

Edward C. Chen (SBN 312553)  
LAW OFFICES OF EDWARD C. CHEN  
1 Park Plaza, Suite 600  
Irvine, CA 92614  
Telephone: (949) 287-4278  
Facsimile: (626) 385-6060  
[Edward.Chen@edchenlaw.com](mailto:Edward.Chen@edchenlaw.com)

*Attorney for Plaintiff and the Proposed Classes*

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

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

Plaintiff,

v.

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

Defendant.

Case No. 8:19-cv-01442

**CLASS ACTION COMPLAINT**

1. Violations of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301 *et seq.*)
2. Violations of the California Song-Beverly Consumer Warranty Act (Cal. Civ. Code § 1780 *et seq.*)
3. Violations of the Federal Trade Commission Act (16 C.F.R. 455)
4. Violations of the California Vehicle Code § 11713.18(a)(6)
5. Violations of California Vehicle Code § 11713.21
6. Violations of California's Consumer Legal Remedies Act (Civil Code § 1750 *et seq.*)
7. Violation of California's Unfair Competition Law (Bus. & Prof. Code § 17200 *et seq.*)
8. Violation of California's False Advertising Law (Bus. & Prof. Code § 17500 *et seq.*)
9. Breach of Express Warranty
10. Breach of Implied Warranties
11. Intentional Misrepresentation
12. Negligent Misrepresentation
13. Fraud by Concealment
14. Quasi Contract/Unjust Enrichment/Restitution

**DEMAND FOR JURY TRIAL**

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>NATURE OF THE ACTION .....</b>	<b>5</b>
<b>III.</b>	<b>PARTIES .....</b>	<b>8</b>
<b>IV.</b>	<b>JURISDICTION .....</b>	<b>10</b>
<b>V.</b>	<b>VENUE .....</b>	<b>11</b>
<b>VI.</b>	<b>FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS.....</b>	<b>11</b>
A.	HISTORY OF TESLA’S CERTIFIED PRE-OWNED (“CPO”) VEHICLE PROGRAM .....	11
B.	TESLA’S VIOLATIONS OF THE FTC’S “USED CAR RULE” .....	14
C.	TESLA’S VIOLATIONS OF CALIFORNIA VEHICLE CODE SECTION 11713.18(A)(6) .....	16
D.	TESLA’S VIOLATIONS OF CALIFORNIA VEHICLE CODE SECTION 1172119	
E.	TESLA’S VIOLATIONS OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT (“CLRA”) .....	20
F.	TESLA’S VIOLATIONS OF THE MAGNUSON-MOSS WARRANTY ACT AND SONG-BEVERLY WARRANTY ACT .....	23
G.	PLAINTIFF HUGH NGUYEN’S EXPERIENCE.....	27
<b>VII.</b>	<b>CLASS ACTION ALLEGATIONS.....</b>	<b>33</b>
<b>VIII.</b>	<b>CAUSES OF ACTION.....</b>	<b>39</b>
COUNT I .....		39
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT (“MMWA”) (15 U.S.C. § 2301 et seq.)		
COUNT II.....		41
VIOLATION OF CALIFORNIA’S SONG-BEVERLY CONSUMER WARRANTY ACT (“SONG-BEVERLY”) (Cal. Civ. Code § 1790 et seq.)		
COUNT III.....		45

1	VIOLETION OF FEDERAL TRADE COMMISSION ACT (Used Motor	
2	Vehicle Trade Regulation Rule)	
3	(16 C.F.R. 455 et seq.)	
4	COUNT IV .....	46
5	VIOLETION OF CALIFORNIA VEHICLE CODE SECTION 11713	
6	(CA Veh. Code §11713 et seq.)	
7	COUNT V .....	48
8	VIOLETION OF CALIFORNIA VEHICLE CODE SECTION 11713.21	
9	(California Car Buyer’s Bill of Rights, FFVR 35) (California Subclass Only)	
10	COUNT VI .....	49
11	VIOLETION OF CALIFORNIA’S CONSUMERS LEGAL REMEDIES	
12	ACT (Cal. Civ. Code § 1750 et seq.)	
13	COUNT VII .....	54
14	VIOLETION OF CALIFORNIA’S UNFAIR COMPETITION LAW	
15	(Cal. Bus. & Prof. Code § 17200 et seq.)	
16	COUNT VIII .....	57
17	VIOLETIONS OF CALIFORNIA’S FALSE ADVERTISING LAW	
18	(Cal. Bus. & Prof. Code §§ 17500, et seq.)	
19	COUNT IX .....	59
20	BREACH OF EXPRESS WARRANTY(Cal. Comm. Code § 2313)	
21	COUNT X .....	61
22	BREACH OF IMPLIED WARRANTIES(Cal. Comm. Code § 2314)	
23	COUNT XI .....	63
24	INTENTIONAL MISREPRESENTATION(Cal. Civ. Code §§ 1709-1710)	
25	COUNT XII .....	64
26	NEGLIGENT MISREPRESENTATION(Cal. Civ. Code §§ 1709-1710)	
27	COUNT XIII .....	65
28	FRAUD BY CONCEALMENT (Cal. Civ. Code § 3294)	
	COUNT XIV .....	68
	QUASI CONTRACT/RESTITUTION/UNJUST ENRICHMENT	
	(California Law)	
	<b>IX. REQUEST FOR RELIEF .....</b>	<b>68</b>
	<b>X. DEMAND FOR JURY TRIAL .....</b>	<b>69</b>

## I. INTRODUCTION

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

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

### Creating the World’s Best Service and Warranty Program

Elon Musk, Chairman, Product Architect & CEO • April 26, 2013

Fully loaded Model S Performance 85 cars or Tesla Roadsters as loaners

Tesla will seamlessly valet the loaner cars to your location

\$600 annual service now optional with no effect on warranty

Unconditional **warranty** for Model S battery, even for user error

[2]

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

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

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

**“Battery Warranty**

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

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

The intent is to provide complete peace of mind about owning your Model S even if you never read or followed the instructions in the manual.”<sup>[3]</sup>

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

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

---

<sup>3</sup> *Id.*

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

customer service, which extends to buying back cars on fair terms from any customer who ultimately remains unsatisfied with their vehicle. We never want someone to be unhappy in their ownership of a Model S.”<sup>5</sup>

“We are continuing our efforts to work with the customer and are happy to address any legitimate concerns he has about his Model S. Customer service remains of utmost importance to Tesla, and no Model S owner should be unhappy with their car. However, we would also like the public to be aware of the potential for lemon laws to be exploited by opportunistic lawyers.”<sup>6</sup>

5. Unfortunately for Tesla, the instant case is not one that can be turned into “lemonade” and it is time for Tesla to be held accountable. Plaintiff brings this action on his own behalf, and on behalf of the Nationwide Class and California Classes, which consist of the putative class members who have purchased used Tesla Model S and X vehicles, and asserts various claims against Tesla for having committed violations of the federal Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.* (“MMWA”); Federal Trade Commission Act (16 C.F.R. 455), Used Motor Vehicle Trade Regulation Rule (“FTC Used Car Rule”); California’s Song-Beverly Consumer Warranty Act (“Song-Beverly”), Cal. Civ. Code § 1780 *et seq.*; California’s Vehicle Code section 11713 *et seq.*, Cal. Veh. Code § 11713.18(a)(6); California Vehicle Code section 11721 *et seq.*; California’s Consumer’s Legal Remedies Act (Cal. Civ Code Section 1750 *et seq.*) (“CLRA”), California’s Unfair Competition Law (Cal. Bus. Prof. Code Section 17200 *et seq.*) (“UCL”); Violation of California’s False Advertising Law (Bus. & Prof. Code § 17500 *et seq.*; breach of express warranty, breach of implied warranty, intentional misrepresentation; negligent misrepresentation; common law fraud; unjust enrichment, breach of contract and violation of consumer protection and warranty laws nationwide.

---

<sup>5</sup> *Id.* (emph. add)

<sup>6</sup> *Id.* (emph. add)

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

18           7. Plaintiff Hugh Nguyen and the putative class members make up the individuals  
19 who purchased a used Tesla Model S or Tesla Model X Vehicle (the "Class Vehicles")  
20 directly from Tesla in the U.S. Tesla induced Plaintiff and other putative class members  
21 to purchase the Class Vehicles despite violating federal and state laws and regulations,  
22 and induced owners and potential purchasers of Tesla vehicles throughout and across the  
23 U.S. that Tesla vehicles would be warrantied. Tesla began selling used vehicles in or  
24 around April 2015 and has sold nearly 13,000 used Tesla Model S vehicles in the United  
25 States since the inception of its certified preowned program, with nearly 5,000 of those  
26  
27  
28

1 vehicles having been sold in California alone.<sup>7</sup> The number of putative class members  
2 and Class Vehicles that will be sold is only expected to grow larger in volume, and this  
3 action is necessary to prevent further harm.<sup>8</sup>

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

## 18 II. NATURE OF THE ACTION

19 9. Plaintiff Hugh Nguyen brings this action individually and on behalf of all others  
20 similarly situated who purchased a used Tesla Model or Model X vehicle (the "Class  
21 Vehicles") and seeks a buy-back for his vehicle, a buyback of the Class Vehicles,  
22 including a full refund for any out-of-pocket repairs or replacements made for batteries of  
23 the Class Vehicles, damages, injunctive relief, and equitable relief for the conduct of  
24

---

25 <sup>7</sup> <https://ev-cpo.com/hunter/> (Advanced Options Filter – Model S/Model X - Used Inventory –  
26 Archived Listings – U.S.A)

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

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

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

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

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

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

26         13. Tesla violated and continues to violate various state and federal consumer and  
27 warranty protection laws selling cars through its used/preowned car program. As  
28

1 applicable to Plaintiff and the putative class, Tesla has engaged in unlawful and unfair  
2 business practices, false and deceptive advertising, fraudulent concealment, intentional  
3 misrepresentation, and specifically failed to disclose the battery health of Plaintiff's  
4 vehicle prior to sale. Tesla also breaches various express and implied warranties by  
5 failing to provide the proper service and replacement for Plaintiff and the other putative  
6 class members' vehicles. Left unchecked, Tesla has and will continue to engage in the  
7 same behavior to the detriment of thousands of consumers nationwide.

### 8 **III. PARTIES**

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

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

21 16. Plaintiff Nguyen was directly harmed by Tesla's actions as described in the  
22 complaint and alleged herein. Plaintiff has been harmed by Tesla's fraudulent acts  
23 concealment of material facts, deceptive advertising, unfair and unlawful business  
24 practices.

