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12 *the Proposed Classes*

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 DEAN SHEIKH, JOHN KELNER, TOM  
MILONE, and DAN WHELAN, on behalf of  
17 themselves and all others similarly situated,

18 Plaintiffs,

19 v.

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

22 Defendant.

No. 5:17-cv-02193-NC

AMENDED CLASS ACTION  
COMPLAINT FOR VIOLATION OF  
STATE CONSUMER FRAUD ACTS,  
FRAUD BY CONCEALMENT, AND  
UNJUST ENRICHMENT

**DEMAND FOR JURY TRIAL**



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## I. INTRODUCTION

1  
2 1. Tesla represents on its website that its “Model S is designed from the ground up to be  
3 the safest, most exhilarating sedan on the road. . . . Model S comes with Autopilot capabilities  
4 designed to make your highway driving not only safer, but stress free.”<sup>1</sup> But most of its “Standard  
5 Safety Features” remain inoperative months after customers have taken delivery, and the Enhanced  
6 Autopilot capabilities that consumers paid \$5,000 extra to obtain are anything but “safer” and “stress  
7 free”—many owners report the Autopilot is essentially unusable and demonstrably dangerous.

8 2. Regarding its Standard Safety Features, Tesla told purchasers: “These active safety  
9 technologies, including collision avoidance and automatic emergency braking, will become available  
10 in December 2016 and roll out through over-the-air software updates.” When Tesla missed that  
11 deadline, it changed its website to state: “These active safety technologies, including collision  
12 avoidance and automatic emergency braking, have begun rolling out through over-the-air updates.”  
13 But neither statement was or is accurate. The Standard Safety Features were not available in  
14 December 2016; and in the months since customers have been taking deliveries of cars under these  
15 promises, only (1) a dangerously defective Traffic Aware Cruise Control (“TACC”); and (2) a  
16 limited front collision warning (with no auto-braking) have actually rolled out. The remaining  
17 features—which are standard on many cars costing less than half the cost of a new Tesla—are  
18 absent.

19 3. Tesla initially promised that the Enhanced Autopilot software was “expected to  
20 complete validation and be rolled out to your car via an over-the-air update in December 2016,  
21 subject to regulatory approval.” It missed this delivery date as well. So then it changed its website  
22 to state: “Tesla’s Enhanced Autopilot software has begun rolling out and features will continue to be  
23 introduced as validation is completed[,]” leaving the impression that only “validation” and  
24 “regulatory approval” were needed. But what Tesla has delivered to date does not resemble what it  
25 promised. Rather than deliver safe and advanced autopilot features, Tesla has delivered software that  
26 causes vehicles to behave erratically. Contrary to what Tesla represented to them, buyers of affected  
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28 <sup>1</sup> Tesla Model S webpage, <https://www.tesla.com/models> (last visited Apr. 19, 2017).

1 vehicles have become beta testers of half-baked software that renders Tesla vehicles dangerous if  
2 engaged.

3 4. Tesla’s deception has resulted in economic injury to owners of its 2016-17 models  
4 that were sold with the hardware (“HW2”) purportedly required for Enhanced Auto Pilot (the  
5 “Affected Vehicles”). By selling vehicles with inoperative Standard Safety Features and inoperative  
6 Autopilot, Tesla defrauded its customers and engaged in unfair competition. Customers did not  
7 receive the benefit of their bargain—they paid many thousands of dollars for a product they did not  
8 receive. Further, consumers such as Plaintiffs would never have bought their Tesla vehicles at all, or  
9 would have paid thousands less for them, but for the promised Standard Safety Features the cars  
10 were supposed to come with, and Enhanced Autopilot capabilities consumers could supposedly  
11 activate in short order by purchasing Tesla’s software.

12 5. Plaintiffs bring this action individually and on behalf of all others similarly situated  
13 who leased or purchased the Affected Vehicles. Plaintiffs seek damages, injunctive relief, and  
14 equitable relief for the conduct of Tesla related to the defective Standard Safety Features and  
15 Enhanced Autopilot, as alleged in this complaint. Specifically, Plaintiffs seek, at their election and  
16 that of putative class members: buyback of the Affected Vehicles, including a full refund for the  
17 software putative class members purchased; return of the premium paid for the Enhanced Autopilot,  
18 if purchased, over the cost of the same model without Enhanced Autopilot; restitution for purchase of  
19 service packages that will go unused as to cars bought back; and punitive damages for Tesla’s  
20 knowing fraud that garnered it illicit profits for a product suite that does not exist and puts drivers at  
21 risk.

## 22 II. JURISDICTION

23 6. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of  
24 2005, 28 U.S.C. § 1332(d), because the proposed classes consist of 100 or more members; the  
25 amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity  
26  
27  
28

1 exists. Tesla sold approximately 22,000 Model S and Model X vehicles in Q4 2016<sup>2</sup> and 25,000  
 2 Model S and Model X cars in Q1 2017.<sup>3</sup> It is believed, and therefore alleged, that all or virtually all  
 3 of these cars were equipped with inoperable Standard Safety Features, and likely at least half of these  
 4 were equipped with second generation autopilot, *i.e.*, Autopilot 2.0 (“AP2.0”) software costing  
 5 \$5,000 per vehicle. This Court also has supplemental jurisdiction over the state law claims pursuant  
 6 to 28 U.S.C. § 1367.

