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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**In re Tesla Advanced Driver Assistance
Systems Litigation**

This Case Relates To All Actions

Case No. 4:22-cv-05240-HSG
CLASS ACTION
**CONSOLIDATED SECOND AMENDED
COMPLAINT**
DEMAND FOR JURY TRIAL

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3 FOURTH CLAIM FOR RELIEF70
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1 Plaintiff Thomas LoSavio, on behalf of himself and the plaintiff Class described herein, brings
2 this Consolidated Second Amended Complaint against Defendants Tesla, Inc., dba Tesla Motors, Inc.,
3 Tesla Lease Trust, and Tesla Finance LLC (collectively, “Defendants” or “Tesla”), and alleges as
4 follows:

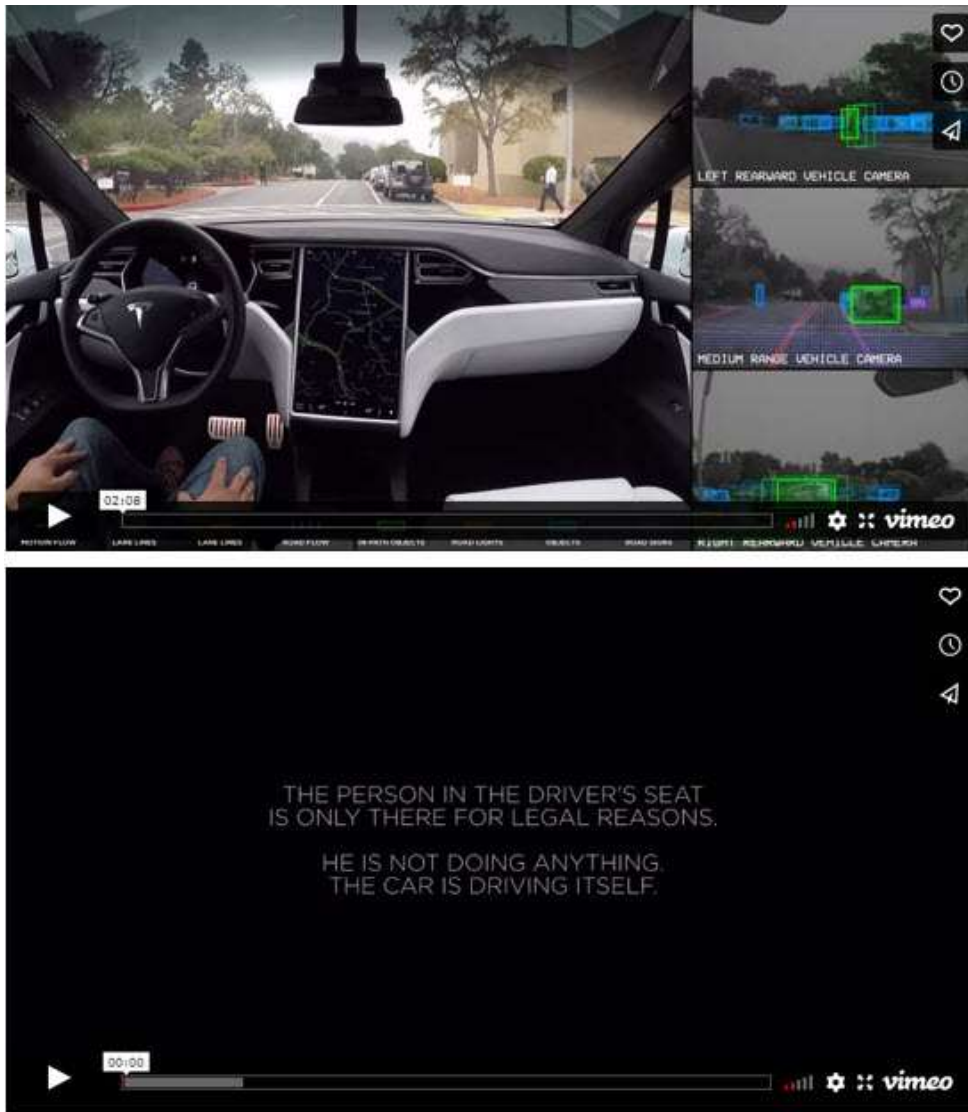
5 **I. INTRODUCTION**

6 1. Plaintiff brings this consumer class action lawsuit to hold Tesla and its representatives,
7 including CEO Elon Musk, accountable for years of making misleading and deceptive statements
8 regarding the company’s advanced driver assistance systems (“ADAS”) technology. For years, Tesla
9 has deceptively and misleadingly marketed its ADAS technology as autonomous driving technology
10 under various names, including “Autopilot,” “Enhanced Autopilot,” and “Full Self-Driving
11 Capability” (“FSD”), the latter two of which Tesla charges consumers thousands of additional dollars
12 to add to their new vehicle. Tesla has deceived and misled consumers regarding the current abilities of
13 its ADAS technology and by representing that it was perpetually on the cusp of perfecting that
14 technology and finally fulfilling its promise of producing a fully self-driving car. Although these
15 promises have proven false time and time again, Tesla and Musk have continued making them to
16 generate media attention, to deceive consumers into believing it has unrivaled cutting-edge
17 technology, and to establish itself as a leading player in the fast-growing electric vehicle market.

18 2. Despite portraying itself as a leader in autonomous vehicle technology, Tesla’s ADAS
19 features have been surpassed by numerous automaker competitors that have developed autonomous
20 driving technology far more advanced than Tesla’s, and now available in some consumer markets. At
21 the same time, former Tesla employees and investigations have revealed damning information that
22 now makes clear that, contrary to Tesla’s repeated promises that it would have a fully self-driving car
23 within months or a year, Tesla has never been remotely close to achieving that goal.

24 3. For example, to accompany the 2016 launch of Tesla’s “Enhanced Autopilot” and
25 “Full Self-Driving” versions of its ADAS technology, much of the Tesla Autopilot engineering team
26 dropped everything to produce a video that purports to show a Tesla car driving itself. The video
27 begins with the following message: “The person in the driver’s seat is only there for legal reasons. He
28 is not driving anything. The car is driving itself.” In reality, Tesla employees who made the video

1 would later reveal that the car in the video had significant assistance from commercial mapping
 2 software not available to Tesla customers, and that the car still performed poorly and even ran into a
 3 fence during filming. Despite this assistance, the car had to run the same route over and over again
 4 before Tesla got acceptable video that appeared to show a car capable of driving itself. Even though
 5 the video was debunked as deceptive and misleading years ago, Tesla continues to prominently
 6 feature it on its website.



Source: www.tesla.com/autopilot

4. Six years later in 2022, Tesla has yet to produce anything even remotely approaching a fully self-driving car. Instead, Tesla pushes out “updates” to its experimental FSD Beta software to a small minority of Tesla owners, who effectively act as untrained test engineers testing experimental

1 software on public roadways. Drivers have consistently found that Tesla’s FSD Beta software has
2 myriad problems, such as cars failing to make routine turns, running red lights, and steering directly
3 into large objects and oncoming traffic.¹ There have also been numerous collisions involving Tesla’s
4 purportedly cutting-edge ADAS software, including Tesla vehicles plowing at high speeds into large
5 stationary objects such as emergency vehicles and an overturned box truck. Dozens of people have
6 suffered fatal and other serious injuries as a result of these ADAS-related collisions, triggering a host
7 of investigations by state and federal regulators.



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16 *Fatal 2018 crash involving Autopilot, in which Tesla’s software suddenly steered the Tesla to the left, directly into a concrete barrier on a highway in Mountain View, California. Photograph by NTSB.*



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26 *2018 crash in which Tesla’s software crashed the vehicle into the back of a firetruck stopped at a red light in Utah. Photograph by South Jordan Police Department.*

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28 ¹ See, e.g., The Dawn Project, “Unsafe at Any Speed,” <https://dawnproject.com/dan-odowds-ads-for-his-campaign/> (collecting video clips showing such problems).



2020 crash involving Autopilot, in which the Tesla drove into an overturned box truck on a highway in Taiwan.²

5. As information has trickled out of the secretive company via former employees and investigations, it has become increasingly clear that Tesla knew for years its statements regarding its ADAS technology were deceptive and misleading, but the company made them anyway. Tesla did so to generate excitement about the company’s vehicles and thereby improve its financial condition by, among other things, attracting investment, increasing sales, avoiding bankruptcy, driving up Tesla’s stock price, and helping to establish Tesla as a dominant player in the electric vehicle market.

6. For example, in 2016, Musk tweeted a bold prediction—that a Tesla vehicle would complete a fully self-driving trip *across the United States* by “next year.” Later in 2016, Tesla announced on its official blog that “All Tesla Cars Being Produced Now Have Full Self-Driving Hardware.” The blog post included the misleading October 2016 video of a Tesla car purportedly driving itself without incident, and suggested that Tesla was on the cusp of bringing to market “[s]elf-driving vehicles” that have “[f]ull autonomy.”³ When Tesla and Musk made these statements, they knew there was no reasonable chance of Tesla being able to meet these forecasts.

² See Brad Templeton, “Tesla In Taiwan Crashes Directly Into Overturned Truck, Ignores Pedestrian, With Autopilot On,” *Forbes* (June 2, 2020), available at <https://www.forbes.com/sites/bradtempleton/2020/06/02/tesla-in-taiwan-crashes-directly-into-overturned-truck-ignores-pedestrian-with-autopilot-on/> (includes surveillance video showing the collision).

³ See The Tesla Team, “All Tesla Cars Being Produced Now Have Full Self-Driving Hardware,” <https://www.tesla.com/blog/all-tesla-cars-being-produced-now-have-full-self-driving-hardware> (Oct. 19, 2016).



Musk making bold promises in 2016. Photograph by Justin Sullivan/Getty Images.⁴

7. From approximately 2017 to 2019, the page on Tesla’s website explaining its “Full Self-Driving Capability” technology similarly promised that consumers who purchased or leased cars with the FSD version of its ADAS technology would receive cars capable of “full self-driving in almost all circumstances,” including being able to “conduct short and long distance trips with no action required by the person in the driver’s seat” and with a “probability of safety at least twice as good as the average human driver.” On the same webpage, Tesla went on to state:

All you will need to do is get in and tell your car where to go. If you don’t say anything, the car will look at your calendar and take you there as the assumed destination or just home if nothing is on the calendar. **Your Tesla will figure out the optimal route, navigate urban streets (even without lane markings), manage complex intersections with traffic lights, stop signs and roundabouts, and handle densely pack freeways with cars moving at high speed.**

8. Indeed, in every year since 2016, Tesla and Musk have repeatedly made deceptive and misleading statements to consumers indicating that a fully self-driving, fully autonomous Tesla vehicle was just around the corner, often expressly stating that would occur by the end of that

⁴ See Maya Kosoff, “Elon Musk: Self-Driving Car Doubters Are Literally ‘Killing People,’” *Vanity Fair* (Oct. 20, 2016), available at <https://www.vanityfair.com/news/2016/10/elon-musk-self-driving-car-doubters-are-literally-killing-people>.

1 calendar year or within the “next year.”⁵ For example, in May 2019, after years of failing to deliver on
 2 prior promises, Musk again promised consumers that a fully self-driving Tesla car would be available
 3 by the end of that year, tweeting that “everyone with Tesla Full Self-Driving will be able” to take a
 4 fully automated trip in their Tesla from Los Angeles to New York.⁶ While tens of thousands of U.S.
 5 and California consumers have purchased or leased new Tesla vehicles with ADAS technology in
 6 2019 and every year since, Tesla has yet to deliver on its repeated promises of a fully self-driving car
 7 at *any* distance—much less a fully automated three-thousand-mile journey across the country.

8 9. The reality of Tesla’s ADAS technology is far different from what Tesla and Musk
 9 have spent years telling consumers. Instead of providing its customers the “Full Self-Driving
 10 Capability” they paid for, Tesla uses them as untrained test engineers to test drive its experimental
 11 FSD Beta software on public roadways, which generates data that Tesla can use to improve its
 12 software. Along the way, scores of Tesla owners who believed Tesla’s and Musk’s deceptive and
 13 misleading statements about the capabilities of Tesla’s ADAS technology have been killed and
 14 seriously injured when that technology failed, often in the face of routine roadway scenarios.

15 10. Even Tesla itself has admitted that “Full Self-Driving” is an inaccurate name. In
 16 response to California regulators’ concerns about Musk’s public announcements in late 2020
 17 indicating that a new FSD Beta update would make Tesla vehicles autonomous, Tesla attorneys sent
 18 private emails to those regulators (later disclosed in response to Public Records Act requests) walking
 19 those statements back and making clear they were false. Tesla attorneys told the regulators that Tesla
 20 vehicles equipped with so-called “Full Self-Driving Capability” were not fully self-driving at all, but
 21 still required the driver to steer, brake, and accelerate as needed. In the meantime, Tesla and Musk
 22 continued their deceptive marketing to consumers.

23 11. Plaintiff is a California resident who purchased a new Tesla vehicle in 2017 and paid
 24 Tesla thousands of additional dollars above the vehicle base price for the Enhanced Autopilot and Full
 25 Self-Driving Capability versions of Tesla’s ADAS technology. Tesla had represented its ADAS
 26

27 ⁵ See, e.g., The Dawn Project, “Elon Musk’s broken promises,” https://dawnproject.com/wp-content/uploads/2022/06/The-Dawn-Project-Musk-promises-1min-NA.mp4?_=2 (collecting video clips of Musk making such
 28 promises from 2014 to 2021).

⁶ Elon Musk, <https://twitter.com/elonmusk/status/1126611407984779264> (May 9, 2019, 3:14 PM).

1 technology would make its vehicles fully self-driving in some situations and would soon make them
2 fully self-driving in all situations. It is now years later, and Tesla has never provided Plaintiff anything
3 remotely approaching the fully self-driving car it promised.

4 12. Plaintiff brings this class action lawsuit on behalf of himself and fellow consumers who
5 purchased or leased a new Tesla vehicle with Tesla's ADAS technology but never received the self-
6 driving car that Tesla promised them. Plaintiff brings claims against Tesla for violations of
7 California's False Advertising Law, Consumer Legal Remedies Act, and Unfair Competition Law, as
8 well as common law claims for fraud and deceit, negligent misrepresentation, negligence, and unjust
9 enrichment. Plaintiff seeks various relief on behalf of himself and the proposed Class, including
10 injunctive relief prohibiting Tesla from continuing its deceptive and misleading marketing of its
11 ADAS technology, restitution of the money Plaintiff and Class members paid for technology that
12 Tesla promised but never delivered, and all available damages including punitive damages to punish
13 Tesla for years of using deceptive and misleading marketing to eventually establish itself as a
14 dominant player in the electric vehicle market.

15 **II. JURISDICTION AND VENUE**

16 13. This Court has subject matter jurisdiction over this action under the Class Action
17 Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), as Plaintiff seeks damages and other relief on a
18 behalf of a class consisting of hundreds of thousands of individuals. This action meets CAFA's
19 jurisdictional requirements because the sum or value of the relief sought exceeds \$5,000,000
20 exclusive of interest and costs, and because at least one Class member is a citizen of a state different
21 from Defendants under § 1332(d)(2)(A) and/or a citizen of a foreign state under § 1332(d)(2)(B).

22 14. This Court has personal jurisdiction over Defendants because they have conducted and
23 continue to conduct substantial business in California, and have sufficient minimum contacts with
24 California in that (1) from the beginning of the Class Period (as defined herein) until December 2021,
25 Defendant Tesla, Inc. was headquartered in Palo Alto, California, and thus designed, developed,
26 manufactured, tested, and marketed its vehicles and ADAS technology at issue in this action in
27 California throughout that period; (2) throughout the Class Period, Tesla, Inc. tested and manufactured
28 a substantial percentage of the Class Vehicles (as defined herein) at its factory in Fremont, California;

1 (3) throughout the Class Period, Tesla, Inc. has been the direct or indirect owner and operator of
 2 dozens of retail Tesla stores in California (accounting for more than a quarter of Tesla stores
 3 nationwide) that market and sell or lease new Tesla vehicles, including a substantial percentage of
 4 Class Vehicles; (4) throughout the Class Period, California has been by far the largest U.S. market for
 5 sales and leases of new electric vehicles, including sales and leases of new Tesla vehicles and Class
 6 Vehicles; (5) throughout the Class Period, Defendants developed the marketing scheme at issue in this
 7 action in California and targeted California consumers with that marketing scheme, including
 8 deceptive and misleading statements about Tesla's vehicles and ADAS technology on Tesla's website
 9 and Musk's Twitter feed (the latter of which has been an official source of Tesla corporate information
 10 since at least 2013); (6) Tesla, Inc. is registered with the California Secretary of State to do business in
 11 the State of California, and is licensed by the California Department of Motor Vehicles as a vehicle
 12 dealer and a vehicle manufacturer; and (7) Defendants Tesla Finance LLC and Tesla Lease Trust have
 13 their principal places of business in California.



24 *Tesla's 5.3 million square foot factory in Fremont, California.*

25 15. Venue is proper in the United States District Court for the Northern District of
 26 California under 28 U.S.C. § 1391(b)(1) because Defendants are subject to the Court's personal
 27 jurisdiction with respect to this action and therefore reside in this District for purposes of venue, under
 28 § 1391(b)(2) because a substantial part of the events and omissions giving rise to Plaintiff's claims

1 occurred in this District (including both Defendants' wrongful conduct and the resulting harm to
2 Plaintiff and Class members residing in this District), and under § 1391(b)(2) because a substantial
3 part of the property that is the subject of this action is situated in this District.

4 **III. PARTIES**

5 **A. Plaintiff**

6 16. Plaintiff Thomas J. LoSavio is a resident of Hillsborough, California. He is a retired
7 attorney with over 34 years of experience in business litigation. In or about January 2017, LoSavio
8 purchased a new 2017 Tesla Model S in the State of California from Defendant Tesla, Inc. He paid
9 Tesla \$5,000 above the vehicle's base price for Tesla's "Enhanced Autopilot" ADAS package, and an
10 additional \$3,000 on top of that for the "Full Self-Driving Capability" ADAS package. LoSavio
11 decided to purchase this vehicle with these ADAS packages after researching, reviewing, and relying
12 on Tesla's online and other public statements, including those made by Musk, which were
13 disseminated to LoSavio and other consumers throughout the State of California, the United States,
14 and the world.

15 17. LoSavio paid more than \$100,000 for his vehicle and ADAS packages, which he
16 considered to be a major purchase. It was certainly more than he had ever previously paid for a car.
17 Accordingly, he did many hours of research over many weeks before making the purchase decision.
18 LoSavio's decision to purchase his car notwithstanding the high cost was motivated in significant part
19 by his concern that, as an older driver, driving might become more difficult for him with age,
20 particularly night driving, and so he was very interested in a car that would soon be able to drive
21 itself, using technology Tesla would continually improve over time with over-the-air software updates
22 delivered to his vehicle. LoSavio's purchase was motivated by Tesla's representations that its ADAS
23 technology was already as safe as, or safer than, a human driver, and that it would only continue to get
24 safer over time. This addressed LoSavio's concern that his driving abilities and reflexes might
25 deteriorate a little as he aged, which might make driving less safe for him and others, in which case it
26 would be great to have a safer self-driving car.

27 18. LoSavio understood at the time of his purchase, based on statements from Tesla and
28 Musk that he had seen before the purchase, that Tesla's self-driving software was still being refined

1 and validated and was not quite yet ready for widespread consumer use, but that it would ready for
2 Tesla owners to use within a year or two after his purchase, at which point his Tesla would be capable
3 of driving itself in at least some circumstances, and that Tesla's self-driving technology would only
4 continue to expand and improve over the life of his car, with Tesla regularly delivering improvements
5 and expanded self-driving abilities to his vehicle via over-the-air software updates. Considering
6 Tesla's and Musk's representations that he had seen before his purchase, in context with his intention
7 to own his Tesla for at least 10 years, LoSavio purchased his Tesla and the full suite of ADAS
8 packages because, although he knew that his vehicle would not be self-driving at the time of purchase,
9 he believed that it would be self-driving within a year or two, or some other reasonably short time,
10 after his purchase, such that he would be able to enjoy a continually improving self-driving car for the
11 majority of the years that he expected to own the car.

12 19. Based on his reasonable reliance on Tesla's and Musk's representations that Tesla
13 would have self-driving technology for Tesla owners to use within a year or two, or some other
14 reasonably short period, after his purchase, LoSavio purchased his Tesla vehicle and paid Tesla an
15 additional \$8,000 for the right to receive perpetual future updates for all of Tesla's available ADAS
16 technology packages, including its flagship Full Self-Driving, in January 2017. By buying FSD for
17 \$8,000 a little before it would be available for Tesla owners' use, LoSavio believed he was saving
18 himself money in the long run based on statements from Tesla and Musk that he had seen indicating
19 that company would increase the price of FSD as the software improved and cars became fully self-
20 driving in next year or two. By purchasing FSD just a year or two before Tesla and Musk were saying
21 it would begin to make cars self-driving, LoSavio thought he was saving himself money in the long
22 run and that he would soon have a self-driving car.

23 **B. Defendants**

24 20. Defendant Tesla, Inc., dba Tesla Motors, Inc., is a Delaware corporation that had its
25 principal place of business in Palo Alto, California, from approximately 2003 until December 1, 2021,
26 at which point it moved its principal place of business to Austin, Texas. Defendant designs, develops,
27 manufactures, tests, markets, distributes, sells, and leases electric vehicles under the brand name
28

1 “Tesla.” Defendant also offers services related to those vehicles, including designing, developing, and
2 periodically sending over-the-air updates for the ADAS software in Tesla vehicles.

3 21. Tesla, Inc. has a vertically integrated business model. For example, instead of using
4 traditional dealerships, Tesla has vertically integrated “Stores” and “Galleries” where customers can
5 see vehicles before ordering them through the Tesla website. More specifically: (a) Tesla designs,
6 develops, manufactures, and tests its electric vehicles and the ADAS software on those vehicles. This
7 includes all versions of Tesla’s ADAS technology (e.g., Autopilot, Enhanced Autopilot, FSD), which
8 were and are designed, developed, manufactured, and tested by Tesla in the State of California at its
9 Palo Alto offices, Fremont factory, and other California offices and facilities. On information and
10 belief, all or a substantial majority of the Class Vehicles (as defined herein) were manufactured and
11 tested in California. (b) Tesla markets its vehicles on its website, in marketing materials, in its brick-
12 and-mortar galleries and showrooms, and through the tweets, media interviews, new conferences,
13 earnings calls, conferences, forums, and other public events and statements by its representatives and
14 agents, including Elon Musk, all of which are intended and designed to generate media coverage, and
15 have been historically successful at doing so. (c) Tesla sells and leases its electric vehicles directly to
16 consumers, including through its website and retail stores, which Tesla owns and operates.

17 22. Tesla, Inc. does not use conventional advertising. Instead, the company’s marketing
18 strategy relies on Musk’s high public profile and Musk’s Twitter account to generate buzz for its
19 products. Musk’s Twitter account has been an official source of Tesla corporate information since at
20 least 2013 and has long had tens of millions of followers, reaching 100 million followers as of June
21 2022 and 160 million followers today. Musk is a widely known public persona whose public
22 statements, including those alleged herein, routinely are the subject of significant media coverage by a
23 great variety of online, television, radio, and print media, resulting in Musk’s statements reaching an
24 enormous audience on a virtually daily basis.

25 23. Defendant Tesla Lease Trust is a Delaware statutory trust, and its initial beneficiary is
26 Tesla Finance LLC. Tesla Lease Trust is the title holder to the Tesla vehicles that are leased under a
27 leasing program managed by Tesla Finance LLC. Tesla Lease Trust has its principal place of business
28 in Palo Alto, California.

1 24. Defendant Tesla Finance LLC is a wholly owned subsidiary of Tesla, Inc., and is the
2 beneficial owner of the leasing assets held in Trust by Tesla Lease Trust and, as an agent of the Tesla
3 Lease Trust, originates, services, administers, and collects leases for Tesla Lease Trust. Tesla Finance
4 LLC is incorporated in Delaware and has its principal place of business in Palo Alto, California.