25 17. Defendant Tesla, Inc. d/b/a/ Tesla Motors, Inc. is a Delaware corporation, with  
26 its principal place of business in Palo Alto, California. Tesla is an auto manufacturer of  
27 electric vehicles and designs, manufacturers, markets, distributes, and sells exclusively  
28

1 electric vehicles. Since 2012, Defendant Tesla designed, manufactured, distributed,  
2 marketed and sold the Tesla Model S electric vehicle (“Model S”) and, later, the Tesla  
3 Model X (“Model X”) in the United States and with a large concentration of both  
4 vehicles being sold in the State of California.

5 18. Tesla also regularly conducts business throughout the State of California, and  
6 as stated above more specifically, owns operates at least two stores and vehicle service  
7 centers within the Court’s jurisdictional district. On information and belief, through  
8 Tesla’s publicly filed financial reports and its website, Tesla’s design, testing, and  
9 manufacturing of its vehicles, including the Class Vehicles at its headquarters in  
10 California and throughout the State of California. Tesla’s advertising, promotional  
11 materials, and website are designed to show the operation of various Tesla vehicles in a  
12 manner which emanates that its vehicles are from California. Tesla also utilizes  
13 promotional videos which are purporting to show the operation of Model S, X and other  
14 Tesla vehicles being operated and driven in California.

15 19. Tesla has a system of company-owned Tesla dealerships in states throughout  
16 the United States, via which it distributes, markets, advertises, and sells Tesla-branded  
17 goods and vehicles, including the Class Vehicles.

18 20. Tesla’s authorized dealerships are tightly and highly controlled by Tesla and  
19 are structured as agents of Tesla. Tesla controls the marketing practices of Tesla-  
20 authorized dealerships, the repair and service facilities within those dealerships, and has  
21 full rein over the appearance of these purported dealerships. Tesla’s control of its  
22 dealerships emanates primarily from its headquarters in California.

23 21. At all times relevant to this action, Tesla, marketed, distributed, advertised,  
24 leased, sold, and warranted its vehicles, including the Class Vehicles by and through its  
25 dealerships located nationwide with many of them located in California.

26 ///

27 ///

#### IV. JURISDICTION

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

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

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

///

///

---

<sup>9</sup> See <https://ev-cpo.com/hunter/> (Model S and X; Used Inventory; Archived Listings)

## V. VENUE

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

26. Venue in this judicial district is also is proper because a substantial portion of Tesla's wrongdoing alleged in this Complaint took place in the State of California and in this judicial district; Tesla is authorized to do business in the State of California; Tesla is licensed by the State of California as a dealer of used automobiles; Tesla has sufficient minimum contacts with the State of California and/or otherwise intentionally avails itself of the markets in the State of California through the production, promotion, marketing, manufacturing, advertising, and sale of products and services in the State of California. An exercise of jurisdiction by this Court is permissible and reasonable under traditional notions of fair play and substantial justice since over 5,000 of the 13,000 Class Vehicles were sold by Tesla in the State of California alone.

## VI. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

### A. History of Tesla's Certified Pre-Owned ("CPO") Vehicle Program

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

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

#### WARRANTY & CONDITION

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

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

[Back to Top](#)

[10]

29. What Tesla fails to address here, however, is the fact that consumers, including Plaintiff and other putative class members, are not provided with any information regarding the results of the purported inspections. Tesla fraudulently conceals this information as they did to Plaintiff and other putative class members, with

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

1 the intention of tricking them into buying cars that they would not have bought had this  
2 information been shared with them from the start. Plaintiff and other putative class  
3 members have been harmed by Tesla's violations of federal and state laws which require  
4 disclosure of this material information because they were put into an extremely unfair  
5 bargaining position with Tesla. Tesla had and continues to have a duty to consumers to  
6 disclose the results of these inspections so that consumers may be better informed.  
7 Plaintiff, other putative class members, and future consumers are harmed by overpaying  
8 for Tesla cars that are known to be defective or in much worse condition than represented  
9 by Tesla, and they would not have paid so much or would not have purchased at all had  
10 Tesla fulfilled its duty and obligation to inform them of such.

11 30. On March 2, 2017, Tesla announced what was called a "Tesla Infinite Mile  
12 Warranty" which provided most, if not all of Tesla Model S and X vehicles with an 8-  
13 year, infinite mile warranty on both the battery pack and drive unit of its Model S 85kWh  
14 vehicles to all future-produced vehicles of the same model, and retroactively to then-  
15 existing vehicles as well.<sup>11</sup> Customers like Plaintiff and the putative class members relied  
16 upon statements by Tesla, such as the "worlds-best warranty program" and the "infinite-  
17 mile warranty" as Tesla's representation that the Class Vehicles and all Tesla vehicles  
18 would be taken care of.

19 31. Furthermore, customers like Plaintiff and the putative class members found  
20 themselves unable to resist to Tesla's empty promises, false advertisements, and  
21 deceptive marketing strategy. Plaintiff and the putative class members purchased the  
22 Class Vehicles with what they believed were covered under warranty by Tesla, or at the  
23 very least fully inspected by Tesla. Plaintiff and the putative class members also believed  
24  
25  
26

---

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

1 that such inspections would cover an inspection of what is arguably the most important  
2 part of a Tesla vehicle, the battery.

3 32. In fact, Tesla maintains the exclusive rights to this information as indicated in  
4 the warranty language below:

5  
6 “The Tesla lithium-ion battery (the “Battery”) and Drive Unit are  
7 extremely sophisticated powertrain components designed to withstand  
8 extreme driving conditions. You can rest easy knowing that Tesla’s  
9 state-of-the-art Battery and Drive Unit are backed by this Battery and  
10 Drive Unit Limited Warranty, which covers the repair or replacement  
11 of any malfunctioning or defective Battery or Drive Unit...”<sup>12</sup>

12 33. Tesla’s statements regarding the full-inspection, vehicle, and battery warranties  
13 were empty promises to induce consumers to purchase Tesla’s vehicles. They were  
14 deceived, however, as Plaintiff and the putative class members soon realized that Tesla  
15 failed to honor the represented warranties that were made expressly and impliedly by  
16 Tesla. Despite making such grandiose and deceptive promises to consumers without  
17 intending to actually repair or provide replacements as warranted, Tesla falls short of its  
18 promises. In fact, Tesla failed to provide required material information regarding the  
19 results of inspection for all, or for basically all of the Class Vehicles. Tesla knowingly  
20 failed to disclose any relevant or useful information of the same results and failed to  
21 provide information such as the level of current battery capacity for each of the Class  
22 Vehicles.

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

24 34. Federal Trade Commission Act (16 C.F.R. 455), also known as the Used Motor  
25 Vehicle Trade Regulation Rule (“FTC Used Car Rule”) requires that used vehicle dealers  
26 display a “Buyers Guide” on all used vehicles that are offered for sale. Dealers who fail

---

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

1 to comply with the FTC Used Car Rule face penalties of up to \$42,530 per violation in  
 2 subsequent FTC enforcement actions. The FTC actively enforces this rule against used  
 3 vehicle dealers, and despite knowing this, Tesla failed to comply with the rule.<sup>13</sup>

4 35. Dealers are required to display the written form prominently and conspicuously  
 5 on or in a vehicle when a car is available for sale.<sup>14</sup> According to the FTCs' own words,  
 6 this means that the Buyer's Guide form must be "in plain view and both sides must be  
 7 visible."<sup>15</sup> Additionally, dealers are required to give buyers the original copy or a copy of  
 8 the vehicle's Buyers Guide at the sale. The FTC Used Car Rule is separate from a  
 9 dealer's mandatory compliance under state and federal warranty laws.

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

16 37. Plaintiff and other putative class members never received a buyer's guide form,  
 17 nor was such form ever displayed on the Subject Vehicle at any time prior to and up until  
 18 purchase. Plaintiff was never provided a copy of the buyer's guide at any time prior to,  
 19 during and after the sale of Plaintiff's vehicle w Plaintiff provided a copy of the buyer's  
 20 guide. Upon further information and belief, Tesla has never actually placed a buyer's  
 21

22  
 23 <sup>13</sup> "FTC, Partners Conduct First Compliance Sweep under Newly Amended Used Car Rule" (Jul 12,  
 24 2018), <https://www.ftc.gov/news-events/press-releases/2018/07/ftc-partners-conduct-first-compliance-sweep-under-newly-amended> (last visited July 12, 2018).

25 <sup>14</sup> Federal Trade Commission Buyer's Guide, [https://www.ftc.gov/system/files/documents/plain-language/cfr\\_buyers\\_guides\\_english.pdf](https://www.ftc.gov/system/files/documents/plain-language/cfr_buyers_guides_english.pdf) (last downloaded July 23, 2019).

26 <sup>15</sup> Federal Trade Commission website, "Dealer's Guide to the Used Car Rule",  
 27 <https://www.ftc.gov/tips-advice/business-center/guidance/dealers-guide-used-car-rule> (last visited July  
 28 22, 2019).

1 guide for any of its used vehicles that have ever been sold by Tesla, which warrants an  
2 award of exemplary and punitive damages.<sup>16</sup>

3 38. Upon information and belief, and by investigation of Plaintiff's counsel, Tesla  
4 has failed to provide over 13,000 buyer's guide forms, the number being the estimated  
5 amount of used vehicle purchasers, which represents the entire putative class. Upon  
6 information and belief, Tesla continues to fail to provide the requisite written disclosures  
7 in violation of the FTC Used Car Rule and therefore thousands of consumers nationwide  
8 are subject to harm.

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

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

15 40. California state law regulates the use of the word "Certified" when selling used  
16 vehicles. A dealer cannot "advertise for sale or sell a used vehicle as 'certified' or use  
17 any similar descriptive term" if the dealer does not comply with the requirements set  
18 forth in Vehicle Code section 11713.18. §11713.18(a)(6) states that it is a violation of  
19 California law if "[p]rior to sale, the dealer fails to provide the buyer with a completed  
20 inspection report indicating all the components inspected."