### 7 III. VENUE

8 7. Venue is proper in this judicial district under 28 U.S.C. § 1391 because a substantial  
 9 part of the events or omissions giving rise to Plaintiffs’ claims occurred in this judicial district.  
 10 Furthermore, Tesla’s principal place of business is in this judicial district, and it is believed, and  
 11 therefore alleged, that a substantial amount of the conduct of which Plaintiffs complain occurred in  
 12 this judicial district. Further, Tesla has marketed, advertised, sold, and leased Affected Vehicles  
 13 within this judicial district. Additionally, the San Jose division of this Court is the proper division  
 14 for filing given Tesla’s headquarters in Palo Alto, California.

### 15 IV. PARTIES

#### 16 A. Colorado Plaintiff

17 8. Plaintiff Dean Sheikh is a resident of Denver, Colorado. Dean placed an order for his  
 18 2016 Model S 60 D on November 20, 2016, paying a \$2,500 deposit. On November 24, 2016, his  
 19 vehicle design was confirmed with a purchase price of \$81,200, inclusive of a \$5,000 premium for  
 20 Enhanced Autopilot. At the time Dean placed the order for his car, Tesla’s website and marketing  
 21 materials indicated that the Standard Safety Features and Enhanced Autopilot features would be  
 22 available in December 2016.

23 9. Plaintiff Sheikh took delivery of his 2016 Model S 60 D on December 27, 2016. At  
 24 the time of delivery, the Standard Safety Features of the car and the Enhanced Autopilot were non-

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25 <sup>2</sup> Tesla Press Release, *Tesla Q4 2016 Production and Deliveries* (Jan. 3, 2017),  
 26 <http://ir.tesla.com/releasedetail.cfm?releaseid=1006161>.

27 <sup>3</sup> Christian Prenzler, *Tesla delivers a record 25,000 Model S, X in Q1 2017, 69% increase over*  
 28 *Q1 2016*, TESLARATI (Apr. 2, 2017), <https://www.teslarati.com/tesla-delivers-record-25000-model-s-x-q1-2017-69-increase-q1-2016/>.

1 functioning. As of today, Enhanced Autopilot remains non-functioning or unsafe to use, and only a  
2 front collision warning from the promised suite of Standard Safety Features has been enabled.

3 10. Plaintiff has been directly harmed by Tesla's actions as described in this complaint  
4 because: (1) he paid for a vehicle that was advertised to have Standard Safety Features that the  
5 vehicle does not have; and (2) he paid an additional \$5,000 premium for an Enhanced Autopilot  
6 AP2.0 system that does not operate as advertised and is unsafe to use.

7 **B. Florida Plaintiff**

8 11. Plaintiff John Kelner is a resident of Davie, Florida. John visited the Tesla showroom  
9 on December 10, 2016, and picked out the car that he wanted, a 2016 Model S 90 D. While at the  
10 showroom, he placed an order through Tesla's online system and paid his initial \$2,500 deposit on a  
11 credit card. On December 14, 2016, John paid a \$24,333.57 initial lease payment. His vehicle  
12 design was confirmed with a purchase price of \$108,700.00, inclusive of a \$5,000 premium for  
13 Enhanced Autopilot. At the time John placed the order for his car, Tesla's website and marketing  
14 materials indicated that the Standard Safety Features and Enhanced Autopilot features would be  
15 available in December 2016.

16 12. Plaintiff Kelner took delivery of his Tesla on December 16, 2016. At the time of  
17 delivery, the Standard Safety Features of the car and the Enhanced Autopilot were non-functioning.  
18 As of today, Enhanced Autopilot remains non-functioning or unsafe to use, and only a front collision  
19 warning from the promised suite of Standard Safety Features has been enabled.

20 13. Plaintiff Kelner has been directly harmed by Tesla's actions as described in this  
21 complaint because: (1) he paid for a vehicle that was advertised to have Standard Safety Features that  
22 the vehicle did not have on delivery and does not have now; and (2) he paid an additional \$5,000  
23 premium for an Enhanced Autopilot AP2.0 system that does not operate as advertised and is unsafe  
24 to use.

25 **C. New Jersey Plaintiff**

26 14. Plaintiff Tom Milone is a resident of Jackson, New Jersey. Tom placed an order for  
27 his 2016 Model S 90 D on November 23, 2016, paying a \$2,500 deposit. His vehicle design was  
28 confirmed with a purchase price of \$113,200.00, inclusive of a \$5,000 premium for Enhanced

1 Autopilot and a \$3,000 premium for “Full Self-Driving Capability.” At the time Tom placed the  
2 order for his car, Tesla’s website and marketing materials indicated that the Standard Safety Features  
3 and Enhanced Autopilot features would be available in December 2016.

4 15. Plaintiff Milone took delivery of his Tesla on December 29, 2016. At the time of  
5 delivery, the Standard Safety Features of the car and the Enhanced Autopilot were non-functioning.  
6 As of today, Enhanced Autopilot remains non-functioning or unsafe to use, and only a front collision  
7 warning from the promised suite of Standard Safety Features has been enabled.

8 16. Plaintiff Milone has been directly harmed by Tesla’s actions as described in this  
9 complaint because: (1) he paid the list price for a vehicle that was advertised to have Standard Safety  
10 Features that the vehicle does not have; and (2) he paid an additional \$5,000 premium for an  
11 Enhanced Autopilot AP2.0 system that does not operate as advertised and is unsafe to use.

