthew Amans filed a putative class action complaint
10 against Tesla in the United States District Court for Northern District of California, Case No. 3:21-
11 cv-03577, on behalf of himself and similarly situated individuals, alleging that in April 2021,
12 Tesla made a company-wide decision to increase the price of Solar Roofs contracts previously
13 entered with consumers between early 2020 and April 2021.

14 B. On May 17, 2021 and July 20, 2021, Plaintiff Sol Kim, Aaron Mandell, Alissa Beth
15 Cohen Mandell, Mattias Astrom, Arpan Patel, Anupama Vivek, Jerin Zachariah, Peter Burns
16 (collectively, the Kim Plaintiffs) and Plaintiff Babak Malek respectively filed separate complaints
17 related to the same conduct. *See Sol Kim et al. v. Tesla, Inc.*, Case No. 5:21-cv-03681 and *Babak*
18 *Malek v. Tesla, Inc.*, Case No. 5:21-cv-05528. Plaintiffs’ counsel promptly coordinated their
19 efforts and filed a motion to consolidate the actions, which the Court subsequently granted. (Dkt.
20 22.) In addition, Plaintiffs’ counsel made immediate efforts and engaged in substantial discussions
21 with Tesla to obtain pertinent data and information from Tesla about the contracts and claims of
22 the putative class and the prospects for early mediation to attempt to bring relief to the class
23 without delay.

24 C. On September 13, 2021, Defendant’s counsel informed Plaintiffs that Tesla
25 intended to reverse the April 2021 price change and offer customers the option to proceed with
26 their Solar Roof contracts under the pre-increase pricing and terms. In light of this development,
27 the Court referred the Parties to private mediation to be completed by no later than February 4,
28 2022, and set various interim deadlines, including the deadline for Plaintiffs to move for

1 appointment of interim lead counsel. (Dkts. 25 & 26.)

2 D. On October 18, 2021, and after briefing by the Parties, the Court appointed Plaintiff
3 Aman's counsel, Eve-Lynn J. Rapp of Edelson PC, as Interim Lead Counsel and Peter A. Muhic
4 (counsel for the Kim Plaintiffs) and Justin T. Berger of Cotchett, Pitre & McCarthy, LLP (counsel
5 for Plaintiff Malek) to the Plaintiffs' Steering Committee. (Dkt. 33.)

6 E. Following the Court's mediation directives, the Parties agreed to schedule a
7 videoconference mediation session on January 14, 2022 with Robert A. Meyer, Esq. of JAMS. In
8 the weeks leading up to the mediation, Plaintiffs' counsel requested, and Defendant produced,
9 additional information to allow Plaintiffs' counsel to evaluate Tesla's price reversal and refund
10 program. Specifically, Tesla provided Plaintiffs' counsel with information related to, *inter alia*,
11 (i) the number of individuals in the putative class, broken down by the number of individuals who
12 had agreed to the April 2021 price increase and those who had not, (ii) any expected changes to
13 the contracts of putative class members resulting from the April 2021 price increase, including the
14 timeframe for installations, any expected additional price adjustments, and/or changes to the terms
15 of the contracts, and (iii) the reimbursement of additional costs incurred by putative class members
16 resulting from Tesla's April 2021 price increase.

17 F. Additionally, the Parties were in frequent communication with Mr. Meyer and each
18 other in order to identify the potential frameworks for resolution. The Parties prepared
19 comprehensive mediation memoranda addressing the core facts, legal issues, litigation risks, and
20 potential settlement structures. In conjunction with the settlement memoranda, the Parties also
21 participated in substantial telephonic and written communications to clarify and develop their
22 positions prior to the mediation session.

23 G. On January 12, 2022, the case was reassigned to Judge Vince Chhabria, following
24 Judge Lucy H. Koh's elevation to the United States Court of Appeals for the Ninth Circuit.

25 H. On January 14, 2022, the Parties participated in a full-day mediation session via
26 videoconference with Mr. Meyer. The session concluded with Tesla taking Plaintiffs' settlement
27 demand under consideration and agreeing to continue the settlement discussions, with
28 Mr. Meyer's assistance, in the weeks that followed. Despite their continued efforts, however, the

1 Parties reached an impasse and the litigation moved forward. (Dkt. 52.)

2 I. On February 22, 2022, Plaintiffs Amans and Babek (hereinafter, “Plaintiffs”) filed
3 their amended consolidated complaint in which they asserted claims for: (i) breach of contract; (ii)
4 violation of California’s Unfair Competition Law (“UCL”); Cal. Bus. & Prof. Code §§ 17200, *et*
5 *seq.*; (iii) violation of Cal. Bus. & Prof. Code § 7160; (iv) violation of California’s Consumer
6 Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*; and (v) violation of the Truth In
7 Lending Act, (“TILA”), 15 U.S.C. §§ 1601, *et seq.* (Dkt. 54.)

8 J. Shortly thereafter, the Parties appeared before the Court for a Case Management
9 Conference, during which time the Court granted in part and denied in part Defendant’s request to
10 stay discovery pending the resolution of Defendant’s anticipated motion to dismiss, permitting
11 discovery to proceed as to the merits of Plaintiffs’ individual claims, but staying class wide
12 discovery. (Dkt. 60.)

13 K. On April 5, 2022, Defendant filed a Motion to Dismiss Under Fed. R. Civ. P.
14 12(b)(1) and 12(b)(2). (Dkt. 63.) After full briefing, the Court granted in part and denied in part
15 Defendant’s Motion. (Dkt. 79.) Specifically, the Court denied Defendant’s motion with respect to
16 the breach of contract claim for specific performance and damages but granted Defendant’s
17 motion as to the breach of contract claim for restitution. The Court additionally dismissed
18 Plaintiffs’ claims under the Unfair Competition Law, Consumer Legal Remedies Act, and
19 California Business & Professions Code § 7160 with leave to amend, and Truth in Lending Act
20 with prejudice. (Dkt. 79.)

21 L. Following the Court’s Order, the Parties agreed to further explore the possibility of
22 resolution. In that vein, the Parties reengaged Mr. Meyer’s mediation services. Over the course of
23 the next few months, and with the assistance of Mr. Meyer, the Parties continued to exchange
24 frequent telephonic and written correspondence regarding the possibility of resolution.

25 M. Nonetheless, even as settlement talks progressed, the litigation continued.
26 Specifically, on August 30, 2022, Defendant answered the Complaint. (Dkt. 91.) The Parties also
27 continued to engage in written discovery, exchanging various rounds of Rule 26(a)(1) disclosures,
28 interrogatories, and requests for production, and regularly conferred regarding the same. After

1 negotiating a protective order, ESI protocol, and search terms, Defendant likewise produced
2 thousands of documents, and the Parties prepared for depositions.

3 N. On April 24, 2023, after significant further discussions, the Parties reached an
4 agreement in principle on the material terms of a class action settlement. Over the next several
5 weeks, the Parties continued negotiating the details of the settlement, culminating in the agreement
6 of material terms on June 26, 2023.

7 O. Plaintiffs and Class Counsel have conducted a comprehensive examination of the
8 law and facts regarding the claims against Defendant, and the potential defenses available.

9 P. Plaintiffs believe that their claims have merit, that they would have succeeded in
10 obtaining adversarial certification of the proposed Settlement Class, and that they would have
11 ultimately prevailed on the merits at summary judgment or at trial. Nonetheless, Plaintiffs and
12 Class Counsel recognize that Defendant has raised factual and legal claims and defenses that
13 present a risk that Plaintiffs may not prevail on their claims. Plaintiffs and Class Counsel have also
14 taken into account the uncertain outcome and risks of any litigation, especially in complex actions,
15 as well as the difficulty and delay inherent in such litigation. Therefore, Plaintiffs and Class
16 Counsel believe that it is desirable that the Released Claims be fully and finally compromised,
17 settled, resolved with prejudice, and barred pursuant to the terms and conditions set forth in this
18 Agreement.