21 41. California Vehicle Code § 11713.18(b) provides the remedies for used car  
22 purchasers in California, and states that "[a] violation of this section is actionable under  
23 the [Consumer Legal Remedies Act ("CLRA"), Civil Code § 1750 *et seq.*], [and] the  
24

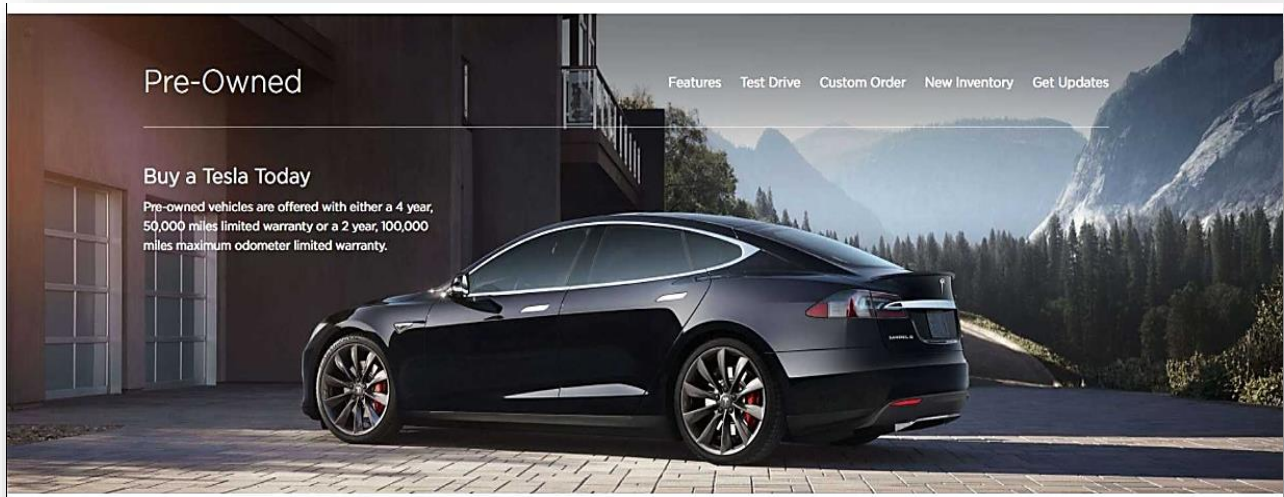
25  
26 <sup>16</sup> Tesla would be subject to over \$500,000,000 (five-hundred million dollars) if a FTC enforcement  
27 action sought the maximum penalty per violation against the estimated 13,000 violations that have  
28 already been committed.

[Unfair Competition Law (“UCL”), Bus. And Prof. Code §17200 *et seq.*]...” (Ca. Veh. Code. § 11713.18(b).)

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

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

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



44. As it later comes to show, Tesla realized that the difference between the two terms isn’t as obvious as it seems. Tesla made multiple revisions to its used vehicle sales

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

1 program, revisions which answers the ex-Tesla CEO's question of the "who" in the "who  
2 are we fooling here?" have clearly been reasonable consumers and purchasers of Tesla  
3 used/preowned vehicles. In addition to the lack of foresight of Tesla at the time, and  
4 perhaps more alarming, was the failure of Tesla ex-CEO to recognize that the true issue  
5 lies not in the wording description of used or preowned Tesla vehicles, but rather, the fact  
6 that the average reasonable consumer would detrimentally rely upon Tesla's lofty  
7 representations and fail-proof vehicle warranties when buying a used, certified preowned  
8 vehicle and later learn that their vehicles would not be taken care of as promised.

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

14 46. Tesla never provided Plaintiff with a report or checklist of the components that  
15 were inspected by way of a "completed inspection report indicating all components  
16 inspected" prior to sale, during the sale, or after the sale. Tesla's failure to disclose a  
17 report violates the CLRA and federal laws in the following ways.

18 47. First, Tesla violated the CLRA by publicly advertising that its used vehicles  
19 were in some way, shape, or form, "certified" by Tesla standards without providing a  
20 completed inspection report *prior to sale*, or at any time thereafter.

21 48. Second, Tesla fraudulently induced Plaintiff and the putative class to rely upon  
22 Tesla's representation that the used vehicles sold by Tesla would receive a "full  
23 inspection" prior to sale, yet Tesla did not provide any form of a "completed inspection  
24 report." Plaintiff and the putative class did not receive anything that indicated the  
25 components inspected, nor did Plaintiff and the putative class receive any information  
26 regarding the status and health of the batteries in the used vehicles.  
27  
28

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

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

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

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

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

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

23           54. Plaintiff’s Model S was priced at \$38,000, yet upon delivery and purchase of  
24 the vehicle, Plaintiff was completely unaware of the option to cancel the purchase  
25 contract and return the vehicle, albeit with a fee.  
26  
27  
28

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

4           56. Plaintiff’s final delivery packet included the items mentioned above, however,  
5 it was notably devoid of any mention of a two-day contract cancellation option or  
6 agreement.<sup>18</sup> The only mention of any cancellation is made regarding new vehicles and  
7 where the deposit for ordering new vehicles is non-refundable after three days elapse  
8 from the order date.

9           57. Plaintiff and other putative class members have been harmed by Tesla’s failure  
10 to disclose the cancellation option because Plaintiff could have returned the vehicle,  
11 albeit with a minor cancellation fee. Plaintiff and the other class members had no idea  
12 that this was an option and thousands of consumers are at risk of becoming harmed.

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

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

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

23           60. Plaintiff discovered the true condition of the Subject Vehicle’s battery shortly  
24 after purchase, as Plaintiff drove the Subject Vehicle to the Tesla Supercharger station in  
25 Victoria Gardens, CA. It was at that time when Plaintiff discovered that the Subject  
26

---

27           <sup>18</sup> Tesla Final Delivery Documents Serial: RN9170625-02-20171115234805.  
28

1 Vehicle charged fully to 100% at 166 miles. This was never disclosed to Plaintiff at any  
2 time prior to sale or at the time of purchase and delivery of his Model S vehicle.

3 61. Tesla's representations that its used cars were fully inspected prior to sale were  
4 made in an effort to induce Plaintiff and the other putative class members to rely on such  
5 representations to purchase the Class Vehicles. Plaintiff and the other putative class  
6 members were harmed by Tesla's representations.

7 62. In an effort induce Plaintiff and other putative class members to purchase the  
8 Class Vehicles, Tesla fraudulently conceals material information regarding the Class  
9 Vehicles, including the status of the batteries for the Class Vehicles, at the expense of  
10 harm and detriment to Plaintiff and the putative class.

11 63. Plaintiff and the putative class members were damaged by Tesla in at least the  
12 following different ways. First, Plaintiff and the putative class did not receive the benefit  
13 of their bargain and have suffered harm because they received less than what they paid  
14 for. Concerted marketing of "Certified" pre-owned or used vehicles by auto  
15 manufacturers and dealers to consumers has created an association of high quality.  
16 Consequently, the "Certified" label itself has intrinsic perceived value, apart from the  
17 qualities of the vehicle itself. In other words, simply calling a vehicle "Certified" or as  
18 Tesla refers to as "fully inspected" increases its value and consumers are charged a  
19 premium for allegedly certified vehicles. The fact that Tesla's used vehicles are sold as  
20 "certified" in some way, shape, or form by Tesla, is publicly known and relied upon by  
21 consumers such as Plaintiff and the putative class.

22 64. "Certified" pre-owned vehicles typically sell for anywhere between a few  
23 hundred and a few thousand dollars more for a comparable, non-certified vehicle.  
24 Plaintiff paid for a 2014 Tesla CPO Model S 60 with a 210-mile EPA estimated mile  
25 range. Instead, Plaintiff received an uncertified 2014 Tesla Model S 60 with severe  
26 battery degradation equaling an actual 166-mile range. Had Tesla disclosed to Plaintiff  
27  
28

1 that the battery of the Subject Vehicle could only provide 166 miles at a full, 100%  
2 charge, Plaintiff would have paid less and/or not purchased the vehicle in question

3 65. Plaintiff was damaged because he suffered opportunity costs due to Tesla's  
4 misrepresentations and failures to disclose material information. Plaintiff relied on  
5 Tesla's representation that the Subject Vehicle would be "certified" and "fully  
6 inspected." Plaintiff has also been damaged after relying upon Tesla's representation that  
7 the Subject Vehicle could provide or come close to providing the EPA estimated mileage  
8 of 210 miles at full charge. Instead, Plaintiff's ability to use the Subject Vehicle as  
9 intended to transport his wife for medical treatment has been severely limited and  
10 affected by the limited range of the Subject Vehicle.

11 66. Plaintiff was damaged by Tesla's fraudulent concealment of the true condition  
12 of the Subject Vehicle and its representations regarding the inspection of the same. Had  
13 Tesla conducted a "full inspection" as promised, Tesla surely would have figured out that  
14 the battery of the Subject Vehicle was defective and/or that the Subject Vehicle could not  
15 provide anywhere close to the EPA estimated 210mile rating.

16 67. Despite Tesla's representation that its used vehicles would receive a "full  
17 inspection", Tesla fails to provide any document or purported checklist of any  
18 components inspected prior to sale of its used vehicles to Plaintiff and the putative class  
19 members. Tesla undermined and continues to undermine protections granted to  
20 consumers by federal and state laws. Tesla's intentional acts harm consumers and creates  
21 profit for Tesla because consumers like Plaintiff and the putative class, are denied  
22 material information and purchase vehicles that they would not otherwise purchase.  
23 Punitive damages are proper to deter Tesla's acts, and to deem such as socially  
24 unacceptable and discourage the perpetuation of Tesla's objectionable corporate policies.

25 ///

26 ///

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

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

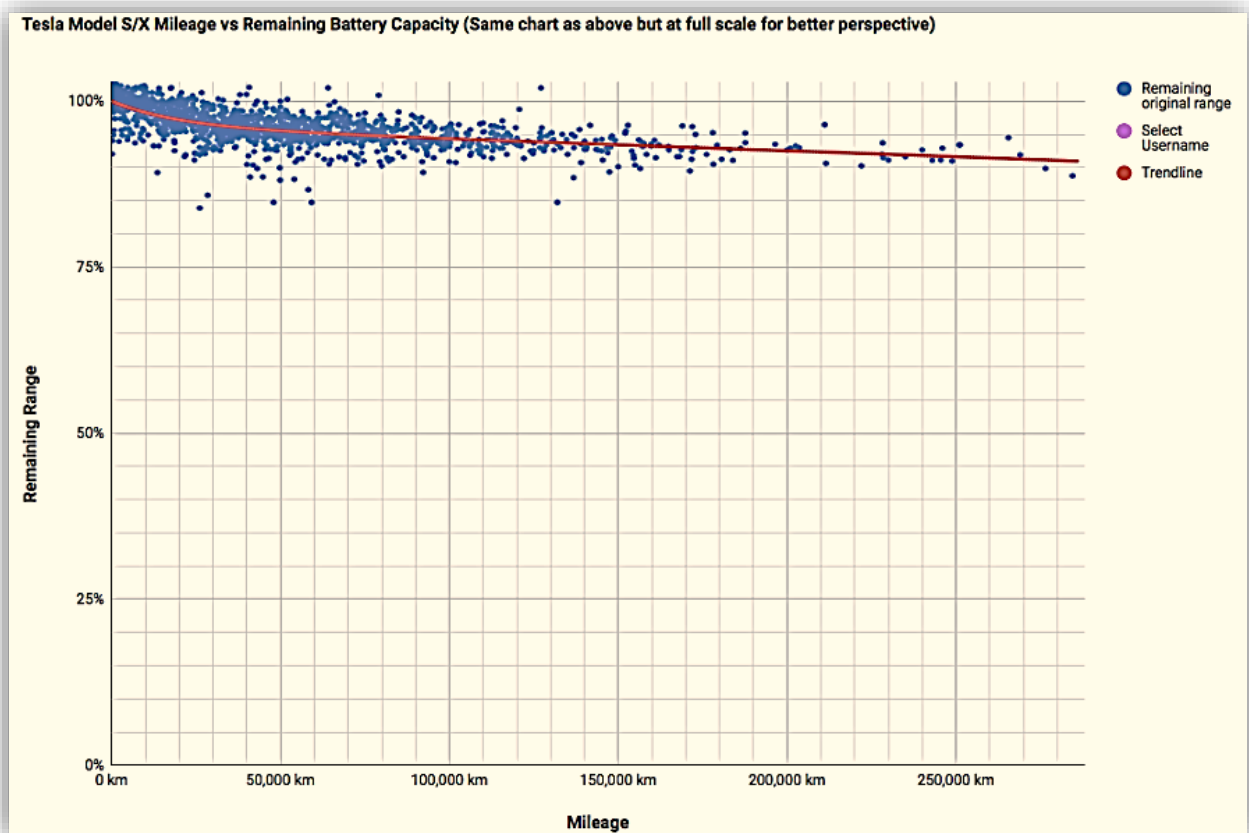
69. Plaintiff's vehicle was sold with a 2-year, 100,000-mile pre-owned vehicle limited warranty provided by Tesla. The warranty language required that Plaintiff first arbitrate all claims arising out of the warranty. The warranty language further required that the claims be arbitrated and sent through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