12 **D. California Plaintiff**

13 17. Plaintiff Dan Whelan is a 71-year-old resident of Mill Valley, California. Dan placed  
14 an order for his 2016 Model S 60 on October 25, 2016, paying a \$2,500 deposit. His vehicle design  
15 was confirmed with a purchase price of \$82,450, inclusive of a \$5,000 premium for Enhanced  
16 Autopilot. Dan also ordered and paid \$3,000 for Tesla’s Full Self Driving (“FSD”) software. At the  
17 time Dan placed the order for his car, Tesla’s website and marketing materials indicated that the  
18 Standard Safety Features and Enhanced Autopilot features would be available in December 2016.

19 18. Plaintiff Whelan took delivery of his 2016 Model S 60 D on December 8, 2016. At  
20 the time of delivery, the Standard Safety Features of the car and the Enhanced Autopilot were non-  
21 functioning. As of today, Enhanced Autopilot remains non-functioning or unsafe to use, and only a  
22 front collision warning from the promised suite of Standard Safety Features has been enabled.

23 19. Plaintiff has been directly harmed by Tesla’s actions as described in this complaint  
24 because: (1) he paid for a vehicle that was advertised to have Standard Safety Features that the  
25 vehicle does not have; and (2) he paid an additional \$5,000 premium for an Enhanced Autopilot  
26 AP2.0 system that does not operate as advertised and is unsafe to use.



1 **E. Defendant**

2 20. Tesla, Inc. d/b/a Tesla Motors, Inc. is a Delaware corporation. As stated above, its  
3 principal place of business is located in Palo Alto, California. On information and belief, through  
4 Tesla's publicly filed financial reports and its website, Tesla's design, testing and manufacturing of  
5 Affected Vehicles occurs at its headquarters and elsewhere in California. In addition, Tesla's  
6 advertising, promotional materials, and website are designed and emanate from California. Finally,  
7 the promotional video shown on Tesla's website purporting to show the operation of the Enhanced  
8 Autopilot system was filmed and created in California on California roadways.

9 21. Tesla has a system of company-owned Tesla dealerships in states throughout the  
10 United States, via which it distributes, markets, advertises, and sells Tesla-branded goods and  
11 vehicles.

12 22. Tesla's authorized dealerships are tightly controlled by Tesla and are the agents of  
13 Tesla. Tesla controls the marketing practices of Tesla-authorized dealerships, the repair facilities  
14 within those dealerships, and even the appearance of said dealerships. This control emanates from  
15 Tesla's California headquarters. Additionally, Tesla trains the personnel at Tesla-authorized  
16 dealerships.

17 23. At all times relevant to this action, Tesla designed, manufactured, marketed,  
18 distributed, sold, leased, and warranted the Affected Vehicles, including the Enhanced Autopilot  
19 AP2.0 system, under the Tesla brand name in California and sold Affected Vehicles by and through  
20 its dealerships. Tesla also designed, manufactured, and installed the defective AP2.0 system in the  
21 Affected Vehicles. Tesla also developed and disseminated advertisements and other promotional  
22 materials relating to the Affected Vehicles and, more specifically, to its Standard Safety Features and  
23 Enhanced Autopilot AP2.0 system in California.

24 **V. FACTUAL ALLEGATIONS**

25 **A. Tesla's Marketing and Sale of Vaporware**

26 24. As Dictionary.com states, vaporware is "[c]omputer software that is advertised but  
27 still nonexistent." Tesla advertised vaporware to consumers, knowing full well that this particular  
28 come-on would particularly excite its target market of high-tech aficionados.

1           **1.       Standard Safety Features**

2           25.     Tesla’s website describes its “Standard Safety Features” to include: (1) Automatic  
3 Emergency Braking; (2) Front Collision Warning; (3) Side Collision Warning; and (4) Auto High  
4 Beams.<sup>4</sup> Customers who ordered their cars from approximately mid-October 2016 through mid-  
5 January 2017 were told these features would “become available in December 2016 and roll out  
6 through over-the-air software updates[.]” In mid-January 2017, Tesla modified its website to state:  
7 “These active safety technologies, including collision avoidance and automatic emergency braking,  
8 have begun rolling out through over-the-air updates.” Many customers, including Plaintiffs in this  
9 action, were shocked to discover these features did not exist when they picked up their cars, and as  
10 yet, only one of the specifically referenced features has been implemented.

11           **2.       New Hardware and Software**

12           26.     On October 19, 2016, Tesla stated in a blog post:

13                     We are excited to announce that, as of today, all Tesla vehicles  
14 produced in our factory – including Model 3 – will have the hardware  
15 needed for full self-driving capability at a safety level substantially  
16 greater than that of a human driver. Eight surround cameras provide  
17 360 degree visibility around the car at up to 250 meters of range.  
18 Twelve updated ultrasonic sensors complement this vision, allowing  
19 for detection of both hard and soft objects at nearly twice the distance  
20 of the prior system. A forward-facing radar with enhanced  
21 processing provides additional data about the world on a redundant  
22 wavelength, capable of seeing through heavy rain, fog, dust and even  
23 the car ahead.