19 Q. Based on their comprehensive examination and evaluation of the law and facts
20 relating to the matters at issue, Class Counsel have concluded that the terms and conditions of this
21 Agreement are fair, reasonable, and adequate to resolve the alleged claims of the Settlement Class
22 and that it is in the best interests of the Settlement Class Members to settle the Released Claims
23 pursuant to the terms and conditions set forth in this Agreement.

24 R. Defendant has at all times denied—and continues to deny—all allegations of
25 wrongdoing and liability and denies all material allegations in the Action. Defendant is prepared to
26 continue its vigorous defense; however, taking into account the uncertainty and risks inherent in
27 litigation, Defendant has concluded that continuing to defend the Action would be burdensome
28 and expensive. Defendant has further concluded that it is desirable to settle the Released Claims

1 pursuant to the terms and conditions set forth in this Agreement to avoid the time, risk, and
2 expense of defending protracted litigation and to resolve finally and completely the pending and
3 potential claims of Plaintiffs and the Settlement Class.

4 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
5 Class Representatives, the Settlement Class, and Defendant that, subject to the Court's final
6 approval after a hearing as provided for in this Agreement, and in consideration of the benefits
7 flowing to the Parties from the Settlement set forth herein, the Released Claims shall be fully and
8 finally compromised, settled, and released, and the Action shall be dismissed with prejudice,
9 upon and subject to the terms and conditions set forth in this Agreement.

10 AGREEMENT

11 **1. DEFINITIONS**

12 As used herein, in addition to any definitions set forth elsewhere in this Settlement
13 Agreement, the following terms shall have the meanings set forth below:

14 1.1 **"Action"** means the case captioned *Matthew Amans and Babak Malek v. Tesla*
15 *Inc.*, No. 3:21-cv-03577-VC (N.D. Cal.).

16 1.2 **"Agreement"** or **"Settlement Agreement"** or **"Settlement"** means this Class
17 Action Settlement Agreement.

18 1.3 **"Approved Claim"** means a Claim Form submitted by a Settlement Class Member
19 that is (a) timely and submitted in accordance with the directions on the Claim Form and the terms
20 of this Agreement, (b) fully completed and physically or electronically signed by the Settlement
21 Class Member, and (c) satisfies the conditions of eligibility for any Out-of-Pocket Loss Payment
22 or an Increased Installation Cost Payment as set forth in this Agreement.

23 1.4 **"Automatic Settlement Payment"** means the automatic payment of one hundred
24 dollars (\$100), subject to a pro rata increase, to all Settlement Class Members that do not submit
25 an Approved Claim for an Out-of-Pocket Loss Payment or an Increased Installation Cost
26 Payment.

27 1.5 **"Claims Deadline"** means the date by which all Claim Forms must be postmarked
28 or submitted on the Settlement Website to be considered timely, and shall be set as a date no later

1 than forty-five (45) days following the Notice Date, subject to Court approval. The Claims
2 Deadline shall be clearly set forth in the order granting Preliminary Approval, as well as in the
3 Notice and the Claim Form.

4 1.6 “**Claim Form**” means the document substantially in the form attached hereto as
5 Exhibit [A], as approved by the Court. The Claim Form, which shall be completed by Settlement
6 Class Members who are potentially eligible to receive an Out-of-Pocket Loss Payment related to
7 an uninstalled solar roof or an Increased Installation Cost Payment for a new contract for solar
8 roof installation, shall be available in electronic format on the Settlement Website. The Claim
9 Form will require claiming Settlement Class Members to provide at least the following
10 information, and any additional information that the Parties and Settlement Administrator may
11 determine is reasonably necessary to process claims and deter fraudulent submissions: (i) full
12 name, (ii) current U.S. Mail address, (iii) current contact telephone number and email address, and
13 the (iv) address of the property subject to the Tesla Solar Roof contract. Settlement Class
14 Members who elect to recover an Out-of-Pocket Loss Payment related to an uninstalled roof will
15 be required to submit proof of damages. Settlement Class Members who elect to enter into a new
16 contract with Tesla for a solar roof and receive an Increased Installation Cost Payment must
17 provide copies of the original and new solar roof contracts showing the difference in price and
18 proof of payment. The Claim Form will not require notarization, but will require affirmation that
19 the information supplied is true and correct. The online Claim Form will provide the option of
20 having settlement payments transmitted electronically or by check via U.S. Mail.

21 1.7 “**Class Counsel**” means lead class counsel Eve-Lynn J. Rapp of Edelson PC, and
22 Plaintiffs’ steering committee of Peter A. Muhic of The Miller Law Firm, P.C. and Justin T.
23 Berger and Sarvenaz J. Fahimi of Cotchett, Pitre, & McCarthy LLP.

24 1.8 “**Class Representatives**” means the named Plaintiffs in the Action, Matthew Amans
25 and Babak Malek.

26 1.9 “**Court**” means the United States District Court for the Northern District of
27 California, San Francisco Division, the Honorable Vince Chhabria presiding, or any judge who
28 shall succeed him as the Judge assigned to the Action.

1 1.10 “**Defendant**” or “**Tesla**” means Tesla, Inc., a Delaware corporation.

2 1.11 “**Defendant’s Counsel**” or “**Tesla’s Counsel**” means attorneys Alan E.
3 Schoenfeld and Ryan Chabot of Wilmer Cutler Pickering Hale and Dorr LLP.

4 1.12 “**Effective Date**” means one business day following the later of: (a) the date upon
5 which the time expires for filing or noticing any appeal of the Final Judgment; (b) if there is an
6 appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award or
7 incentive awards, the date of completion, in a manner that finally affirms and leaves in place the
8 Final Judgment without any material modification, of all proceedings arising out of the appeal(s)
9 (including, but not limited to, the expiration of all deadlines for motions for reconsideration or
10 petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings
11 arising out of any subsequent appeal(s) following decisions on remand); or (c) the date of final
12 dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to the
13 Final Judgment.

14 1.13 “**Escrow Account**” means the separate, interest-bearing escrow account to be
15 established by the Settlement Administrator under terms acceptable to Class Counsel and
16 Defendant at a depository institution insured by the Federal Deposit Insurance Corporation that
17 will constitute a court-approved Qualified Settlement Fund (QSF) for federal tax purposes
18 pursuant to Treas. Reg. § 1.468B-1. The money in the Escrow Account shall be invested in the
19 following types of accounts and/or instruments and no other: (a) demand deposit accounts and/or
20 (b) time deposit accounts and certificates of deposit, in either case with maturities of forty-five
21 (45) days or less. Any interest earned on the Escrow Account shall inure to the benefit of the
22 Settlement Class as part of the Settlement Payment, if practicable. The Settlement Administrator
23 shall be responsible for all tax filings with respect to the Escrow Account.

24 1.14 “**Fee Award**” means the amount of attorneys’ fees and reimbursement of costs to
25 Class Counsel by the Court to be paid out of the Settlement Fund.

26 1.15 “**Final Approval Hearing**” means the hearing before the Court where the
27 Plaintiffs will request that the Final Judgment be entered by the Court finally approving the
28

1 Settlement as fair, reasonable, and adequate, and determining the Fee Award and the service
2 award to the Class Representatives.

3 1.16 “**Final Approval**” means the Court’s order finally approving the Settlement.

4 1.17 “**Final Judgment**” means the final judgment to be entered by the Court confirming
5 approval of the Settlement Class for purposes of Settlement, approving the settlement of the
6 Action in accordance with this Settlement Agreement after the Final Approval Hearing, and
7 dismissing the Action with prejudice.

8 1.18 “**Increased Installation Cost Payment**” means the payment to Settlement Class
9 Members with an Approved Claim that elect to enter in a new contract for a Tesla Solar Roof.