70. On April 5, 2018, Plaintiff submitted a claim to NCDS, which then forwarded the claim to the California Department of Consumer Affairs for arbitration.

71. On April 6, 2018, Plaintiff submitted a claim to the California Department of Consumer Affairs. Plaintiff's claims were set for arbitration on May 4, 2018, and an arbitration was conducted on the same date. Plaintiff asserted that the Subject Vehicle suffered from severe battery degradation, based upon the fact that the battery provided only 166 miles at a 100% full charge. Despite the obvious fact that the battery was severely and abnormally degraded, at over 20% degradation, counsel for Tesla reported that the battery was "not defective" and that the condition of the battery did not substantially affect the vehicle's use, safety or value. Counsel for Tesla asserted that the battery continues to operate at a reasonable and expected level, essentially admitting to the fact that over 20-plus percent degradation is normal.

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

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



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

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

75. Tesla's treatment of battery replacements under warranty have been historically inconsistent. Tesla has the ultimate choice and final say in determining whether consumers are entitled to battery replacements, irrespective of whether the battery should be replaced under warranty. Tesla has a history of replacing batteries for owners who have suffered from a lower percentage of battery degradation than Plaintiff's 24%. This type of "pick-and-choose" behavior by Tesla violates some of the basic principles upon which state and federal warranty laws are founded upon.<sup>20 21</sup> Plaintiff's car currently suffers from nearly 30% degradation, and currently provides approximately 150 miles at 100% charge, which has significantly affected the value, safety, and use of the vehicle. Despite these facts, Tesla has failed to remedy, repair, or replace the battery and in failing to do so, violates federal and state warranty and consumer protection laws as alleged herein.

76. Tesla fails to perform under the express and implied warranties given to the Class Vehicles despite having knowledge of specific defects, including the battery health

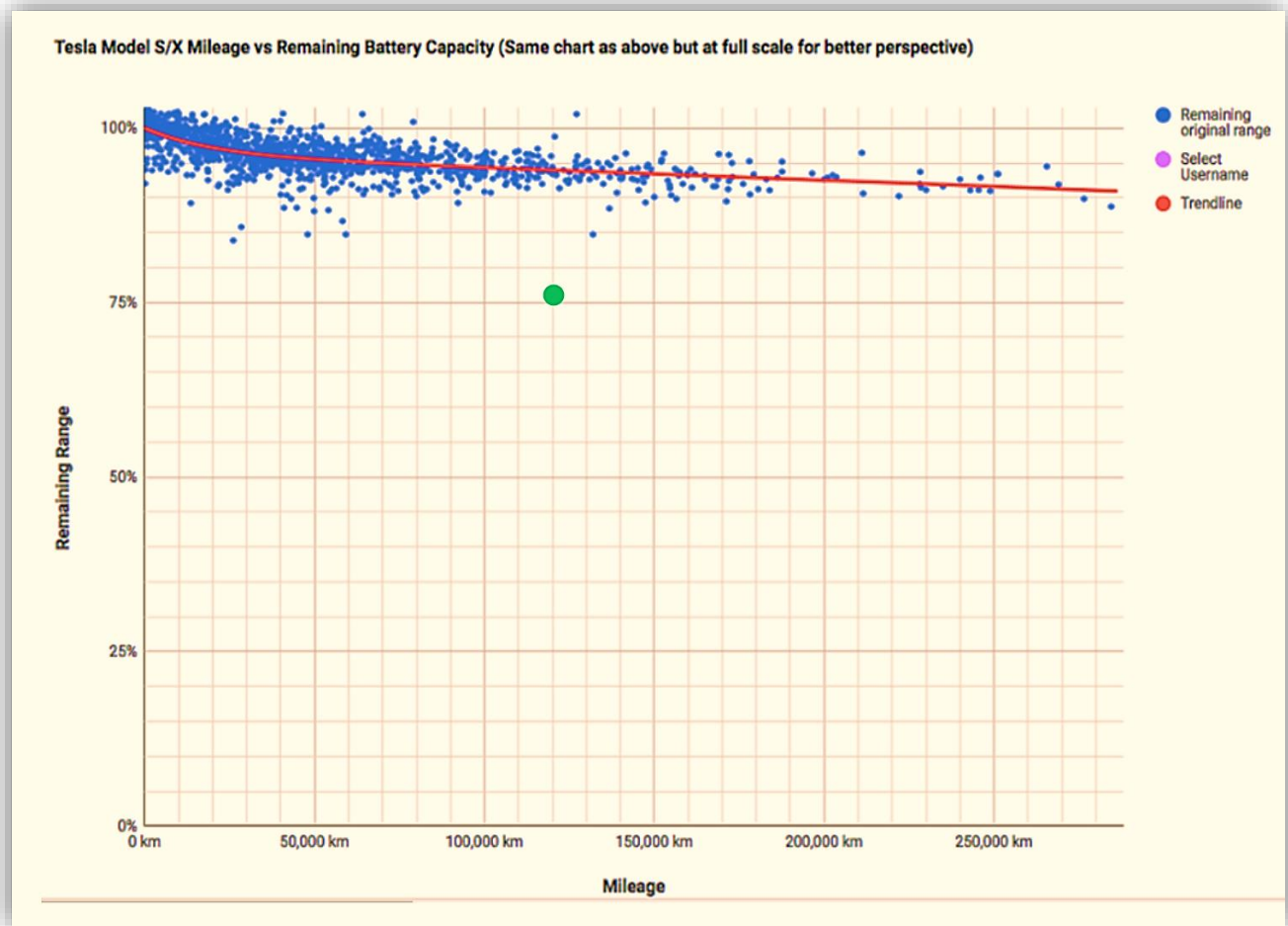
<sup>20</sup> "Tesloop's Tesla Model S Surpasses 400,000 miles"

<https://www.tesloop.com/blog/2018/7/16/tesloops-tesla-model-s-surpasses-400000-miles-643737-kilometers> (Last accessed on July 12, 2019)

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

and status of the same. At the time of purchase, Plaintiff's car did not have anywhere close to the battery capacity as advertised, nor was it ever disclosed to Plaintiff that his car would only be capable of reaching 166 miles at a full 100% charge.

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



[22]

<sup>22</sup> Same graph from fn. 16, which green dot representing Plaintiff Hugh Nguyen's Tesla Model S 60 at approximately 76% remaining battery capacity on the date it was purchased with approximately 120,000 miles on the odometer at time of purchase.

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


6 **G. Plaintiff Hugh Nguyen's Experience**

7 79. Plaintiff Hugh Nguyen was introduced to Tesla in 2017 after hearing from a  
8 friend that Tesla was offering used, "certified pre-owned" ("CPO") vehicles. During the  
9 same year, Plaintiff received the unfortunate news that his wife had been diagnosed with  
10 Pancreatic Neuroendocrine Tumor (PNET) and started to undergo treatment of the  
11 terminal cancer. Plaintiff's wife requires medical treatment from various medical  
12 facilities in Los Angeles and Orange County, which Plaintiff has been taking her to  
13 receive treatment from their home in Rancho Cucamonga, California. Plaintiff's wife  
14 requires treatment at least three, sometimes four, times per week, Plaintiff decided it was  
15 time for a more efficient and effective means of transportation. Thus, Plaintiff began  
16 shopping for a hybrid or all-electric vehicle and intended it to be a gift for his wife's  
17 birthday.

18 80. Plaintiff was impressed by the fact that Tesla CPO vehicles were fully  
19 inspected prior to sale and would be covered under warranty by Tesla. After researching  
20 and learning more about Tesla's CPO vehicles, Plaintiff chose to purchase a 2014 Model  
21 S 60, bearing the vehicle identification number 5YJSA1S11EFP32857 (the "Subject  
22 Vehicle"). Tesla's website and advertisement for Plaintiff's vehicle provided and  
23 displayed the following:

24  
25 "60 (illus.) 60 kWh Battery 210 miles range (EPA) 5.9 seconds 0-60  
26 mph 2014 | 5,712 miles | P32857 \$38,000"  
27  
28

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



**60**


**Model S**

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

2014 | 75,712 miles | P32857

**\$38,000**  
Calculate transportation fee

**BUY**  
Requires a \$1,000 deposit  
Request a callback



**Features**

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

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

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

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

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

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

<sup>23</sup> Tesla Model S, VIN# 5YJSA1S11EFP32857

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

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

18 83. During and between the date that Plaintiff placed the initial deposit until the  
 19 actual delivery date on November 17, 2017, at Tesla's showroom and service center  
 20 location in Buena Park, CA, Tesla never disclosed any information regarding the battery  
 21 health of his Model S. In fact, Tesla failed to mention anything to Plaintiff with regards  
 22

---

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

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

27 <sup>26</sup> See Trop, Jaclyn "Tesla CPO Buying Guide", [https://www.autotrader.com/car-shopping/cpo-](https://www.autotrader.com/car-shopping/cpo-program-review-tesla-239862)  
[program-review-tesla-239862](https://www.autotrader.com/car-shopping/cpo-program-review-tesla-239862) (last visited July 16, 2019).  
 28

1 to inspection that was supposedly done, nor did Tesla provide Plaintiff with a checklist of  
2 components inspected and parts checked as required by law. Plaintiff relied upon Tesla's  
3 marketing, advertisements, and representations that his Model S would be fully inspected  
4 and essentially, certified, as a used Tesla vehicle and would conform to Tesla's standards  
5 accordingly. Plaintiff additionally relied upon the Tesla marketing and advertisement of  
6 their cars and reasonably believed that the Subject Vehicle would provide for  
7 approximately 200 miles per full charge at 100% battery capacity, close to the 210 EPA  
8 mile rating displayed on Tesla's website.