20                     To make sense of all of this data, a new onboard computer with more  
21 than 40 times the computing power of the previous generation runs the  
22 new Tesla-developed neural net for vision, sonar and radar processing  
23 software. Together, this system provides a view of the world that a  
24 driver alone cannot access, seeing in every direction simultaneously  
25 and on wavelengths that go far beyond the human senses.<sup>[5]</sup>

24           27.     Tesla’s website filled in some details. Shortly after Tesla’s October 19, 2016  
25 announcement, its website stated: “All Tesla vehicles produced in our factory, including Model 3,

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26                     <sup>4</sup> See Tesla Autopilot webpage, <https://www.tesla.com/autopilot> (last visited Apr. 19, 2017).

27                     <sup>5</sup> Tesla, *All Tesla Cars Being Produced Now Have Full Self-Driving Hardware* (Oct. 19, 2016)  
28 <https://www.tesla.com/blog/all-tesla-cars-being-produced-now-have-full-self-driving-hardware>.

1 have the hardware needed for full self-driving capability at a safety level substantially greater than  
2 that of a human driver.”<sup>6</sup> It also advised that consumers would need to pay \$5,000 more (at the time  
3 of ordering, or \$6,000 thereafter) to unlock software that would activate the “Enhanced Autopilot”  
4 aspect of the new hardware.

5 28. On or about October 20, 2016, the day after it announced its new hardware features,  
6 Tesla posted a video to its website that gave a demonstration of certain self-driving features made  
7 possible by HW2. That video continues to be available on Tesla’s website.<sup>7</sup>

8 29. Shortly thereafter, on or about November 18, 2016, Tesla presented another self-  
9 driving video on its website. When consumers pushed the “Learn More” button under the statement:  
10 “All Tesla vehicles produced in our factory, including Model 3, have the hardware needed for full  
11 self-driving capability at a safety level substantially greater than that of a human driver,” they first  
12 would be invited to see a video lasting over two minutes, in which the initial frames shouted: “THE  
13 PERSON IN THE DRIVER’S SEAT IS ONLY THERE FOR LEGAL REASONS. HE IS NOT  
14 DOING ANYTHING. THE CAR IS DRIVING ITSELF.” The video, presented at a sped-up rate,  
15 shows a Tesla driving by itself to a destination a good distance away, taking a path replete with  
16 curves, much vehicular traffic, pedestrians, stop signs, and turns. The car self-parks at the end of the  
17 route. It’s a remarkable piece of salesmanship for the car’s newly enhanced hardware and software  
18 that was only available on Tesla vehicles.

19 30. Underneath this video, Tesla presented (and presents) consumers with descriptions of  
20 the newly enhanced hardware installed on its latest models. The descriptions speak to eight  
21 “surround cameras,” twelve “updated ultrasonic sensors,” and radar, too. They also speak to “a new  
22 onboard computer with over 40 times the computing power of the previous generation” as well as a  
23 new “neural net for vision, sonar and radar processing software.”

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26 <sup>6</sup> Tesla Design webpage, available at [http://web.archive.org/web/20161022202131/  
27 https://www.tesla.com/models/design](http://web.archive.org/web/20161022202131/https://www.tesla.com/models/design) (capture from Oct. 22, 2016) (last visited Mar. 20, 2017).

28 <sup>7</sup> Tesla, *Full Self-Driving Hardware on All Teslas* [https://www.tesla.com/videos/full-self-driving-  
hardware-all-tesla-cars](https://www.tesla.com/videos/full-self-driving-hardware-all-tesla-cars) (last visited Apr. 19, 2017).

1           31. But getting the system to come to life required customers to pay an extra \$5,000 for  
2 Tesla's Enhanced Autopilot software system.<sup>8</sup> According to Tesla's summary:

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

9           Tesla's Enhanced Autopilot software is expected to complete  
10 validation and be rolled out to your car via an over-the-air update in  
11 December 2016, subject to regulatory approval.<sup>9]</sup>

12           32. Thus, if consumers pushed the "Order Now" button between approximately October  
13 22, 2016, and at least through January 23, 2017,<sup>10</sup> they would see as an option for purchase:

14           **Enhanced Autopilot**

15           Enhanced Autopilot adds new capabilities to the Tesla Autopilot  
16 driving experience. The enhancements include going from one to four  
17 cameras for greater accuracy, redundancy, and to see fast-approaching  
18 vehicles in adjacent lanes. In addition, 12 ultrasonic sonar sensors  
19 provide 360 degree coverage around your car with almost twice the  
20 range and resolution of the prior version.

21           The significantly increased sensor information is processed by a  
22 computer that is over 40 times more powerful than before. Your Tesla  
23 will match speed to traffic conditions, keep within a lane,  
24 automatically change lanes without requiring driver input, transition  
25 from one freeway to another, exit the freeway when your destination is  
26 near, self-park when near a parking spot and be summoned to and from  
27 your garage. That said, Enhanced Autopilot should still be considered  
28 a driver's assistance feature with the driver responsible for remaining in  
control of the car at all times.

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23           <sup>8</sup> The customer could activate even more features if he paid thousands of dollars extra to active  
24 Tesla's "Full Self-Driving Capability" software system. *See, e.g.*, Tesla Design webpage,  
25 <https://www.tesla.com/modelx/design> (current page for Model X vehicle, describing this system)  
(last visited April 19, 2017).