5 **IV. AGENCY, JOINT VENTURE, AIDING AND ABETTING, AND CONSPIRACY**

6 25. On information and belief, Plaintiff alleges that at all relevant times herein, Defendants
7 conspired with currently unidentified co-conspirators in carrying out the wrongful conduct alleged
8 herein, and that all such unidentified co-conspirators were Defendants' agents, employees, and/or
9 joint venturers, and were at all times acting within the course and scope of said agency, employment,
10 and/or joint venture.

11 26. Each Defendant and unidentified co-conspirators took actions that aided and abetted,
12 encouraged, and rendered substantial assistance in accomplishing the wrongful conduct, wrongful
13 goals, and other wrongdoing alleged herein. In taking these actions, each Defendant and unidentified
14 co-conspirator acted with an awareness of his/her primary wrongdoing and realized his/her conduct
15 would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and other
16 wrongdoing. In addition, each act and omission comprising the aforementioned wrongful conduct,
17 wrongful goals, and other wrongdoing was made known to, and ratified by, each of the Defendants.

18 27. Each Defendant and unidentified co-conspirator conspired with each other and with
19 others to perpetrate the unlawful scheme on Plaintiff and Class members, as alleged herein. In doing
20 so, each Defendant and unidentified co-conspirator have committed acts and omissions, including but
21 not limited to making materially false, misleading, and deceptive statements and omissions, while
22 acting within the scope and in furtherance of the conspiracy alleged herein, and with full knowledge
23 of the goals of that conspiracy.

24 28. Plaintiff reserves the right to amend this Complaint when he learns the identities of
25 currently unidentified co-conspirators, and Plaintiff intends to sue each Defendant and co-conspirator
26 as participants, alter egos, agents, and conspirators with one another in the wrongful acts, omissions,
27 plans, schemes, and transactions alleged herein.

28

1 **V. FACTUAL ALLEGATIONS**

2 **A. The Technology of Autonomous Vehicles**

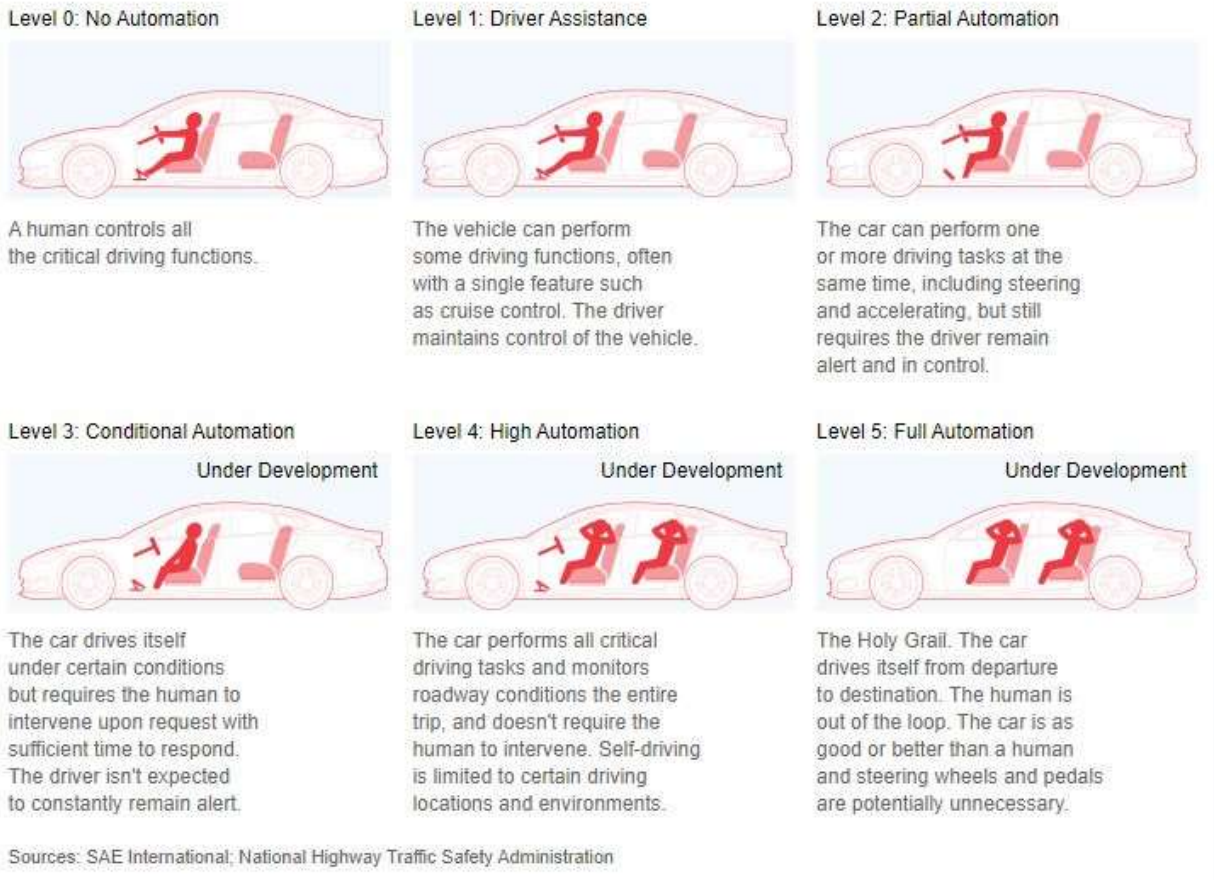
3 29. SAE International, formerly the Society of Automotive Engineers, is a U.S.-based
4 professional association and standards development organization founded in the early 20th century.
5 In 2014, SAE International took a leading role in the development of autonomous vehicle technology
6 standards by publishing the initial version of *SAE J3016 Recommended Practice: Taxonomy and*
7 *Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles*,
8 commonly referred to as the SAE Levels of Driving Automation (“SAE Levels”). Following this,
9 SAE International published revised versions of the SAE Levels in 2016, 2018, and 2021.⁷

10 30. The SAE Levels provide a taxonomy of vehicle driving automation systems with
11 detailed definitions for six levels for driving automation, ranging from no driving automation (SAE
12 Level 0) to full driving automation (SAE Level 5). The SAE Levels can be summarized as follows:
13 **Level 0: No Driving Automation.** The human driver performs all driving tasks (steering,
14 acceleration, braking, etc.), although vehicles may have safety features like automatic emergency
15 braking and forward collision warning. **Level 1: Driver Assistance.** The vehicle has features that
16 provide a small degree of automation over the vehicle’s acceleration, braking, or steering (e.g.,
17 adaptive cruise control, lane-keeping assistance). **Level 2: Partial Driving Automation.** The vehicle
18 can perform multiple driving tasks (e.g., acceleration, steering) but remains under the human driver’s
19 constant supervision, responsibility, and control. **Level 3: Conditional Driving Automation.** The
20 vehicle can take full control of certain driving tasks such that the human driver need not remain
21 constantly alert but must be ready to intervene upon request from the vehicle. **Level 4: High Driving**
22 **Automation.** The vehicle can perform all driving tasks in specific locations or environments, but
23 human override is still an option. **Level 5: Full Driving Automation.** The vehicle can perform all
24 driving tasks under all conditions, with zero human attention or interaction required. The SAE Levels
25 are summarized in the following graphic from *The Wall Street Journal*.

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27
28 ⁷ See SAE International, *Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles* (revised Apr. 30, 2021), https://www.sae.org/standards/content/j3016_202104.

The Six Stages of Automation

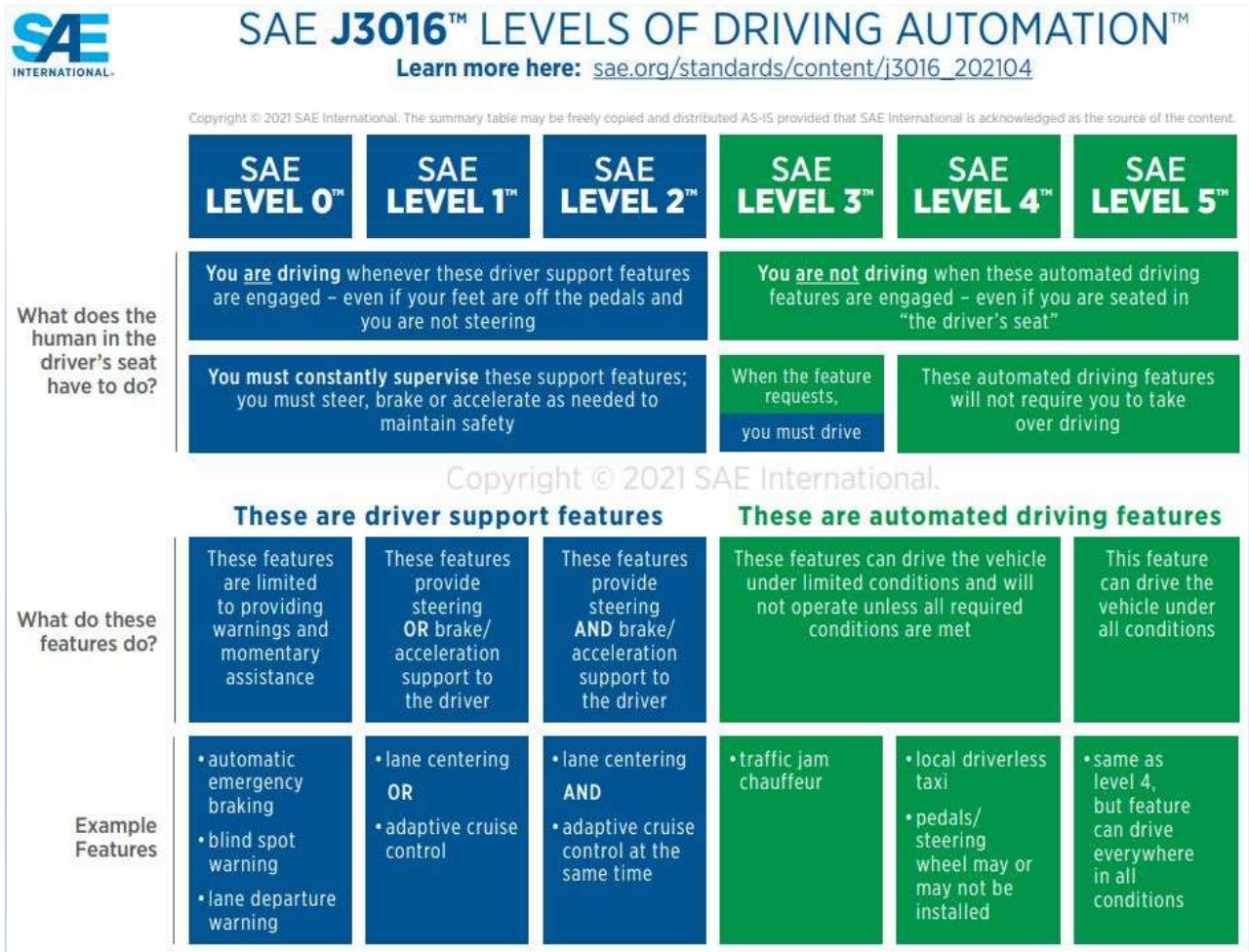
Tesla and other companies are working on automated-driving systems that would eventually allow cars to drive themselves.



31. The SAE Levels are a widely accepted international standard and have been adopted by regulatory agencies such as the National Transportation Safety Board (“NTSB”), National Highway Traffic Safety Administration (“NHTSA”), and U.S. Department of Transportation.

32. SAE International refers to SAE Level 1 and 2 technologies as systems or features that provide “driver support” (see below in blue), whereas it refers to SAE Level 3, 4, and 5 technologies as systems or features that provide “automated driving” (see below in green). When SAE International published the current version of the SAE Levels in 2021, it summarized the revised SAE Levels in the following graphic, which emphasizes that for SAE Level 2 driver-support features, “You are driving whenever these driver support features are engaged” and “You must constantly supervise these support features.”⁸

⁸ SAE International, “SAE Levels of Driving Automation Refined for Clarity and International Audience” (May 3, 2021), <https://www.sae.org/blog/sae-j3016-update>.



33. In May 2022, NHTSA published the following graphic summarizing the SAE Levels, which drives home many of the same points as the 2021 SAE International graphic—i.e., that at SAE Levels 0 to 2, the driver is fully responsible for the driving the car (“You drive, you monitor”), whereas autonomous technology does not begin until SAE Level 3 (“System drives, you must be able to take over upon request”), and fully self-driving technology does not occur until SAE Levels 4 and 5 (“system drives, you ride”).⁹

⁹ NHTSA, “Levels of Automation” (May 2022), available at <https://www.nhtsa.gov/sites/nhtsa.gov/files/2022-05/Level-of-Automation-052522-tag.pdf>.

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34. While Tesla and Musk have routinely promised Tesla’s SAE Level 2 ADAS technology (including Autopilot and FSD) would rapidly advance to SAE Level 5 abilities within a year or other short period of time, Tesla’s technology has never advanced beyond SAE Level 2.

35. While Tesla has spent year after year stuck at SAE Level 2, other vehicle manufacturers have successfully designed and developed SAE Level 3 features, including Audi in

1 2017, Honda in 2021, and Mercedes-Benz in 2021. When the Consolidated Amended Class Action
2 Complaint was filed in this matter in October 2022, Honda and Mercedes-Benz both offered
3 automobiles with Level 3 features for sale or lease to the public in their respective home markets of
4 Japan and Europe, Waymo was operating a limited SAE Level 4 taxi service on public roadways in
5 some areas of Phoenix (since 2018) and San Francisco (since 2021), and Cruise was operating a fully
6 driverless robotaxi service in San Francisco (since 2022). Between then and the filing of this
7 Complaint in October 2023, those companies have continued to expand their technologies and receive
8 increased regulatory approval to operate SAE Level 3 and higher technologies on public roadways,
9 including expanded driverless commercial taxi services. All the while, Tesla’s technology has
10 remained stuck at SAE Level 2.

11 36. Driving automation technologies at all SAE Levels require the use of vehicle-mounted
12 sensors to gather data about the surrounding environment, including sensors such as cameras, radar,
13 and lidar (light detecting and ranging). Tesla’s Level 2 technology relies heavily on cameras (with
14 limited assistance from a single forward-facing radar unit). To date, all Level 3 or higher technologies
15 have used a combination of cameras, radar, and lidar. There has long been an expert consensus that
16 truly autonomous, self-driving cars cannot be achieved without some reliance on expensive lidar
17 technology, but Tesla has always refused to use lidar.

18 **B. Tesla’s First-Generation “Autopilot” Technology**

19 37. In 2003, Tesla was founded by Martin Eberhard and Marc Tarpinning. The following
20 year, PayPal co-founder Elon Musk made a substantial investment in Tesla and became chairman of
21 the company’s board. Tesla will later refer to Musk as a “co-founder” of the company.

22 38. In 2008, Musk became Tesla’s Chief Executive Officer (“CEO”), and Tesla released
23 the Roadster, which was the first mainstream electric vehicle powered by lithium-ion batteries.

24 39. In 2012, Tesla released its Model S sedan.

25 40. In 2014, Tesla began equipping its Model S sedan with hardware that (although the
26 necessary software was not yet active) was intended to allow vehicles to automate some steering,
27 braking, and acceleration functions. Consistent with widely used industry terminology, Tesla
28 originally called this feature “advanced driver assistance” before Tesla executives led by Musk

1 decided to change the name to “Autopilot.” Tesla engineers expressed concerns that the name was
2 misleading and suggested less misleading options such as “Copilot,” which Tesla rejected.¹⁰

3 41. Tesla’s “Autopilot” technology is based on two driver assistance technologies
4 developed by other automakers in the 1990s. The first is adaptive cruise control (“ACC”) technology,
5 versions of which were debuted by Toyota and Mercedes-Benz in the 1990s. ACC uses radar to warn
6 the driver if a vehicle ahead is slowing down and automatically brakes if the driver fails to take
7 sufficient responsive action. Contemporary ACC technology also has the ability to follow a forward
8 vehicle at a pre-selected time gap, up to a driver-selected speed. ACC is an SAE Level 1 feature.¹¹

9 42. The second driver-assistance technology on which Autopilot is based is lane keeping
10 assistance (“LKA”). LKA evolved from lane departure warning (“LDW”) technology, which was
11 developed in the 1990s and first appeared on commercial vehicles in Europe in 2000. LDW warns the
12 driver if the vehicle crosses a painted line on the roadway, whereas LKA controls steering inputs to
13 keep a vehicle in its lane. LKA is an SAE Level 1 feature.

14 43. On October 2, 2014, CNN Business published video of portions of an interview with
15 Musk, in which Musk represented that “[a] Tesla car next year will probably be 90 percent capable of
16 Autopilot. Like, so 90 percent of your miles can be on auto. For sure highway travel.”¹²

17 44. In October 2015, Tesla released its Autopilot version 7.0 software, which enabled
18 Autopilot on Model S vehicles. In public comments surrounding the release, Musk stated: “We’re
19 being especially cautious at this stage, so we’re advising drivers to keep their hands on the wheel just
20 in case.”¹³ Shortly before the release of Autopilot v7.0, the head of the Autopilot project, Robert
21 Rose, resigned. Another Tesla Autopilot engineer who had worked on safety features, Evan Nakano,
22 objected internally that Autopilot was not ready for release and also resigned in protest when Tesla
23 ignored his concerns. In a resignation letter circulated widely among Tesla employees, Nakano

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25 ¹⁰ Cade Metz & Neal E. Boudette, “Inside Tesla as Elon Musk Pushed an Unflinching Vision for Self-Driving
26 Cars,” *The New York Times* (Dec. 6, 2021), available at <https://www.nytimes.com/2021/12/06/technology/tesla-autopilot-elon-musk.html>; Tesla, “Tesla Self-Driving Demonstration” (Nov. 18, 2016), <https://www.tesla.com/videos/autopilot-self-driving-hardware-neighborhood-long>.

27 ¹¹ See NHTSA, “Automated Vehicles for Safety: The Road to Full Automation,” <https://www.nhtsa.gov/technology-innovation/automated-vehicles-safety#the-topic-road-to-full-automation>.

28 ¹² CNN Business, <https://twitter.com/CNNBusiness/status/517738916892270592> (Oct. 2, 2014, 11:12 AM).

¹³ Alexandria Sage & David Ingram, “Tesla mixes warnings and bravado about hands-free driving,” *Reuters* (July 1, 2016), <https://www.reuters.com/article/tesla-autopilot-drivers-idCNL1N19N1U5>.

1 charged that Autopilot’s development and release had been based on “reckless decision making that
2 has potentially put customer lives at risk.”¹⁴

3 45. By December 2015, Musk was publicly stating that Tesla vehicles would drive
4 themselves within about two years. He told *Fortune* magazine, “I think we have all the pieces, and it’s
5 just about refining those pieces, putting them in place, and making sure they work across a huge
6 number of environments—and then we’re done. It’s a much easier problem than people think it is.”¹⁵

7 46. In January 2016, Musk announced on a conference call with reporters that Autopilot
8 was “probably better” than a human driver. He stated that Tesla vehicles would be able to drive
9 significantly better than humans within two to three years, and that within approximately two years
10 drivers would be able to use Tesla’s “Summon” feature, which allows drivers to remotely instruct
11 their vehicle to drive to a specified location, to summon a vehicle from the other side of the country.¹⁶



19 47. Ten days later, on January 20, 2016, 23-year-old Gao Yaning, who had a history of
20 relying on Autopilot to drive, was killed in China on the way home from a family wedding when his
21 Tesla Model S crashed at full speed on a highway into the back of a large street sweeper. The facts of
22 the accident strongly indicate that Autopilot was engaged at the time of the crash.¹⁷

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25 ¹⁴ Ianthe Jeanne Dugan & Mike Spector, “Tesla’s Push to Build a Self-Driving Car Sparked Dissent Among Its
26 Engineers,” *The Wall Street Journal* (Aug. 24, 2017), available at <https://www.wsj.com/articles/teslas-push-to-build-a-self-driving-car-sparks-dissent-among-its-engineers-1503593742>.

27 ¹⁵ Kristen Korosec, “Elon Musk Says Tesla Vehicles Will Drive Themselves in Two Years,” *Fortune* (Dec. 21,
28 2015), available at <https://fortune.com/2015/12/21/elon-musk-interview/>.

¹⁶ Elon Musk, <https://twitter.com/elonmusk/status/686279251293777920> (Jan. 10, 2016, 12:11 PM).

¹⁷ Neal Boudette, “Autopilot cited in Death of Chinese Tesla Driver,” *The New York Times* (Sept. 14, 2016),
available at <https://www.nytimes.com/2016/09/15/business/fatal-tesla-crash-in-china-involved-autopilot-government-tv-says.html>.

1 48. In February 2016, Consumer Reports tested Tesla’s new Summon feature, which Tesla
 2 claimed makes the car able to drive itself for short distances without anyone in the car, such as to
 3 enter or leave a parking space or garage. Although Consumer Reports had previously given Tesla
 4 vehicles rave reviews (scoring Tesla’s Model S a 99 out of 100 and calling it “the best car we have
 5 ever tested” in 2013, and scoring a another version of the Model S even higher in 2015), this time
 6 Consumer Reports’ testing revealed that the Summon feature failed to detect “several large objects
 7 that a homeowner might leave in a driveway or on the floor of a garage—such as a duffel bag and
 8 bicycle—and the car failed to stop before hitting them.” Consumer Reports’ testers also encountered
 9 other problems related to difficulties they had remotely stopping the car, which resulted in damage to
 10 one of the car’s wheels and raised significant safety concerns.¹⁸

11 49. In July 2016, Musk announced that Autopilot’s performance was now “almost twice as
 12 good as a person.”¹⁹

13 50. On May 7, 2016, Tesla driver Joshua Brown was killed in Florida when the Autopilot
 14 on his Tesla Model S failed to recognize a tractor-trailer crossing in front his car, which resulted in
 15 Brown’s car striking and passing under the trailer at 74 mph.²⁰ The top third of Brown’s car was
 16 sheared off (pictured below). Brown was a Tesla enthusiast who had previously made videos of
 17 himself using Autopilot, one of which was retweeted by Elon Musk just a few weeks earlier.²¹ Tesla
 18 later publicly stated that the Autopilot software on Brown’s car failed to detect the white tractor-trailer
 19 because it could not distinguish it from the bright sky. Several months later, in September 2016, Tesla
 20 would announce it was confident it had fixed the issue in version 8 of its Autopilot software by

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 24 ¹⁸ Jake Fisher, “Tesla to Fix Self-Parking Feature After Consumer Reports Raises Safety Concern,” *Consumer*
 25 *Reports* (Feb. 10, 2016), available at [https://www.consumerreports.org/car-safety/tesla-fixes-self-parking-](https://www.consumerreports.org/car-safety/tesla-fixes-self-parking-feature-after-consumer-reports-raises-safety-concern/)
 feature-after-consumer-reports-raises-safety-concern/.

26 ¹⁹ Sage & Ingram, *supra* note 13.

27 ²⁰ NTSB, Investigation No. HWY16FH018, Dkt. No. 2, “Crash Summary Report” (June 19, 2017), available at
 28 [https://data.nts.gov/Docket/Document/docBLOB?ID=40453253&FileExtension=.PDF&FileName=Crash%20](https://data.nts.gov/Docket/Document/docBLOB?ID=40453253&FileExtension=.PDF&FileName=Crash%20Summary-Master.PDF)
 Summary-Master.PDF.

²¹ Rachel Abrams & Annalyn Kurtz, “Joshua Brown, Who Died in Self-Driving Accident, Tested Limits of His
 Tesla,” *The New York Times* (July 1, 2016), available at [https://www.nytimes.com/2016/07/02/business/joshua-](https://www.nytimes.com/2016/07/02/business/joshua-brown-technology-enthusiast-tested-the-limits-of-his-tesla.html)
 brown-technology-enthusiast-tested-the-limits-of-his-tesla.html.