10 1.19 “**Notice**” means the notice of this proposed Settlement and Final Approval
11 Hearing, which, subject to Court approval, is to be disseminated to the Settlement Class
12 substantially in the manner set forth in this Settlement Agreement, and which fulfills the
13 requirements of Due Process and Federal Rule of Civil Procedure 23, and is substantially in the
14 form of Exhibits [A, B, C, and D] attached hereto.

15 1.20 “**Notice Date**” means the date by which the Notice is disseminated to the
16 Settlement Class, which shall be a date no later than twenty-eight (28) days after entry of
17 Preliminary Approval.

18 1.21 “**Objection/Exclusion Deadline**” means the date by which a written objection to
19 the Settlement Agreement must be filed with the Court or a request for exclusion submitted by a
20 person within the Settlement Class must be postmarked or received by the Settlement
21 Administrator, which shall be designated as a date forty-five (45) days after the Notice Date, as
22 approved by the Court. The Objection/Exclusion Deadline will be set forth in the Notice and on
23 the Settlement Website.

24 1.22 “**Out-of-Pocket Loss Payment**” means the payment to Settlement Class Members
25 with an Approved Claim who have incurred documented losses related to preparations for the
26 installation of a contracted for Tesla Solar Roof, which installation was canceled or delayed,
27 including but not limited to costs of (i) utility expenses, (ii) landscaping expenses (e.g. tree
28 removal), (iii) roof-related work/repairs such as mold remediation, chimney removal, roof

1 protection, roof leveling, or waterproof lining, (iv) electrical work and/or expenses, (v) expenses
2 related to Powerwalls which were not provided and required payment out of pocket, (vi) increased
3 insurance payments, (vii) inspection/permit fees, or (viii) costs associated with seeking HOA
4 approval for a Solar Roof.

5 1.23 “**Plaintiffs**” mean Matthew Amans and Babak Malek.

6 1.24 “**Preliminary Approval**” means the Court’s Order preliminarily approving the
7 Agreement, appointing Class Counsel, certifying and/or finding the Settlement Class is likely to
8 be certified for purposes of entering the Final Judgment, and approving the form and manner of
9 the Notice.

10 1.25 “**Released Claims**” means any and all past and present claims or causes of action,
11 whether known or unknown (including “Unknown Claims” as defined below), whether in law or
12 in equity, under contract, tort or any other subject area, or under any statute, rule, regulation,
13 order, or law, whether federal, state, or local, on any grounds whatsoever, that were alleged or
14 could have been alleged in the Action relating to the price increases imposed by Tesla in or around
15 April 2021 upon customers with contracts for solar roof installations and the subsequent
16 termination by Tesla of any uncanceled contracts for the Tesla Solar Roof. Released Claims does
17 not include any claims or causes of action resulting from or related to Solar Roof contracts entered
18 into with Tesla subsequent to the execution of this Agreement.

19 1.26 “**Released Parties**” means Tesla and any of its past or present parents, subsidiaries,
20 affiliated companies, and corporations, and any of their past or present officers, directors,
21 managers, employees, general partners, limited partners, principals, insurers, reinsurers,
22 shareholders, attorneys, advisors, representatives, agents, consultants, contractors, service
23 providers, successors, or assigns.

24 1.27 “**Releasing Parties**” means Plaintiffs, the Settlement Class Members, and their
25 respective present or past heirs, executors, estates, administrators, assigns, and agents.

26 1.28 “**Settlement Administration Expenses**” means the expenses reasonably incurred
27 by the Settlement Administrator in or relating to administering the Settlement, providing Notice,
28 creating and maintaining the Settlement Website, receiving and processing Claim Forms, mailing

1 checks or electronic processing, Automatic Settlement Payments, Out-of-Pocket Loss Payments,
2 Increased Installation Cost Payments, and other such related expenses and any tax obligations,
3 with all such expenses to be paid from the Settlement Fund.

4 1.29 “**Settlement Administrator**” means Angeion Group, LLC, subject to approval of
5 the Court, which will provide the Notice, create and maintain the Settlement Website, establish the
6 Escrow Account, receive and process Claim Forms, send Automatic Settlement Payments, Out-of-
7 Pocket Loss Payments, or Increased Installation Cost Payments to Settlement Class Members, be
8 responsible for any tax reporting, and perform such other settlement administration matters set
9 forth herein, contemplated by the Settlement, and/or ordered by the Court.

10 1.30 “**Settlement Class**” means all persons with whom Tesla entered into a contract for
11 the purchase and/or installation of a Solar Roof with or without a Powerwall energy storage
12 system in the United States and whom Tesla notified, in or around April 2021, would be required
13 to pay an increased price as a condition for performance of the contract. Excluded from the
14 Settlement Class are (a) any Judge or Magistrate presiding over this action and members of their
15 families; (b) Defendant, Defendant’s subsidiaries, parents, successors, predecessors, and any
16 entity in which Defendant or its parents have a controlling interest and its current or former
17 employees, officers and directors; (c) persons who properly execute and file a timely request for
18 exclusion from the Settlement Class; and (d) the legal representatives, successors, and assigns of
19 any such excluded persons.

20 1.31 “**Settlement Class Member**” or “**Class Member**” means a person who falls within
21 the definition of the Settlement Class and who does not submit a valid request for exclusion from
22 the Settlement Class.

23 1.32 “**Settlement Fund**” means the non-reversionary cash settlement fund that shall be
24 paid by the Defendant into the Escrow Account within fourteen (14) days of Preliminary Approval
25 in the amount of six million Dollars (\$6,000,000.00), plus all interest earned thereon. Payments to
26 Class Members from the Settlement Fund shall be allocated, subject to increase as described in
27 Section 2, below, as follows: (1) an “Automatic Payment Fund of \$820,000; (2) a “New Contract
28 Roof Installation Fund” of \$2,220,000; and (3) an “Out-of-Pocket Loss Fund” of \$1,370,000. The

1 Settlement Fund shall satisfy all monetary obligations of Defendant under this Settlement
2 Agreement, including the Fee Award, Settlement Administration Expenses, Automatic Settlement
3 Payments, Out-of-Pocket Loss Payments, or Increased Installation Cost Payment, to the
4 Settlement Class Members, any service award, and any other payments or other monetary
5 obligations contemplated by this Agreement. In no event shall Defendant be required to pay more
6 than the amount of six million dollars (\$6,000,000.00). In no event shall any amount paid by
7 Defendant into the Escrow Account revert to Defendant.

8 1.33 “**Settlement Website**” means the website to be created, launched, and maintained
9 by the Settlement Administrator, which will allow class members to submit a Claim Form and
10 supporting documents online, elect to receive Out-of-Pocket Loss Payments, or Increased
11 Installation Cost Payment via electronic means or a check and will provide access to relevant
12 settlement administration documents, including the Notice, relevant case documents, and other
13 relevant material.

14 1.34 “**Unknown Claims**” means claims that could have been but were not raised in the
15 Action, including but not limited to claims that Plaintiffs, any member of the Settlement Class or
16 any Releasing Party, do not know or suspect to exist, which, if known by him, her, them, or it,
17 might affect his, her or its agreement to release the Released Parties or the Released Claims or
18 might affect his, her, theirs, or its decision to agree, to object or not to object to the Settlement.
19 Upon the Effective Date, Plaintiffs, the Settlement Class, and the Releasing Parties shall be
20 deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted
21 by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which
22 provides as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
24 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
25 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
26 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
27 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
28 DEBTOR OR RELEASED PARTY.