26           <sup>9</sup> Tesla autopilot webpage, available at [http://web.archive.org/web/20170123045718/  
27 https://www.tesla.com/autopilot](http://web.archive.org/web/20170123045718/https://www.tesla.com/autopilot) (capture from Jan. 23, 2017) (last visited Mar. 20, 2017).

28           <sup>10</sup> *See* Tesla autopilot webpage, available at [http://web.archive.org/web/20170123043328/  
https://www.tesla.com/autopilot](http://web.archive.org/web/20170123043328/https://www.tesla.com/autopilot) (capture from Jan. 23, 2017) (last visited Mar. 20, 2017).

1            *Tesla's Enhanced Autopilot software is expected to complete validation*  
2            *and be rolled out to your car via an over-the-air update in December*  
3            *2016, subject to regulatory approval.*<sup>11]</sup>

4            33.     The website stated (and continues to state) that Enhanced Autopilot is available for  
5            \$5,000 if ordered pre-delivery, or \$6,000 if ordered later.

6            34.     Customers like Plaintiffs found themselves unable to resist Tesla's marketing pitches.  
7            They purchased cars that they believed had (or at least by the end of December 2016 would have) the  
8            Standard Safety Features that Tesla touted, and they also believed Tesla's representations as to  
9            Enhanced Autopilot features and what to expect regarding delivery.

10           35.     But they were deceived. Real-world performance shows that the software needed to  
11           actually implement the Standard Safety Features and Enhanced Autopilot was nowhere near ready  
12           for the vital tasks for which it was sold. This is not simply a matter of Tesla missing the December  
13           2016 roll-out timeline it marketed for its Standard Safety Features and Enhanced Autopilot software  
14           (which would be deceptive enough). Nor is this a matter of merely waiting for "regulatory  
15           approval." Instead, the actual behavior of cars equipped with the new hardware and software  
16           combination speaks to Tesla's deceptiveness.

17           36.     Tesla had to know how deeply flawed, raw, and untested the software was and  
18           remains. In fact, new vehicles equipped with Tesla's newest software *still* do not have some of the  
19           basic safety features that are standard features of cars equipped with the older software—and that are  
20           supposed to be standard features of Tesla's newest vehicles, too. Yet Tesla promised imminent  
21           safety-enhanced and auto-driving nirvana.

## 22     **B.     Real-World Performance**

### 23           **1.     Generally**

24           37.     As of the date of this Complaint, Tesla has not released truly functional software for  
25           its Standard Safety Features or Enhanced Autopilot. A February 27, 2017 article at Jalopnik.com, an  
26

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27           <sup>11</sup> Tesla design webpage, available at [http://web.archive.org/web/20161022202131/  
28           <https://www.tesla.com/models/design>](http://web.archive.org/web/20161022202131/https://www.tesla.com/models/design) (capture from Oct. 22, 2016) (last visited Mar. 20, 2017)  
(emphasis added).

1 automobile enthusiast website, describes a Tesla equipped with Autopilot 2.0<sup>12</sup>—a combination of  
2 Tesla’s new hardware and software—behaving as if a drunk driver is at the wheel.

3           The video from Tesla owner “Scott S.” shows his Model S driving  
4 with Autosteer and Traffic-aware cruise control (TACC) engaged  
5 while driving. It doesn’t go well. At times, the car veers toward curbs  
6 and merges across the double yellow line. Scott wrote in the comment  
7 section that he has driven that particular road at least 30 times, making  
8 the Autopilot failure seem even more strange.<sup>[13]</sup>

9 The accompanying video in fact shows the vehicle behaving in a highly dangerous manner. And  
10 “Scott,” the subject of the article, attributes all of this to software issues rather than any sort of need  
11 to calibrate cameras (a notion suggested by Tesla’s CEO Elon Musk). Scott advises that he owns  
12 two AP2.0 Teslas and suggests that both are exhibiting the same behavior, rendering it highly  
13 unlikely that the exact same calibration issue would be present on both vehicles. *Id.* Indeed, Mr.  
14 Musk himself has stated only that “[s]ome cars will require adjustment of camera pitch angle by  
15 service.” *Id.* (emphasis added).

16           38. Another online article, this one published at Backchannel.com and dated March 3,  
17 2017, describes a Tesla with AP2.0 “zig-zagging wildly across the road,” eliciting scared shouts  
18 from the driver’s wife.<sup>14</sup> That driver also describes a situation where “[y]ou can be sailing along at  
19 50 mph and the radar spots [an approaching] bridge and immediately slams on the brakes.” “The  
20 other extreme is that you approach a stoplight with a car already stopped, and the Tesla doesn’t apply

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21           <sup>12</sup> Hereafter, including in the Violations Alleged, Plaintiffs, unless the context indicates  
22 otherwise, refer to the software suite that enables the Standard Safety Features and the optional  
23 Enhanced Autopilot features as AP2.0. *See* Jordon Golson, *Tesla says focus on safety is driving the*  
24 *step-by-step Autopilot 2 rollout*, THE VERGE (Jan. 23, 2017), <http://www.theverge.com/2017/1/23/14351764/tesla-autopilot-2-rollout-self-driving-safety> (“Tesla CEO Elon Musk calls the new sensor  
25 suite ‘HW2,’ an acronym for second-generation hardware, and the software is called AP2. Tesla  
26 considers the entire suite of safety and driver assist features to be the Autopilot Safety Features,  
27 though the Autosteer and traffic-aware cruise control features are what most people consider  
28 ‘Autopilot.’”).