1 increasing the system’s reliance on radar so that it “would see a large metal object across the road.”²²



11 *Joshua Brown’s Tesla Model S following the fatal crash. Photograph by NTSB/Florida Highway Patrol.*

12 51. Less than a month later, on June 2, 2016, Musk confidently announced that
13 “autonomous driving” was “basically a solved problem,” and reiterating that Tesla’s Autopilot
14 software was already safer than a human driver on highways. “I think we’re basically less than two
15 years away from complete autonomy—*complete*,” Musk said.²³

16 52. On July 14, 2016, Consumer Reports took the unusual step of publicly calling on Tesla
17 to take certain actions. It urged Tesla to “change the name of the Autopilot feature because it
18 promotes a potentially dangerous assumption that the Model S is capable of driving on its own.”
19 Instead of using the “misleading” name Autopilot, Consumer Reports urged Tesla to “name
20 automated features with descriptive, not exaggerated, titles.”²⁴

21 53. On July 20, 2016, Tesla’s official blog published a post by Musk, in which he
22 misleadingly suggests that lack of regulatory approval was a major challenge Tesla was facing in
23 bringing to market fully self-driving vehicles: “When true self-driving is approved by regulators, it

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25 ²² Neal Boudette, “Elon Musk Says Pending Tesla Updates Could Have Prevented Fatal Crash,” *The New York Times* (Sept. 11, 2016), available at <https://www.nytimes.com/2016/09/12/business/elon-musk-says-pending-tesla-updates-could-have-prevented-fatal-crash.html>.

26 ²³ Recode, “Elon Musk | Full Interview | Code Conference 2016,” <https://www.youtube.com/watch?v=wsixsRISz4&t=4675s> at 1:17:55–1:21:20 (June 2, 2016).

27 ²⁴ Consumer Reports, “Consumer Reports Calls on Tesla to Disable and Update Auto Steering Function, Remove ‘Autopilot’ Name” (July 14, 2016), available at <https://www.consumerreports.org/media-room/press-releases/2016/07/consumer-reports-calls-on-tesla-to-disable-and-update-auto-steering-function-remove-autopilot-name/>.

1 will mean that you will be able to summon your Tesla from pretty much anywhere. Once it picks you
 2 up, you will be able to sleep, read or do anything else enroute to your destination. You will also be
 3 able to add your car to the Tesla shared fleet just by tapping a button on the Tesla phone app and have
 4 it generate income for you while you're at work or on vacation."²⁵

5 54. In August 2016, after a Tesla driver with Autopilot engaged crashed into a parked
 6 vehicle on a Beijing highway and later stated publicly that Tesla had misrepresented Autopilot's
 7 capabilities and misled buyers, Tesla removed from its China website a term that translates as "self-
 8 driving" and replaced it with a term that translates as "self-assisted driving."²⁶ Tesla did not make any
 9 similar changes to its U.S. website.

10 55. In September 2016, Tesla's key vehicle sensor supplier Mobileye stopped supplying
 11 sensors to Tesla due to stated "reputation" concerns that Mobileye had due to "be[ing] associated with
 12 [Tesla] pushing the envelope in terms of safety."²⁷

13 56. On or about October 16, 2016, German regulators sent Tesla a formal letter reading,
 14 "In order to prevent misunderstanding and incorrect customers' expectations, we demand that the
 15 misleading term Autopilot is no longer used in advertising the system." The German government also
 16 reminded Tesla vehicle owners that Tesla's ADAS technology required, and could only be safely
 17 operated with, constant driver attention and supervision.²⁸

18 **C. Tesla's Release of "Enhanced Autopilot" and "Full-Self-Driving Capability"**

19 57. On October 19, 2016, Tesla released its Autopilot 2.0 software and announced that all
 20 new Tesla cars would come with a new suite of hardware (called Autopilot Hardware 2.0) comprising
 21 eight cameras, twelve ultrasonic sensors, and a forward-facing radar unit, which Tesla claimed would
 22 allow the cars to soon become capable of SAE Level 5 autonomy.²⁹ To access the hardware, owners
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24 ²⁵ Elon Musk, "Master Plan, Part Deux," <https://www.tesla.com/blog/master-plan-part-deux> (July 20, 2016).

25 ²⁶ Jake Spring & Alexandria Sage, "Tesla removes 'self-driving' from China website after Beijing crash,"
Reuters (Aug. 15, 2016), <https://www.reuters.com/article/us-tesla-china-crash-idUSKCN10Q0L4>.

26 ²⁷ Eric Auchard & Tova Cohen, "Mobileye says Tesla was 'pushing the envelope in terms of safety,'" *Reuters*
 (Sept. 14, 2016), <https://www.reuters.com/article/us-mobileye-tesla-idUSKCN11K2T8>.

27 ²⁸ Reuters Staff, "Germany says Tesla should not use 'Autopilot' in advertising," *Reuters* (Oct. 16, 2016),
 available at <https://www.reuters.com/article/idUSKBN12G0KS>.

28 ²⁹ See Alex Nishimoto, "All New Tesla Models Will Feature Level 5-Capable Autopilot Hardware," *Motor
 Trend* (Oct. 20, 2016), available at <https://www.motortrend.com/news/new-tesla-models-will-feature-level-5-capable-autopilot-hardware/>.

1 would have to pay \$5,000 for an “Enhanced Autopilot” feature and another \$3,000 for the right to
 2 activate Tesla’s promised “Full Self-Driving Capability.” The Enhanced Autopilot package provided
 3 drivers most or all of the features in the FSD package, except for the right to unlimited access to
 4 Tesla’s soon-to-arrive full self-driving technology, and potential early access to FSD Beta updates
 5 Tesla might release on its way perfecting that technology.

6 58. As part of the announcement, Tesla published on its official blog a post titled “All
 7 Tesla Cars Being Produced Now Have Full Self-Driving Hardware.” The post includes numerous
 8 carefully worded statements that, even if technically true, could easily mislead reasonable consumers
 9 about the abilities of Tesla’s technology, including each of the following: (a) “Full autonomy will
 10 enable a Tesla to be substantially safer than a human driver.” (b) “[A]s of today, all Tesla vehicles ...
 11 will have the hardware needed for full self-driving capability at a safety level substantially greater
 12 than that of a human driver.” (c) “[T]his system provides a view of the world that a driver alone
 13 cannot access, seeing in every direction simultaneously and on wavelengths that go far beyond the
 14 human senses.”³⁰

15 59. The blog post included a video, made in the weeks before the release, by Tesla’s
 16 “Autopilot” team. (Tesla and Musk often use “Autopilot” as an umbrella term to refer to all of Tesla’s
 17 ADAS technologies and systems, including Autopilot, Enhanced Autopilot, and FSD, and Tesla’s
 18 Autopilot team has historically developed all of Tesla’s ADAS technologies and systems.) The video
 19 purports to show a Tesla driving itself without any human intervention from the person in the driver’s
 20 seat, whose hands remain off the steering wheel throughout the video. The video begins with a note
 21 saying, “**The person in the driver’s seat is only there for legal reasons. He is not doing anything.**
 22 **The car is driving itself.**”³¹ Musk shared the video on Twitter, stating: “Tesla drives itself (no human
 23 input at all) thru urban streets to highway to streets, then finds a parking spot.”³²

24 a. However, the video was debunked by a 2021 *New York Times* investigation
 25 based on interviews with 19 former Autopilot employees. The investigation showed that Tesla had
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27 ³⁰ The Tesla Team, “All Tesla Cars Being Produced Now Have Full Self-Driving Hardware,” <https://www.tesla.com/blog/all-tesla-cars-being-produced-now-have-full-self-driving-hardware> (Oct. 19, 2016).

28 ³¹ Tesla, <https://www.tesla.com/autopilot>.

³² Elon Musk, <https://twitter.com/elonmusk/status/789019145853513729> (Oct. 20, 2016, 1:23 AM).

1 concealed key facts about the video, including that the car: was assisted by a pre-loaded 3D digital
 2 map of the route (a technology Tesla’s ADAS systems do not use), had to repeatedly drive the pre-
 3 loaded route to get usable video because the ADAS software kept executing driving tasks poorly, and
 4 crashed into a fence during filming.³³ In January 2023, this reporting was broadly confirmed by
 5 deposition testimony of longtime Autopilot engineer Ashok Elluswamy (transcript obtained by
 6 Reuters) in which Elluswamy admitted that the route was “3-D mapped beforehand,” that the car
 7 drove into a fence, and that the video shows the car having abilities not then possessed by Tesla’s
 8 ADAS technology.³⁴ The reporting was further confirmed by contemporaneous internal Tesla emails
 9 surrounding the making of the video (obtained by Bloomberg News), which include an email from
 10 Musk in which he rejected a fourth draft of the video because there were still too many jump cuts, and
 11 instructed Tesla staff that the video “needs to feel like one continuous take,” and which reportedly
 12 establish that Musk personally dictated the text at the beginning of the videos.³⁵ None of these facts
 13 were referenced in the video or otherwise disclosed by Tesla. Even though Tesla has never denied the
 14 facts underlying any of the above-referenced reporting, Tesla continues to feature the video on the
 15 main “Autopilot” webpage on the company’s website.³⁶

16 b. Tesla made similar videos during the same period, which suffer from the same
 17 flaws and all of which begin with that same deceptive and misleading text: “The person in the driver’s
 18 seat is only there for legal reasons. He is not doing anything. The car is driving itself.” Despite the
 19 equally deceptive and misleading nature of those videos, Tesla also continues to make those videos
 20 available to the public on its website.³⁷

21 _____
 22 ³³ See Metz & Boudette, *supra* note 10.

23 ³⁴ See Ashok Elluswamy Depo. Tr. at 71, 80, 82-84, 88-89, in *Huang v. Tesla Inc.*, No. 19-cv-346663 (Cal.
 24 Super. Santa Clara County June 30, 2022), *available at* <https://s3.documentcloud.org/documents/23574198/elluswamy-deposition-transcript.pdf>.

25 ³⁵ Dana Hull & Sean O’Kane, “Musk Oversaw Video That Exaggerated Tesla’s Self-Driving Capabilities,”
 26 *Bloomberg News* (Jan. 19, 2023) <https://www.bloomberg.com/news/articles/2023-01-19/elon-musk-directed-tesla-autopilot-video-saying-car-drove-itself-tesla?leadSource=verify%20wall>.

27 ³⁶ See *id.*; Tesla, <https://www.tesla.com/autopilot>; Tesla, “Tesla Self-Driving Demonstration” (Nov. 18, 2016),
 28 <https://www.tesla.com/videos/autopilot-self-driving-hardware-neighborhood-long>.

³⁷ Tesla, “Full Self-Driving Hardware on All Teslas” (Oct. 20, 2016), <https://www.tesla.com/videos/full-self-driving-hardware-all-tesla-cars>; Tesla, “Full Self-Driving Hardware on All Teslas” (Oct. 20, 2016), <https://vimeo.com/188105076>; Tesla, “Tesla Self-Driving Demonstration” (Nov. 18, 2016), <https://www.tesla.com/videos/autopilot-self-driving-hardware-neighborhood-long>; Tesla, “Autopilot Full Self-Driving Hardware (Neighborhood Short)” (Nov. 18, 2016), <https://vimeo.com/192179726>.

1 60. On October 19, 2016, Tesla also held a conference call with reporters, during which
 2 Musk stated that all new Tesla cars would now include all the cameras, computing power, and other
 3 hardware necessary for “full self-driving”—not a technical term but one that suggests truly
 4 autonomous operation. Musk further stated that Tesla would “be able to demonstrate a demonstration
 5 drive of our full autonomy all the way from LA to New York. So basically from home in LA to let’s
 6 say dropping you off in Times Square, NY and then having the car parking itself by the end of next
 7 year without the need for a single touch.”³⁸ Musk repeatedly represented that autonomous vehicles
 8 were safer than human-driven ones, and even warned journalists that they would be “killing people” if
 9 they wrote negative articles about self-driving technology that dissuaded people from using it.³⁹

10 61. According to reporting by multiple outlets, including *The Wall Street Journal* and *The*
 11 *New York Times*, Tesla’s decision to promise the technology would be able to provide “Full Self-
 12 Driving” and Musk’s statements at the news conference “took the Tesla engineering team by surprise,
 13 and some felt that Musk was promising something that was not possible.” Sterling Anderson, who
 14 was the head of Tesla’s Autopilot program at the time, “told Tesla’s sales and marketing teams that
 15 they should not refer to the company’s technology as ‘autonomous’ or ‘self-driving’ because this
 16 would mislead the public.”⁴⁰ In a meeting after the October announcement, someone asked Anderson
 17 how Tesla could defend branding the product “Full Self-Driving.” Anderson reportedly declined to
 18 defend the branding, responding instead, “This was Elon’s decision.” Two months later, in December
 19 2016, Mr. Anderson resigned.⁴¹

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 26 ³⁸ Xautoworld, “Transcript: Elon Musk’s Autopilot 2.0 Conference Call,” <https://www.xautoworld.com/tesla/transcript-elon-musk-autopilot-2-conference-call/> (Oct. 19, 2016).

27 ³⁹ Kosoff, *supra* note 4; Andrew Batiuk, “Tesla October 19th 2016 Autopilot 2.0 Conference Call With Visuals Added,” https://www.youtube.com/watch?v=-vjGEEF_p5E (Oct. 20, 2016).

28 ⁴⁰ Metz & Boudette, *supra* note 10.

⁴¹ Dugan & Spector, *supra* note 14.

1 62. On October 20, 2016, the day after the release of Enhanced Autopilot and FSD, Musk
2 tweeted that Tesla’s “Summon” feature was capable of autonomously driving itself to pick up its
3 owner “even if you are on the other side of the country.”⁴²



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10 **D. Year After Year, Tesla Fails to Deliver on Its Promise of a Fully Self-Driving Car, Instead Providing Experimental Software that Kills and Maims Drivers**

11 63. Since 2017, the “Autopilot” page on Tesla’s website has stated that FSD is capable of
12 “full self-driving in almost all circumstances,” including being able to “conduct short and long
13 distance trips with no action required by the person in the driver’s seat” and with a “probability of
14 safety at least twice as good as the average human driver.” According to Tesla, “All you will need to
15 do is get in and tell your car where to go. ... Your Tesla will figure out the optimal route, navigate
16 urban streets (even without lane markings), manage complex intersections with traffic lights, stop
17 signs and roundabouts, and handle densely packed freeways with cars moving at high speed.”⁴³

18 64. In April 2017, in a TED interview, Musk stated that Tesla would achieve a “fully
19 autonomous” cross-country trip “by the end of 2017,” and that Tesla owners would be able to sleep
20 while their cars drove them around in “about two years.”⁴⁴

21 65. In May 2017, a Twitter user tweeted if there was any update on the coast-to-coast
22 Autopilot demo, and Musk responded, “Still on for end of year. Just software limited. Any Tesla car
23 with HW2 (all cars built since Oct last year) will be able to do this.”⁴⁵

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⁴² Elon Musk, <https://twitter.com/elonmusk/status/789022017311735808> (Oct. 20, 2016, 1:34 AM).

26 ⁴³ See, e.g., Internet Archive Wayback Machine, <https://web.archive.org/web/20170104193524/tesla.com/autopilot> (captured Jan. 4, 2017); *id.*, <https://web.archive.org/web/20180101212757/tesla.com/autopilot> (captured Jan. 1, 2018); Tesla, <https://www.tesla.com/autopilot>.

27 ⁴⁴ Elon Musk Interview Tr. at 15:00-15:40, 16:42-17:02, 2017 TED conference (Apr. 2017), *available at*
28 https://www.ted.com/talks/elon_musk_the_future_we_re_building_and_boring/transcript?language=en.

⁴⁵ Elon Musk, <https://twitter.com/elonmusk/status/866482406160609280> (May 21, 2017, 7:34 PM).

1 66. In March 2018, in an interview at the South by Southwest (SXSW) festival in Texas,
2 Musk stated that Tesla vehicles would be driving themselves “by the end of next year.”⁴⁶

3 67. In March 2018, Apple engineer Walter Huang was killed when the Autopilot on his
4 Tesla Model X became confused at a fork in the highway and caused the car to veer sharply to the left
5 and crash into a concrete barrier in Mountain View, California (pictured below).



16 68. In the aftermath of that fatal crash, Tesla publicly released crash data and sought to
17 blame Huang for the accident, including that Huang’s hands were not detected on the steering wheel
18 during the six seconds before the collision. This release of information violated Tesla’s agreement
19 with NTSB not to comment on crashes during the course of an investigation and caused NTSB to
20 remove Tesla as a party to its investigation.

21 69. In April 2018, in the wake of the Huang crash, Musk appeared on the national morning
22 news show *CBS This Morning* to discuss Autopilot with co-host Gayle King and take her on a ride in
23 a Tesla vehicle to demonstrate how it worked. During the demonstration, Musk was driving and King
24 was in the passenger seat. Musk repeatedly took his hands off the steering wheel and kept his hands
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28 ⁴⁶ SXSW 2018, “Elon Musk Answers Your Questions!” at 36:05-36:30 (Mar. 11, 2018), <https://www.youtube.com/watch?v=kzIUyrcbos&t=8s>.

1 off the wheel while the car was moving with Tesla’s ADAS technology engaged, falsely suggesting to
2 the nation that a Tesla vehicle was fully capable of driving itself.⁴⁷

3 70. Less than a month later, a Tesla vehicle with Autopilot engaged struck and killed a
4 pedestrian in Japan.

5 71. In September 2018, Musk sent a series of tweets regarding Tesla’s stock price and his
6 purported plans to take the company private that the Securities and Exchange Commission (“SEC”)
7 labeled “misleading.” The SEC filed a lawsuit against Tesla and Musk, who settled two days later.
8 Under the settlement, Tesla and Musk agreed to pay \$40 million in penalties, Tesla agreed to oversee
9 Musk’s communications, and Musk was forced to step down as Tesla’s chairman (though he would
10 remain as CEO). Musk would later send at least two tweets that violated the terms of the settlement.

11 72. An October 2018 study by Thatcham Research showed that 71% of drivers globally at
12 the time mistakenly believed that they could purchase a self-driving car, and 11% said they would be
13 tempted to have a brief nap while using ADAS technology. The study concluded that a significant
14 percentage of consumers incorrectly believe that ADAS makes cars “autonomous,” and that Tesla
15 was the company that survey respondents most cited (incorrectly) as a seller of self-driving cars.⁴⁸

16 73. In November 2018, a Twitter user posted a tweet asking, “When will they [Tesla cars]
17 just self drive to the customer’s door?” Musk tweeted in response, “Probably technically able to do so
18 in about a year. Then up to regulators.”⁴⁹

19 74. In December 2018, Musk appeared on the CBS show *60 Minutes* in a segment with co-
20 host Leslie Stahl. As part of the segment, Musk took Stahl on a ride in a Tesla vehicle to demonstrate
21 the Tesla’s ADAS technology, with Musk driving and Stahl in the passenger seat. Just as he had
22 earlier in the year on *CBS This Morning*, Musk repeatedly took his hands off the steering wheel and
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26 ⁴⁷ Gayle King, “Elon Musk says Tesla’s autopilot system will ‘never be perfect,’” *CBS This Morning* (Apr. 13,
27 2018), <https://www.youtube.com/watch?v=AO33rOofFpg>.

28 ⁴⁸ “Automated Driving hype is dangerously confusing drivers, study reveals” *Thatcham Research* (Oct. 18,
2018), available at <https://news.thatcham.org/pressreleases/autonomous-driving-hype-is-dangerously-confusing-drivers-study-reveals-2767283>.

⁴⁹ Elon Musk, <https://twitter.com/elonmusk/status/1063123659290595328> (Nov. 15, 2018, 9:36 AM).

1 kept them off the wheel while the car was moving with Tesla’s ADAS technology engaged, falsely
2 suggesting to the nation that a Tesla vehicle was fully capable of driving itself.⁵⁰

3 75. In January 2019, in a Tesla quarterly earnings call, Musk stated, in response to a
4 question seeking “an update on full-self driving and Tesla network development,” and specifically
5 asking “[w]hen will customers start seeing full self-driving features,” Musk responded: “...when will
6 we think it’s safe for full self-driving? It’s probably toward the end of this year, and then it’s up to
7 regulators to decide when they want to approve that.”⁵¹

8 76. In March 2019, Jeremy Banner was killed when his 2018 Tesla Model 3 with
9 Autopilot engaged drove under a tractor-trailer in Florida. The Banner accident was eerily similar to
10 the 2016 accident that killed Joshua Brown when his car drove under a tractor-trailer, and that led
11 Tesla to announce in September 2016 that the company was confident it had fixed the issue by
12 increasing its ADAS software’s reliance on radar. The Banner accident indicated that Tesla had not
13 fixed this significant flaw in its ADAS technology in September 2016, and still had not done so two-
14 and-a-half years later.

15 77. In April 2019, in a popular podcast, Musk stated that Tesla so close to FSD that
16 anyone who “buys a Tesla today ... [is] buying an appreciating asset, not a depreciating asset.”⁵²

17 78. In April 2019, at an event in Palo Alto, California, that Tesla dubbed “Autonomy
18 Day,” Musk took to the stage and made widely reported-on announcements that Tesla vehicles would
19 be capable of full self-driving and autonomously navigating dense urban areas like San Francisco and
20 New York by the end of 2019, that Tesla vehicles would provide hands-free driving by the “second
21 quarter of next year,” and that the company would be making cars without steering wheels or pedals
22 in two years.⁵³ Musk also stated, “If you fast forward a year, maybe a year and three months, but next

23 ⁵⁰ Leslie Stahl, “Tesla CEO Elon Musk: The 60 Minutes Interview,” *60 Minutes* (Dec. 9, 2018), <https://www.cbsnews.com/news/tesla-ceo-elon-musk-the-2018-60-minutes-interview/>; see also Jack Stewart, “Even
24 Elon Musk Abuses Tesla’s Autopilot,” *Wired* (Dec. 10, 2018), available at [https://www.wired.com/story/elon-
25 musk-tesla-autopilot-60-minutes-interview/](https://www.wired.com/story/elon-musk-tesla-autopilot-60-minutes-interview/).

26 ⁵¹ Tesla (TSLA) Q4 2018 Earnings Conference Call Transcript (Jan. 30, 2019), available at [https://
27 www.fool.com/earnings/call-transcripts/2019/01/31/tesla-tsla-q4-2018-earnings-conference-call-transc.aspx](https://www.fool.com/earnings/call-transcripts/2019/01/31/tesla-tsla-q4-2018-earnings-conference-call-transc.aspx).

28 ⁵² Lex Fridman, “Elon Musk: Tesla Autopilot,” *Lex Fridman Podcast No. 18* at 15:15-15:35 (Apr. 12, 2019),
available at <https://www.youtube.com/watch?v=dEv99vxKjVI>.

⁵³ Video of Tesla Autonomy Day at 1:55:48-1:56:01 (Apr. 22, 2019), available at <https://vimeo.com/331892012>;
R. Baldwin, “Tesla promises ‘one million robo-taxis’ in 2020,” *Engadget* (Apr. 22, 2019), [https://
www.engadget.com/2019-04-22-tesla-elon-musk-self-driving-robo-taxi.html](https://www.engadget.com/2019-04-22-tesla-elon-musk-self-driving-robo-taxi.html).