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

17 85. On December 16, 2017, after informing Tesla about the battery capacity and  
18 severely limited mileage range on his vehicle, Plaintiff brought his car to the Tesla  
19 service center for the first time in Buena Park, CA. Plaintiff reiterated the issues to  
20 Tesla's service center technicians and that his car was only showing 166 miles of range at  
21 maximum battery capacity of 100% Tesla attempted to repair this issue by making a  
22 correction to the "Battery Management System (BMS) (HV Battery 1.0/1.5)" which did  
23 not fix the issues with the battery. Plaintiff was told to report back to the service center  
24 after driving around with the car and after "cycling" the battery, which refers to the  
25 practice of charging to 100% and discharging the battery to low levels for purposes of  
26 recalibrating the battery.  
27  
28

1 86. Between December 2017 to July 2018, Plaintiff brought his Model S to Tesla  
2 on at least 5 separate occasions. During these visits, Tesla performed tests and conducted  
3 further inspection of the battery. However, Tesla has been unable repair these issues and  
4 continues to avoid providing Plaintiff with a proper remedy. Instead, Tesla has relied  
5 upon its own discretion and “pick-and-choose” behavior to determine whether Plaintiff’s  
6 car will receive a battery replacement under warranty. Tesla has blatantly refused to  
7 provide Plaintiff with a proper remedy as warranted and continues to fraudulently  
8 deceive consumers like Plaintiff.

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

18 88. During the initial arbitration between Plaintiff and Tesla, Tesla contended that  
19 Plaintiff’s Model S was only experiencing normal battery degradation. As evidenced in a  
20 service repair order on March 6, 2018, Tesla service technicians incorrectly indicated that  
21 Plaintiff’s car was only suffering from 11% degradation. Tesla technicians failed to  
22 record the actual correct numbers, as Plaintiff’s vehicle was actually only charging up to  
23 165/166 miles at 100% battery capacity. Tesla blatantly lied and made the fraudulent  
24 representation that the battery was charging up to 165/166 miles at 90%. If it weren’t for  
25 Tesla’s fraudulent motives, concealment and deceptive behavior, the true battery  
26 degradation of 24%, not 11%, would have been noted by Tesla.  
27  
28

1           89. On April 20, 2018, Plaintiff brought the vehicle for more battery diagnostic  
2 testing. The battery was purportedly tested by the technicians at the Tesla Service Center  
3 in Costa Mesa, CA, and it was once again ultimately concluded that the battery was  
4 “normal” and indicating a battery degradation of 11%. In good faith, Plaintiff informed  
5 Tesla service technicians of their mistaken numbers and pointed out the errors in the  
6 previous service invoice. Tesla intended to fraudulently cover up this mistake by issuing  
7 subsequent invoicing that deleted any mention of the prior miscalculations.

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

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

20           92. Upon information and belief, and upon investigation by Plaintiff’s counsel,  
21 Tesla has denied, and will continue to deny purchasers of its vehicles lawful and proper  
22 remedies under warranty. Tesla also fails to provide or disclose any material information  
23 regarding the vehicle inspections that it purportedly conducts prior to selling its used  
24

---

25  
26           <sup>27</sup> Tesla in-house counsel, Ryan McCarthy stated during the initial arbitration that it was normal for a  
27 car similar to Plaintiff’s to be suffering from the level of degradation that Plaintiff was experiencing.  
28 Plaintiff concedes that 11% degradation is normal and given the circumstances beyond reasonable,  
however, Plaintiff’s vehicle suffers from approximately 25% degradation, not 11%.

vehicles, and therefore Plaintiff and other putative class members were unaware of any issues prior to purchase and have been harmed as a result thereof. Tesla continues to engage in this fraudulent scheme of tricking consumers and leading them to believe that these issues will be taken care of by Tesla, and thousands of consumers are at risk of Tesla's fraudulent and dishonest acts as alleged herein.

## VII. CLASS ACTION ALLEGATIONS

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

### **Nationwide Class**

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

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

1 94. Alternatively, if California law does not apply to all owners of Class Vehicles,  
2 Plaintiff brings this action individually, and on behalf of the following proposed classes:  
3

4 **California Class**

5 All persons or entities who purchased or will purchase a Class Vehicle  
6 in the State of California from Tesla in California.

7 **California Subclass**

8 All persons or entities who purchased or will purchase a Class Vehicle  
9 with a purchase price of \$40,000 (forty-thousand dollars) or less in the  
10 State of California from Tesla in California.

11 95. Excluded from the proposed classes are Tesla, its employees, officers,  
12 directors, legal representatives, heirs, successors, wholly or partly owned, and its  
13 subsidiaries and affiliates, Tesla dealers, and the judicial officers and their immediate  
14 family members and associated court staff assigned to this case, and all persons who  
15 make a timely election to be excluded from the proposed classes.

16 96. Certification of Plaintiff's claims for class-wide treatment is appropriate  
17 because Plaintiff can prove the elements of the claims on a class-wide basis using the  
18 same evidence as would be used to prove those elements in individual actions alleging  
19 the same claims.

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

23 98. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the  
24 classes proposed herein are so numerous and geographically dispersed that individual  
25 joinder of all proposed class members is impracticable. While Plaintiff believes that there  
26 are thousands of members of the proposed classes, the precise number of class members  
27  
28

1 is unknown to them but may be ascertained from Tesla's books and records. Based upon  
 2 information, belief, and investigation by Plaintiff's counsel, it is estimated that nearly  
 3 13,000 used, certified preowned Tesla Model S Vehicles and approximately 163 Tesla  
 4 Model X vehicles were sold to members of the Nationwide Class, with the majority of  
 5 Class Vehicles, over 5,000, having been sold to members of the California Classes. Class  
 6 members may be notified of the pendency of this action by recognized, court-approved  
 7 notice dissemination methods, which may include U.S. Mail, electronic mail, Internet  
 8 postings, and/or published notice.

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

- 13 a. Whether Tesla engaged in the conduct alleged herein;
- 14 b. Whether Tesla designed, advertised, marketed, distributed,  
 15 leased, sold, or otherwise placed the Class into the stream of  
 16 commerce in the United States;
- 17 c. Whether Tesla provided the requisite materials and disclosures  
 18 pursuant to federal laws, including the FTC Used Car Rule;
- 19 d. Whether Tesla's violations of the FTC's Used Car Rule  
 20 constitutes a *per se* violation, actionable under state consumer  
 21 and warranty protection laws;
- 22 e. Whether Tesla's violations of California's Car Buyer's Bill of  
 23 Rights, Cal. Veh. Code §§ 11713.18(a)(6) constitutes a *per se*  
 24 violation, actionable under state consumer and warranty  
 25 protection laws;
- 26 f. Whether Tesla's violations of California's Car Buyer's Bill of  
 27 Rights, Cal. Veh. Code §§ 11713.21 constitutes a *per se*  
 28 violation, actionable under state consumer and warranty  
 protection laws;

- g. Whether Tesla knew the health and status of the batteries for Class Vehicles prior to purchase and delivery by Plaintiff and the proposed classes;
- h. Whether it was Tesla's intent and/or policy to refuse to provide the required disclosures to Plaintiff and the proposed classes including, but not limited to, an inspection list containing requisite and material information, a buyer's guide pursuant to FTC's Used Car Rule, amongst others in a fraudulent, deceptive, or unfair manner so as to trick Plaintiff and the proposed classes?
- i. Whether it was Tesla's intent and/or policy to refuse to provide the required disclosures to Plaintiff and the proposed classes including, but not limited to, an inspection list containing requisite and material information, a buyer's guide pursuant to FTC's Used Car Rule, amongst others;
- j. Whether Plaintiff and proposed classes were denied battery replacements or wrongfully denied a vehicle "buyback" despite Tesla's failure to provide any relevant information regarding the Class Vehicles and Class Vehicles regarding the health or status of its batteries;
- k. Whether Tesla's actions including the blog posts on its website, as well as other display mediums, are misleading, false, and therefore violating consumer protection statutes, false advertising laws, and any other laws as asserted herein;
- l. Whether Tesla had a duty to Plaintiff and the proposed classes to disclose the battery health and status of battery capacity prior to sale of the Class Vehicles;
- m. Whether Tesla knew about the violations, and if so, for how long;
- n. Whether Tesla breached their express and implied warranties;
- o. Whether the advertisements and statements made by Tesla were and are false and/or had and have had a tendency to deceive

customers by either failing to disclose the current level of maximum battery capacity or battery health for the Class Vehicles, or misrepresenting that the Class Vehicles would be capable of reaching or, close to reaching EPA mileage ratings for the Class Vehicles.

- p. Whether Tesla's conduct violates nationwide consumer protection statutes, false advertising laws, sales contracts, and other laws as asserted herein;
- q. Whether Plaintiff and proposed class members overpaid for the Class Vehicles;
- r. Whether Plaintiff and the proposed class members overpaid for the Class Vehicles;
- s. Whether Plaintiff and putative class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief;
- t. Whether Plaintiff and putative class members are entitled to damages and other monetary relief for Tesla's violations of the applicable laws as alleged herein, and, if so, in what amount; and
- u. Whether Plaintiff and putative class members are entitled to an award of punitive or exemplary damages based on Tesla's conduct and violations as alleged herein and if so, in what amount.

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

101. Adequacy. Federal Rule of Civil Procedure 23(a)(4): Plaintiff is an adequate proposed class representative because Plaintiff's interests do not conflict with the interests of the other members of the proposed classes they seek to represent; Plaintiff has

1 retained counsel competent and experienced in complex litigation and the technology and  
2 subject matter in regards to the underlying suit; and Plaintiff intends to prosecute this  
3 action vigorously. The interests of the proposed classes will be fairly and adequately  
4 protected by Plaintiff and Plaintiff's counsel.