29           <sup>13</sup> Ryan Felton, *Watch Tesla Autopilot 2.0 Drive Like A Drunk Old Man*, JALOPNIK (Feb. 27,  
30 2017), <http://jalopnik.com/watch-tesla-autopilot-2-0-drive-like-a-drunk-old-man-1792785936>.

31           <sup>14</sup> Mark Harris, *Tesla Drivers Are Paying Big Bucks to Test Flawed Self-Driving Software*,  
32 BACKCHANNEL (Mar. 3, 2017), <https://backchannel.com/tesla-drivers-are-guinea-pigs-for-flawed-self-driving-software-c2cc80b483a>.

1 the brakes at all,” said the driver. “It’s really a pretty scary experience,” he said. “If you’d ridden in  
2 the car with my wife, you would know how many times she’s screamed to turn it off.”

3 39. In this same article, Tesla admits that the software is in beta phase. But this was not  
4 communicated on Tesla’s website or its promotional materials before or at the time of purchase.  
5 And while the software seems to be improving due to the data collected by way of human testers  
6 such as those featured in this article, it may be that there are fundamental flaws in the software:

7 It’s an open question how many of the system’s glitches stem from  
8 insufficient testing, versus more entrenched flaws in its underlying  
9 design. “Having a wealth of data is incredibly powerful but the  
10 [software] is also massively important and very difficult,” says Karl  
11 Iagnemma, CEO of NuTonomy, a provider of AI systems for self-  
driving cars. “The algorithmic element is often something that can’t be  
sped up simply by having access to more data—it’s a process of  
painstaking development.”<sup>15]</sup>

12 40. This difficulty with the software is no doubt the reason why Enhanced Autopilot cars  
13 are only using one to two of the eight available cameras at this time.<sup>16</sup> One would think that this  
14 would mean that AP2.0 cars are at least at parity with older cars equipped with the former Autopilot  
15 system, which only had one camera, but this would be wrong. Tesla is still seeking parity with those  
16 older cars, which are regularly used during test drives in order to sell customers on the AP2.0 system.  
17 This practice plainly was meant to foster the impression that AP2.0 would work at least as well as  
18 AP1.0 out of the gate, but that impression was false—and Tesla, which operates its own dealerships,  
19 plainly knew it.

20 41. After all, Tesla has not disclosed to buyers such as Plaintiffs that it actually was  
21 starting over from scratch with its AP2.0 system and not building on the AP1.0 system at all. Tesla  
22

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23 <sup>15</sup> *Id.*

24 <sup>16</sup> Raphael Orlove, *Clever Owner Uses Tape To Discover Nearly All Of Tesla's New Cameras Do*  
25 *Nothing*, JALOPNIK (Feb. 28, 2017), [http://jalopnik.com/clever-owner-uses-tape-to-discover-nearly-](http://jalopnik.com/clever-owner-uses-tape-to-discover-nearly-all-of-teslas-1792825392)  
26 [all-of-teslas-1792825392](http://jalopnik.com/clever-owner-uses-tape-to-discover-nearly-all-of-teslas-1792825392). One report concerning the March 29, 2017 roll-out of version 8.1 software  
27 for Tesla cars reports that the software is now using two of the eight on board cameras, purportedly  
28 improving the Enhanced Autopilot (AP2), but not yet to the level of the original autopilot (AP1)  
features. See Fred Lambert, *Tesla’s Autopilot 2.0 is now using 2 out of 8 cameras with the new*  
*update*, ELECTREK (Mar. 30, 2017), [https://electrek.co/2017/03/30/tesla-autopilot-2-0-camera-8-1-](https://electrek.co/2017/03/30/tesla-autopilot-2-0-camera-8-1-update/)  
[update/](https://electrek.co/2017/03/30/tesla-autopilot-2-0-camera-8-1-update/).

1 lost the right to use that older software as the basis for AP2.0. As the Backchannel.com article  
2 explains:

3           Mobileye, the Israeli company that supplied the original camera and  
4 software for Autopilot, cited safety concerns when it pulled out of its  
5 partnership with Tesla. The company’s chief technology officer told  
6 Reuters that Tesla was “pushing the envelope in terms of safety ...  
7 [Autopilot] is not designed to cover all possible crash situations in a  
8 safe manner.” Tesla says the collaboration ended for commercial  
9 reasons.<sup>[17]</sup>

10 Whether Tesla can replicate even what the Mobileye system could do remains a dangerously open  
11 question, yet Tesla purposely gave consumers the impression that Enhanced Autopilot would be  
12 available on their cars as of December 2016, and effective self-driving in a host of situations would  
13 be theirs, but only if they paid an additional \$5,000 to secure the Enhanced Autopilot functionality.

14           42. What is more, Tesla was far behind at least one self-driving competitor in terms of  
15 real-world testing of AP2.0 even as it began selling it to consumers with the promise that it soon  
16 would perform as advertised.<sup>18</sup> While that competitor had logged “635,000 fully autonomous miles  
17 in California last year, with just 124 hand-offs to safety drivers,” Tesla “reported zero autonomous  
18 miles in 2015, and *only* 550 miles in 2016—during which a safety driver had to take control of the  
19 car 182 times.” *Id.* (emphasis added). This comparison, too, speaks to Tesla’s fundamental  
20 deceptiveness in the marketing and sale of AP2.0.