1 year for sure, we will have over a million robo-taxis on the road,” which Musk stated would be
 2 operating at “[SAE] Level 5 without a geofence.” Musk continued: “I feel very confident predicting
 3 autonomous robo-taxis for Tesla next year. ... I’m confident we’ll have at least regulatory approval
 4 somewhere, literally next year.” Musk further stated that the robo-taxis would be a way for Tesla
 5 owners to make money when they aren’t using their vehicles, with Tesla taking 25 or 30 percent of
 6 the revenue and allowing the company to compete with popular ride-hailing services like Uber and
 7 Lyft.⁵⁴ Shortly thereafter, some investment analysts discovered that Musk had made the robotaxi
 8 announcement without Tesla appearing to have any “answers to or [] even considered pretty basic
 9 questions on the pricing, insurance liability, or regulatory and legal requirements.”⁵⁵ But, as routinely
 10 occurs, the cautionary reporting received only miniscule press attention relative to Musk’s headline-
 11 grabbing, widely published claims of Tesla putting a million robotaxis on the road by the following
 12 year. A few months later, Musk doubled-down on the robo-taxi prediction, tweeting that Tesla would
 13 “have a million robotaxis by end of 2020.”⁵⁶ To date, Tesla has never developed a robotaxi and is
 14 nowhere near doing so.

15 79. In May 2019, Musk tweeted that a Tesla vehicle would complete a fully autonomous
 16 cross-country trip “this year.”⁵⁷

17 80. In May 2019, Tesla released an update to its ADAS “Navigate” feature, which is
 18 designed to automate some lane-change functions. When Consumer Reports tested the feature, it
 19 found that it cut off other cars without leaving enough space, failed to pass in the correct lane, and
 20 sometimes struggled to merge into traffic.⁵⁸

23 ⁵⁴ Video of Tesla Autonomy Day at 1:55:48-1:56:01 (Apr. 22, 2019), available at <https://vimeo.com/331892012>;
 24 *Tech Insider*, “Watch Elon Musk Unveil Plans For A Tesla Ride-Hailing App,” [https://www.youtube.com](https://www.youtube.com/watch?v=YiWbdZ8ItRs)
 25 [/watch?v=YiWbdZ8ItRs](https://www.youtube.com/watch?v=YiWbdZ8ItRs) (Apr. 22, 2019); Matt McFarland, “Elon Musk says Tesla will have robo-taxis
 26 operating next year,” *CNN Business*, <https://www.cnn.com/2019/04/22/tech/tesla-robotaxis> (Apr. 22, 2019).

⁵⁵ Lora Kolodny, “Elon Musk sent a two-line email telling employees how great Tesla’s autonomy day was,
 26 but the plan has lots of holes,” *CNBC* (Apr. 23, 2019), [https://www.cnbc.com/2019/04/23/elon-musk-](https://www.cnbc.com/2019/04/23/elon-musk-celebrates-flawed-tesla-autonomy-day-with-employee-email.html)
 27 [celebrates-flawed-tesla-autonomy-day-with-employee-email.html](https://www.cnbc.com/2019/04/23/elon-musk-celebrates-flawed-tesla-autonomy-day-with-employee-email.html).

⁵⁶ Elon Musk, <https://twitter.com/elonmusk/status/1148070210412265473> (July 7, 2019, 8:24 PM).

⁵⁷ Elon Musk, <https://twitter.com/elonmusk/status/1126611407984779264> (May 9, 2019, 3:14 PM).

⁵⁸ See Keith Barry, “Tesla’s Updated Navigate on Autopilot Requires Significant Driver Intervention,”
 28 *Consumer Reports* (May 22, 2019), available at [https://www.consumerreports.org/autonomous-driving/tesla-](https://www.consumerreports.org/autonomous-driving/tesla-navigate-on-autopilot-automatic-lane-change-requires-significant-driver-intervention/)
 29 [navigate-on-autopilot-automatic-lane-change-requires-significant-driver-intervention/](https://www.consumerreports.org/autonomous-driving/tesla-navigate-on-autopilot-automatic-lane-change-requires-significant-driver-intervention/).

1 81. In October 2019, Consumer Reports tested Tesla’s “Smart Summon” feature, which
 2 Tesla claimed would allow owners to use a smartphone app to “summon” their Tesla vehicle to drive
 3 itself across a parking lot without any occupants inside the vehicle. Consumer Reports’ testing
 4 revealed that the feature had difficulty negotiating a parking lot, with the summoned car crossing lane
 5 lines and wandering erratically “like a drunken or distracted driver.”⁵⁹ This was nearly four years after
 6 Musk’s January 2016 tweet that Tesla was two years away from its customers being able to use
 7 Summon to have their car come to them even if it was thousands of miles away.⁶⁰

8 82. In December 2019, Jenna Monet was killed when the Model 3 she was in crashed into
 9 the back of a parked fire truck in Indiana while Autopilot was engaged.

10 83. In February 2020, the NTSB called on NHTSA to set stricter standards on Autopilot,
 11 citing the high number of Autopilot-related collisions and deaths.

12 84. In April 2020, Musk tweeted that Tesla would complete and be ready to roll out
 13 robotaxi technology “this year” with “[r]egulatory approval [being] the big unknown.”⁶¹ That same
 14 month, Musk made public comments that he expected Tesla robotaxis to receive regulatory approval
 15 to be operating on public roadways “next year.”⁶²

16 85. In July 2020, in a major interview on stage at the World Artificial Intelligence
 17 Conference, Musk stated, in his capacity as Tesla CEO, “we are very close” and “will have the basic
 18 functionality for Level 5 autonomy complete this year.”⁶³

19 86. In August 2020, a couple was killed in Saratoga, California, after their Tesla veered off
 20 a highway while Autopilot was active.

21 87. In September 2020, Consumer Reports published the first in a series of evaluations of
 22 Tesla’s “Full Self-Driving Capability” technology, finding that the technology caused vehicles to
 23 engage in unusual and unsafe behavior, such as stopping at green lights, driving through stop signs,

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 25 ⁵⁹ Jeff Plungis, “Tesla’s Smart Summon Performance Doesn’t Match Marketing Hype,” *Consumer Reports*
 (Oct. 8, 2019), available at <https://www.consumerreports.org/automotive-technology/teslas-smart-summon-performance-doesnt-match-marketing-hype/>.

26 ⁶⁰ Musk, *supra* notes 16, 42.

27 ⁶¹ Elon Musk, <https://twitter.com/elonmusk/status/1249210220200550405> (Apr. 11, 2020, 10:38 PM).

28 ⁶² Joey Klender, “Tesla CEO Elon Musk opens up about Robotaxi rollout for next year” *Teslarati* (Apr. 30, 2020), <https://www.teslarati.com/elon-musk-talks-tesla-robotaxi-plans-2021/>.

⁶³ Elon Musk Speech at 00:20-00:36, available at “Elon Musk delivers virtual speech for WAIC,” *Shanghai Daily* (July 9, 2020), <https://www.youtube.com/watch?v=MdpZUp4I-H8>.

1 slamming on the brakes for yield signs when the merge was clear, and stopping at every exit while
2 going around a traffic circle.⁶⁴

3 88. In October 2020, Tesla increased the price of an FSD package from \$8,000 to \$10,000,
4 and informed some owners who had previously purchased an FSD package that their vehicles would
5 require a \$1,000 hardware upgrade to be compatible with Tesla’s FSD technology going forward.

6 89. On November 20, 2020, Tesla attorneys sent the California Department of Motor
7 Vehicles (“DMV”) a letter (later released via Public Records Act request) in response to the DMV’s
8 questions about the FSD “City Streets” feature that was about to be released to some Tesla owners in
9 a software update. Tesla’s legal counsel wrote, “For context, as we’ve previously discussed, City
10 Streets continues to firmly root the vehicle in SAE Level 2 capability.” The letter goes on to explain
11 in detail FSD’s limitations and to admit that the system is nowhere near being fully autonomous or
12 fully self-driving:

13 City Streets’ capabilities with respect to the object and event detection
14 and response (OEDR) sub-task are limited, as there are circumstances and
15 events to which the system is not capable of recognizing or responding.
16 These include static objects and road debris, emergency vehicles,
17 construction zones, large uncontrolled intersections with multiple
18 incoming ways, occlusions, adverse weather, complicated or adversarial
19 vehicles in the driving path, unmapped roads. As a result, the driver
20 maintains responsibility for this part of the dynamic driving task (DDT).
21 In addition, the driver must supervise the system, monitoring both the
22 driving environment and the functioning of City Streets, and he is
23 responsible for responding to inappropriate actions taken by the system.
24 The feature is not designed such that a driver can rely on an alert to draw
25 his attention to a situation requiring response. There are scenarios or
26 situations where an intervention from the driver is required but the system
27 will not alert the driver. In the case of City Streets (and all other existing
28 FSD features), because the vehicle is not capable of performing the entire
DDT, a human driver must participate⁶⁵

⁶⁴ See Mike Monticello & Keith Barry, “Tesla’s ‘Full Self-Driving Capability’ Falls Short of Its Name: The pricey option doesn’t make the car self-driving, and now Tesla’s promises are under scrutiny by state regulators in California,” *Consumer Reports* (Sept. 4, 2020) (last updated May 19, 2021), available at <https://www.consumerreports.org/autonomous-driving/tesla-full-self-driving-capability-review-falls-short-of-its-name-a1224795690/>.

⁶⁵ Letter from Eric Williams (Tesla) to Miguel Acosta (DMV) Re: City Streets – Pilot Release at 1 (Nov. 20, 2020), available at <https://www.plainsite.org/documents/242a2g/california-dmv-tesla-robotaxi-ADAS-emails/>.

1 90. On December 14, 2020, in another letter to the California DMV (released via Public
2 Records Act request), Tesla’s legal counsel reiterated that any final release of the FSD City Streets
3 feature to the Tesla customer fleet “will continue to be an SAE Level 2, advanced driver-assistance
4 feature” that, like all other FSD features, “do[es] not make the vehicle autonomous” and is “intended
5 for use only with a fully attentive driver who has his or her hands on the wheel and is prepared to take
6 over at any moment.” Tesla’s counsel continued, “Please note that Tesla’s development of true
7 autonomous features (SAE Levels 3+) ... will not be released to the general public until we have fully
8 validated them and received any required regulatory permits or approvals.”⁶⁶

9 91. On December 28, 2020, in another letter to the California DMV (released via Public
10 Records Act request), Tesla’s legal counsel again reiterated the SAE Level 2 nature and limitations of
11 Tesla’s FSD technology:

12 Full Self-Driving (FSD) Capability is an additional optional suite of
13 features that builds from Autopilot and is also representative of SAE L2.
14 Features that comprise FSD Capability are Navigate on Autopilot, Auto
15 Lane Change, Autopark, Summon, Smart Summon, Traffic and Stop
16 Sign Control, and, upcoming, Autosteer on City Streets (City Streets).
17 While we designed these features to become more capable over time
18 through over-the-air software updates, currently neither Autopilot nor
19 FSD Capability is an autonomous system, and currently no comprising
20 feature, whether singularly or collectively, is autonomous or makes our
21 vehicles autonomous. This includes the limited pilot release of City
22 Streets.⁶⁷

23 92. During the same month that Tesla’s legal team was assuring California regulators that
24 the most advanced version of its ADAS technology was still at SAE Level 2 and suggesting it was
25 likely to remain at Level 2 for the foreseeable future, Elon Musk gave an interview to Business
26 Insider in which he promised that Tesla would achieve Level 5 before the end of the following year,
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25 ⁶⁶ Letter from Eric Williams (Tesla) to Miguel Acosta (DMV) Re: City Streets – Pilot Release at 2-3 (Dec. 14,
26 2020), *available at* <https://www.plainsite.org/documents/242a2g/california-dmv-tesla-robotaxi-ADAS-emails/>.

27 ⁶⁷ Letter from Eric Williams (Tesla) to Miguel Acosta (DMV) Re: Autonomous Mode Disengagements for
28 Reporting Year 2020 at 1-2 (Dec. 14, 2020), *available at* <https://www.plainsite.org/documents/242a2g/california-dmv-tesla-robotaxi-ADAS-emails/>; *see also* David Silver, “Tesla Emails To The California DMV Emphasize Continued Reliance On Maps,” *Forbes* (Mar. 9, 2021), *available at* <https://www.forbes.com/sites/davidsilver/2021/03/09/tesla-emails-to-the-california-dmv-emphasize-continued-reliance-on-maps/?sh=2c0884c957e6>.

1 stating “I’m extremely confident that Tesla will have level five next year, extremely confident,
2 100%.”⁶⁸

3 93. On January 6, 2021, Waymo announced that it would no longer use the term “self-
4 driving” to refer to its fleet of vehicles, noting that “some automakers [i.e., referring to Tesla] use the
5 term ‘self-driving’ in an inaccurate way, giving consumers and the general public a false impression
6 of the capabilities of driver assist (not fully autonomous) technology.” Central to this decision was
7 Waymo’s determination that the use of “self-driving” as a descriptor of driver assist technology was
8 not just misleading, but that its use also causes drivers to unknowingly over-rely on the technology to
9 operate the vehicle and thus take risks that “jeopardize not only their own safety but the safety of
10 people around them.”⁶⁹

11 94. In January 2021, Tesla released its earnings, reporting \$721 million in profit in 2020,
12 its first profitable year. This was a dramatic turnaround in the company’s financial condition from
13 prior years. According to Musk, Tesla had been, as recently as 2018, “bleeding money like crazy” and
14 on the brink of collapse, at one point being “about a month” away from having to declare
15 bankruptcy.⁷⁰ In early 2019, Musk coupled a \$2 billion capital campaign with new projections about
16 Tesla’s imminent advances in “self-driving” technology.⁷¹ This included the headline-grabbing
17 claim that a million Tesla cars would be able to act as Level 5 “robotaxis” by 2020.

18 95. On the Tesla January 2021 earnings call, Musk stated that the company had made
19 “massive progress on Full Self-Driving,” and that it “will become obvious later this year” that “Tesla

21 ⁶⁸ Mathias Döpfner, “Elon Musk reveals Tesla’s plan to be at the forefront of a self-driving-car revolution,”
22 *Business Insider*, <https://www.businessinsider.com/elon-musk-interview-axel-springer-tesla-accelerate-advent-of-sustainable-energy> (Dec. 5, 2020).

23 ⁶⁹ The Waymo Team, “Why you’ll hear us saying fully autonomous driving tech from now on,” <https://waymo.com/blog/2021/01/why-youll-hear-us-say-autonomous-driving.html> (Jan. 6, 2021).

24 ⁷⁰ See Chris Isidore, “Tesla just proved all its haters wrong. Here’s how,” *CNN Business*, <https://www.cnn.com/2020/01/31/investing/tesla-cash-crunch/index.html> (Jan. 31, 2020); Chris Isidore, “Elon Musk: Tesla was
25 month away from bankruptcy,” *CNN Business*, <https://www.cnn.com/2020/11/04/tech/elon-musk-tesla-once-got-near-bankruptcy/index.html> (Nov. 4, 2020); Steve Kovach, “Elon Musk: Tesla had ‘single-digit weeks’ as it
26 teetered on brink of collapse” *CNBC* (Nov. 25, 2018), <https://www.cnbc.com/2018/11/25/elon-musk-tesla-had-single-digit-weeks-before-it-would-die.html>; Lora Kolodny, “Elon Musk says Tesla was ‘about a month’ from
27 bankruptcy during Model 3 ramp,” *CNBC* (Nov. 3, 2020), <https://www.cnbc.com/2020/11/03/musk-tesla-was-about-a-month-from-bankruptcy-during-model-3-ramp.html>.

28 ⁷¹ Lora Kolodny, “Elon Musk sent a two-line email telling employees how great Tesla’s autonomy day was,
but the plan has lots of holes,” *CNBC* (Apr. 23, 2019), <https://www.cnbc.com/2019/04/23/elon-musk-celebrates-flawed-tesla-autonomy-day-with-employee-email.html>.

1 Autopilot is capable of full self-driving.” Musk also stated, “I’m highly confident the car will drive
 2 itself for the reliability in excess of a human this year. This is a very big deal.” When a financial
 3 analyst asked Musk why he was confident Tesla would achieve SAE Level 5 autonomy in 2021,
 4 Musk responded, “I’m confident based on my understanding of the technical roadmap and the
 5 progress that we’re making between each beta iteration.”⁷²

6 96. On an investor call a few days later, Musk talked up Tesla’s self-driving strategy right
 7 off the bat, calling it “the fundamental driver of value for Tesla,” and projecting it would soon make
 8 Tesla vehicles “worth \$150,000 to \$250,000.”⁷³ Musk has continued making the claims up to the
 9 present day, while also repeatedly stating that Tesla’s brand and value depends on FSD being
 10 successful, calling it “the difference between Tesla being worth a lot of money and being worth
 11 basically zero.”⁷⁴

12 97. Six weeks later, on a March 9, 2021 phone call with California DMV regulators,
 13 Tesla’s director of Autopilot software, CJ Moore, contradicted Musk. According to an internal DMV
 14 memo memorializing the call (released via Public Records Act request), “DMV asked CJ to address,
 15 from an engineering perspective, Elon’s messaging about L5 [Level 5] capability by the end of the
 16 year. Elon’s tweet does not match engineering reality per CJ.” (It appears that the DMV tried but
 17 failed to redact that last sentence.) In response to a question from DMV regulators about “how Tesla
 18 evaluates the potential advancement of levels of autonomy,” Tesla representatives “indicated they are
 19 still firmly in L2 [Level 2].” Tesla further told DMV that “[t]he ratio of driver interaction would need
 20 to be in the magnitude of 1 or 2 million miles per driver interaction to move into higher levels of
 21 automation [i.e., Level 3 and higher].”⁷⁵ In other words, drivers would need to intervene only once
 22 per 1 to 2 million miles before Tesla would proceed to Level 3 software. Tesla’s ADAS software,
 23 which routinely makes mistakes, is not even remotely close to this level of reliability.

24 _____
 25 ⁷² Tesla (TSLA) Q4 2020 Earnings Call Transcript (Jan. 27, 2021), *available at* <https://www.fool.com/earnings/call-transcripts/2021/01/27/tesla-tsla-q4-2020-earnings-call-transcript/>.

26 ⁷³ Lora Kolodny, “Elon Musk to investors: Self-driving will make Tesla a \$500 billion company,” *CNBC*
 (May 2, 2019), <https://www.cnbc.com/2019/05/02/elon-musk-on-investor-call-autonomy-will-make-tesla-a-500b-company.html>.

27 ⁷⁴ Faiz Siddiqui, “How Elon Musk knocked Tesla’s ‘Full Self-Driving’ off course” *The Washington Post*
 (Mar. 19, 2023), <https://www.washingtonpost.com/technology/2023/03/19/elon-musk-tesla-driving/>.

28 ⁷⁵ Memorandum to File by Miguel Acosta (DMV) Re: Tesla AP City Streets Update (Mar. 9, 2021), *available at* <https://www.plainsite.org/documents/28jcs0/california-dmv-tesla-robotaxi-ADAS-notes/>.

1 98. Following up on the March 9, 2021 phone call, the California DMV wrote to Tesla:
2 “Notwithstanding other public messaging from Tesla about developing vehicles capable of full
3 driving automation, Tesla reiterated that the City Streets feature is currently a Society of Automotive
4 Engineers (SAE) level two (2) Advanced Driver-Assistance feature and that Tesla will continue to
5 monitor how participants interact with the feature and make improvements. As mentioned in your
6 [prior] correspondence and per California regulations, should Tesla develop technology features
7 characterized as SAE level 3 or higher, Tesla will seek the appropriate regulatory permitting from the
8 DMV before autonomous vehicles are operated on public roads.”⁷⁶

9 99. In May 2021, Tesla began building new Tesla vehicles bound for the North America
10 market without radar, as part of the company’s move toward achieving a fully self-driving car using
11 only cameras (and neural network machine learning). No longer including radar in new Tesla vehicles
12 has reduced Tesla’s manufacturing costs, but it is contrary to the industry-standard view that a
13 combination of sensors—i.e., at minimum, cameras, radar, and lidar—is necessary to achieve
14 technology capable of SAE Level 3, 4, or 5 functionality. Tesla’s decision to change the hardware
15 mix by excluding radar and relying heavily or solely on cameras also means that Tesla’s ADAS
16 technology cannot now and likely will never be able to function safely in weather conditions with
17 reduced visibility, such as heavy rain and fog.⁷⁷

18 100. Also in May 2021, under pressure from the Transportation Committee of the
19 California Senate, the California Department of Motor Vehicles launched an investigation into
20 whether Tesla is deceptively marketing its ADAS technology as making its cars capable of
21 autonomous driving.⁷⁸

24 ⁷⁶ Letter from Miguel Acosta (DMV) to Eric Williams (Tesla) (Apr. 21, 2021), *available at* <https://www.plainsite.org/documents/28jcs0/california-dmv-tesla-robotaxi-ADAS-notes/>.

25 ⁷⁷ See Kirsten Korosec, “Tesla is no longer using radar sensors in Model 3 and Model Y vehicles built in North
26 America,” *TechCrunch* (Mar. 25, 2021), <https://techcrunch.com/2021/05/25/tesla-is-no-longer-using-radar-sensors-in-model-3-and-model-y-vehicles-built-in-north-america/>; Hyunjoo Jin, “Explainer: Tesla drops radar; is Autopilot system safe?,” *Reuters* (June 2, 2021), <https://www.reuters.com/business/autos-transportation/tesla-drops-radar-is-autopilot-system-safe-2021-06-02/>.

27 ⁷⁸ See Russ Mitchell, “DMV probing whether Tesla violates state regulations with self-driving claims,” *Los Angeles Times* (May 17, 2021), *available at* <https://www.latimes.com/business/story/2021-05-17/dmv-tesla-california-fsd-autopilot-safety>.

1 101. In June 2021, in what was widely seen as a response to motor vehicle collisions
2 involving Tesla’s ADAS technology, NHTSA issued an unprecedented order requiring automobile
3 manufacturers to report any crash involving an injury, fatality, or property damage that happens while
4 or immediately after a vehicle is automating some driving tasks.

5 102. In early July 2021, Tesla released the FSD Beta 9 version of its FSD software to
6 certain Tesla vehicle owners. Following the release, Tesla owners took videos of the software in
7 action that show vehicles missing turns, scraping against bushes, and veering toward parked cars.

8 103. On July 26, 2021, on a quarterly earnings call, Musk told investors and reporters that
9 he was confident FSD-equipped Tesla vehicles would soon “be able to drive themselves with the
10 safety levels substantially greater than that of the average person.”

11 104. On August 13, 2021, NHTSA's Office of Defects Investigation opened a “Preliminary
12 Evaluation” investigation to assess the performance of Tesla’s Autopilot system, which was prompted
13 by at least 11 incidents in which Tesla vehicles using Autopilot crashed into parked emergency
14 vehicles that had their lights on and flashing, killing one person and injuring 17.⁷⁹ The investigation
15 was reported to be “the broadest look yet at Autopilot and at potential flaws that could make it and the
16 Teslas that operate on it dangerous.”⁸⁰ As alleged below, NHTSA significantly expanded this
17 investigation in June 2022.

18 105. Later in August 2021, two U.S. Senators called for the Federal Trade Commission to
19 investigate what they referred to as Tesla’s potentially deceptive marketing practices surrounding its
20 FSD technology, including Tesla’s use of the phrase “full self-driving” to describe and market a set of
21 features that does not make the vehicle fully self-driving.

22 106. On August 31, 2021, NHTSA ordered Tesla to produce documents and information
23 regarding the design of its FSD technology, crashes involving that technology, and marketing
24 materials that make representations about that technology. On the date that was the deadline for
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27 ⁷⁹ NHTSA, Investigation PE 21-020, ODI Resume (Aug. 13, 2021), *available at* <https://static.nhtsa.gov/odi/inv/2021/INOA-PE21020-1893.PDF>.

28 ⁸⁰ Neal Boudette & Niraj Chokshi, “U.S. Will Investigate Tesla’s Autopilot System Over Crashes With
Emergency Vehicles,” *The New York Times* (Aug. 16, 2021), *available at* <https://www.nytimes.com/2021/08/16/business/tesla-autopilot-nhtsa.html>.

1 compliance, Tesla submitted only a partial response to NHTSA, claiming that the documents and
2 information it had requested was confidential business information.