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

9 103. Superiority. Federal Rule of Civil Procedure 23(b)(3): Class actions are a  
10 superior means for the fair and efficient adjudication of this controversy and action, when  
11 compared to any other available means. It is unlikely that there will be any difficulties or  
12 problems encountered with regards to management of this class action. A class action is  
13 superior here also where damages, financial detriment, or any other harm that Plaintiff  
14 and the other putative class members have suffered is small in comparison and relation to  
15 the large burden, unnecessary expense and costs spent if individual litigants proceeded  
16 against Tesla instead of together as a class. Individual litigation and individual claims  
17 sought against Tesla would make it impracticable for the members of the proposed  
18 classes to individually seek redress for Tesla's wrongful conduct. Despite the likely fact  
19 that individual class members have the means to and could afford to litigate as separate  
20 individual actions, doing so would place unnecessary burden on the court and would not  
21 promote judicial efficiency. Furthermore, individualized litigation creates a potential for  
22 inconsistent or contradictory judgments, and it increases the delay and expense to all  
23 parties and the court system. Undoubtedly here, the class action device presents far fewer  
24 management difficulties and provides the benefits of single adjudication, economy of  
25 scale, as well as comprehensive supervision by a single court.

26 ///

27 ///

**VIII. CAUSES OF ACTION**

**COUNT I**

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

**(15 U.S.C. § 2301 *et seq.*)**

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

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

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

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

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

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

110. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with an implied or written warranty.

111. As described herein, Tesla provided Plaintiff and the other Class members with “implied warranties” and “written warranties” as those terms are defined in 15 U.S.C. § 2301 *et seq.*

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

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

1 114. Tesla breached these written and implied warranties as described in the  
2 allegations herein, with respect to the batteries of the Class Vehicles and by failing to  
3 acknowledge that Plaintiff's battery and those of other Class members were defective and  
4 eligible to be replaced under Tesla's written and implied warranties.

5 115. By Tesla's conduct described and alleged herein, including Tesla's  
6 knowledge that the batteries of the Class Vehicles were abnormally degraded or  
7 otherwise defective, Tesla has failed to comply with its obligations under their written  
8 and implied promises, warranties, and representations.

9 116. In its capacity as a warrantor, and by the conduct and allegations described  
10 herein, any attempts by Tesla to limit the implied warranties in a manner that would  
11 exclude coverage is unconscionable and any such effort to disclaim, or otherwise limit  
12 liability is null and void.

13 117. The transactions by which Plaintiff and the putative class members purchased  
14 the Affected Vehicles were transactions for the sale of goods and at all times relevant,  
15 Tesla was the seller of the Affected Vehicles and placed these products into the stream of  
16 commerce throughout the United States, including California. At all times relevant,  
17 Tesla maintained showroom stores and vehicle service centers in California.

18 118. Plaintiff and putative class members purchased the Class Vehicles by placing  
19 a deposit online for a specific vehicle, and Tesla would provide a delivery date for the  
20 Class Vehicles whereby Plaintiff and putative class members would take possession of  
21 the vehicles.

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

26 120. The Class Vehicles, however, were non-conforming goods and/or goods that  
27 were not the same quality as those generally accepted in the trade, were of poor or below  
28

1 average quality within the description and/or did not conform to affirmations of fact  
2 disseminated by Tesla because they did not achieve the advertised and displayed  
3 estimated approximate mileage range as displayed by Tesla for the Affected Vehicles.

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

7 122. The Class Vehicles, at all times relevant herein, did not and do not have the  
8 quality that a buyer would reasonably expect.

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

11 124. All jurisdictional prerequisites have been satisfied.

12 125. Plaintiff and the other Class members are in privity with Tesla in that they  
13 purchased the Class Vehicles from Tesla or its agents.

14 126. As a result of Tesla's breach of warranties, Plaintiff and the other Class  
15 members are entitled to revoke their acceptance of the Class Vehicles, obtain damages  
16 and equitable relief, and obtain costs pursuant to 15 U.S.C. § 2310.

## 17 **COUNT II**

### 18 **VIOLATION OF CALIFORNIA'S SONG-BEVERLY CONSUMER WARRANTY** 19 **ACT ("SONG-BEVERLY")**

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

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

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

25 129. Pursuant to the Song Beverly Consumer Warranty Act ("Song-Beverly") Cal.  
26 Civ. Code §1790 *et seq.*, the Class Vehicles are "consumer goods" purchased primarily  
27  
28

1 for family or household purposes and Plaintiff and the other Class members have used the  
2 Class Vehicles primarily for those purposes.

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

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

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

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

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

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

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

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

26 138. Plaintiff’s vehicle has a defective battery, such that it is a defect in materials  
27 and/or workmanship and is expressly covered under the warranty. Applying any  
28

1 warranty limitation period to avoid the need to repair this particular defect would be  
2 unconscionable in that, inter alia, the vehicles at issue contain a defect at the time of  
3 deliver, Tesla was either aware of or consciously and/or recklessly disregarded this defect  
4 which could not be discovered by Plaintiff and putative class members at the time of such  
5 purchase of the Class Vehicles, and said purchasers lacked any meaningful choice with  
6 respect to the warranty terms.

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

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

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

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

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

25 144. Tesla’s representations about the estimated mileage range and that the Class  
26 Vehicles would be subject to a “full inspection” thus, creating express warranties that the  
27  
28

1 Affected vehicles would contain approximately the stated mileage range as advertised by  
2 Tesla.

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

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

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

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

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

25 150. Plaintiff and the other Class members are entitled under Song-Beverly to  
26 recover as part of the judgment a sum equal to the aggregate amount of costs and  
27  
28

1 expenses, including attorneys' fees, reasonably incurred in connection with the  
2 commencement and prosecution of this action.

### 3 **COUNT III**

#### 4 **VIOLATION OF FEDERAL TRADE COMMISSION ACT**

##### 5 **(Used Motor Vehicle Trade Regulation Rule, 16 C.F.R. 455 *et seq.*)**

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

8 152. Plaintiff brings this count on his own behalf, the Nationwide Class, and the  
9 California Classes.

10 153. Plaintiff and the putative class members are "consumers" and tesla is a  
11 "dealer" of used cars as defined by Federal Trade Commission Act 16 CFR §455.1.

12 154. 16 CFR §455.1 ("FTC Used Car Rule") provides that it is a deceptive act or  
13 practice for any used vehicle dealer to: (1) misrepresent the mechanical condition of a  
14 used vehicle; (2) misrepresent the terms of any warranty offered in connection with the  
15 sale of a used vehicle; and (3) represent that a used vehicle is sold with a warranty when  
16 the vehicle is sold without any warranty. 16 CFR § 455.1.

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

22 156. Tesla has violated, and upon information and belief, continues to violate these  
23 sections of the FTC Used Car Rule by misrepresenting the mechanical condition of the  
24 Class Vehicles to Plaintiff and the putative class members. Plaintiff and the putative  
25 class members were led on by Tesla to believe that, at the very least, the batteries of the  
26 Class Vehicles were in a sound mechanical condition free of any major defects or severe  
27 battery degradation.  
28



1 Defendant Tesla has committed fraud within the common law meaning of the term fraud  
2 in violation of §11713.18.

3 165. Vehicle Code §11713.18(a) provides that it is a violation for the holder of a  
4 dealer's license to "advertise for sale or sell a used vehicle as "certified" or use any  
5 similar descriptive term in the advertisement or the sale of a used vehicle that implies the  
6 vehicle has been certified to meet the terms of a used vehicle certification program" for  
7 certain acts.

8 166. Specifically, Vehicle Code §11713.18(a)(6) provides that a violation occurs  
9 where "[p]rior to sale, the dealer fails to provide the buyer with a completed inspection  
10 report including all the components inspected." CA Veh. Code §11713.18(a)(6).

11 167. Tesla offered these vehicles and used deceptive advertisement and made  
12 fraudulent representations to consumers to induce Plaintiff and the putative class  
13 members to rely on such advertising and representation in purchasing the Class Vehicles.

14 168. Tesla violated the vehicle code sections herein by failing to provide Plaintiff  
15 and the putative class members with any form of inspection or checklist of any vehicle  
16 parts that were inspected as defined by and required under the sections of the vehicle  
17 code sections herein.

18 169. Plaintiff and the putative class members were harmed by Tesla's violations, in  
19 that they would not have purchased, or would have purchased the Class Vehicles for  
20 much lower price had Tesla provided them with an inspection checklist.

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

26 171. Based upon Tesla's deceptive and fraudulent acts that have garnered Tesla  
27 significant profits at the expense of Plaintiff and the putative class members, Plaintiff and  
28

1 the putative class members seek an award of exemplary and punitive damages against  
2 Tesla for the violations and acts as alleged herein.

3 **COUNT V**

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

5 **(California Car Buyer's Bill of Rights, FFVR 35)**

6 **(California Subclass Only)**

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

9 173. Plaintiff brings this count on behalf of himself and the California Subclass.

10 174. California Vehicle Code Section 11713.21, part of the California Car Buyer's  
11 Bill of Rights, FFVR 35, provides that a dealer "shall not sell a used vehicle, as defined in  
12 Section 665 and subject to registration under this code, at retail to an individual for  
13 personal, family, or household use without offering the buyer a contract cancellation option  
14 agreement that allows the buyer to return the vehicle without cause. This section does not  
15 apply to a used vehicle having a purchase price of forty thousand dollars (\$40,000) or  
16 more..." Ca. Veh. Code §11713.21(a)(1).

17 175. Plaintiff is an individual as defined by vehicle code 11713.21, and the Class  
18 Vehicles that had a purchase price of \$40,000 or less are used vehicles as defined by vehicle  
19 code 11713.21.

20 176. Plaintiff and other California Subclass members were never offered a contract  
21 cancellation option agreement as required by the vehicle section referenced above.

22 177. Tesla's failure to offer or provide any disclosures to Plaintiff and the California  
23 Subclass members constitutes fraud and shows Tesla's intent to defraud Plaintiff and other  
24 Subclass members by letting them believe that they had no viable options to deal with the  
25 Class Vehicles after purchase.

26 178. Violations under this California vehicle code section is actionable under the  
27 California Consumer Legal Remedies Act (CLRA), California's Unfair Competition  
28

1 Law, false advertising statutes, or any other applicable state or federal law. Cal. Veh.  
 2 Code § 11713.18(b) for which Plaintiff and the California Classes seek all proper relief  
 3 for as alleged herein.

4 179. Based upon Tesla's deceptive and fraudulent acts that have garnered Tesla  
 5 significant profits at the expense of Plaintiff and the putative class members, Plaintiff and  
 6 the putative class members seek an award of exemplary and punitive damages against  
 7 Tesla for the violations and acts as alleged herein.

## 8 **COUNT VI**

### 9 **VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT** 10 **(Cal. Civ. Code § 1750 *et seq.*)**

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

13 181. Plaintiff brings this count on behalf of himself, the Nationwide Class and the  
 14 California Classes.