## 21           **2. Plaintiffs’ Experiences**

### 22           **a. Colorado Plaintiff Dean Sheikh**

23           43. Plaintiff Dean Shiekh was first introduced to Tesla cars when his wife was searching  
24 for a replacement to her 2006 BMW X3 in November 2016. Dean and his wife looked at the Tesla  
25 Model X but ultimately decided against it due to the falcon doors. The door design prohibits a ski  
26 rack on top, which Dean and his wife needed in Denver.

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27           <sup>17</sup> Mark Harris, *Tesla Drivers Are Paying Big Bucks to Test Flawed Self-Driving Software*,  
28 BACKCHANNEL (Mar. 3, 2017), <https://backchannel.com/tesla-drivers-are-guinea-pigs-for-flawed-self-driving-software-c2cc80b483a>.

<sup>18</sup> *See, e.g., id.*



1           44. Dean was not in the market for a new car for himself, as he owned a low mileage  
2 2013 Audi A7 (27k miles). However, Dean really liked Tesla's Autopilot (AP1.0) feature on the car  
3 he test drove. When Dean learned from Tesla's marketing materials that the new cars would come  
4 with an improved version (Enhanced Autopilot AP2.0) and an option to upgrade to Full Self Drive,  
5 Dean became very interested.

6           45. All of the marketing materials that Dean saw in mid-November 2016 indicated that  
7 Enhanced Autopilot would be available by the end of December 2016 and would include all the  
8 function of AP1 plus many other functions, including the ability to change from one highway to  
9 another based on navigation input, and the ability to be upgraded to Full Self Driving ("FSD") when  
10 the software was approved by regulators.

11           46. After test driving the AP1.0 car, Dean found and watched Tesla's FSD video that was  
12 on its website.<sup>19</sup> This video significantly influenced Dean's decision to buy the Tesla Model S 60 D.

13           47. Only in March 2017, long after he had purchased his car, Dean learned that this video  
14 was patently misleading. The video states in the beginning that the driver is only there for legal  
15 reasons and was not providing any input. Dean learned from online sources that the driver provided  
16 input hundreds of times and that the video was simply pieced together and actually footage took days  
17 to tape. Dean came to understand that editing made it look like Tesla had a working Full Self Drive  
18 prototype that was primarily ready and just waiting for regulatory approval. But that was not true;  
19 Dean now believes that Tesla has no such prototype.

20           48. When Dean ordered his Tesla Model S 60 D in late November 2016, the order form  
21 stated the following: "Tesla's Enhanced Autopilot software is expected to complete validation and  
22 be rolled out to your car via an over-the-air update in December 2016 subject to regulatory  
23 approval."

24           49. When Dean picked up his vehicle on December 17, 2016, the website made the same  
25 claim and the staff at the Tesla dealership confirmed that the software update was due "in a few  
26 days."

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<sup>19</sup> Tesla, Inc., *Autopilot Full Self-Driving Hardware (Neighborhood Long)*, available at  
<https://vimeo.com/192179727> (last visited Apr. 19, 2017).

1           50.     It was not disclosed to Dean that the Standard Safety Features on his car would be  
2 inoperable, or that AP2.0 would be delivered slowly, over the course of months, or even years. Dean  
3 understood Tesla’s clear statement that that EAP would be rolled out via “an” over-the-air update.  
4 Dean understood “an update” to mean a single update available in December 2016 that would render  
5 the Standard Safety Features and Enhanced Autopilot fully operational.

6           51.     Dean understood and relied upon Tesla’s marketing materials and order form that  
7 states that the EAP “adds new capabilities to the Tesla Autopilot driving experience.” Dean later  
8 learned that the Tesla Autopilot experience (AP1.0) was withdrawn by its primary supplier,  
9 Mobileye. Tesla’s EAP does not add to AP1.0—it replaces the system that Dean test drove.

10          52.     Dean believed Tesla’s marketing materials and expected EAP to safely “change lanes  
11 without requiring driver input, transition from one freeway to another, [and] exit the freeway when  
12 your destination is near.” But none of this was available on his car when he took delivery and none  
13 of these features exist as of the filing of this complaint. There is no set time table that has been  
14 disclosed for any of those options.

15          53.     Dean also believed that the Standard Safety Features would be available on his car  
16 when delivered, or at least sometime in December 2016, as promised. But to date, Dean’s car only  
17 has a rudimentary front collision warning. It does not have the rest of these features, including  
18 Automatic Emergency Braking. And there is no time table for this important safety feature. Dean  
19 had no intention to buy a car that does not have Automatic Emergency Braking; it was standard on  
20 his prior Audi A7 and was a “must have” on Dean’s feature list for a new car.

21          54.     In or about February 2017, an over-the-air update was sent to Dean’s car by Tesla.  
22 This update allowed Dean to engage the Enhanced Autopilot on his car. However, once engaged, the  
23 system operated in an unpredictable manner, sometimes veering out of lanes, lurching, slamming on  
24 the brakes for no reason, and failing to slow or stop when approaching other vehicles and obstacles.  
25 This rendered the Enhanced Autopilot system unsafe to operate. The suite of Standard Safety  
26 Features that Dean was promised remain inoperable, including Automatic Emergency Braking, side  
27 collision warnings, auto-wipers, and auto high beams.