3 107. In September 2021, Tesla announced it was aiming for a wider release of FSD Beta by
4 the end of that month. In response, NTSB Chair Jennifer Homendy made public comments stating
5 that Tesla should address “basic safety issues” before expanding the availability of FSD. Regarding
6 Tesla’s of the term “full self-driving,” Homendy called it “misleading and irresponsible,” and further
7 stated that Tesla “has clearly misled numerous people to misuse and abuse the technology.”

8 108. On October 12, 2021, NHTSA asked Tesla about its practice of asking FSD Beta users
9 to sign nondisclosure agreements prohibiting users from sharing negative information about their
10 experiences using the FSD Beta software.

11 109. On October 24, 2021, Tesla pulled back the release of version 10.3 of its ADAS
12 software, which the company had already made available for drivers to use on public roads, because
13 of problems the software was having making left turns at traffic lights.

14 110. On October 25, 2021, NTSB Chair Homendy sent Musk a letter expressing concern
15 that Tesla was rolling out FSD software updates without having implemented recommendations about
16 improving the safety of Tesla’s ADAS technology that NTSB had made years earlier following fatal
17 crashes involving Tesla’s ADAS technology. The following day, Homendy appeared on the CNBC
18 show *Squawk Box* to share her concerns about Tesla’s anticipated rollout of FSD beta to a larger
19 group of Tesla vehicle owners.

20 My biggest concern is that Tesla is rolling out Full Self-Driving
21 technology in beta on city streets with untrained drivers, and they
22 [Tesla] have not addressed our [NTSB’s] recommendations that we’ve
issued as a result of numerous investigations of Tesla crashes.

23 ... The NTSB, and I specifically, meet people on the worst day of their
24 lives after a crash, after they’ve lost a loved one. That is part of our job
25 at the NTSB. And our job is to determine what happened, why it
26 happened, and prevent a crash from happening again. We conduct a
27 thorough investigation, and at the end of that investigation, we issue
28 findings of probable cause and safety recommendations, and then we
work extensively with the recipients of those recommendations to
ensure they’re implemented because it’s not until they’re implemented
that safety is truly improved. And in this case, we haven’t received a

1 response from Tesla in four years, yet we've reiterated those
2 recommendations numerous times.

3 The show's host then asked Chair Homendy about Tesla's statements that Tesla drivers "need to be
4 engaged when [they're] behind the wheel—that's not enough [to ensure safety]?" Chair Homendy
5 unequivocally responded that it was not, in part because Tesla's marketing of its ADAS technology as
6 "Full Self-Driving" is inherently misleading:

7 No, that's not enough. It's clear that if you're marketing something as
8 Full Self-Driving, and it is not full self-driving, and people are misusing
9 the vehicles and the technology, that you have a design flaw, and you
10 have to prevent that misuse. And part of that is how you talk about your
11 technology. It is not full self-driving. ... It isn't full self-driving
12 technology. It's misleading.⁸¹

11 111. In October 2021, after an update to the FSD Beta software, there was a major increase
12 in "phantom braking" incidents, in which the software identifies a non-existent threat that triggers the
13 vehicle's emergency braking system. The result is that Tesla vehicles, traveling at various speeds,
14 were suddenly slamming on the brakes for no apparent reason. Tesla initially claimed it had identified
15 the source of the problem and fixed it with a software update released on October 25, 2021, but
16 subsequently issued a formal recall over the issue for the more than 11,0000 vehicles using the FSD
17 Beta software in a reported effort to head off adverse action by U.S. regulators.⁸² Tesla's claims of
18 having fixed the problem, however, turned out to be false, as driver complaints about "phantom
19 braking" issues soared to 107 NHTSA complaints in the three-month period of November 2021
20 through January 2022 (compared with only 34 such complaints in the preceding 22 months). Owner
21 complaints to NHTSA included everything from phantom braking incidents that were "happening
22 with NOTHING present in front of my vehicle, and sometimes with nothing around me at all," to an
23 incident where Tesla software slammed on the brakes in response to a plastic bag.⁸³ Many industry
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26 ⁸¹ Michael Wayland, "NTSB head criticizes Tesla's self-driving features, calls them 'misleading,'" *CNBC*
(Oct. 26, 2021), <https://www.cnbc.com/2021/10/26/ntsb-head-criticizes-teslas-self-driving-features-calls-them-misleading.html>.

27 ⁸² Tom Krisher, "Tesla software recall may head off fight with US regulators," *Associated Press* (Nov. 2, 2021),
available at <https://apnews.com/article/technology-business-software-d3e2107435f432fd9b36ba14898166a0>.

28 ⁸³ Faiz Siddiqui & Jeremy B. Merrill, "Tesla drivers report a surge in 'phantom braking,'" *The Washington Post*
(Feb. 2, 2022), available at <https://www.washingtonpost.com/technology/2022/02/02/tesla-phantom-braking/>.

1 experts have opined that the increase in “phantom braking” incidents is a predictable result of
 2 removing radar from new Tesla vehicles in favor of relying more heavily or entirely on cameras.⁸⁴

3 112. On November 18, 2021, CNN Business reported that it spent a morning testing Tesla’s
 4 FSD technology on the streets of New York City and “watched the software nearly crash into a
 5 construction site, try to turn into a stopped truck and attempt to drive down the wrong side of the
 6 road.” The FSD software reportedly “needed plenty of human interventions to protect us and
 7 everyone else on the road,” including a driver intervention “every couple of blocks or so” and
 8 multiple instances in which the driver “quickly jerked the wheel to avoid a crash.”⁸⁵

9 113. On December 6, 2021, *The New York Times* published an article about its investigation
 10 into the failures of Tesla’s ADAS technology based on interviews with 19 Tesla employees who had
 11 worked on design, developing, and testing that technology at Tesla over the prior decade. The article
 12 reported that interviews with the employees indicated that Musk “repeatedly misled buyers” about the
 13 abilities of Tesla’s ADAS technology.⁸⁶

14 114. Later in December 2021, Musk appeared on a popular podcast and predicted that
 15 Tesla’s ADAS technology would reach SAE Level 4 in 2022. The podcast host asked Musk, “When
 16 you do you think Tesla will solve level four FSD?” Musk responded, “I mean, it’s looking quite likely
 17 that it’ll be next year.”⁸⁷

18 115. In January 2022, Musk stated on an earnings call, “My personal guess is that we’ll
 19 achieve Full Self-Driving this year. I would be shocked if we do not achieve Full Self-Driving safer
 20 than a human this year. I would be shocked.”

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 25 ⁸⁴ See, e.g., Jonathan M. Gitlin, “Tesla’s radar-less cars investigated by NHTSA after complaints spike: Tesla’s
 safety camera system has a real problem with false positives,” *ArsTechnica* (Feb. 18, 2022), [https://
 arstechnica.com/cars/2022/02/teslas-radar-less-cars-investigated-by-nhtsa-after-complaints-spike/](https://arstechnica.com/cars/2022/02/teslas-radar-less-cars-investigated-by-nhtsa-after-complaints-spike/).

26 ⁸⁵ Matt McFarland, “We tried Tesla’s ‘full self-driving.’ Here’s what happened,” *CNN Business*, [https://
 www.cnn.com/2021/11/18/cars/tesla-full-self-driving-brooklyn/index.html](https://www.cnn.com/2021/11/18/cars/tesla-full-self-driving-brooklyn/index.html) (Nov. 18, 2021); *CNN*, “CNN tests
 27 a ‘full self-driving’ Tesla,” <https://www.youtube.com/watch?v=2PMu7MD9GvI> (Nov. 18, 2021).

28 ⁸⁶ Metz & Boudette, *supra* note 10; Tesla, “Tesla Self-Driving Demonstration” (Nov. 18, 2016), [https://
 www.tesla.com/videos/autopilot-self-driving-hardware-neighborhood-long](https://www.tesla.com/videos/autopilot-self-driving-hardware-neighborhood-long).

⁸⁷ Lex Fridman, Podcast #252 at 1:26:56 (Dec. 28, 2021), <https://youtu.be/DxREm3s1scA?t=5215>.

1 116. In February 2022, the company Cruise received regulatory approval to begin offering a
2 fully driverless robotaxi service with no backup driver behind the wheel, and received regulatory
3 approval to begin charging customers.⁸⁸

4 117. In May 2022, Musk told reporters in Brazil that Tesla will have self-driving cars
5 without the need for people behind the wheel in about a year. The comments received media coverage
6 in the United States.

7 118. On July 13, 2022, the Dawn Project, an organization dedicated to increasing software
8 safety, published a white paper regarding its testing of a Tesla Model 3 equipped with FSD Beta
9 10.12.2 (released on June 1, 2022). The purpose of the testing was to determine the FSD software's
10 safety in terms of its ability to detect and avoid hitting small children. The testing was performed on a
11 closed racetrack with the Tesla driving itself between a long row of cones with a child-sized
12 mannequin placed in plain view at the end of the row—i.e., conditions significantly less complex and
13 more favorable to the FSD software than those that would be encountered in the real world.
14 Nevertheless, the testing found that Tesla's FSD software consistently failed to detect the stationary
15 child-size mannequins and "d[id] not avoid the child or even slow down," but instead "repeatedly
16 struck the child mannequin in a manner that would be fatal to an actual child."⁸⁹

17 119. On July 14, 2022, the editor-in-chief of Electrek, a website that covers electric
18 vehicles, published a review of Tesla's FSD Beta software based on his experience of using it over
19 the course of two months. His ultimate conclusion was that, despite years of development and updates
20 by Tesla, FSD Beta's "decision-making is still the equivalent of a 14-year-old who has been learning
21 to drive for the last week and sometimes appears to consume hard drugs."⁹⁰

22 120. In August 2022, Tesla announced that the price of FSD on new Tesla cars would
23 increase from \$12,000 to \$15,000, effective September 5, 2022.

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⁸⁸ See Andres Picon, "Cruise gets state permit to offer paid driverless taxi rides in San Francisco," *San Francisco Chronicle* (June 2, 2022), available at <https://www.sfchronicle.com/bayarea/article/Cruise-gets-state-permit-to-offer-paid-driverless-17216515.php>.

26 ⁸⁹ The Dawn Project, *In Scientific Test, Tesla "Full Self-Driving" Technology Consistently Strikes Child-Sized Mannequins* (July 13, 2022), available at https://dawnproject.com/wp-content/uploads/2022/08/The_Dawn_Project_Tesla_FSD_Test_8_.pdf.

28 ⁹⁰ Fred Lambert, "Elon Musk does the impossible and manages expectations on Tesla's next Full Self-Driving update," *Electrek* (July 14, 2022), <https://electrek.co/2022/07/14/elon-musk-manages-expectations-tesla-next-big-full-self-driving-update/>.

1 211. On October 19, 2022, in a quarterly earnings call, Musk said he expects Tesla to
2 release upgraded FSD software that “will be able to take you from your home to your work, your
3 friend’s house, to the grocery store without you touching the wheel. So, it’s looking very good.”

4 212. On the same call, Musk made comments stating Tesla was unlikely to get regulatory
5 approval for its full self-driving technology in 2022—a misleading rhetorical tactic that Musk has
6 used throughout the Class Period (as defined below) to generate media coverage that is likely to leave
7 many readers and viewers with the false impression that Tesla’s Autopilot and FSD technology is, for
8 all intents and purposes, already capable of making the car fully autonomous (i.e., SAE Level 4 or 5),
9 and it is only that “regulators” are refusing to recognize this and/or preventing Tesla from making it's
10 most advanced self-driving technology available to the public. This is misleading, in part, because it
11 implies that Tesla’s Autopilot and FSD technology is ready or almost ready for regulatory approval as
12 an SAE Level 3, 4, or 5 technology, when that is not the case, when Musk and Tesla know that is not
13 the case, and when no objectively reasonable view of the relevant facts known to Musk and Tesla
14 could lead them to believe that that is the case. To the contrary, Musk and Tesla know, and any
15 objectively reasonable view of the facts known to Musk and Tesla would lead a reasonable person to
16 conclude, that Tesla’s Autopilot and FSD technology is an SAE Level 2 ADAS technology and
17 nowhere near an SAE Level 3, 4, or 5 technology, or ready to seek regulatory approval as an SAE
18 Level 3, 4, or 5 technology.

19 213. Just as such comments regularly have in the past, Musk’s October 20, 2022 comments
20 regarding the anticipated lack of “regulatory approval” in the two remaining months of 2022
21 generated misleading news coverage. A Reuters article about Musk’s comments is typical of kind of
22 misleading news coverage that such comments often generate, and that Musk and Tesla know such
23 comments have often generated in the past and are likely to generate whenever such comments are
24 made. Ignoring that Tesla’s Autopilot and FSD technology is an SAE Level 2 ADAS technology, the
25 Reuters article reports that Musk’s comments “signal[] that the company is not yet able to satisfy
26 authorities that its cars can be driven without someone behind the wheel” (i.e., SAE Level 4 or 5).
27 The article goes on to report on Musk’s comments as follows:
28

1 On a call on Wednesday to discuss quarterly results, Musk said he
 2 expects to release an upgraded FSD software at the end of the year,
 3 adding that while its cars are not ready to have no one behind the wheel,
 4 drivers would rarely have to touch the controls. [¶] “The car will be able
 5 to take you from your home to your work, your friend's house, the
 6 grocery store without you touching the wheel,” he said. [¶] “It’s a
 7 separate matter as to will it have regulatory approval. It won’t have
 8 regulatory approval at that time,” he added.⁹¹

9 124. In late 2022, a survey of 2,000 U.S. drivers found that 72% of respondents answered
 10 “Yes, definitely” or “Yes, possibly” to the question: “Do you think it is possible to purchase a car
 11 today than can drive itself?” On information and belief, Tesla is aware of such grossly inaccurate
 12 perceptions in the marketplace, and indeed is perhaps the biggest reason for those misperceptions, and
 13 capitalizes on them in misleadingly marketing its ADAS software as making cars self-driving, or
 14 being on the cusp of making its cars self-driving.

15 125. On a January 26, 2023 earnings call, Musk falsely touted Tesla’s FSD as the most
 16 advanced autonomous driving technology in the industry:

17 Who do we think is close to Tesla with -- a general solution for self-
 18 driving? And we still don't even know really who would even be a
 19 distant second. So yes, it really seems like we're -- I mean, right now, I
 20 don't think you could see a second place with a telescope, at least we
 21 can't.”⁹²

22 126. On April 19, 2023, during Tesla’s next quarterly earnings call, Musk used the terms
 23 “full self-driving” and “full autonomy” as fully synonymous, indicating he views that the two terms
 24 as having the same meaning. Musk also reported that “it looks like” Tesla would achieve full self-
 25 driving and full autonomy during the year 2023—i.e., within the following 7.5 months. Specifically,

26
 27 ⁹¹ Hyunjoo Jin & Akrash Sriram, “Tesla cars will not be approved as fully self driving this year, Musk says,”
 28 *Reuters* (Oct. 20, 2022), available at <https://www.reuters.com/business/autos-transportation/tesla-flags-its-cars-not-ready-be-approved-fully-self-driving-this-year-2022-10-20/>.

⁹² Tesla (TSLA) Q4 2022 Earnings Call Transcript (Jan. 26, 2023), available at <https://www.fool.com/earnings/call-transcripts/2023/01/26/tesla-tsla-q4-2022-earnings-call-transcript/>.

1 Musk stated that “the trend is very clearly towards full self-driving, towards full autonomy. And I
2 hesitate to say this, but I think we’ll do it this year. So that’s what it looks like. Yes.”⁹³

3 127. On June 8, 2023, the California DMV approved a deployment permit to Mercedes-
4 Benz permitting use of its SAE Level 3 “Drive Pilot” system on certain highways and under certain
5 conditions.⁹⁴ Mercedes Benz therefore became the first company approved by the California DMV to
6 sell SAE Level 3 technology to the public, and joined Waymo, Cruise, and Nuro as the fourth
7 company to acquire a California DMV permit for deployment of vehicles with SAE Level 3 or higher
8 technology on public roads in California.⁹⁵

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10 128. In June 2023, *The Washington Post* published an in-depth analysis of national crash
11 data, revealing that Tesla’s Autopilot mode was involved in 736 crashes in the United States since
12 2019, “far more than previously reported.” The article noted that the “uptick in crashes coincides with
13 Tesla’s aggressive rollout of Full Self-Driving,” and reported a former NHTSA official’s view that
14 the data showed Tesla vehicles were having “more severe—and fatal—crashes than people in a
15 normal data set.”⁹⁶

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17 129. On July 5, 2023, a Tesla vehicle that appeared to have its ADAS features activated at
18 the time of the crash caused a head-on collision in South Lake Tahoe, California, killing the driver of
19 the other vehicle and a three-month-old passenger in the Tesla.⁹⁷

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⁹³ Tesla (TSLA) Q1 2023 Earnings Call Transcript (Apr. 19, 2023), *available at*
23 <https://seekingalpha.com/article/4595114-tesla-inc-tsla-q1-2023-earnings-call-transcript>.

24 ⁹⁴ California DMV, “California DMV Approves Mercedes-Benz Automated Driving System for Certain
25 Highways and Conditions” (June 8, 2023), *available at* [https://www.dmv.ca.gov/portal/news-and-media/
/california-dmv-approves-mercedes-benz-automated-driving-system-for-certain-highways-and-conditions/](https://www.dmv.ca.gov/portal/news-and-media/california-dmv-approves-mercedes-benz-automated-driving-system-for-certain-highways-and-conditions/).

26 ⁹⁵ California DMV, “Autonomous Vehicle Testing Permit Holders,” *available at* [https://www.dmv.ca.gov/
/portal/vehicle-industry-services/autonomous-vehicles/autonomous-vehicle-testing-permit-holders/](https://www.dmv.ca.gov/portal/vehicle-industry-services/autonomous-vehicles/autonomous-vehicle-testing-permit-holders/).

27 ⁹⁶ Faiz Siddiqui & Jeremy B. Merrill, “17 fatalities, 736 crashes: The shocking toll of Tesla’s Autopilot,” *The
28 Washington Post* (June 10, 2023), *available at* [https://www.washingtonpost.com/technology/2023/06/10/tesla-
autopilot-crashes-elon-musk/](https://www.washingtonpost.com/technology/2023/06/10/tesla-autopilot-crashes-elon-musk/).

⁹⁷ David Shepardson, “US opens special probe into fatal Tesla crash,” *Reuters* (July 18, 2023), *available at*
[https://www.reuters.com/business/autos-transportation/us-opens-new-special-probe-into-fatal-tesla-crash-2023-
07-18/](https://www.reuters.com/business/autos-transportation/us-opens-new-special-probe-into-fatal-tesla-crash-2023-07-18/).

1 130. On July 19, 2023, in a Tesla quarterly earnings call, Musk stated that Tesla’s FSD
2 technology would be “better than human by the end of this year.”⁹⁸

3 131. That same day, July 19, 2023, a Tesla vehicle drove under a tractor-trailer in
4 Warrenton Virginia, killing the driver of the Tesla.⁹⁹ This was yet another fatal incident caused by a
5 Tesla car driving under a tractor-trailer, following the similar crash that killed Joshua Brown in 2016
6 and the similar crash that killed Jeremy Banner in 2019.

7 132. On August 10, 2023, the California Public Utilities Commission (“CPUC”) approved
8 permits for additional operating authority to both Cruise and Waymo “to conduct commercial
9 passenger service using driverless vehicles in San Francisco.” The permits allowed the companies to
10 charge fares to riders at any time of day.¹⁰⁰ Neither the California DMV nor the CPUC have issued
11 Tesla any approval to deploy, sell, or lease vehicles with technology at SAE Level 3 or higher, or to
12 use vehicles with such technology for driverless commercial passenger service.

13 133. Even in vehicles and software not yet released to the public, Tesla still has not
14 achieved a fully self-driving car. On August 25, 2023, Musk livestreamed a demonstration of the
15 upcoming Tesla FSD v12 software it has stated it plans to release in the near future.¹⁰¹ During the
16 video, the Tesla vehicle accelerated at a red light in an unsafe manner and in violation of traffic safety
17 laws, requiring driver intervention to stop it.¹⁰²

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23 ⁹⁸ Tesla (TSLA) Q2 2023 Earnings Call Transcript (July 19, 2023), *available at* <https://www.fool.com/earnings/call-transcripts/2023/07/19/tesla-tsla-q2-2023-earnings-call-transcript/>.

24 ⁹⁹ David Shepardson, “US opens investigation into fatal Tesla crash in Virginia,” *Reuters* (Aug. 10, 2023),
available at <https://www.reuters.com/technology/us-opens-new-investigation-into-fatal-tesla-crash-virginia-2023-08-10/>.

25 ¹⁰⁰ California Public Utilities Commission, “CPUC Approves Permits for Cruise and Waymo to Charge Fares
26 for Passenger Service in San Francisco” (Aug. 10, 2023), *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M516/K992/516992488.PDF>.

27 ¹⁰¹ Elon Musk, <https://twitter.com/elonmusk/status/1695247110030119054> (Aug. Livestream Demonstrating
FSD v12 (Aug. 25, 2023).

28 ¹⁰² Beatrice Nolan, “Elon Musk’s Tesla almost ran a red light during a FSD demo, video shows,” *Business
Insider* (Aug. 29, 2023), *available at* <https://www.businessinsider.com/elon-musk-tesla-fsd-almost-ran-red-light-2023-8>.

1 134. In October 2023, J.D. Power and the Massachusetts Institute of Technology released a
 2 joint study regarding consumer knowledge of ADAS technology, finding that consumers were not
 3 able to differentiate between lower levels of automation, namely SAE Level 2 and Level 3.¹⁰³ For
 4 example, the study found that there was “no distinction in the activities that consumers are willing to
 5 do in a vehicle (e.g., talking, texting, online searching) as the level of automation increases from SAE
 6 Level 2 to SAE Level 3.”¹⁰⁴ The study also indicates much of the confusion may be caused by
 7 consumers’ inaccurate perception of Tesla’s ADAS technology, reporting that nearly of quarter (22%)
 8 of the 3,000 surveyed respondents indicated they believed, inaccurately, that “Tesla” or “Autopilot”
 9 are examples of “fully automated” driving technologies.¹⁰⁵

11 135. On October 18, 2023, in a Tesla quarterly earnings call, Musk stated that “all of the
 12 cars we’re making and have made for a while, we believe, are capable of full autonomy.”¹⁰⁶ Like
 13 Musk’s many prior representations about the current and near-term future abilities of FSD, this
 14 representation was false and misleading.

16 136. Instead of providing its customers fully self-driving cars, Tesla has used them, and
 17 continues to use them, to test drive its FSD system on public roadways and thereby generate the “trial
 18 and error” data that Tesla needs to improve FSD. Musk has publicly touted Tesla has a competitive
 19 advantage in having a “massive inflow of data” from all the Tesla cars on the road, and that Tesla is
 20 able to use that data to test and improve its ADAS software.

25 ¹⁰³ Lisa Boor, et al., *J.D. Power 2023 U.S. Mobility Confidence Index (MCI) Study 6 (2023)*, available at
 26 <https://discover.jdpa.com/hubfs/2023%20Mobility%20Confidence%20Index%20Study%20Whitepaper.pdf>.

27 ¹⁰⁴ J.D. Power, “Stakes are High and Consumer Confidence is Fragile for Automated Vehicles, J.D. Power
 28 Finds” (Oct. 4, 2023), available at [https://www.jdpower.com/business/press-releases/2023-us-mobility-
 confidence-index-mci-study](https://www.jdpower.com/business/press-releases/2023-us-mobility-confidence-index-mci-study).

¹⁰⁵ Boor, *supra* note 103, at 7-8.

¹⁰⁶ Tesla (TSLA) Q3 2023 Earnings Call Transcript (Oct. 19, 2023), available at <https://www.fool.com/earnings/call-transcripts/2023/10/18/tesla-tsla-q3-2023-earnings-call-transcript/>.