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

19 183. The Class Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

20 184. Plaintiff and other putative Nationwide class members are "consumers" as  
 21 defined in Cal. Civ. Code § 1761(d), and Plaintiff, the other class members, and Tesla are  
 22 "persons" as defined in Cal. Civ. Code § 1761(c).

23 185. As alleged above, Tesla made numerous representations concerning the  
 24 quality, performance, effectiveness, performance, safety, and status of the Class Vehicles,  
 25 that were misleading, all of which emanated from Tesla's headquarters in California, as  
 26 well as Tesla's showroom stores and service centers throughout California, and publicly  
 27 displayed on Tesla's website.  
 28

1           186. In purchasing the Class Vehicles, Plaintiff and other putative Nationwide  
2 class members were deceived by Tesla's fraudulent and deceptive advertising, and for  
3 failing to disclose certain material facts regarding the Class Vehicles as required by  
4 federal and state laws.

5           187. Tesla's conduct as described herein was and is in violation of the CLRA.  
6 Tesla's conduct emanates from its headquarters in California and violates at least the  
7 following enumerated CLRA provisions:

- 8           a. Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or  
9 certification goods;
- 10           b. Cal. Civ. Code § 1770(a)(5): Representing that goods have  
11 sponsorship, approval, characteristics, uses, benefits, or  
12 quantities which they do not have;
- 13           c. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a  
14 particular standard, quality, or grade, if they are of another;
- 15           d. Cal Civ. Code § 1770(a)(9): Advertising goods with intent not  
16 to sell them as advertised;
- 17           e. Cal. Civ. Code § 1770(a)(16): Representing that goods have  
18 been supplied in accordance with a previous representation  
19 when they have not;
- 20           f. By deceptively, falsely, and fraudulently advertising on Tesla's  
21 website that the Affected Vehicle's would receive a "full  
22 inspection" when the Affected Vehicles were not inspected;
- 23           g. By violating state laws, including California Vehicle Code  
24 Section 11713 et seq., for failing to disclose material  
25 information in violation of Section 11713.18(a)(6) which  
26 requires disclosure of material information by used car dealers  
27 as defined by statute and California Vehicle Code Section  
28 11713.21 by failing to disclose the required two-day contract  
cancellation option to the California Subclass.

- 1
- 2 h. By violating federal laws, including the Used Motor Vehicle
- 3 Trade Regulation Rule, 16 CFR Part 455 et seq. for failing to
- 4 disclose material information including the written form
- 5 “Buyer’s Guide” to Plaintiff and the putative class members.

6 188. California Vehicle Code Section 11713.18(a)(6), Cal. Veh. Code §

7 11713.18(a)(6) requires used car dealers, like Tesla, to provide an “inspection report”

8 which conforms to one that is within the commonly understood meaning of the term in

9 the automobile industry, namely, “a report that lists the components inspected, with a

10 space corresponding to each component in which the inspector designates whether or not

11 that component is functional”.

12 189. Furthermore, § 11713.18(a)(6) prohibits car dealers from advertising or

13 selling a used car as “certified” (or any similar word) unless before the sale, the dealer

14 provides the buyer with “a completed inspection report indicating all components

15 inspected.”

16 190. Tesla advertised and marketed that the Class Vehicles would receive a “full

17 inspection” by Tesla. Tesla failed to provide Plaintiff, the Nationwide Class, and the

18 Defective Battery Class with an “inspection report” as required by Cal. Veh. Code §

19 11713.18(a)(6). Tesla never disclosed the outcome or details regarding any inspection of

20 the Class Vehicles or specific parts that were inspected prior to Plaintiff’s purchase.

21 191. Plaintiff, the Nationwide Class, and the Defective Battery Class relied upon

22 Tesla’s representation that the Class Vehicles would receive a “full inspection” prior to

23 purchase. Plaintiff would not have purchased the product, or would have paid

24 significantly less for the product, but for Tesla’s unlawful conduct. Nationwide Class

25 and Defective Battery Class members were likely to also have relied upon Tesla’s

26 deceptive labeling and advertising. Plaintiff, the Nationwide Class, California Classes

27

28

1 and putative class members acted reasonably when they purchased the Affected Vehicles  
2 under the mistaken belief that the cars they purchased would be fully inspected.

3 192. Due to Tesla's failure to complete a "full inspection" of the Class Vehicles  
4 and failure to provide Plaintiff with the requisite inspection reports, let alone anything  
5 related to the status of the inspected vehicle parts, Plaintiff was never aware that the  
6 Subject Vehicle would only provide an estimated 150 mile range at a full charge.

7 193. Tesla had a duty to disclose the material information regarding the Class  
8 Vehicles, including the status of the batteries, maximum capacity and current level of  
9 estimated mileage range for the Class Vehicles to Plaintiff and the putative class  
10 members. Tesla is in the sole and exclusive position to conduct tests and it does so under  
11 its "full inspection" of the Class Vehicles prior to sale. Plaintiff and the putative class  
12 members did not have access to this information, nor was it reasonably or readily  
13 accessible to them.

14 194. The facts concealed and omitted by Tesla in its interaction with Plaintiff and  
15 the putative class members are material in that a reasonable consumer would have  
16 considered them to be important in deciding whether to purchase the Class Vehicles or  
17 pay a lower price for the Class Vehicles. Had Plaintiff and other class members known  
18 about the defective nature of the Class Vehicles, or had Tesla provided the required  
19 material information disclosure, they would not have purchased, or they would not have  
20 paid the prices they paid for the Class Vehicles.

21 195. By failing to disclose material information regarding the Class Vehicles to  
22 Plaintiff and the other class members, the entire purchase transaction was tainted by  
23 Tesla's CLRA violations because Plaintiff and the other class members were damaged by  
24 purchasing a product that they would not have, and/or not getting the benefit of their  
25 bargain.

26 196. Plaintiff provided Tesla with notice of its violations of the CLRA pursuant to  
27 Cal. Civ. Code § 1782(a). The notice was transmitted to Tesla on April 24, 2019.  
28

1 Plaintiff's letter was sent via Certified Mail, advising Tesla of the multiple violations of  
2 the CLRA, UCL, federal and state warranty and consumer protection statutes, as well as  
3 Tesla's deceptive and fraudulent business practices. Plaintiff informed Tesla that his  
4 vehicle did not provide the advertised and displayed mileage range of 210, and that the  
5 mileage range of the Subject Vehicle was beyond what is acceptable, normal, and  
6 expected. Plaintiff demanded that Tesla comply with a buyback of the vehicle, including  
7 payment of costs incurred and attorneys' fees incurred as provided for by the CLRA.

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

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

18 199. In accordance with Cal. Civ. Code § 1780(a) Plaintiff and members of the  
19 putative class seek only injunctive relief for Tesla's violations of the CLRA at this  
20 juncture.

21 200. While Plaintiff and the putative class members do not seek to recover  
22 damages under the CLRA in this Complaint, after mailing appropriate notice and demand  
23 in accordance with Cal. Civ. Code § 1782(a) & (d) on July 23, 2019, Plaintiff will  
24 subsequently amend this Complaint to also include a request for compensatory and  
25 punitive damages because Plaintiff and the putative class members have suffered injury  
26 in fact and actual damages resulting from Tesla's material omissions and  
27 misrepresentations because Plaintiff and putative class members would not have  
28

1 purchased the Class Vehicles or would have paid significantly less, had Tesla been  
2 compliant with the relevant federal and state laws. Plaintiff and the putative class  
3 members were damaged by not getting the benefit of their bargain and overpaid for the  
4 Class Vehicles.

5 201. In an amendment to this complaint, and following the notice sent on July 23,  
6 2019, Plaintiff will seek an additional award against Tesla, under Cal. Civ. Code §  
7 1780(b) of up to \$5,000 for each Class member who qualifies as a “senior citizen” or  
8 “disabled person” under the CLRA on behalf of the putative class members. Tesla knew  
9 or should have known that its conduct was directed to one or more putative class  
10 members who are senior citizens or disabled persons. Tesla’s conduct caused putative  
11 class members who are senior citizens or disabled persons to suffer a substantial loss of  
12 property set for retirement or for personal or family care and maintenance, or assets  
13 essential to the health or welfare of the senior citizen or disabled person. One or more  
14 putative class members who are senior citizens or disabled persons are substantially more  
15 vulnerable to Tesla’s conduct because of age, poor health or infirmity, impaired  
16 understanding, restricted mobility, or disability, and each of them suffered substantial  
17 physical, emotional, or economic damage resulting from Tesla’s conduct.

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

## 22 **COUNT VII**

### 23 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW**

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

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

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

3           205. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §  
4 17200, et seq., proscribes acts of unfair competition, including "any unlawful, unfair or  
5 fraudulent business act and unfair, deceptive, untrue or misleading advertising."

6           206. Tesla's conduct, as described herein, was performed in and emanated from  
7 California and is in violation of the UCL. Tesla's conduct violates the UCL in at least the  
8 following ways:

- 9
- 10           a. By deceptively and fraudulently advertising to Plaintiff and the  
11 other class members that the Affected Vehicles would be "fully  
12 inspected" and certified by Tesla prior to purchase and delivery of  
the Affected Vehicles;
- 13           b. By violating federal laws, including the Used Motor Vehicle Trade  
14 Regulation Rule, 16 CFR Part 455 et seq. for failing to disclose  
15 material information in violation of Section 5(a) of the Federal  
Trade Commission Act, 15 U.S.C. section 45(a).
- 16
- 17           c. By violating state laws, including California Vehicle Code Section  
18 11713 *et seq.*, for failing to disclose material information such as a  
19 written inspection checklist and/or requisite "Buyer's Guide", in  
20 violation of Section 11713.18(a)(6) which requires disclosure of  
21 material information by used car dealers as defined by statute and  
22 Section 11713.21 which requires an offer by dealers to purchasers  
of used cars under \$40,000 with a two-day contract cancellation  
option;
- 23           d. By failing to disclose material information regarding the health of  
24 the battery for the Class Vehicles, including the estimated mileage  
25 range of the Class Vehicles, maximum battery capacity level, and  
26 failure to provide any written inspection report regarding the status  
27 of the batteries of the Class Vehicles;  
28

- e. By marketing the Affected Vehicles with the Environmental Protection Agency (EPA) estimated mileage range, therefore misrepresenting the actual mileage range of the Class Vehicles with the intent for Plaintiff and the other class members to rely on such fraudulent advertising;
- f. By deceptively advertising and fraudulently representing to Plaintiff and the other class members, by stating that the Class Vehicles would be fully inspected by Tesla standards prior to purchase and delivery of the Class Vehicles;
- g. By violating federal and state laws requiring that used vehicle dealers display and disclose material information, including a “buyers guide” and an inspection checklist prior to and after the purchase of used vehicles;
- h. By violating other California laws, including California laws governing false advertising and consumer protection.