27 Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have,
28 waived any and all provisions, rights and benefits conferred by any law of any state or territory of

1 the United States, or principle of common law, or the law of any jurisdiction outside of the United
2 States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The
3 Releasing Parties acknowledge that they may discover facts in addition to or different from those
4 that they now know or believe to be true with respect to the subject matter of this release, but that
5 it is their intention to finally and forever settle and release the Released Claims, notwithstanding
6 any Unknown Claims they may have, as that term is defined in this paragraph.

7 **2. SETTLEMENT RELIEF**

8 2.1 **Automatic Settlement Payments to Settlement Class Members.** All Settlement
9 Class Members who do not submit an Approved Claim shall be entitled to an Automatic
10 Settlement Payment from the Automatic Settlement Payment Fund. Automatic Settlement
11 Payments shall be increased pro rata should any funds remain in the Settlement Fund after
12 payment of all Approved Claims, the Fee Award, incentive awards, and Settlement Administration
13 Expenses. No claims procedure, Claim Form, or documentation will be required from a Class
14 Member as a condition of receiving an Automatic Settlement Payment.

15 a. Class Members will have the option of electing to have their Automatic Settlement
16 Payment transmitted to them through Venmo, Zelle, ACH direct deposit, or check by
17 indicating their payment preference prior to the Claims Deadline. Class Members who do
18 not choose a payment method via the Settlement Website or where an electronic payment
19 is unable to be processed will be sent a check via First Class U.S. Mail to their last-known
20 mailing address, as updated through the National Change of Address database if necessary
21 by the Settlement Administrator.

22 b. Within twenty-eight (28) days of the Effective Date, or such other date as the Court
23 may set, the Settlement Administrator shall send Automatic Settlement Payments from the
24 Automatic Settlement Payment Fund by check, ACH direct deposit, or electronic deposit,
25 as elected by the Class Member.

26 c. Each Automatic Settlement Payment issued to a Class Member by check will state
27 on the face of the check that it will become null and void unless cashed within sixty (60)
28

1 calendar days after the date of issuance.

2 d. In the event that an electronic deposit to a Class Member is unable to be processed,
3 the Settlement Administrator shall attempt to contact the Class Member within thirty (30)
4 calendar days to correct the problem.

5 e. To the extent that a check issued to a Settlement Class Member is not cashed within
6 sixty (60) days after the date of issuance or an electronic deposit is unable to be processed
7 within sixty (60) days of the first attempt, such funds will first be re-distributed to
8 Settlement Class Members who cashed their checks or successfully received their
9 electronic payments, if feasible and in the interests of the Settlement Class. If redistribution
10 is not feasible, such funds shall be distributed to a *cy pres* recipient approved by the Court.
11

12 **2.2 Out-Of-Pocket Loss Payments.** Settlement Class Members who have cancelled
13 their contracts or no longer want to have the Solar Roof installed, or who encountered delays in
14 installation associated with the April 2021 price increase, may submit and elect on the Claim Form
15 to recover out-of-pocket losses resulting from money spent in reliance on or in preparation for
16 installation of the Solar Roof from their initial contracts by the Claims Deadline. Settlement Class
17 Members with Approved Claims will receive a pro rata payment from the Out-of-Pocket Loss
18 Fund up to but not to exceed the documented amount of the losses submitted with Claim Form and
19 approved by the Settlement Administrator.

20 a. The Settlement Administrator will review all Claim Forms for an Out-of-Pocket
21 Loss Payment and submitted documentation of losses to determine if Settlement Class
22 Members have an Approved Claim and will determine the dollar amount approved. All
23 such determinations shall be completed within twenty-eight (28) days of the Claims
24 Deadline.

25 b. Settlement Class Members determined by the Settlement Administrator to have
26 Approved Claims for Out-of-Pocket Loss Payment will receive the full dollar amount
27 determined by the Settlement Administrator, less any previous amount reimbursed by
28 Tesla to that Class Member, unless the total amount of all Out-of-Pocket Loss Payments

1 exceeds the amount of the Out-of-Pocket Loss Fund. If the Settlement Administrator
2 determines that a claim for an Out-of-Pocket Loss Payment is denied or the amount of the
3 Approved Claim is for less than \$100, then the Class Member shall instead be provided an
4 Automatic Payment.

5 c. Class Members will have the option of electing to have their Out-of-Pocket Loss
6 Payment transmitted to them through Venmo, Zelle, ACH direct deposit, or check by
7 indicating their payment preference prior to the Claims Deadline. Class Members who do
8 not choose a payment method via the Settlement Website or where an electronic payment
9 is unable to be processed will be sent a check via First Class U.S. Mail to their last-known
10 mailing address, as updated through the National Change of Address database if necessary
11 by the Settlement Administrator.

12 d. Within twenty-eight (28) days of the Effective Date, or such other date as the Court
13 may set, the Settlement Administrator shall send Out-of-Pocket Loss Payments from the
14 Out-of-Pocket Loss Fund by Venmo, Zelle, ACH direct deposit or check as elected by the
15 Class Member.

16 e. Each Out-of-Pocket Loss Payment issued to a Class Member by check will state on
17 the face of the check that it will become null and void unless cashed within sixty (60)
18 calendar days after the date of issuance.

19 f. In the event that an ACH direct deposit to a Class Member is unable to be
20 processed, the Settlement Administrator shall attempt to contact the Class Member within
21 thirty (30) calendar days to correct the problem or send a check to the Class Member at the
22 address listed on the Claim Form.

23 g. To the extent that a check issued to a Settlement Class Member is not cashed within
24 sixty (60) days after the date of issuance, such funds will first be returned the Settlement
25 Fund for possible re-distribution to Settlement Class Members as Automatic Settlement
26 Payments or Increased Installation Cost Payments, if feasible and in the interests of the
27 Settlement Class. If redistribution is not feasible, such funds shall be distributed to a *cy*
28 *pres* recipient approved by the Court.

1 **2.3 Increased Installation Cost Payments.** Settlement Class Members may indicate
2 their desire on the Claim Form submitted by the Claims Deadline to enter into a new Solar Roof
3 contract with Tesla. Provided that Tesla currently services the location for which the Settlement
4 Class Member seeks installation of a Solar Roof and the site is otherwise suitable for a Solar Roof
5 according to Tesla's standard qualification criteria, the Settlement Class Member may visit the
6 Tesla website to place an order for a Solar Roof with an updated price quote reflecting pricing
7 consistent with then-current market rates and Tesla's customary pricing and Tesla will work with
8 the customer in good faith to finalize a new contract within thirty (30) days of order placement.
9 Those Settlement Class Members must notify Tesla and the Settlement Administrator of their
10 intention to move forward with the updated Solar Roof Contract within fourteen (14) days after
11 receipt of the updated contract. Upon proof of payment and installation, Settlement Class
12 Members with Approved Claims will receive a pro rata payment from the New Contract Roof
13 Installation Fund up to but not to exceed the difference in the original contract price and the new
14 contract price. If the Settlement Administrator determines that a claim for an Increased Installation
15 Cost Payment is denied or the amount of the Approved Claim is for less than \$100, then the Class
16 Member shall instead be provided an Automatic Payment.

17 a. Class Members will have the option of electing to have their Increased Installation
18 Cost Payment transmitted to them through Venmo, Zelle, ACH direct deposit, or check by
19 indicating their payment preference prior to the Claims Deadline. Class Members who do
20 not choose a payment method via the Settlement Website or where an electronic payment
21 is unable to be processed will be sent a check via First Class U.S. Mail to their last-known
22 mailing address, as updated through the National Change of Address database if necessary
23 by the Settlement Administrator.

24 b. Within twenty-eight (28) days that proof of payment and installation of the Solar
25 Roof is submitted to the Settlement Administrator, but no earlier than twenty (28) days of
26 the Effective Date, or such other date as the Court may set, the Settlement Administrator
27 shall send Increased Installation Cost Payments from the New Contract Roof Installation
28 Fund by Venmo, Zelle, ACH direct deposit, or check as elected by the Class Member.