1 **E. Federal and State Authorities Launch Numerous Investigations and Actions**
 2 **Regarding Tesla’s Autopilot and FSD Technology**

3 **1. NHTSA significantly expands its investigations into Autopilot and FSD**

4 137. In April 2022, NHTSA opened two defect investigations into Autopilot. In reporting
 5 on this development, *Bloomberg News* spoke on the record with several current and former top
 6 federal officials responsible for roadway safety under various administrations, all of whom singled
 7 out Tesla and its Autopilot and FSD software as cause for concern. According to the article, NTSB
 8 Chair Jennifer Homendy “describe[d] Tesla’s deployment of features marketed as Autopilot and Full
 9 Self-Driving as artificial-intelligence experiments using untrained operators of 5,000-pound
 10 vehicles,” and said “It is a disaster waiting to happen.” David Friedman, a former deputy and acting
 11 administrator of NHTSA from 2013 to 2015, told reporters that Tesla’s approach to automated-
 12 driving features “sticks out like a sore thumb” in the industry and “has for years.” Heidi King, a
 13 deputy and acting administrator of NHTSA during the Trump administration, similarly stated for the
 14 article: “I really dislike a lot of what Tesla has done, and at the top of the list in bright, bold letters, is
 15 Elon Musk’s habit of making false public claims, and using his podium in a way that creates safety
 16 risks.” King continued: “We all admire his [Musk’s] visionary attributes. But visionary exaggerations
 17 about a consumer product can be very, very dangerous.”¹⁰⁷

18 138. In June 2022, NHTSA announced it was upgrading its August 2021 “Preliminary
 19 Evaluation” into Tesla’s Autopilot system into an “Engineering Analysis”—a significant expansion of
 20 the investigation.¹⁰⁸ The announcement was welcomed by many roadway safety organizations,
 21 including the Governors Highway Safety Association, whose executive director told the *The New*
 22 *York Times* that his organization had been “asking for closer scrutiny of Autopilot for some time,”
 23 and that the product names Autopilot and Full Self-Driving “confuse people into thinking they can do
 24 more than they are actually capable,” and that “[a]t a minimum they should be renamed.”¹⁰⁹

25 _____
 26 ¹⁰⁷ Craig Trudell & Keith Laing, “Tesla Autopilot Stirs U.S. Alarm as ‘Disaster Waiting to Happen,’”
Bloomberg News (Apr. 18, 2022), <https://www.bloomberg.com/news/articles/2022-04-18/tesla-autopilot-stirs-u-s-alarm-as-disaster-waiting-to-happen>.

27 ¹⁰⁸ NHTSA, Investigation EA 22-002, ODI Resume (June 8, 2022), *available at* <https://static.nhtsa.gov/odi/inv/2022/INOA-EA22002-3184.PDF>.

28 ¹⁰⁹ Neal E. Boudette, “Federal safety agency expands its investigation of Tesla’s Autopilot system,” *The New*

1 139. In February 2023, NHTSA issued a nationwide recall of all 362,758 Tesla vehicles
 2 with FSD.¹¹⁰ The recall identified four new FSD safety defects not identified by NHTSA’s other
 3 ongoing FSD investigations: (1) traveling or turning through intersections during a stale yellow light,
 4 (2) not stopping at stop signs, (3) not reducing vehicle speed in response changes in posted speed
 5 limits, and (4) changing lanes out of a turn-only lane to continue traveling straight.¹¹¹ To remedy the
 6 problems identified by the recall Tesla offered to “deploy an over-the-air (“OTA”) firmware update to
 7 affected vehicles that will improve how FSD Beta negotiates certain driving maneuvers in specific
 8 conditions.”¹¹² Tesla has self-reported that 334,747 of the total vehicles have been “remedied,” but
 9 has provided little or no information about the efficacy of the remedy.¹¹³

10 140. On July 26, 2023, NHTSA issued a Special Order to Tesla requesting information
 11 about its driver monitoring systems after it “became aware that Tesla has introduced an Autopilot
 12 configuration that, when enabled, allows drivers using Autopilot to operate their vehicles for extended
 13 periods without Autopilot prompting the driver to apply torque to the steering wheel.”¹¹⁴ Tesla
 14 provided responses to the Special Order confidentially, and has declined to make any public comment
 15 on the investigation.¹¹⁵

16 2. *The FTC says Tesla’s Autopilot and FSD is “on its radar”*

17 141. On June 7, 2022, Lina Khan, the Chair of the Federal Trade Commission (“FTC”),
 18 which is charged with protecting the consuming public from unfair and deceptive corporate practices,
 19 made public comments indicating that concerns about Tesla’s Autopilot and FSD technology were on
 20 the FTC’s radar. Though Chair Khan declined to say whether the FTC had opened an investigation

21
 22 *York Times* (June 9, 2022), available at <https://www.nytimes.com/2022/06/09/business/tesla-autopilot-nhtsa-investigation.html>.

23 ¹¹⁰ NHTSA, “Part 573 Safety Recall Report 23V-085” (Feb. 15, 2023), available at <https://static.nhtsa.gov/odi/rc1/2023/RCLRPT-23V085-3451.PDF>.

24 ¹¹¹ *Id.*

25 ¹¹² Tesla, Recall Notice to Tesla Owners (2023), available at <https://static.nhtsa.gov/odi/rc1/2023/RCONL-23V085-7530.pdf>.

26 ¹¹³ NHTSA, “Recall Quarterly Report 23V-085” (Aug. 1, 2023), available at <https://static.nhtsa.gov/odi/rc1/2023/RCLQRT-23V085-2089.PDF>.

27 ¹¹⁴ Letter from John Donaldson (NHTSA Acting Chief Counsel) to Dinna Eskin (Sr. Director, Legal, Tesla Inc.) (July 26, 2023), available at <https://static.nhtsa.gov/odi/inv/2022/INLM-EA22002-91174P.pdf>.

28 ¹¹⁵ Keith Laing, “Tesla Ordered to Address New Concern About Autopilot Setting” *Bloomberg* (Aug. 29, 2023), available at <https://www.bloomberg.com/news/articles/2023-08-29/tesla-ordered-by-regulators-to-address-new-issue-over-autopilot>.

1 into Tesla, she referred to concern about the marketing of Autopilot and FSD as an “issue on which
 2 many members of Congress have focused and written to us about, so it's certainly something that's on
 3 our radar.”¹¹⁶

4 **3. *The California DMV charges Tesla with untrue and deceptive marketing***
 5 ***of its Autopilot and FSD technology***

6 142. On July 28, 2022, following a year-long investigation, the California DMV, which
 7 licenses motor vehicle manufacturers and dealerships in California (including Tesla’s Fremont factory
 8 and dozens of Tesla retail stores), brought two related administrative enforcement actions against
 9 Tesla for “untrue,” “misleading,” and “deceptive” marketing of its Autopilot and FSD technology. The
 10 DMV specifically alleged that Tesla’s use of the product labels “Autopilot” and “Full Self-Driving
 11 Capability,” as well as statements about those technologies that have appeared on Tesla’s website in
 12 2022, “represent that vehicles equipped with those ADAS features will operate as an autonomous
 13 vehicle, but vehicles equipped with those ADAS features could not at the time of those
 14 advertisements, and cannot now, operate as autonomous vehicles.” For relief, the DMV seeks
 15 restitution and the revocation or suspension of Tesla’s California vehicle manufacturer license and
 16 vehicle dealer license. *See In the Matter of the Accusation Against Tesla Inc. dba Tesla Motors, Inc., a*
 17 *Vehicle Manufacturer*, Case No. 21-02188, Accusation (July 28, 2022) (attached here as **Exhibit A**);
 18 *In the Matter of the Accusation Against Tesla Inc. dba Tesla Motors, Inc., a Vehicle Dealer*, Case No.
 19 21-02189, Accusation (July 28, 2022) (attached here as **Exhibit B**). On information and belief, those
 20 California DMV enforcement actions are ongoing.

21 **4. *The U.S. Department of Justice launches a criminal investigation***

22 143. On October 25, 2022, Reuters reported that the U.S. Department of Justice had
 23 launched a criminal investigation against Tesla, Inc. regarding the company’s claims that its vehicles
 24 could drive themselves. As part of the investigation, “Justice Department prosecutors in Washington
 25 and San Francisco are examining whether Tesla misled consumers, investors and regulators by
 26 making unsupported claims about its driver assistance technology’s capabilities.” One of the article’s

27 _____
 28 ¹¹⁶ Diane Bartz & David Shepardson, “Tesla Autopilot concerns are on U.S. agency’s ‘radar,’ chair says,”
Reuters (June 9, 2022), <https://www.reuters.com/business/autos-transportation/tesla-autopilot-concerns-are-us-agencys-radar-chair-says-2022-06-09/>.

1 sources provided information indicating that the criminal probe “is competing with two other DOJ
 2 investigations involving Tesla” but did not elaborate on the subject matter of those other ongoing
 3 investigations.¹¹⁷ On information and belief, those USDOJ investigations are ongoing.

4 **VI. CLASS ACTION ALLEGATIONS**

5 144. Plaintiff brings this lawsuit individually and as a class action under Federal Rule of
 6 Civil Procedure (“Rule”) 23, seeking declaratory relief, injunctive relief, restitution, damages, and
 7 other relief specified herein, on behalf of a proposed nationwide class and, in the alternative, a
 8 proposed California class (collectively, the “Class”), defined as follows:

9 **Nationwide Class:** All persons who purchased or leased from Tesla, Inc.
 10 (or any entity it directly or indirectly owns or controls, including but not
 11 limited to Tesla Lease Trust and Tesla Finance LLC) a new Tesla vehicle
 12 with “Autopilot,” “Enhanced Autopilot,” or “Full Self-Driving
 Capability” (collectively, “Class Vehicles”) at any time from January 1,
 2016, to the present (“Class Period”).

13 **California Class:** All persons who purchased or leased from Tesla, Inc.
 14 (or any entity it directly or indirectly owns or controls, including but not
 15 limited to Tesla Lease Trust and Tesla Finance LLC) a new Tesla vehicle
 16 with “Autopilot,” “Enhanced Autopilot,” or “Full Self-Driving
 Capability” (collectively, “Class Vehicles”) at any time from January 1,
 2016, to the present (“Class Period”), and who either purchased or leased
 17 that vehicle in California or who currently reside in California.

18 145. The following persons are excluded from the proposed Class: Defendants; any entity
 19 that Defendants directly or indirectly own or control; Defendants’ officers, directors, employees,
 20 agents, legal representatives, and attorneys; and the Court and its employees.

21 146. Plaintiff reserves the right under Rule 23 to amend or modify the proposed Class
 22 definitions and to add one or more subclasses based on information obtained during this litigation.

23 147. This action is brought and may be properly maintained as a class action against
 24 Defendants under the following provisions of Rule 23:

25 a. **Numerosity (Rule 23(a)(1)):** The members of the Class are so numerous that
 26 their individual joinder is impracticable. Defendants sold or leased tens of thousands of Class

27 _____
 28 ¹¹⁷ Mike Spector & Dan Levine, “Exclusive: Tesla faces U.S. criminal probe over self-driving claims,” *Reuters*
 (Oct. 26, 2022), <https://www.reuters.com/legal/exclusive-tesla-faces-us-criminal-probe-over-self-driving-claims-sources-2022-10-26/>.

1 Vehicles during the Class Period. The identities of Class members may be identified through business
2 records regularly maintained by Defendants and their employees, agents, and subsidiaries, and
3 through the media. If necessary, Class members can be notified of this action by e-mail, mail, and
4 supplemental published notice.

5 b. **Commonality and Predominance (Rules 23(a)(2) and 23(b)(3)):** Many
6 questions of law and fact are common to the Class. These common questions predominate over any
7 questions affecting only individual Class members. These common questions include, but are not
8 limited to:

- 9 i. Whether Defendants and their agents (collectively, “Defendants”) engaged in
10 the conduct alleged herein;
- 11 ii. Whether Defendants’ use of the terms “Autopilot,” “Enhanced Autopilot,”
12 “Full Self-Driving,” and “Full Self-Driving Capability” to describe their ADAS
13 technology was false, deceptive, or misleading;
- 14 iii. Whether Defendants knew or should have known that their public statements
15 and omissions regarding the time period in which Tesla vehicles would be, or
16 would likely be, fully self-driving were false, deceptive, or misleading;
- 17 iv. Whether Defendants knew or should have known that their prior public
18 statements regarding the time period in which Tesla vehicles would be, or
19 would likely be, fully self-driving were false, deceptive, or misleading, but
20 failed to take steps adequate to correct those prior statements;
- 21 v. Whether Defendants knowingly concealed from consumers information that
22 would cause a reasonable consumer to develop material doubts or conclude that
23 Defendants’ public statements and omissions regarding the time period in
24 which Tesla vehicles would be, or would likely be, fully self-driving were
25 false, deceptive, or misleading;
- 26 vi. Whether Defendants’ conduct alleged herein violates consumer protection laws;
- 27 vii. Whether Defendants’ conduct alleged herein violates warranty laws;

1 viii. Whether Defendants’ conduct alleged herein violates any other laws set forth
2 below in the Claims for Relief;

3 ix. Whether Defendants’ conduct alleged herein actually and proximately caused
4 Plaintiff and Class members to suffer legally cognizable harm; and

5 x. Whether Plaintiff and Class members are entitled to declaratory relief,
6 injunctive relief, restitution, damages, or any other relief requested herein.

7 c. **Typicality (Rule 23(a)(3)):** Plaintiff’s claims are typical of the other Class
8 members’ claims because: Defendants’ wrongful acts and omissions alleged herein were substantially
9 the same with respect to Plaintiff and all other Class members, Defendants’ wrongful acts and
10 omissions alleged herein caused Plaintiff and all other Class members comparable injury, Plaintiff is
11 advancing the same claims and legal theories on behalf of himself and all other Class members, and
12 there are no defenses that are unique to Plaintiff.

13 d. **Adequacy of Representation (Rule 23(a)(4)):** Plaintiff can fairly and
14 adequately represent and protect the interests of all other Class members. There are no material
15 conflicts between the interests of Plaintiff and the other Class members that would make certification
16 of the Class inappropriate. Plaintiff has retained competent and qualified counsel who have extensive
17 experience in complex litigation and class action litigation, and who will vigorously prosecute the
18 claims of Plaintiff and all other Class members.

19 148. This action is properly maintained as a class action under Rule 23(b) for the following
20 reasons:

21 a. **Class Action Status (Rule 23(b)(1)):** Class action status is appropriate under
22 Rule 23(b)(1)(A) because prosecution of separate actions by each of the tens of thousands of Class
23 members would create a risk of establishing incompatible standards of conduct for Defendants and
24 inconsistent results for Class members. Class action status is also appropriate under Rule 23(b)(1)(B)
25 because prosecution of separate actions by Class members would create a risk of adjudication with
26 respect to individual Class members that, as a practical matter, would be dispositive of other Class
27 members’ interests or would substantially impair or impede their ability to protect their interests.

28

1 b. **Declaratory and Injunctive Relief (Rule 23(b)(2)):** Certification under Rule
2 23(b)(2) is appropriate because Defendants have acted or refused to act on grounds that apply
3 generally to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate
4 equitable relief with respect to the Class as a whole.

5 c. **Predominance and Superiority (Rule 23(b)(3)):** Certification under Rule
6 23(b)(3) is appropriate because questions of law and fact common to the Class predominate over the
7 questions affecting only individual Class members, and because a class action is superior to other
8 available methods for the fair and efficient adjudication of this controversy, including consideration
9 of the following: (i) the relatively limited interests of Class members in individually controlling the
10 prosecution of separate actions; (ii) the limited extent and nature of any litigation concerning this
11 controversy already begun by Class members; (iii) the desirability of concentrating the litigation of
12 the claims in this forum; and (iv) the relatively minor difficulties likely to arise in managing the
13 proposed class action. Class action treatment is superior here because the monetary harms suffered by
14 individual Class members are small compared to the burden and expense of bringing and prosecuting
15 individual actions against Defendants to address their complex misconduct against the consuming
16 public. A class action allows for the adjudication of a significant number of claims that would
17 otherwise go unaddressed because of the significant practical difficulties and relative expense of
18 bringing and maintaining an individual action, and also provides economies of scale and other
19 significant potential benefits that can be realized only by resolving this controversy in a single
20 adjudication with comprehensive supervision by a single court. By contrast, individualized litigation
21 also presents a potential for inconsistent or contradictory judgments, would increase the delay and
22 expense to all parties and the court system due to the complex legal and factual issues involved in this
23 controversy, and would make it virtually impossible for individual Class members to redress
24 effectively the harm done to them by Defendants.

25 149. **Issue Certification (Rule 23(c)(4)):** Certification of particular issues in this action,
26 including issues of liability and relief sought, is appropriate under Rule 23(c)(4) because these issues
27 are common to all Class members, and because resolution of these common issues on a classwide
28 basis will materially advance the disposition of the litigation as a whole.

1 150. The Class is ascertainable from Defendants' own records, and there is a well-defined
2 community of interest in the questions of law and fact alleged herein since the rights of each Class
3 member were infringed or violated by Defendants in the same or similar fashion.

4 **VII. TOLLING OF THE STATUTES OF LIMITATIONS**

5 151. To the extent that there are any statutes of limitations applicable to Plaintiff's and
6 Class members' claims, the running of the limitations periods have been tolled by various doctrines
7 and rules, including but not limited to equitable tolling, the discovery rule, the fraudulent concealment
8 rule, equitable estoppel, the repair rule, and class action tolling. With respect to Plaintiff LoSavio,
9 tolling is supported by the following facts.

10 152. In late 2016 and January 2017, before purchasing his Tesla vehicle in January 2017,
11 LoSavio spent considerable time exploring the Tesla website and online media to learn about the
12 Enhanced Autopilot and FSD packages. During that time, LoSavio read statements on Tesla's website
13 and press coverage of statements from Tesla and Musk stating that new Tesla vehicles were being
14 manufactured with all the hardware necessary to become fully self-driving vehicles through future
15 software updates, and that such updates would makes Tesla vehicles self-driving cars in about a year,
16 or two years at most. For example, LoSavio saw press coverage of a statement by Musk that a Tesla
17 would soon drive itself coast-to-coast across the country.¹¹⁸

18 153. Before purchasing his Tesla, LoSavio reviewed the Tesla website and read Tesla's
19 descriptions of Enhanced Autopilot and Full Self-Driving, and its representations that Tesla cars
20 would soon be self-driving. The following descriptions and representations from the "Autopilot" page
21 of Tesla's website captured by the Internet Archive Wayback Machine on January 26, 2017, are
22 consistent with LoSavio's recollection of what he read before purchasing his vehicle:

23 Enhanced Autopilot adds these new capabilities to the Tesla Autopilot
24 driving experience. Your Tesla will match speed to traffic conditions,
25 keep within a lane, automatically change lanes without requiring driver
26 input, transition from one freeway to another, exit the freeway when your
27 destination is near, self-park when near a parking spot and be summoned
28 to and from your garage.

118 See, e.g., Paul A. Eisenstein, "A Driverless Tesla Will Travel from L.A. to NYC by 2017, Says Musk,"
NBC News (Oct. 20, 2016), <https://www.nbcnews.com/business/autos/driverless-tesla-will-travel-l-nyc-2017-says-musk-n670206>.

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Tesla’s Enhanced Autopilot software has begun rolling out and features will continue to be introduced as validation is completed, subject to regulatory approval.

On-ramp to Off-ramp

Once on the freeway, your Tesla will determine which lane you need to be in and when. In addition to ensuring you reach your intended exit, Autopilot will watch for opportunities to move to a faster lane when you're caught behind slower traffic. When you reach your exit, your Tesla will depart the freeway, slow down and transition control back to you.

Autosteer+

With the new Tesla Vision cameras, sensors and computing power, your Tesla will navigate tighter, more complex roads.

Smart Summon

With Smart Summon, your car will navigate more complex environments and parking spaces, maneuvering around objects as necessary to come find you.

Full Self-Driving Capability

Build upon Enhanced Autopilot and order Full Self-Driving Capability on your Tesla. This doubles the number of active cameras from four to eight, enabling full self-driving in almost all circumstances, at what we believe will be a probability of safety at least twice as good as the average human driver. The system is designed to be able to conduct short and long distance trips with no action required by the person in the driver’s seat. For Superchargers that have automatic charge connection enabled, you will not even need to plug in your vehicle.

All you will need to do is get in and tell your car where to go. If you don’t say anything, the car will look at your calendar and take you there as the assumed destination or just home if nothing is on the calendar. Your Tesla will figure out the optimal route, navigate urban streets (even without lane markings), manage complex intersections with traffic lights, stop signs and roundabouts, and handle densely packed freeways with cars moving at high speed. When you arrive at your destination, simply step out at the entrance and your car will enter park seek mode, automatically search for a spot and park itself. A tap on your phone summons it back to you.

Please note that Self-Driving functionality is dependent upon extensive software validation and regulatory approval, which may vary widely by jurisdiction. It is not possible to know exactly when each element of the functionality described above will be available, as this is highly dependent on local regulatory approval. Please note also that using a self-driving Tesla for car sharing and ride hailing for friends and family is fine, but doing so for revenue purposes will only be permissible on the Tesla Network, details of which will be released next year.

From Home

All you will need to do is get in and tell your car where to go. If you don’t say anything, your car will look at your calendar and take you there as

1 the assumed destination. Your Tesla will figure out the optimal route,
2 navigating urban streets, complex intersections and freeways.

3 To your Destination

4 When you arrive at your destination, simply step out at the entrance and
5 your car will enter park seek mode, automatically search for a spot and
6 park itself. A tap on your phone summons it back to you.

7 Standard Safety Features

8 These active safety technologies, including collision avoidance and
9 automatic emergency braking, have begun rolling out through over-the-
10 air updates

11 Automatic Emergency Braking

12 Designed to detect objects that the car may impact and applies the brakes
13 accordingly

14 Side Collision Warning

15 Warns the driver of potential collisions with obstacles alongside the car

16 Front Collision Warning

17 Helps warn of impending collisions with slower moving or stationary
18 cars

19 Auto High Beams

20 Adjusts high/low beams as required

21 Internet Archive Wayback Machine, <https://web.archive.org/web/20170126073829/tesla.com>
22 /autopilot (capturing “Autopilot” page on Tesla website as of January 26, 2017) (attached here as
23 **Exhibit C**) (emphasis added).

24 154. At or around the time of his purchase in January 2017, LoSavio also saw multiple
25 quotes from Tesla and Musk concerning what the then-existing Enhanced Autopilot and FSD features
26 could do, such as autosteering and navigating on autopilot, and that those features were being rapidly
27 improved to result in software updates for fully self-driving cars soon being available. For example,
28 LoSavio received and read a newsletter that Tesla emailed to him on November 12, 2016 (attached
here as **Exhibit D**), in which Tesla made the following representations that influenced LoSavio’s
purchase his Tesla Model S:

All Tesla vehicles produced in our factory now have full self-driving
hardware, enabling a **rapidly expanding set of new Autopilot features
to be introduced over time**. While active safety features continue to
come standard in all Tesla vehicles, customers can now choose from two
new Autopilot packages: Enhanced Autopilot, which is an advanced suite
of driver-assistance features, and Full Self-Driving Capability which will

1 ultimately take you from home to work and find a parking space for you
2 on its own.

3 Self-driving vehicles will play a crucial role in improving transportation
4 safety and accelerating the world's transition to a sustainable future.
5 **Once the software is extensively validated and there is regulatory
6 approval, full autonomy will enable a Tesla to be substantially safer
7 than a human driver.** It will also lower the financial cost of
8 transportation for those who own a car, while providing low-cost on-
9 demand mobility for those who do not.