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

208. Accordingly, Plaintiff and other putative Nationwide class members have suffered injury in fact, including lost money or property, as a result of Tesla’s misrepresentations and omissions.

209. Plaintiff and the putative class members seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Tesla under Cal. Bus. & Prof. Code § 17200 *et seq.*



1           215. Tesla caused to be made or disseminated throughout California and the  
2 United States, through advertising, marketing, and other publications emanating from its  
3 headquarters in California, statements that were untrue or misleading, and which were  
4 known, or which by exercise of reasonable care should have been known to Tesla, to be  
5 untrue and misleading to consumers, including Plaintiff and putative class members.

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

10           217. Plaintiff and other putative Nationwide class members have suffered an injury  
11 in fact, including the loss of money or property, as a result of Tesla's unfair, unlawful,  
12 and/or deceptive practices. In purchasing the Class Vehicles, Plaintiff and putative class  
13 members relied on the misrepresentations and/or omissions with respect to the safety,  
14 performance, and reliability of the Class Vehicles, including representations as to the  
15 battery health, condition, capacity, and mileage range. Tesla's representations turned out  
16 not to be true because the Class Vehicles were sold with batteries that were abnormally  
17 degraded, dangerously defective, faulty, inoperable, unsafe or otherwise not capable of  
18 reaching close to the maximum battery capacity as advertised and represented by Tesla.  
19 Had Plaintiff and putative class members known about this, they would not have  
20 purchased the Class Vehicles, or would not have paid as much for them. Accordingly,  
21 Plaintiff and putative class members overpaid for the Class Vehicles and did not receive  
22 the benefit of their bargain.

23           218. All of the wrongful conduct alleged herein occurred and continues to occur, in  
24 the conduct of Tesla's business, which is headquartered and has its principal operations in  
25 California. Tesla's wrongful conduct is part of a pattern or generalized course of conduct  
26 that is still perpetuated and repeated, all of which emanates from California and occurs  
27 both in the state of California and nationwide.  
28

1           219. Plaintiff, individually, and on behalf of putative class members, request that  
2 this Court enter such orders or judgments as may be necessary to enjoin Tesla from  
3 continuing its unfair, unlawful, and/or deceptive practices and to restore Plaintiff and the  
4 putative class members any money that was acquired by Tesla's acts of unfair  
5 competition, including restitution and/or restitutionary disgorgement, and for such other  
6 relief set forth below.

7           220. Based upon Tesla's deceptive and fraudulent acts that have garnered Tesla  
8 significant profits at the expense of Plaintiff and the putative class members, Plaintiff and  
9 the putative class members seek an award of exemplary and punitive damages against  
10 Tesla for the violations and acts as alleged herein.

11                                   **COUNT IX**  
12                                   **BREACH OF EXPRESS WARRANTY**  
13                                   **(Cal. Comm. Code § 2313)**

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

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

18           223. Tesla provided all nationwide purchasers of the Class Vehicles with a 48  
19 month or 50,000-mile limited warranty and a 24 month or 100,000-mile warranty (the  
20 "Warranties") against defects in materials and/or workmanship.

21           224. Tesla also provided all Class Vehicles with a 8 year, unlimited mile warranty  
22 which would cover the Class Vehicle's drivetrain and batteries.

23           225. The Warranties were provided in consideration for the purchase of the Class  
24 Vehicles, became part of the basis of the bargain, because they were incorporated into the  
25 purchase agreements of all Class Vehicles.

26           226. Plaintiff and the putative class members learned about the existence of such  
27 Warranties pre-purchase, and as reasonable consumers, relied on the existence of such  
28

1 warranties. Plaintiff and the putative class members conduct of purchasing the Class  
2 Vehicles is in accordance with their reliance on said Warranties.

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

11 228. Plaintiff and the putative class members substantially performed all of their  
12 obligations under the Warranties, by presenting the Class Vehicles to authorized Tesla  
13 repair facilities during the warranty coverage period and/or by accepting all of the over-  
14 the-air updates provided by Tesla. Plaintiff and the putative class members heeded to the  
15 advice of Tesla technicians by recalibrating the batteries of the Class Vehicles.

16 229. Tesla breached and continues to breach said express warranties by failing to  
17 repair the defects in materials and workmanship in the severely degraded batteries.

18 230. Tesla's representations about the way in which consumers would be able to  
19 use the Class Vehicles without paying much attention to the batteries created express  
20 warranties that the Class Vehicles would not have severely degraded batteries.

21 231. Plaintiff and the putative class members have been injured as a result of  
22 Tesla's breach, as they did not get the benefit of their bargain, which included, *inter alia*,  
23 effective and not severely degraded batteries in the Class Vehicles.

24 232. Tesla breached and continues to breach, said express warranties as alleged  
25 herein, because the Class Vehicles are sold to purchasers with said battery defects and  
26 severe degradation, because Tesla fails to fix/repair the batteries through over-the-air  
27 updates and in-store.  
28



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

5           243. At the time of purchase of the Class Vehicles, Tesla knew or had reason to  
6           know that Plaintiff and other putative class members were relying on Tesla's skill and  
7           judgment to inspect and certify the Class Vehicles for the particular purposes, and  
8           Plaintiff justifiably relied on Defendant's skill and judgment.

9           244. This became a part of the basis of the bargain between the parties.

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

15          246. The Class Vehicles were of poor or below average quality within the  
16          description of electric vehicles provided by Tesla and did not possess the qualities that a  
17          buyer would have reasonably expected. The Class Vehicles were not suitable for these  
18          purposes.

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

23          248. The Class Vehicles were not acceptable commercially and breached the  
24          implied warranty because they did not conform to the promises or affirmations of fact  
25          made Tesla's website and other marketing materials, Cal. Comm. Code § 2314(2)(f), and  
26          other grounds as set forth in Commercial Code section 2314(2).  
27  
28





1 covered under warranty and replaced and/or repaired by Tesla for almost any reason  
2 imaginable.

3 264. Plaintiff and the putative class members relied upon Tesla's representations  
4 and purchased the Class Vehicles.

5 265. As a direct and proximate result of the foregoing, Plaintiff and the putative  
6 class members were damaged because they would not have purchased the Class Vehicles  
7 or would have paid significantly less for the Class Vehicles had they known that Tesla's  
8 representations were false.

9 **COUNT XIII**  
10 **FRAUD BY CONCEALMENT**  
11 **(Cal. Civ. Code § 3294)**

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

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

16 268. Tesla concealed and suppressed material facts concerning the battery health  
17 and status of the Class Vehicle batteries.

18 269. More specifically, Tesla concealed and suppressed material facts concerning  
19 the design, safety, performance, and quality of the Class Vehicles and the batteries in the  
20 Class Vehicles. As alleged herein, notwithstanding its promises regarding the batteries of  
21 the Class Vehicles and warranties both express and implied regarding the same, Tesla  
22 knowingly and intentionally represented to consumers that the Class Vehicles would  
23 receive full inspections prior to sale. Tesla conducted full inspections of the Class  
24 Vehicles, which would include testing the batteries of the Class Vehicles to determine the  
25 maximum battery capacity of the Class vehicles.

26 270. Tesla fraudulently concealed the results of any inspection performed on the  
27 Class Vehicles, including any results from testing of the batteries and maximum battery  
28

1 capacity of the Class Vehicles. Tesla did so in order to boost sales of the Class Vehicles  
2 and in order to falsely assure consumers that the Class Vehicles were fully inspected and  
3 performing as promised. The false representations were material to consumers, both  
4 because they concerned the safety and performance of the Class Vehicles, and because  
5 the representations played a significant role in the value of the Class Vehicles.

6 271. Plaintiff and the other Class members viewed advertising on Tesla's website,  
7 read promotional materials, and heard a plethora of Tesla information regarding the  
8 safety, performance, and quality of Tesla vehicles and Class Vehicles, including the  
9 battery health and maximum battery capacity. They had no way of knowing that Tesla's  
10 representations were false and gravely misleading and there was no way that Plaintiff and  
11 the other Class members could have unraveled Tesla's deception.

12 272. Tesla failed to provide any inspection checklist or report for any of the Class  
13 Vehicles, nor did Tesla provide any type of written disclosure regarding the battery health  
14 and maximum battery capacity of the Class Vehicles. Tesla had a duty to disclose the  
15 true battery health and maximum battery capacity of the Class Vehicles because the tests  
16 could only have been conducted by Tesla. Tesla had readily available access to this  
17 information, superior knowledge, and understood this information. Tesla knew that these  
18 facts would be difficult and nearly impossible for this information to be discovered by  
19 Plaintiff and the other Class members. Tesla failed to disclose and/or fraudulently  
20 concealed material information regarding the batteries of the Class Vehicles, which are  
21 material concerns to consumers because they directly impact the safety, performance, and  
22 value of the Class Vehicles.

23 273. Tesla actively concealed and/or suppressed these material facts, including  
24 facts regarding the batteries and degradation of the Class Vehicles, in whole or in part, to  
25 pad and protect its profits and to burnish the perception that its vehicles were the leading  
26 edge of electric vehicle and battery technology, which perception would enhance the  
27  
28

1 brand's image and garner Tesla more money and profits. However, Tesla did so at the  
2 expense of Plaintiff and the other Class members.

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

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

20 276. Accordingly, Tesla is liable to Plaintiff and the putative class members for  
21 damages in an amount to be proven at trial.

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

27 ///  
28

**COUNT XIV**  
**QUASI CONTRACT/RESTITUTION/UNJUST ENRICHMENT**  
**(California Law)**

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

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

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

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

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

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

**IX. REQUEST FOR RELIEF**

284. WHEREFORE, Plaintiff HUGH NGUYEN, individually and on behalf of the putative class members and the proposed classes, respectfully requests that the Court enter judgment in their favor and against Defendant Tesla, Inc., as follows:

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

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

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

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

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

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

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

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

13                           **X. DEMAND FOR JURY TRIAL**

14          Plaintiff hereby demands a jury trial for all claims so triable.

15  
16  
17  
18       Dated: July 23, 2019

LAW OFFICES OF EDWARD C. CHEN

19                           By /s/ Edward C. Chen  
20                                       Edward C. Chen (SBN 312533)

21                           1 Park Plaza, Suite 600  
22                           Irvine, CA 92614  
23                           Telephone: (949) 287-4278  
24                           Facsimile: (626) 386-6060  
25                           Email: [Edward.Chen@edchenlaw.com](mailto:Edward.Chen@edchenlaw.com)

26                           *Attorney for Plaintiff Hugh Nguyen and the*  
27                           *Proposed Classes*  
28