1 c. Each Increased Installation Cost Payment issued to a Class Member by check will
2 state on the face of the check that it will become null and void unless cashed within sixty
3 (60) calendar days after the date of issuance.

4 d. In the event that an ACH direct deposit to a Class Member is unable to be
5 processed, the Settlement Administrator shall attempt to contact the Class Member within
6 thirty (30) days to correct the problem or send a check to the Class Member at the address
7 where the Solar Rood was installed.

8 e. To the extent that a check issued to a Settlement Class Member is not cashed within
9 sixty (60) days after the date of issuance, such funds will first be returned the Settlement
10 Fund for possible re-distributed to Settlement Class Members as Automatic Settlement
11 Payments or Out-of-Pocket Loss Payments, if feasible and in the interests of the Settlement
12 Class. If redistribution is not feasible, such funds shall be distributed to a *cy pres* recipient
13 approved by the Court.

14 2.4 **Prospective Relief.**

15 a. After the filing of this Action, Tesla agreed to install the solar roof of Class
16 Members at the original contract price, and hundreds of those solar roofs have been
17 installed.

18 b. Tesla agrees to install Solar Roofs at the original contract price of Settlement Class
19 Members who had been scheduled for installation of their Solar Roof with Tesla as of
20 April 24, 2023.

21 c. In addition, and separate and apart from the Settlement Fund, no later than twenty
22 eight (28) days after the Effective Date, Tesla will also automatically refund any deposits
23 paid by Settlement Class Members who have not had their Solar Roof installed or
24 cancelled their contract but not received a refund by the Effective Date.

25 **3. RELEASE & CANCELLATION OF CLASS MEMBER CONTRACTS**

26 3.1 **The Release.** Upon the Effective Date, and in consideration of the settlement relief
27 described herein, the Releasing Parties, and each of them, shall be deemed to have released, and
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1 by operation of the Final Judgment shall have, fully, finally, and forever, released, relinquished
2 and discharged all Released Claims against each and every one of the Released Parties.

3 3.2 **Cancellation of Existing Solar Roof Contracts.** Upon the Effective Date, all
4 contracts between Class Members and Tesla subject to the April 2021 price increase which have
5 not previously been terminated, other than contracts of customers who had been scheduled for
6 installation of their Solar Roof with Tesla as of April 24, 2023, shall become null and void.

7 **4. NOTICE TO THE CLASS**

8 4.1 Class List. Tesla shall provide the Settlement Administrator the following data for
9 all persons in the Settlement Class (the “Class List”) as soon as practicable, but by no later than
10 thirty (30) days after execution of this Settlement Agreement: (1) contact information where
11 available (including name, last known e-mail, and last known U.S. mailing addresses) of each
12 person in the Settlement Class; and (2) the status of the performance of the contract for a Solar
13 Roof; and (3) the amount and categorization of any refunds previously provided the Class
14 Member. The Settlement Administrator shall keep the Class List and all personal information
15 obtained therefrom, including but not limited to the identity, mailing addresses, and e-mail
16 addresses of all persons, strictly confidential.

17 4.2 Update Addresses. Prior to mailing any Notice, the Settlement Administrator will
18 update the addresses of Settlement Class Members on the Class List using the National Change of
19 Address database and other available resources deemed suitable by the Settlement Administrator.
20 The Settlement Administrator shall take all reasonable steps to obtain the correct address of any
21 Class Members for whom Notice is returned by the U.S. Postal Service as undeliverable and shall
22 attempt re-mailings as described below in Paragraph 5.1.

23 4.3 Direct Email Notice. No later than the Notice Date, the Settlement Administrator
24 shall send Notice via e-mail, substantially in the form of Exhibit [B], to all persons in the
25 Settlement Class for whom an email address is available in the Class List. If no email address is
26 available for a person in the Settlement Class, or in the event that the transmission of any email
27 notice results in a “bounce-back,” the Settlement Administrator shall send a Notice via First Class
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1 U.S. Mail, substantially in the form of Exhibit [C], to the physical address of each such person in
2 the Class List.

3 4.4 Reminder Email Notice. Fourteen (14) days prior to the Claims Deadline, the
4 Settlement Administrator shall again send Notice via email to all persons on the Class List for
5 whom a valid email address is available and who, at that point, are potentially eligible to receive
6 either an Out-of-Pocket Loss Payment or an Increased Installation Cost Payment but have not
7 submitted a Claim Form. The reminder notice shall be substantially in the form of Exhibit B with
8 minor, non-material modifications to indicate that they are reminder notices rather than initial
9 notices.

10 4.5 Uncashed Checks Reminder. Thirty (30) days after Automatic Settlement Payments
11 and Out-of-Pocket Loss Payments have been disbursed, the Settlement Administrator shall
12 identify any Settlement Class Members whose checks have not yet been cashed and shall deliver
13 reminders by email to those individuals that if they do not cash their checks before the expiration
14 date, the checks will be voided and be subject to redistribution.

15 4.6 Internet Notice. Within fourteen (14) days after the entry of Preliminary Approval,
16 the Settlement Administrator will develop, host, administer, and maintain the Settlement Website,
17 containing the Notice substantially in the form of Exhibit [D], other important case documents, the
18 ability to file Claim Forms, supporting documentation, and select the type of electronic Settlement
19 Payment to be received, and other standard Settlement Website features.

20 4.7 CAFA Notice. Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the
21 Agreement is filed with the Court, the Settlement Administrator shall cause to be served upon the
22 Attorneys General of each U.S. State in which Settlement Class members reside, the Attorney
23 General of the United States, and other required government officials, notice of the proposed
24 settlement as required by law.

25 4.8 Notice Contents. The Notice shall advise the Settlement Class of their rights under
26 the Settlement Agreement, including the right to be excluded from or object to the Settlement
27 Agreement or its terms. The Notice shall specify that any objection to this Settlement Agreement,
28 and any papers submitted in support of said objection, shall be received by the Court at the Final

1 Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court
2 and specified in the Notice, the person making an objection shall file notice of his, her, or their
3 intention to do so and at the same time (a) file copies of such papers they propose to submit at the
4 Final Approval Hearing clearly identifying the case name and number (*Amans et al. v. Tesla, Inc.*,
5 No. 3:21-cv-03577-VC (N.D. Cal.); (b) submit such papers to the Court either by filing them
6 electronically or in person at any location of the United States District Court for the Northern
7 District of California or by mailing them to the Class Action Clerk, United States District Court
8 for the Northern District of California, San Francisco Division; and (c) file or postmark such
9 papers on or before the Objection/Exclusion Deadline.

10 4.9 Right to Object or Comment. Any Settlement Class Member who intends to object
11 to this Settlement Agreement must present the objection in writing, which must be personally
12 signed by the objector and must include: (a) the Settlement Class Member's full name, current
13 address, and address associated with the Solar Roof, if different; (b) a statement that he or she
14 believes himself or herself to be a member of the Settlement Class; (c) whether the objection
15 applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement
16 Class; (d) the specific grounds for the objection; (e) all documents or writings that the Settlement
17 Class Member desires the Court to consider; (f) the name and contact information of any and all
18 attorneys representing, advising, or in any way assisting the objector in connection with the
19 preparation or submission of the objection or who may profit from the pursuit of the objection; (g)
20 a statement indicating whether the objector intends to appear at the Final Approval Hearing (either
21 personally or through counsel, who must file an appearance or seek *pro hac vice* admission in
22 accordance with the Local Rules). All written objections must be filed with the Court and filed,
23 postmarked, or delivered to the Court no later than the Objection/Exclusion Deadline. Unless
24 excused by the Court upon good cause shown, any Settlement Class Member who fails to timely
25 file a written objection with the Court and notice of his or her intent to appear at the Final
26 Approval Hearing in accordance with the terms of this Section and as detailed in the Notice shall
27 not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall
28 be foreclosed from seeking any review of this Settlement Agreement or Final Judgment by appeal

1 or other means and shall be deemed to have waived his or her objections and be forever barred
2 from making any such objections in the Action or any other action or proceeding. The Court will
3 require only substantial compliance with these requirements for submitting an objection.