7 Ex. D (emphasis added).

8 155. In reliance on these and other similar representations from Tesla and Musk that
9 LoSavio saw on Tesla's website and in press accounts of Musk's public statements in the months
10 leading up to his January 2017 purchase, LoSavio understood some of Tesla's representations about
11 self-driving features would not be fully operational on the vehicle he was buying. Rather, he
12 understood they were being developed and refined and would be introduced in the next year or two,
13 or some similar reasonable time after his purchase, as the software was refined and validated.
14 Consistent with Tesla's and Musk's representations, LoSavio reasonably expected that he would be
15 able to enjoy those features during most of the years he expected to own his Model S. Based on this,
16 he decided to pay the additional \$8,000 for all of Tesla's ADAS features and the right to receive
17 future updates of its promised fully self-driving technology. He understood from Tesla's and Musk's
18 representations, and was motivated by his understanding, that the price would be cheaper in January
19 2017 if he purchased the options then, rather than waiting another year or two, until those features had
20 been refined, validated, and were being rolled out to the public.

21 156. At all relevant times (from the months leading up to his purchase to the present),
22 LoSavio has received and typically read three newspapers daily: *The Wall Street Journal*, *The New*
23 *York Times*, and *The San Francisco Chronicle*. After his purchase, he continued his usual habit of
24 reading these papers, and paid particular interest and attention to any articles regarding Tesla, Musk,
25 and especially Tesla's purposed self-driving technologies. At regular intervals following the purchase,
26 LoSavio recalls seeing news reports that Tesla and particularly Musk were continuing to make
27 statements indicating that the release of self-driving features for consumer use was coming reasonably
28 soon, often in a year or so. Sometimes when LoSavio saw such articles or other press related to Tesla

1 ADAS and purported self-driving technology (at least 1-2 times per year), he would go to Tesla's
 2 website seeking updating information on the timing for Tesla providing software updates for making
 3 cars self-driving. Additionally, when LoSavio encountered such representations by Tesla and Musk,
 4 he believed that Tesla and Musk were making them in objective and subjective good faith, and he
 5 certainly did not believe they were false or misleading. When he noticed that Tesla and Musk made
 6 statements that seemed to push back their projections slightly for when self-driving software would be
 7 available, he thought that complex projects do not always go perfectly to plan, gave Tesla the benefit
 8 the doubt, and believed Tesla and Musk's representations that it would just take them a little longer to
 9 deliver the promised self-driving software.

10 157. For example, during each of the first three years after his purchase (i.e., in 2017, 2018,
 11 and 2019), LoSavio recalling see press coverage discussing and quoting Musk's tweets and public
 12 comments stating that Tesla cars would be self-driving in about a year.¹¹⁹ LoSavio assumed that Musk
 13 was making these statements in good faith, and that if Musk he saying these things and making these
 14 projections in such a public way, he must have both a subjectively and objectively reasonable basis
 15 for doing so. In each of the years following his purchase, LoSavio periodically went to the Tesla
 16 website seeking updates on the rollout of these features and when they would be operational in his
 17 vehicle. He recalls consistently seeing on Tesla's website, and believing, representations that the
 18 Model S would be able to be updated with full self-driving capabilities in the future.¹²⁰

19 158. Similarly, in each of the years following his purchase, LoSavio recalls visiting the
 20 Tesla website and reading and believing representations such as this statement appearing on Tesla's
 21 website in April 2020 regarding the FSD features: "All Tesla vehicles have the hardware needed in
 22 the future for full self-driving in almost all circumstances, at a safety level we believe will be at least
 23 twice as good as the average human driver."¹²¹ Consistent with these representations, he continued to
 24

25
 26 ¹¹⁹ See, e.g., *supra* ¶ 72 & note 49 (discussing Musk's November 15, 2018 tweet that Tesla vehicles would be
 able to drive themselves from the factory to customers' doors "probably technically ... in about a year").

27 ¹²⁰ See, e.g., Internet Archive Wayback Machine, [https://web.archive.org/web/20190414140516](https://web.archive.org/web/20190414140516/tesla.com/models)
 /tesla.com/models (captured Apr. 14, 2019) (Full Self-Driving Hardware [¶] Every new Model S comes
 28 standard with advanced hardware capable of providing Autopilot features today, and full self-driving
 capabilities in the future—through software updates designed to improve functionality over time.”).

¹²¹ *Id.*, <https://web.archive.org/web/20200418045832/tesla.com/models> (captured Apr. 18, 2020).

1 believe, as he did at the time of purchase, that his vehicle had had all the hardware needed for the his
2 car to become self-driving through software updates soon to be provided by Tesla.

3 159. Throughout his ownership, LoSavio's car has received periodic over-the-air software
4 updates, some of which had titles and were accompanied by release notes indicating they were
5 software related to eventually making his car self-driving. All these software updates were initiated
6 by a message on the vehicle touchscreen indicating the update was available. LoSavio would typically
7 push a button on the touchscreen to request that the update be installed as soon as it became available.
8 Once installed, it was at all relevant times Losavio's habit, who was curious about the software and
9 particularly whether it related to self-driving, to click through a few screens on the touchscreen to
10 access the "release notes" for the software update, which described the update, and to read those
11 release notes. In every year from 2017 to the present, LoSavio recalls regular software updates to his
12 vehicle that were accompanied by release notes that described updates related to self-driving features,
13 which he took to be evidence of Tesla continually working and making progress toward the goal of
14 making their cars self-driving.

15 160. While LoSavio has been unable to locate documentation concerning the updates on his
16 Model S during 2017 and 2018, he has located and reviewed such documentation for the years 2019
17 to present. The documented updates from 2019 to present are broadly consistent with the number and
18 kinds of updates that LoSavio recalls his vehicle receiving in 2017 and 2018.

19 161. For example, for the years 2019, 2020, and 2021, Losavio found documentation
20 indicating that his vehicle received the following updates from Tesla, which are broadly consistent
21 with his recollection of the updates his vehicles received during those years, based on the information
22 including release notes that he read about the updates on his vehicle touchscreen:

23 a. 2019: (a) Adjacent Lane Speeds, Autosteer Stop Sign Warning, Driving
24 Visualization Improvements (Release 2019.40.2); (b) Automatic Lane Change Improvements and
25 Autosteer (Beta) (Release 2019.40.1.1); (c) Smart Summon (Beta), Navigate on Autopilot (Beta)
26 (Release 2019.40.50.1); and (d) Adjacent Lane Speeds and Autosteer Stop Sign Warning (Release
27 2019.40.2).

28

1 b. 2020: (a) Navigating on Autopilot (Beta), Adjacent Lane Speeds (Release
2 2020.4); (b) Navigating on Autopilot (Beta), Traffic Light and Stop Sign Control (Beta), Driving
3 Visualization Improvements (Release 2020.16); (c) Traffic Light and Stop Sign Control (Beta)
4 (Release 2020.20.13); (d) Traffic Light and Stop Sign Control (Beta), Driving Visualization
5 Improvements (Release 2020.24.6); (e) Traffic Light and Stop Sign Control (Beta) (Release
6 2020.28.1); (f) Traffic Light and Stop Sign Control (Beta), Navigating on Autopilot (Beta) – Exit
7 Passing Lane (Release 2020.36.10); (g) Driving Visualization Improvements, Autosteer Stop Sign
8 and Stop Light Warning, Speed Assist Improvements, Pedestrian Warning (Release 2020.36); (h) Full
9 Self-Driving (Beta) (Release 2020.40.8.10); (i) Driving Visualization Improvements, Full Self-
10 Driving (Beta), Speed Assist Improvements, Traffic Light and Stop Sign Control (Beta) (Release
11 2020.44.15.3); (j) Autopilot Set Speed (Release 2020.44); (k) Driving Visualization Improvements
12 and Scheduled Departure Improvements (Release 2020.48.25); and (l) Navigation Improvements,
13 Autosteer Stop Sign and Stop Light Warning (Release 2020.48.5).

14 c. 2021: (a) Full Self-Driving (Beta) and Driving Visualization Improvements
15 (Release 2021.4.18.12); (b) Emergency Lane Departure Avoidance and Smart Summon (Release
16 2021.4.18.10); (c) Improved Navigation and Navigation Improvements (Release 2021.4.16); (d) Full
17 Self-Driving (Beta) and Driving Visualization Improvements (Release 2021.12.25.15); (e) Detect
18 Emergency Vehicles (Release 2021.24.12); (f) Full Self-Driving (Beta) and Driving Visualization
19 Improvements (Release 2021.24.15); (g) Auto Park, Navigation Voice Guidance, Navigation Route,
20 Navigation Lane Guidance (Release 2021.24); (h) Full Self-Driving (Beta) and Driving Visualization
21 Improvements (Release 2021.32.25); (i) Request Full Self-Driving (Beta) (Release 2021.32.22); (j)
22 Autopark (Release 2021.32.5); (k) FSD v10.6 Release Notes (Release 2021.36.8.9); (l) Full Self-
23 Driving (Beta) Terms, Full Self-Driving (Beta) Suspension, FSD v10.5 Release Notes (Release
24 2021.36.8.7); (m) FSD v10.4 Release Notes (Release 2021.36.8.5); (n) FSD v10.3.1 Release Notes
25 (Release 2021.36.5.3); (o) Autopark (Release 2021.40.6); (p) FSD Beta v10.3.2 Release Notes
26 (Release 2021.44.30.21); (q) FSD Beta v10.3.1 Release Notes (Release 2021.44.30.20); (r) FSD Beta
27 v10.3.2 Release Notes (Release 2021.44.30.21); (s) FSD Beta v10.10 Release Notes (Release
28 2021.44.30.15); (t) FSD v10.8.1 Release Notes (Release 2021.44.30.5); (u) FSD v10.8 Release Notes

1 (Release 2021.44.25.5); (v) FSD v10.7 Release Notes, Full Self-Driving (Beta) and Driving
2 Visualization Improvements (Release 2021.44.6); and (w) Autopark (Release 2021.44).

3 162. At the time, LoSavio reasonably believed that many of these updates were being
4 installed but were not yet active on his vehicle. For example, many of the updates concerned FSD
5 Beta at a time FSD Beta was available to only a limited number of Tesla owners, and LoSavio was
6 not one of those owners. LoSavio believed that the updates were part of the roll out prefatory to Tesla
7 continuing to validate and eventually activate those features for his and other Tesla owners' use.
8 LoSavio was encouraged by the fact of the updates because he believed they were evidence of Tesla
9 making concrete progress toward the promised full roll-out and activation of software that would
10 make his car self-driving. Based on these continual updates, LoSavio believed that Tesla was
11 somewhat behind schedule relative some of its early predictions but that it was otherwise making
12 concrete progress and on track to providing a self-driving software, and that it was just a matter of
13 waiting a little longer for Tesla to refine that software and activate it on his vehicle.

14 163. In addition to reading the news and keeping up with software updates to his vehicle,
15 LoSavio also regularly stayed in contact with and sought out information from Tesla employees and
16 representatives about the state of development and timeline for Tesla bringing its promised self-
17 driving software to market. For example, 6 to 9 months after his purchase, LoSavio began inquiring
18 through local Tesla service centers about when his vehicle would have the features that he had paid
19 for to make his car self-driving. He visited Tesla service centers periodically to have his car serviced,
20 and when he did, he commonly asked service center workers if they knew anything about when
21 Tesla's full self-driving software could be activated on his car. The same was true of the few visits he
22 made to the Tesla showroom in Burlingame, California after his purchase. The responses he received
23 from Tesla employees on those occasions were consistent with and confirmed his original
24 understanding that the software would be activated within a year or two, or some other reasonably
25 short time, after his purchase. On one visit to the Tesla showroom in Burlingame, California within a
26 year or two after purchase, LoSavio asked about when self-driving features on his car might be
27 activated, and the Tesla representative told him that those features could not be updated through the
28 showroom. Rather, LoSavio was told he would need to make a Tesla service appointment.

1 164. Following these instructions, LoSavio made service appointments with Tesla service
2 centers in 2018, 2019, and 2020, so that Tesla could perform whatever service was necessary for self-
3 driving features to be activated on his vehicle. However, most every time he made a service
4 appointment, Tesla would cancel the appointment as the date approached. For example, on August 7,
5 2020, LoSavio brought his car into the Tesla Service Center for a service that Tesla documentation
6 describes as an “FSD Computer Retrofit.” Tesla has represented that an FSD Computer Retrofit was
7 performed on his vehicle during that appointment. However, following the appointment, the FSD
8 software on his car was still not activated.

9 165. Before Losavio’s purchase and in the years following his purchase, the Tesla website
10 and Tesla employees consistently represented to LoSavio that his Model S had all the hardware
11 needed for full self-driving, and that all his car needed to become fully self-driving was software
12 updates that could be delivered to his car in over-the-air updates. However, in November 2021, Tesla
13 told LoSavio that his vehicle would now need hardware upgrades to activate FSD on his vehicle. That
14 month, LoSavio had once again scheduled an appointment to get FSD working on his vehicle, but
15 Tesla Service canceled the appointment by text on November 13, 2021. The text informed LoSavio
16 that “there was just announced about a camera upgrade that needs to be performed on your vehicle.
17 The cameras are not available at this time. You will receive a notice from Tesla when the parts
18 become available for your vehicle. That is when you can make an appointment – We will go ahead
19 and close out this appointment.”

20 166. LoSavio then scheduled a camera upgrade appointment with Tesla Service. On
21 December 24, 2021, Tesla responded: “The camera upgrade for Full Self-Driving is not yet available.
22 Qualifying customers will be notified and asked to schedule service one [sic] the upgrade is available.
23 We will be closing this appointment now, but please let us know if you have any questions.” On
24 December 25, 2021, LoSavio texted back asking for the expected date of the upgrade, but the only
25 response was to be again told that the service appointment has been closed, and that for additional
26 service needs he must schedule an appointment via the Tesla app.

27 167. In December 2021, NHTSA issued a recall related to the secondary trunk latch on
28 Tesla Model S vehicles, which impacted LoSavio’s vehicle. On or around March 20, 2022, LoSavio

1 contacted Tesla Service through its app to obtain the repair for the trunk defect and also to obtain any
2 necessary FSD upgrades. On March 20, 2022, Tesla Service responded that there was an FSD
3 hardware upgrade to his vehicle on August 8, 2020, but “[t]here is one more equipment upgrade that
4 will need to be performed on your vehicle. Tesla has determined that the cameras that are installed on
5 your vehicle will need to be upgraded to work with the latest hardware. You will receive a notice with
6 the cameras will become available. Then you can make an appointment to have the updated.” On
7 March 25, 2022, in response to LoSavio’s request for clarification, Tesla Service responded, “I am
8 sorry for the miscommunication – for your vehicle the FSD has been updated – however there is still
9 a camera upgrade that needs to be performed – at this time, the parts are not available. Once they are,
10 you will be notified by Tesla.”

11 168. On April 22, 2022, Tesla Service left him a voicemail and also sent him a message
12 through the Tesla app: “Looks like we did the FSD retrofit 2 years ago. Your service appointment is
13 confirmed.” LoSavio responded to explain that he was told the driver facing cameras were necessary
14 for FSD, and that was what he was trying to schedule. Tesla Service responded, “I checked with my
15 technicians and that is not a service that we perform or have heard of.” LoSavio responded by sending
16 copies of the earlier Tesla messages he had received regarding the so-called camera upgrade, and
17 Tesla Service responded by asking if he had received notice that the camera was available. On April
18 23, 2022, Tesla Service responded to LoSavio, “No you are correct I was just confused because you
19 only mentioned the forward facing cameras. Unfortunately we do have to wait until you get the
20 notice. Our parts team physically can not order parts that are not configured to your vehicles vin.
21 Without the notice they will not be able to order the cameras.”

22 169. Following this, LoSavio considered Tesla’s numerous delays and changing
23 explanations for the delayed activation of FSD on his vehicle, and the fact that it had now been over
24 five years since he purchased his car. He realized for the first time that the most likely explanation for
25 why FSD was not activated on his vehicle was that Tesla and Musk had misled him about the current
26 state of its self-driving technology, had misled him about the likely timeline for Tesla being able to
27 make his car self-driving, and had been stringing him along, and that he was likely never going to get
28 the self-driving car for which he had paid. As a result, he joined this litigation as a named plaintiff.

1 **VIII. CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **Breach of Express Warranty**

4 **Cal. Civ. Code §§ 1791.2(a), 1794**

5 170. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
6 above, as though fully set forth in this Claim for Relief.

7 171. Defendants expressly warranted to Plaintiff and Class members through written
8 statements within the meaning of Cal. Civ. Code § 1791.2(a)(1) (including but not limited to
9 statements that Defendants made or caused to be made on Tesla’s website, in Tesla marketing
10 materials, on Musk’s Twitter account, in various print media, and other written forums) that the Class
11 Vehicles were fully self-driving, or that they would be fully self-driving within a reasonable time after
12 Plaintiff and Class members purchased or leased their respective Class Vehicles and ADAS packages.

13 172. Defendants also expressly warranted to Plaintiff and Class members through use the of
14 samples and models within the meaning of Cal. Civ. Code § 1791.2(a)(2) (including but not limited to
15 videos Defendants produced purporting to show Tesla vehicles driving themselves) that the Class
16 Vehicles were fully self-driving, or that they would be fully self-driving within a reasonable time after
17 Plaintiff and Class members purchased or leased their respective Class Vehicles and ADAS packages.

18 173. The Class Vehicles and ADAS packages that Plaintiff and Class members purchased
19 or leased: were not as warranted when they left Tesla’s factories, reached Plaintiff and Class members
20 without substantial change in the condition in which they were sold or leased, and did not perform as
21 warranted.

22 174. Defendants breached their warranties by knowingly selling or leasing Class Vehicles
23 equipped with ADAS packages and technology that had abilities, limitations, flaws, and value that
24 were different from what Defendants had represented and warranted. Defendants’ breaches were
25 “willful” within the meaning of Cal. Civ. Code § 1794(c).

26 175. As a direct and proximate result of Defendants’ breaches, Plaintiff and Class members
27 have suffered various injuries and economic losses, including but not limited to (1) purchasing or
28 leasing Class Vehicles and ADAS packages they would not otherwise have purchased or leased;

1 (2) purchasing or leasing an inferior product whose nature and characteristics render it of lesser value
2 than represented; (3) incurring monetary harm from the diminution in the Class Vehicles' and ADAS
3 packages' value and resale value; and (4) purchasing or leasing Class Vehicles and ADAS packages
4 that pose a danger to the health and safety of Plaintiff, Class members, and the public.

5 176. The failure of the Class Vehicles and ADAS packages to be as warranted was a
6 substantial factor in causing Plaintiff's and Class members' harm, which includes the difference
7 between the prices they paid for their respective Class Vehicles and ADAS packages as warranted
8 and the actual value of their Class Vehicles and ADAS packages as delivered.

9 177. Unless Defendants are enjoined from engaging in conduct alleged herein that violates
10 their express warranties, members of the consuming public will be further harmed by that conduct.

11 178. For relief, Plaintiff and the Class are entitled to and seek (a) an injunction prohibiting
12 Defendants from sending or transmitting false, deceptive, or misleading statements to the public
13 regarding the abilities, limitations, flaws, and value of Tesla's ADAS packages and technology;
14 (b) damages caused by Defendants' breaches of the warranties, including economic damages (based
15 on the return of the price that Plaintiff and Class members paid for their respective Class Vehicles and
16 ADAS packages and/or the difference between the price paid for the Class Vehicles and ADAS
17 packages as warranted and their actual value as delivered); (c) consequential and incidental damages;
18 (d) a civil penalty of two times the amount of damages under Cal. Civ. Code § 1794; (d) reasonable
19 attorneys' fees and costs under Cal. Civ. Code § 1794 and any other applicable law; and (e) all other
20 available relief prayed for below.

21 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

22 **SECOND CLAIM FOR RELIEF**

23 **Breach of Implied Warranties**

24 **Cal. Civ. Code §§ 1791.1, 1792, 1794**

25 179. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
26 above, as though fully set forth in this Claim for Relief.

27 180. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790, *et seq.*,
28 every sale or lease of consumer goods to a retail buyer is accompanied by an implied warranty of

1 merchantability from both the manufacturer and the retail seller or lessor, and some such sales and
2 leases may also be accompanied by an implied warranty of fitness from both the manufacturer and the
3 retail seller or lessor. *Id.* § 1792-1792.2.

4 181. The durations of these implied warranties are coextensive with the duration of the
5 Defendants' express warranty, provided the duration of the express warranty is reasonable, except
6 that the duration of the implied warranties cannot have a duration of less than 60 days or more than
7 one year. *Id.* § 1791.1(c).

8 182. Defendants' sale or lease of Class Vehicles and ADAS packages to Plaintiff and Class
9 members was accompanied by Defendants' implied warranty of merchantability, both in their
10 capacities as manufacturer and as retail seller or lessor of Class Vehicles and ADAS packages. *Id.*
11 § 1792.

12 183. Defendants' implied warranties of merchantability include warranties that the Class
13 Vehicles and ADAS packages (1) will pass without objection in the trade under the contract
14 description, (2) are fit for the ordinary purposes for which such goods are used, (3) are adequately
15 contained, packaged, and labelled, and (4) will conform to the promises or affirmations of fact made
16 on the container or label. *Id.* § 1791.1(a).

17 184. At the time of purchase or lease, or within one year thereafter, the Class Vehicles and
18 ADAS packages and technology failed to conform with Defendants' implied warranty of
19 merchantability because they (1) did not pass without objection in the trade under the contract
20 description, (2) were not fit for the ordinary purposes for which such goods are used, (3) were not
21 adequately contained, packaged, and labelled, and (4) did not conform to the promises or affirmations
22 of fact made on the container or label. Among other things, the Class Vehicles and ADAS packages
23 did not conform to the promises contained in the labels "Autopilot," "Enhanced Autopilot," and "Full
24 Self-Driving Capability."

25 185. Defendants' sale or lease of Class Vehicles and ADAS packages to Plaintiff and Class
26 members was also accompanied by Defendants' implied warranty of fitness, both in their capacities
27 as manufacturer and as retail seller or lessor of Class Vehicles and ADAS packages. *Id.* § 1792.
28

1 186. At the time that Plaintiff and Class members purchased or leased their Class Vehicles
2 and ADAS packages from Defendants, Defendants were in the business of designing, developing,
3 testing, manufacturing, selling, and leasing electric vehicles and ADAS technology in general, and the
4 Class Vehicles and Tesla’s ADAS packages and technologies in particular.

5 187. Defendants held themselves out as having special knowledge or skill regarding the
6 designing, developing, testing, and manufacturing of electric vehicles and ADAS technology in
7 general, and the Class Vehicles and Tesla’s ADAS packages and technologies in particular. Further,
8 Defendants knew or had reason to know that Plaintiff and Class members required the Class Vehicles
9 and ADAS packages for a particular purpose, and that Plaintiff and Class members were relying on
10 Defendants’ skill and judgment to furnish goods suitable for that purpose.

11 188. Defendants breached the implied warranty of fitness because they failed to deliver
12 Class Vehicles and ADAS packages that were suited to Plaintiff’s and Class members’ purpose of
13 purchasing or leasing a car that was fully self-driving car at the time of transaction, or that would be
14 fully self-driving within a reasonably short period thereafter.

15 189. Defendants breached their warranties by knowingly selling or leasing Class Vehicles
16 equipped with ADAS packages and technology that had abilities, limitations, flaws, and value that
17 were different from what Defendants had represented and warranted. Defendants’ breaches were
18 “willful” within the meaning of Cal. Civ. Code § 1794(c).

19 190. As a direct and proximate result of these breaches, Plaintiff and Class members have
20 suffered various injuries and economic losses, including but not limited to (1) purchasing or leasing
21 Class Vehicles and ADAS packages they would not otherwise have purchased or leased;
22 (2) purchasing or leasing inferior products whose nature and characteristics render them of lesser
23 value than warranted; (3) incurring monetary harm from the diminution in the Class Vehicles’ and
24 ADAS packages’ value and resale value; and (4) purchasing or leasing Class Vehicles and ADAS
25 packages that pose a danger to the health and safety of Plaintiff, Class members, and the public.

26 191. The failure of the Class Vehicles and ADAS packages to be as warranted was a
27 substantial factor in causing Plaintiff’s and Class members’ harm, which includes the difference
28

1 between the prices they paid for their respective Class Vehicles and ADAS packages as warranted
2 and the actual value of their Class Vehicles and ADAS packages as delivered.

3 192. Unless Defendants are enjoined from engaging in conduct alleged herein that violates
4 their implied warranties, members of the consuming public will be further harmed by that conduct.

5 193. For relief, Plaintiff and the Class are entitled to and seek (a) an injunction prohibiting
6 Defendants from sending or transmitting false, deceptive, or misleading statements to the public
7 regarding the abilities, limitations, flaws, and value of Tesla’s ADAS packages and technology;
8 (b) damages caused by Defendants’ breaches of their warranties, including economic damages (based
9 on the return of the price that Plaintiff and Class members paid for their respective Class Vehicles and
10 ADAS packages and/or the difference between the price paid for the Class Vehicles and ADAS
11 packages as warranted and their actual value as delivered); (c) consequential and incidental damages;
12 (d) a civil penalty of two times the amount of damages under Cal. Civ. Code § 1794; (e) reasonable
13 attorneys’ fees and costs under Cal. Civ. Code § 1794 and any other applicable law; and (f) all other
14 available relief prayed for below.

15 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

16 **THIRD CLAIM FOR RELIEF**

17 **Violation of the California False Advertising Law**

18 **Cal. Bus. & Prof. Code § 17500, *et seq.***

19 194. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
20 above, as though fully set forth in this Claim for Relief.

21 195. Defendants’ conduct alleged herein violates California’s False Advertising Law
22 (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq.*, which makes it unlawful for a business to make,
23 disseminate, or cause to be made or disseminated to the public “any statement, concerning ... personal
24 property ... which is untrue or misleading, and which is known, or which by the exercise of
25 reasonable care should be known, to be untrue or misleading.” *Id.* § 17500.

26 196. The Class Vehicles and ADAS packages (including all ADAS hardware, software, and
27 rights to receive updates and use the same) are “personal property” within the meaning of the FAL.
28

1 197. Any express or implied representation, material omission of information, or failure to
2 correct a past material misrepresentation or omission regarding the abilities, limitations, flaws, or
3 value of the Class Vehicles and ADAS packages and technology is a “statement[] concerning
4 personal property” within the meaning of the FAL.

5 198. Defendants violated the FAL by making, disseminating, and causing to be made or
6 disseminated to the public statements about the abilities, limitations, flaws, and value of Tesla’s
7 ADAS packages and technology that were “untrue or misleading” within the meaning of the FAL,
8 and by failing to correct what was untrue or misleading about those statements after they had been
9 made.

10 199. Defendants made, disseminated, caused to be made or disseminated, and failed to
11 correct such public statements in numerous forums, including but not limited to Tesla’s blog and
12 website, Musk’s Twitter account, earnings calls and other public statements to investors, conferences
13 and other public events, television, radio, podcasts, and other publicly available media (whether print,
14 video, audio, or some other format) that republished such representations and omissions.

15 200. Defendants knew or, by the exercise of reasonable care, should have known about each
16 of those statements at or near the time they were made or disseminated, and at all times thereafter.

17 201. Defendants knew or, by the exercise of reasonable care, should have known that each
18 of those statements was untrue, misleading, and likely to deceive the public at or near the time it was
19 made or disseminated, and at all times thereafter.

20 202. Unless Defendants are enjoined from engaging in the conduct alleged herein that
21 violates the FAL, members of the consuming public will be further harmed by that conduct.

22 203. As a result of Defendants’ FAL violations and the harm caused thereby, Plaintiff and
23 Class members are entitled to and seek (a) injunctive relief to protect the consuming public by
24 prohibiting Tesla from engaging in its past and ongoing acts, omissions, and conduct that violate the
25 FAL; (b) restitution of the full value of all monies and other consideration that Plaintiff and Class
26 members paid Defendants for the purchase or lease of Class Vehicles and ADAS packages, which
27 Defendant continues to wrongfully retain, including any diminished value of Plaintiff’s and Class
28 members’ Class Vehicles and ADAS packages and disgorgement of the profits Defendants derived

1 from their wrongful conduct; (c) an award of reasonable attorneys’ fees under Cal. Code Civ. Proc.
2 § 1021.5 and any other applicable law; and (d) all other available relief prayed for below.

3 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

4 **FOURTH CLAIM FOR RELIEF**

5 **Violation of the California Consumer Legal Remedies Act**

6 **Cal. Civ. Code § 1750, *et seq.***

7 204. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
8 above, as though fully set forth in this Claim for Relief.

9 205. The California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et*
10 *seq.*, makes unlawful certain “unfair methods of competition and unfair or deceptive acts or practices
11 ... undertaken by any person in a transaction intended to result or that results in the sale or lease of
12 goods or service to any consumer.” *Id.* § 1770(a).

13 206. Each Defendant is a “person” under the CLRA, *id.* § 1761(c).

14 207. Plaintiff and all Class members are “consumers” under the CLRA because they are all
15 individuals who acquired, by purchase or lease, Class Vehicles and ADAS packages for personal,
16 family, or household purposes. *See id.* § 1761(d).

17 208. The purchase or lease of a Class Vehicle and/or ADAS package is a “transaction”
18 under the CLRA, *id.* § 1761(e).

19 209. Class Vehicles and ADAS packages are “goods” under the CLRA, *id.* § 1761(a).

20 210. In selling or leasing Class Vehicles and ADAS packages to Plaintiff and Class
21 members, Defendants made an express or implied promise to provide future ADAS software
22 development, future ADAS software updates, and other work or labor that constitutes “services”
23 under the CLRA, *id.* § 1761(b).

24 211. Defendants’ wrongful acts, practices, and conduct alleged herein—including but not
25 limited to their false, misleading, and deceptive marketing, representations, and omissions regarding
26 the present and likely future abilities, limitations, flaws, and value of Class Vehicles and ADAS
27 packages and technology, and the time periods in which Tesla’s ADAS packages and technology
28

1 would result in a fully self-driving vehicle—are “unfair or deceptive acts or practices” in violation of
2 the CLRA, *id.* § 1770(a).

3 212. “Unfair or deceptive acts or practices” in violation of the CLRA include but are not
4 limited to: (a) representing that goods or services have characteristics, ingredients, uses, or benefits
5 that they do not have, *id.* § 1770(a)(5); (b) representing that goods or services are of a particular
6 standard or quality, or that goods are of a particular style or model, if they are of another, *id.*
7 § 1770(a)(7); (c) advertising goods or services with intent not to sell or lease them as advertised, *id.*
8 § 1770(a)(9); and (d) representing that the subject of a transaction has been supplied in accordance
9 with a previous representation when it has not, *id.* § 1770(a)(16).

10 213. Defendants committed these unfair or deceptive acts or practices when they sold or
11 leased Class Vehicles and ADAS packages to Plaintiff and Class members that did not have
12 represented characteristics, uses, and benefits; were not of the represented quality; were not sold or
13 leased as advertised; did not perform as advertised; and were materially worse, less capable, less safe,
14 and less valuable than Defendants had represented, and continued to represent them, to be.

15 214. Defendants knowingly and intentionally committed these unfair or deceptive acts or
16 practices.

17 215. A reasonable consumer would consider knowing the reasons why Defendants’
18 representations were unfair or deceptive to be material and important in deciding whether to purchase
19 or lease a Class Vehicle, and whether to pay additional money above the vehicle’s base price for an
20 ADAS package.

21 216. Defendants’ unfair or deceptive acts or practices materially affected Plaintiff’s and
22 Class members’ purchasing and leasing decisions. Defendants’ false, misleading, and deceptive
23 marketing, representations, and omissions regarding Class Vehicles and ADAS packages and
24 technology were a substantial factor in Plaintiff’s and Class members’ decisions to purchase or lease
25 Class Vehicles, and their decisions to pay thousands of dollars above the vehicle’s base price for an
26 ADAS package.

27 217. Plaintiff’s CLRA venue affidavits is attached here as **Exhibit E**, in accordance with
28 Cal. Civ. Code § 1780(d).

1 218. Unless Defendants are enjoined from engaging in conduct alleged herein that violates
2 the CLRA, members of the consuming public will be further harmed by that conduct.

3 219. As a result of Defendants' CLRA violations and the harm caused thereby, Plaintiff and
4 Class members are entitled to and seek (a) injunctive relief to protect the consuming public by
5 prohibiting Defendants from engaging in its past and ongoing acts, omissions, and conduct that violate
6 the CLRA; (b) an award of reasonable attorneys' fees under Cal. Civ. Code § 1780(e), Cal. Code Civ.
7 Proc. § 1021.5, and any other applicable law; and (c) all other available relief prayed for below.

8 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

9 **FIFTH CLAIM FOR RELIEF**

10 **Violation of the California Unfair Competition Law**

11 **Cal. Bus. & Prof. Code § 17200, *et seq.***

12 220. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
13 above, as though fully set forth in this Claim for Relief.

14 221. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et*
15 *seq.*, prohibits any unlawful, unfair, or fraudulent business act or practice, including but not limited
16 any act or practice that constitutes deception, fraud, misrepresentation, or the concealment,
17 suppression, or omission of a material fact in a consumer transaction, or that is likely to deceive the
18 consuming public.

19 222. Defendants' wrongful acts and omissions alleged herein were and are unlawful, unfair,
20 and fraudulent business acts and practices in violation of the UCL. Defendants' wrongful acts and
21 omissions alleged herein were and are likely to deceive the consuming public in California and
22 throughout the United States regarding the abilities, limitations, flaws, and value of the Class
23 Vehicles and Tesla's ADAS packages and technology. Defendants' wrongful acts and omissions
24 alleged herein also constitute deception, fraud, and misrepresentation, and concealment, suppression,
25 and omission of material facts in the context of consumer transactions with Plaintiff and Class
26 members.

27 223. Defendants knew or should have known that their wrongful acts and omissions alleged
28 herein were are likely to deceive the consuming public in California and the rest of the United States,

1 and Defendants committed those acts and omissions anyway for their own financial gain, including
2 for the purpose of shoring up and otherwise improve their financial condition, avoiding bankruptcy,
3 increasing the likelihood of receiving new capital from investors, increasing their revenue and profits,
4 and increasing the value of Tesla (including by increasing its share price).

5 224. Defendants’ “unfair” business acts and practices under the UCL include, among other
6 things, Defendants’ acts, omissions, and conduct in: (a) marketing and referring to Tesla’s ADAS
7 packages and technology as “Autopilot,” “Full Self-Driving,” and “Full Self-Driving Capability”;
8 (b) representing the capabilities, limitations, flaws, and value of Tesla’s ADAS packages and
9 technology to the public in a way that is materially different from how Defendants
10 contemporaneously represented those same subjects to regulators, especially when those
11 representations were communicated to regulators in a non-public forum or in a way not
12 contemporaneously available to the public (e.g., when a FOIA or PRA request is required to obtain
13 the communication); (c) describing and marketing Tesla’s ADAS packages and technology in a way
14 that largely or entirely focuses on its actual or purported positive attributes and abilities in forums
15 likely to generate significant public attention or reach large numbers of consumers (e.g., Musk’s
16 Twitter feed, interviews with high-distribution or otherwise influential media outlets, news
17 conferences and other public events likely to generate media coverage, pages on the Tesla website
18 that potential Tesla customers are more likely to visit than other pages on the website), while
19 relegating information about the ADAS packages’ and technology’s limitations and flaws to forums
20 likely to generate little public attention or otherwise reach a relatively small number of relevant
21 consumers (e.g., pages on the Tesla website that potential Tesla customers are less likely to visit than
22 other pages on the website, vehicle user manuals, regulatory filings); (d) misrepresenting or otherwise
23 providing information likely to deceive the public regarding the then-existing abilities, limitations,
24 flaws, and value of Tesla’s ADAS packages and technology, including versions of that technology
25 then available to some or all eligible Tesla owners, and versions Defendants represented to be in their
26 possession but not yet available to some or all eligible Tesla owners; (e) misrepresenting or otherwise
27 providing information likely to deceive the public regarding the likely future abilities, limitations,
28 flaws, and value of Tesla’s ADAS packages and technology, and the time periods in which those

1 future abilities would likely be achieved and the future limitations and flaws likely reduced or
2 eliminated; and (f) otherwise disseminating or causing to be disseminated to the consuming public
3 information likely to deceive the consuming public in California and the rest of the United States.

4 225. Defendants' acts, omissions, and conduct alleged herein were and are "unfair" under
5 the UCL because they are offensive to public policy and constitute immoral, unethical, oppressive,
6 and unscrupulous activities that caused and continue to cause substantial injury to the consuming
7 public, including Plaintiff and Class members. The harm caused by Defendants' conduct greatly
8 outweighs any countervailing benefits to consumers or competition.

9 226. Defendants have engaged in "unlawful" business acts and practices by, as set forth in
10 this Complaint, violating the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790, *et seq.*;
11 violating the California False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*; violating the
12 California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; and violating their common
13 law obligations.

14 227. Defendants have further engaged in "unlawful" business acts and practices by
15 (a) committing "unfair or deceptive acts or practices in or affecting commerce" in violation of 15
16 U.S.C. § 45; (b) "mak[ing] or disseminat[ing], or caus[ing] to be made or disseminated, before the
17 public in this state ... a statement that is untrue or misleading and that is known, or that by the
18 exercise of reasonable care should be known, to be untrue or misleading," in violation of Cal. Vehicle
19 Code § 11713(a); (c) "mak[ing] or disseminat[ing], or caus[ing] to be so disseminated, a statement as
20 part of a plan or scheme with the intent not to sell a vehicle or service ... as so advertised," in
21 violation of Cal. Vehicle Code § 11713(a); (d) making "advertised statements, representations, or
22 offers [] in connection with the sale or attempted sale of any vehicle(s)" that is not "clearly set forth,"
23 "based on facts," or otherwise violates the Vehicle Code or Title 13, Division 1, Chapter 1 of the
24 California Code of Regulations, in violation of 13 Cal. Code Regs. § 260.00; (e) violating other
25 "provision[s] of Article 1 (commencing with Section 11700) of, or Article 1.1 (commencing with
26 Section 11750) of, Chapter 4 of Division 5 or any rule or regulation adopted pursuant thereto," as
27 referenced in Cal. Vehicle Code § 11705(a)(10); and (f) causing Plaintiff and all other Class members
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1 to suffer “loss or damage by reason of any fraud or deceit practiced on that person or fraudulent
2 representations made to that person” within the meaning of Cal. Vehicle Code § 11705(a)(14).

3 228. Defendants have engaged in “fraudulent” business acts and practices by making
4 representations (including by failing to disclose and concealing information) about the abilities,
5 limitations, flaws, and value of the Class Vehicles and Tesla’s ADAS packages and technology that
6 were likely to deceive the public. Among other representations likely to deceive the public,
7 Defendants represented the Class Vehicles and Tesla’s ADAS packages and technology as being
8 capable of full self-driving at the time of purchase or lease, or within a reasonably short period
9 thereafter. Plaintiff and Class members reasonably relied on Defendants’ representations,
10 nondisclosure, and concealment, and suffered economic injury as a result, including by not receiving
11 the full benefit of the bargain from their purchase or lease of their new Tesla vehicle and ADAS
12 package.

13 229. Defendants’ wrongful conduct and the harm it has caused, and continues to cause, was
14 and is not reasonably avoidable by Plaintiff, Class members, or the consuming public. At all relevant
15 times, Defendants knew or should have known that Plaintiff and Class members would not have
16 reasonably known or discovered that so many of Defendants’ representations regarding the present
17 and likely future abilities, limitations, flaws, and value of Tesla’s ADAS packages and technology,
18 and time periods in which those future abilities would likely be achieved and the future limitations
19 and flaws likely reduced or eliminated, were false, deceptive, or misleading.

20 230. Defendants’ false, deceptive, or misleading representations regarding the capabilities,
21 limitations, flaws, and value of Tesla’s ADAS packages and technology were material, and Plaintiff’s
22 and Class members’ reasonable reliance on the truth and accuracy of those material
23 misrepresentations was a substantial factor in influencing Plaintiff and Class members to purchase or
24 lease Class Vehicles and ADAS packages from Defendants.

25 231. As a direct and proximate result of their wrongful conduct, Defendants (a) have
26 received wrongful obtained money from Plaintiff and Class members that rightfully belongs to
27 Plaintiff and Class members, but that Defendants continue to wrongfully retain; (b) will continue to
28 receive revenue, profits, and other benefits that they would not have received if they had not engaged

1 in conduct violating the UCL as alleged herein, and (c) have obtained, and will continue to obtain, an
2 unfair advantage over similar businesses that represent their goods and services in a manner that
3 either does not violate the UCL, or that violates the UCL to a lesser extent than Defendants.

4 232. As a direct and proximate cause of Defendants' UCL violations, Plaintiff and Class
5 members have each suffered monetary injury because they each paid Defendants money for a good or
6 service (e.g., a vehicle with full self-driving capability) that Defendants have never provided, and
7 because Defendants have wrongfully retained those monies.

8 233. Unless Defendants are enjoined from engaging in conduct alleged herein that violates
9 the UCL, members of the consuming public will be further harmed by that conduct.

10 234. As a result of Defendants' UCL violations and the harm caused thereby, Plaintiff and
11 Class members seek and are entitled to (a) injunctive relief to protect the consuming public by
12 prohibiting Defendants from engaging in their past and ongoing acts, omissions, and conduct that
13 violate the UCL; (b) restitution of the full value of all monies and other consideration that Plaintiff
14 and Class members paid Defendants for Class Vehicles and for ADAS packages, including any
15 diminished value of Plaintiff's and Class members' Class Vehicles and ADAS packages and
16 disgorgement of the profits Defendants derived from their wrongful conduct; (c) an award of
17 reasonable attorneys' fees under Cal. Code Civ. Proc. § 1021.5 and any other applicable law; and
18 (d) all other available relief prayed for below.

19 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

20 **SIXTH CLAIM FOR RELIEF**

21 **Fraud and Deceit**

22 **Cal. Civ. Code §§ 1572, 1573, 1710**

23 235. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
24 above, as though fully set forth in this Claim for Relief.

25 236. Based on Defendants' conduct alleged in this Complaint, Defendants have engaged in
26 fraud and deceit as set forth in Cal. Civ. Code §§ 1572, 1573, and 1710.

27 237. Defendants misrepresented to Plaintiff and Class members the abilities, limitations,
28 flaws, and value of Class Vehicles and Tesla's ADAS packages by marketing them in a manner that

1 Defendants knew was materially false and deceptive, including by knowingly engaging in
2 misrepresentation, nondisclosure, and concealment of material facts. Among other wrongful conduct,
3 Defendants knowingly misrepresented the Class Vehicles and Tesla’s ADAS packages and
4 technology as being capable of full self-driving at the time of purchase or lease, or within a
5 reasonably short period thereafter.

6 238. Plaintiff and Class members reasonably relied on Defendants’ misrepresentations,
7 nondisclosure, and concealment, and were induced by Defendants’ wrongful conduct to purchase or
8 lease Class Vehicles and ADAS packages that they would not otherwise have purchased or leased in
9 the absence of Defendants’ fraud and deceit.

10 239. As a direct and proximate result of Defendants’ fraud and deceit, Plaintiff and Class
11 members have suffered damages and other harms. Plaintiff’s and Class members’ reliance was a
12 substantial factor in causing their harm because they purchased or leased Class Vehicles and ADAS
13 packages that they would not otherwise have purchased or leased, and/or because they paid materially
14 more for Class Vehicles and ADAS packages than they otherwise would have paid, in the absence of
15 Defendants’ fraud and deceit.

16 240. Defendants’ misrepresentations, deceit, and concealment were intentionally false or
17 deceptive, and Defendants engaged in that conduct with the intent to mislead and deceive Plaintiff
18 and Class members in order to obtain their business and otherwise benefit financially. As a result,
19 Plaintiff and Class members are entitled punitive or exemplary damages under Cal. Civ. Code § 3294.

20 241. As a result of Defendants’ fraud and deceit and the harm caused thereby, Plaintiff and
21 Class members seek and are entitled to (a) damages in an amount to be determined at trial,
22 (b) punitive or exemplary damages under Cal. Civ. Code § 3294 and any other applicable law, and
23 (c) all other available relief prayed for below.

24 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

25 **SEVENTH CLAIM FOR RELIEF**

26 **Negligent Misrepresentation**

27 242. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
28 above, as though fully set forth in this Claim for Relief.

1 duty to follow industry custom and standards to accurately represent the abilities, limitations, flaws,
2 and value of Class Vehicles and Tesla’s ADAS packages and technology.

3 252. Defendants breached their duties to Plaintiff and Class members by negligently
4 misrepresenting that the Class Vehicles and ADAS packages had greater abilities and value than they
5 actually had, and fewer limitations and flaws than they actually had, and by further repeatedly
6 representing that they were on the cusp of advancing their ADAS technology to the point of being
7 able to deliver fully self-driving vehicles within a reasonable time in near future, when Defendants
8 had no reasonable basis to believe that those representations were true, accurate, and non-misleading.

9 253. As a direct and legal result of Defendants’ wrongful acts and omissions, Plaintiff and
10 Class members have suffered damages and other harms.

11 254. Defendants’ negligence was a substantial factor in causing Plaintiff’s and Class
12 members’ damages and other harms.

13 255. As a result of Defendants’ negligent misrepresentation and the harm caused thereby,
14 Plaintiff and Class members seek and are entitled to (a) damages in an amount to be determined at
15 trial and (b) all other available relief prayed for below.

16 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

17 **NINTH CLAIM FOR RELIEF**

18 **Unjust Enrichment**

19 256. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
20 above, as though fully set forth in this Claim for Relief.

21 257. Plaintiff and Class members paid Defendants the value of Class Vehicles with ADAS
22 packages that would make their vehicles fully self-driving at the time of purchase or lease, or within a
23 reasonably short period thereafter.

24 258. In exchange, Defendants provided Plaintiff and Class members with Class Vehicles
25 and ADAS packages that could not meet Plaintiff’s and Class members’ reasonable expectations
26 created by Defendants’ marketing, labelling, and other representations, concealment, and
27 nondisclosure.

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1 259. Defendants knew or should have known that the Class Vehicles and ADAS packages
2 could not meet Plaintiff's and Class members' reasonable expectations created by Defendants'
3 marketing, labelling, and other representations, concealment, and nondisclosure.

4 260. As such, Plaintiff and Class members conferred value upon Defendants which would
5 be unjust for Defendants to retain.

6 261. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff and Class
7 members have suffered and continue to suffer economic and other harms.

8 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

9 **IX. PRAYER FOR RELIEF**

10 262. WHEREFORE, Plaintiff, on behalf of himself and all other Class members, pray for
11 judgment against Defendants and the following relief:

- 12 A. An order certifying this matter as a class action, appointing Plaintiff and his counsel of
13 record to represent the Class, and requiring Defendants to pay the costs of all Class
14 notice and administration of Class relief;
- 15 B. Declaratory and preliminary and permanent injunctive relief prohibiting Defendants
16 from continuing to engage in acts, omissions, and conduct alleged herein that violate
17 any law set forth in the Claims for Relief for which injunctive relief is available,
18 including but limited to the California FAL, CLRA, and UCL;
- 19 C. An award of all recoverable actual, general, special, incidental, compensatory,
20 consequential, statutory, and punitive damages, as well as civil penalties, in an amount
21 to be determined at trial;
- 22 D. An order awarding Plaintiff and the Class restitution and disgorgement in an amount to
23 be determined at trial;
- 24 E. An award of reasonable attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5,
25 Cal. Civ. Code § 1780(e), Cal. Civ. Code § 1794, and any other applicable law;
- 26 F. Pre- and post-judgment interest at the maximum rate provided by law; and
27 G. Such other and further relief as the Court may deem proper.
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1 **X. DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands trial by jury on all issues so triable.

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Dated: October 30, 2023

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