4 4.10 Right to Request Exclusion. Any person in the Settlement Class may submit a
5 request for exclusion from the Settlement on or before the Objection/Exclusion Deadline. To be
6 valid, any request for exclusion must (a) be in writing; (b) identify the case name (*Amans et al. v.*
7 *Tesla, Inc.*, No. 3:21-cv-03577-VC (N.D. Cal.); (c) state the full name, current address, and
8 address associated with the Solar Roof, if different of the person in the Settlement Class seeking
9 exclusion; (d) be signed by the person(s) seeking exclusion; and (e) be postmarked or received by
10 the Settlement Administrator on or before the Objection/Exclusion Deadline. Each request for
11 exclusion must also contain a statement to the effect that “I hereby request to be excluded from the
12 proposed Settlement Class in *Amans et al. v. Tesla, Inc.*, No. 3:21-cv-03577-VC (N.D. Cal.)” A
13 request for exclusion that does not include all of the foregoing information, that is sent to an
14 address or e-mail address other than that designated in the Notice, or that is not postmarked or
15 delivered to the Settlement Administrator within the time specified, shall be invalid and the
16 persons serving such a request shall be deemed to remain Settlement Class Members and shall be
17 bound as Settlement Class Members by this Settlement Agreement, if approved. Any person who
18 elects to request exclusion from the Settlement Class shall not (a) be bound by any orders or Final
19 Judgment entered in the Action; (b) receive a Settlement Payment under this Settlement
20 Agreement; (c) gain any rights by virtue of this Settlement Agreement, or (d) be entitled to object
21 to any aspect of this Settlement Agreement or Final Judgment. No person may request to be
22 excluded from the Settlement Class through “mass” or “class” opt-outs meaning, *inter alia*, that
23 each individual who seeks to opt out must send an individual, separate request to the Settlement
24 Administrator that complies with all requirements of this paragraph. Tesla reserves the right to
25 enforce any applicable arbitration provision against any person who requests to exclude
26 themselves from the Settlement Class and, by entering into this Agreement and this Settlement,
27 expressly reserves and does not waive its right to compel arbitration of any claims of persons
28 excluded from the Settlement Class.

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5. SETTLEMENT ADMINISTRATION

5.1 Settlement Administrator's Duties.

a. *Dissemination of Notices.* The Settlement Administrator shall disseminate the Notice as provided in Section 4 of this Settlement Agreement.

b. *Undeliverable Notice via U.S. Mail.* If any Notice sent via U.S. mail is returned as undeliverable, the Settlement Administrator shall forward it to any forwarding addresses provided by the U.S. Postal Service. If no such forwarding address is provided, the Settlement Administrator shall perform skip traces to attempt to obtain the most recent addresses for such Settlement Class members.

c. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, requests for exclusion, Out-of-Pocket Loss Payment amount calculations, Increased Installment Cost Payment calculations, any pro rata increase or decrease calculations, and administration and implementation of the Settlement.

d. *Receipt of Requests for Exclusion.* The Settlement Administrator shall receive requests for exclusion from persons in the Settlement Class and provide to Class Counsel and Defendant's Counsel a copy thereof within five (5) days of the Objection/Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the deadline for the submission of requests for exclusion, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel.

1 e. *Creation of Settlement Website.* The Settlement Administrator shall create
2 the Settlement Website. The Settlement Website shall include a toll-free telephone number,
3 email, and mailing address through which persons in the Settlement Class may contact the
4 Settlement Administrator or Class Counsel directly.

5 f. *Establishment of the Escrow Fund.* The Settlement Administrator shall
6 establish the Escrow Fund and maintain the Escrow Fund as a qualified settlement fund
7 throughout the implementation of the Settlement in accordance with the Court's Order
8 granting Preliminary Approval and Final Judgment.

9 g. *Processing Claim Forms.* The Settlement Administrator shall, under the
10 supervision of the Court, administer the relief provided by this Settlement Agreement by
11 processing Claim Forms in a rational, responsive, cost effective, and timely manner. The
12 Settlement Administrator shall be obliged to employ reasonable procedures to screen
13 claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud,
14 including without limitation by cross-referencing Approved Claims with the Class List.
15 The Settlement Administrator shall determine whether a Claim Form submitted by a
16 Settlement Class Member is an Approved Claim for either an Out-of-Pocket Loss Payment
17 or an Increased Installment Cost Payment and shall determine the amount of the Approved
18 Claim and any pro rata deductions. The Settlement Administrator shall provide Class
19 Counsel and Defendant's Counsel with all Claim Forms electing an Increased Installment
20 Cost Payment so a new contract can be provided by Tesla to the Class Member, which
21 shall also be provided by Tesla to the Settlement Administrator. The Settlement
22 Administrator shall reject Claim Forms that fail to (1) comply with the instructions on the
23 Claim Form or the terms of this Agreement, or (2) provide full and complete
24 documentation and information as requested on the Claim Form. In the event a person
25 submits a timely Claim Form by the Claims Deadline, but the Claim Form is not otherwise
26 complete or documentation is insufficient or lacking, then the Settlement Administrator
27 shall give such person reasonable opportunity to provide any requested missing
28 information or documentation, which information or documentation must be received by

1 the Settlement Administrator no later than twenty-eight (28) days after the Claims
2 Deadline. In the event the Settlement Administrator receives such information more than
3 twenty-eight (28) calendar days after the Claims Deadline, then any such claim shall be
4 denied and that Settlement Class Member shall only be entitled to an Automatic Settlement
5 Payment. The Settlement Administrator may contact any person who has submitted a
6 Claim Form to obtain additional information or documentation necessary to verify the
7 Claim Form.

8 **6. PRELIMINARY APPROVAL AND FINAL APPROVAL**

9 **6.1 Preliminary Approval.** Promptly after execution of this Settlement Agreement,
10 Class Counsel shall submit this Settlement Agreement to the Court and shall move the Court to
11 enter an order granting Preliminary Approval, which shall include, among other provisions, a
12 request that the Court:

- 13 a. Appoint Plaintiffs as Class Representatives of the Settlement Class;
 - 14 b. Appoint Class Counsel to represent the Settlement Class;
 - 15 c. Appoint Angeion Group, LLC as the Settlement Administrator;
 - 16 d. Certify the Settlement Class for settlement purposes only and/or find that
17 the Settlement Class is likely to be certified for purposes of entering the Final Judgment;
 - 18 e. Preliminarily approve this Settlement Agreement for purposes of
19 disseminating Notice to the Settlement Class;
 - 20 f. Approve the form and contents of the Notice and the method of its
21 dissemination to members of the Settlement Class; and
 - 22 g. Schedule a Final Approval Hearing after the expiration of the CAFA notice
23 period, to review comments and/or objections regarding this Settlement Agreement, to
24 consider its fairness, reasonableness and adequacy, to consider the application for a Fee
25 Award and service award to the Class Representatives, and to consider whether the Court
26 shall issue a Final Judgment approving this Settlement Agreement and dismissing the
27 Action with prejudice.
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1 6.2 **Final Approval.** After Notice to the Settlement Class is given, Class Counsel shall
2 move the Court for entry of Final Approval and a Final Judgment, which shall include, among
3 other provisions, a request that the Court:

4 a. find that it has personal jurisdiction over all Settlement Class Members and
5 subject matter jurisdiction to approve this Settlement Agreement, including all attached
6 Exhibits;

7 b. approve the Settlement as fair, reasonable and adequate as to, and in the
8 best interests of, the Settlement Class Members;

9 c. direct the Parties and their counsel to implement and consummate the
10 Settlement according to its terms and conditions;

11 d. find that the Notice implemented pursuant to the Settlement Agreement
12 (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice
13 that is reasonably calculated, under the circumstances, to apprise the Settlement Class of
14 the pendency of the Action and their rights to object to or exclude themselves from this
15 Settlement Agreement and to appear at the Final Approval Hearing; (3) is reasonable and
16 constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and
17 (4) fulfills the requirements of the Federal Rules of Civil Procedure, the Due Process
18 Clause of the United States Constitution, and the rules of the Court;

19 e. finally certify or confirm certification of the Settlement Class under Federal
20 Rule of Civil Procedure 23, including finding that the Class Representatives and Class
21 Counsel adequately represented the Settlement Class for purposes of entering into and
22 implementing the Settlement Agreement;

23 f. dismiss the Action on the merits and with prejudice, without fees or costs to
24 any Party except as provided in this Settlement Agreement;

25 g. incorporate the Release set forth above, make the Release effective as of the
26 Effective Date, and forever discharge the Released Parties as set forth herein;

27 h. authorize the Parties, without further approval from the Court, to agree to
28 and adopt such amendments, modifications and expansions of the Settlement and its

1 implementing documents (including all Exhibits to this Settlement Agreement) that
2 (1) shall be consistent in all material respects with the Final Judgment; and (2) do not limit
3 the rights of Settlement Class Members; and

4 i. without affecting the finality of the Final Judgment for purposes of appeal,
5 retain jurisdiction as to all matters relating to administration, consummation, enforcement
6 and interpretation of the Settlement Agreement and the Final Judgment, and for any other
7 necessary purpose.

8 **6.3 Cooperation.** The Parties shall, in good faith, cooperate, assist and undertake all
9 reasonable actions and steps in order to accomplish these required events on the schedule set by
10 the Court, subject to the terms of this Settlement Agreement.

11 **7. TERMINATION OF THE SETTLEMENT AGREEMENT**

12 **7.1 Termination.** Subject to Section 9 below, the Class Representatives, on behalf of
13 the Settlement Class, or Defendant, shall have the right to terminate this Agreement by providing
14 written notice of the election to do so to all other Parties within ten (10) days of any of the
15 following events: (a) the Court's refusal to grant Preliminary Approval of this Agreement in any
16 material respect; (b) the Court's refusal to enter the Final Judgment in this Action in any material
17 respect; (c) the date upon which the Final Judgment is modified or reversed in any material respect
18 by the Court of Appeals or the Supreme Court; (d) the date upon which an Alternative Judgment,
19 as defined in Paragraph 9.1 of this Agreement, is modified or reversed in any material respect by
20 the Court of Appeals or the Supreme Court; or (e) 100 or more Settlement Class Members eligible
21 to participate in the Settlement have properly elected to exclude themselves from the Settlement
22 Class in accordance with the requirements for requesting exclusion.

23 **7.2 Tesla Representations.** Tesla has provided Plaintiffs with data as on April 24,
24 2023, regarding the approximate size of the Settlement Class (approximately 8,200), the number
25 of cancelled contracts (approximately 5,740), the number of contracts completed at the original
26 price (approximately 1,640), the number of Class Members scheduled to have the Solar Roof
27 installed at the original price (approximately 82), and the number of Class Members who have not
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1 responded to Tesla since the April 2021 price increase (approximately 738), and amounts paid to
2 certain Class cover certain listed out-of-pocket losses.

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4 **8. SERVICE AWARD AND CLASS COUNSEL'S ATTORNEYS' FEES AND**
5 **REIMBURSEMENT OF EXPENSES**

6 8.1 Defendant agrees that Class Counsel is entitled to reasonable attorneys' fees and
7 unreimbursed expenses incurred in the Action as the Fee Award. The amount of the Fee Award
8 shall be determined by the Court based on petition from Class Counsel. Class Counsel has agreed,
9 with no consideration from Defendant, to limit their request for attorneys' fees to no more than
10 twenty-five percent (25%) of the Settlement Fund, plus unreimbursed costs. Defendant may
11 challenge the amounts requested. Payment of the Fee Award shall be made from the Settlement
12 Fund, and should the Court award less than the amount sought by Class Counsel, the difference in
13 the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the
14 Settlement Fund and be distributed to Settlement Class Members. Class Counsel shall be paid the
15 Fee Award within ten (10) business days after the Effective Date. Payment of the Fee Award shall
16 be made by the Settlement Administrator from the Settlement Fund via wire transfer to an account
17 designated by Lead Class Counsel after providing necessary information for electronic transfer.

18 8.2 Defendant agrees that the Class Representatives shall each be paid a service award
19 in the amount of Ten Thousand Dollars (\$10,000.00) from the Settlement Fund, in addition to any
20 recovery pursuant to Approved Claims from this Settlement Agreement and in recognition of their
21 efforts on behalf of the Settlement Class, subject to Court approval. Should the Court award less
22 than this amount, the difference in the amount sought and the amount ultimately awarded pursuant
23 to this Section shall remain in the Settlement Fund and be distributed to Settlement Class
24 Members. Any award shall be paid by the Settlement Administrator from the Settlement Fund (in
25 the form of checks to the Class Representatives that is sent care of Class Counsel) within ten (10)
26 business days after the Effective Date.

27 **9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**
28 **CANCELLATION OR TERMINATION.**

1 9.1 In the event that this Agreement is not approved by the Court or the settlement set
2 forth in this Agreement is terminated or fails to become effective in accordance with its terms,
3 then this Agreement shall be canceled and terminated subject to Section 9.2, unless Class Counsel
4 and Defendant's Counsel mutually agree in writing to proceed with this Settlement Agreement. If
5 any Party is in material breach of the terms hereof, any other Party, provided that it is in
6 substantial compliance with the terms of this Agreement, may terminate this Settlement
7 Agreement on notice to all other Parties. Notwithstanding anything herein, the Parties agree that
8 the Court's decision as to the Fee Award to Class Counsel set forth above or the service award to
9 the Class Representatives or the amounts thereof, regardless of the amounts awarded, shall not
10 prevent the Settlement Agreement from becoming effective and Settlement Payments being
11 distributed, nor shall they be grounds for termination of the Agreement.

12 9.2 If this Settlement Agreement is terminated or fails to become effective for the
13 reasons set forth above, the Parties shall be restored to their respective positions in the Action as
14 of the date of the signing of this Agreement, and Defendant's entry into the Settlement Agreement
15 shall not be considered, in any way, as an admission concerning liability or the propriety of class
16 certification.

17 9.3 In the event the Settlement is terminated or fails to become effective for any
18 reason, Defendant shall be solely responsible for paying all costs to the Settlement Administrator
19 for work performed by the Settlement Administrator up to the date the Settlement is nullified, and
20 the Settlement Fund, together with any earnings thereon at the same rate as earned, less any taxes
21 paid or due, less Settlement Administrative Expenses actually incurred and paid or payable from
22 the Settlement Fund, shall be returned to Defendant within twenty-eight (28) calendar days after
23 written notification of such event.

24 **10. MISCELLANEOUS PROVISIONS.**

25 10.1 The Parties: (a) acknowledge that it is their intent to consummate this Agreement;
26 and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent
27 reasonably necessary to effectuate and implement all terms and conditions of this Agreement and
28 to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this

1 Settlement Agreement. Class Counsel and Defendant's Counsel agree to cooperate with one
2 another in seeking entry of an order granting Preliminary Approval and the Final Judgment, and
3 promptly to agree upon and execute all such other documentation as may be reasonably required
4 to obtain final approval of the Settlement Agreement.

5 10.2 Each signatory to this Agreement represents and warrants (a) that he, she, they, or it
6 has all requisite power and authority to execute, deliver and perform this Settlement Agreement
7 and to consummate the transactions contemplated herein; (b) that the execution, delivery and
8 performance of this Settlement Agreement and the consummation by it of the actions
9 contemplated herein have been duly authorized by all necessary corporate action on the part of
10 each signatory, and (c) that this Settlement Agreement has been duly and validly executed and
11 delivered by each signatory and constitutes its legal, valid and binding obligation.

12 10.3 The Parties intend this Settlement Agreement to be a final and complete resolution
13 of all disputes between them with respect to the Released Claims by Plaintiffs and the other
14 Settlement Class Members, and each or any of them, on the one hand, against the Released
15 Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree
16 not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendant, or
17 each or any of them, in bad faith or without a reasonable basis.

18 10.4 The Parties have relied upon the advice and representation of counsel, selected by
19 them, concerning the claims hereby released. The Parties have read and understand fully this
20 Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their
21 own selection and intend to be legally bound by the same.

22 10.5 Whether the Effective Date occurs or this Settlement is terminated, neither this
23 Settlement Agreement nor the Settlement contained herein, nor any act performed or document
24 executed pursuant to or in furtherance of this Settlement Agreement or the Settlement:

25 a. is, may be deemed, or shall be used, offered or received against the
26 Released Parties, or each or any of them as an admission, concession or evidence of, the
27 validity of any Released Claims, the truth of any fact alleged by Plaintiffs, the deficiency
28 of any defense that has been or could have been asserted in the Action, the violation of any

1 law or statute, the reasonableness of the Settlement Fund, payments, or the Fee Award, or
2 of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of
3 them;

4 b. is, may be deemed, or shall be used, offered or received against Defendant
5 as, an admission, concession or evidence of any fault, misrepresentation or omission with
6 respect to any statement or written document approved or made by the Released Parties, or
7 any of them;

8 c. is, may be deemed, or shall be used, offered or received against Plaintiffs or
9 the Settlement Class, or each or any of them as an admission, concession or evidence of,
10 the infirmity or strength of any claims asserted in the Action, the truth or falsity of any fact
11 alleged by Defendant, or the availability or lack of availability of meritorious defenses to
12 the claims raised in the Action;

13 d. is, may be deemed, or shall be used, offered or received against the
14 Released Parties, or each or any of them as an admission or concession with respect to any
15 liability, negligence, fault or wrongdoing as against any Released Parties, in any civil,
16 criminal or administrative proceeding in any court, administrative agency or other tribunal.
17 However, the Settlement, this Settlement Agreement, and any acts performed and/or
18 documents executed in furtherance of or pursuant to this Settlement Agreement and/or
19 Settlement may be used in any proceedings as may be necessary to effectuate the
20 provisions of this Settlement Agreement so long as such use does not require public
21 disclosure of Defendant's confidential business information. Moreover, if this Settlement
22 Agreement is approved by the Court, any of the Released Parties may file this Settlement
23 Agreement and/or the Final Judgment in any action that may be brought against such
24 parties in order to support a defense or counterclaim based on principles of *res judicata*,
25 collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other
26 theory of claim preclusion or issue preclusion, or similar defense or counterclaim;

27 e. is, may be deemed, or shall be construed against Plaintiffs and the
28 Settlement Class, or each or any of them, or against the Released Parties, or each or any of

1 them, as an admission or concession that the consideration to be given hereunder
2 represents an amount equal to, less than or greater than that amount that could have or
3 would have been recovered after trial; and

4 f. is, may be deemed, or shall be construed as or received in evidence as an
5 admission or concession against Plaintiffs and the Settlement Class, or each and any of
6 them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims
7 are with or without merit or that damages recoverable in the Action would have exceeded
8 or would have been less than any particular amount.

9 10.6 The headings used herein are used for the purpose of convenience only and are not
10 meant to have legal effect.

11 10.7 The waiver by one Party of any breach of this Settlement Agreement by any other
12 Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Settlement
13 Agreement.

14 10.8 All of the Exhibits to this Settlement Agreement are material and integral parts
15 hereof and are fully incorporated herein by reference.

16 10.9 This Settlement Agreement and its Exhibits set forth the entire agreement and
17 understanding of the Parties with respect to the matters set forth herein, and supersede all prior
18 negotiations, agreements, arrangements and undertakings with respect to the matters set forth
19 herein. No representations, warranties or inducements have been made to any Party concerning
20 this Settlement Agreement or its Exhibits other than the representations, warranties and covenants
21 contained and memorialized in such documents. This Settlement Agreement may be amended or
22 modified only by a written instrument signed by or on behalf of all Parties or their respective
23 successors-in-interest.

24 10.10 Except as otherwise provided herein, each Party shall bear its own attorneys' fees
25 and costs incurred in any way related to the Action.

26 10.11 Plaintiffs represent and warrant that they have not assigned any claim or right or
27 interest relating to any of the Released Claims against the Released Parties to any other person or
28 party and that they are fully entitled to release the same.

1 10.12 Each counsel or other Person executing this Settlement Agreement, any of its
2 Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and
3 represents that such Person has the full authority to do so and has the authority to take appropriate
4 action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its
5 terms.

6 10.13 This Settlement Agreement may be executed in one or more counterparts. All
7 executed counterparts and each of them shall be deemed to be one and the same instrument.
8 Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this
9 Settlement Agreement. A complete set of original executed counterparts shall be filed with the
10 Court if the Court so requests.

11 10.14 The Court shall retain jurisdiction with respect to implementation and enforcement
12 of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the
13 Court for purposes of implementing and enforcing the settlement embodied in this Settlement
14 Agreement.

15 10.15 This Settlement Agreement shall be governed by and construed in accordance with
16 the laws of the State of California without reference to the conflicts of laws provisions thereof.

17 10.16 This Settlement Agreement is deemed to have been prepared by counsel for all
18 Parties, as a result of arm's-length negotiations among the Parties. Whereas all Parties have
19 contributed substantially and materially to the preparation of this Settlement Agreement, it shall
20 not be construed more strictly against one Party than another.

21 10.17 Where this Settlement Agreement requires notice to the Parties, such notice shall be
22 sent to the undersigned counsel: Eve-Lynn J. Rapp EDELSON PC, 2101 Pearl Street, Boulder, CO
23 80302, erapp@edelson.com; Alan Schoenfeld, Wilmer Cutler Pickering Hale and Dorr LLP, 7
24 World Trade Center, 250 Greenwich Street, New York, NY 10007.

25 [SIGNATURES APPEAR ON FOLLOWING PAGE]
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MATTHEW AMANS

Dated: _____

By (signature): _____

Name (printed): _____

BABAK MALEK

Dated: 6/26/2023

By (signature): 

Name (printed): Babak Malek

EDELSON PC

Dated: _____

By (signature): 

Name (printed): Eve-Lynn J. Rapp

Its (title): Partner

TESLA, INC.

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

**WILMER CUTLER PICKERING
HALE AND DORR LLP**

Dated: _____

By (signature): _____

Name (printed): _____

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MATTHEW AMANS

Dated: 6/26/2023

By (signature): Matthew Amans

Name (printed): Matthew Amans

BABAK MALEK

Dated: _____

By (signature): _____

Name (printed): _____

EDELSON PC

Dated: 6/26/23

By (signature): Eve Lynn J. Rapp

Name (printed): Eve-Lynn J. Rapp

Its (title): Partner

TESLA, INC.

Dated: 6/26/2023

By (signature): Nathaniel Smith

Name (printed): Nathaniel Smith

Its (title): Associate General Counsel, Litigation

**WILMER CUTLER PICKERING
HALE AND DORR LLP**

Dated: 6/26/2023

By (signature): Alan Schoenfeld

Name (printed): Alan Schoenfeld

Its (title): Partner