1           55.     On or about March 30, 2017, a second over-the-air update was sent to Dean's car by  
2 Tesla. According to Tesla, this update allowed the TACC to operate at speeds up to 80 mph and  
3 purportedly improved the functionality of the Enhanced Autopilot and the Standard Safety Features.  
4 However, except for front collision warning, the Standard Safety Features that Dean was promised  
5 remain inoperable, including Automatic Emergency Braking, side collision warnings, auto-wipers,  
6 and auto high beams. In addition, the Enhanced Autopilot remains unsafe to use as it continues to  
7 brake unexpectedly for no reason, and fails to brake when approaching large vehicles like trucks and  
8 buses. The Enhanced Autopilot remains less capable than the original autopilot that it replaced, and  
9 in any event places Plaintiff, and all drivers and occupants of Tesla vehicles, at risk of serious injury  
10 or death.

11           56.     Dean reports that when using the auto-steer function on local roads, the car will  
12 consistently cross double solid lines and move into the lane for traffic coming the opposite direction.  
13 This happens even at low speed (20 mph) with gentle turns.

14           57.     When using TACC, the car will brake on the highway for no apparent reason. It  
15 appears to see overhead signs and bridges as vehicles and will sometimes slam on the brakes, leaving  
16 the driver at risk of being re-ended.

17           58.     TACC often does not see buses directly ahead of Dean's car. On April 3, 2017, Dean  
18 was following a bus, which was moving in front of him at speeds from 5 mph to 25 mph. The sensor  
19 display on Dean's Tesla showed nothing in front of the car the entire time. Had Dean turned on the  
20 TACC, the car would have run into the bus without human intervention. Later that week, TACC was  
21 engaged when approaching a slow moving bus. TACC did not attempt to brake. Dean had to make  
22 an aggressive brake to avoid a collision

23           59.     The Enhanced Autopilot Features are simply too dangerous to be used, and are  
24 therefore completely useless notwithstanding the \$5,000 premium that Dean paid for Enhanced  
25 Autopilot.

26           60.     In Dean's car there is still no Automatic Emergency Braking, there are no side  
27 collision warnings, there is no auto high-beam, and the auto-sensing wipers remain inoperative. All  
28

1 of these features were advertised as “standard” and included in the base price of the car. Yet they  
2 were inoperable on delivery of the car, and they remain inoperable today.

3 61. Plaintiff has been directly harmed by Tesla’s actions as described in this complaint  
4 because he paid for a vehicle that was advertised to have Standard Safety Features that the vehicle  
5 does not have. As a result, he did not get the benefit of the bargain he struck, and his car is  
6 necessarily worth less than he paid for it because it does not have the Standard Safety Features. In  
7 addition, Plaintiff has been directly harmed by Tesla because Plaintiff paid an additional \$5,000  
8 premium for an Enhanced Autopilot AP2.0 system that does not operate as advertised and is unsafe  
9 to use.

10 **b. Florida Plaintiff John Kelner**

11 62. Plaintiff John Kelner took delivery of his Tesla Model S 90 D on December 16, 2016.  
12 The price included Tesla’s Standard Safety Features, and John paid \$5,000 extra for the Enhanced  
13 Autopilot.

14 63. One year earlier, on December 24, 2015, the Tesla dealer had given John a 2015  
15 Model S with the original version of autopilot for an extended test drive. John drove the car from Ft.  
16 Lauderdale to Jupiter, Florida (about 2.5 hours each way). John loved the car. The car was equipped  
17 with the original version of Autopilot, which functioned safely, including the Autosteer and TACC  
18 features. Naturally, John believed that a newer 2016 version, with an Enhanced Autopilot (including  
19 more cameras and sensors) would work even better.

20 64. On his way home from the dealership, John attempted to engage the Enhanced  
21 Autopilot, but nothing happened. There was no TACC, no autosteer, no Automatic Emergency  
22 Braking, no auto-sensing wipers, and no auto high-beams. Simply put, none of the safety features  
23 that were supposed to be “standard” were on his car, and none of the Enhanced Autopilot features  
24 worked.

25 65. On or about February 2017, an over-the-air update was sent to Plaintiff Kelner’s car  
26 by Tesla. This update allowed John to engage the Enhanced Autopilot on his car. However, once  
27 engaged, the system operated in an unpredictable manner, sometimes veering out of lanes, lurching,  
28 slamming on the brakes for no reason, and failing to slow or stop when approaching other vehicles

1 and obstacles. This rendered the Enhanced Autopilot system unsafe to operate. The suite of  
2 Standard Safety Features that John was promised remain inoperable, including Automatic  
3 Emergency Braking, side collision warnings, auto-wipers and auto high beams.

4 66. On or about March 30, 2017, a second over-the-air update was sent to John's car by  
5 Tesla. According to Tesla, this update allowed the TACC to operate at speeds up to 80 mph and  
6 purportedly improved the functionality of the Enhanced Autopilot and the Standard Safety Features.  
7 However, the Standard Safety Features that John was promised remain inoperable, including  
8 Automatic Emergency Braking, side collision warnings, auto-wipers and auto high beams. In  
9 addition, the Enhanced Autopilot remains unsafe to use as it continues to brake unexpectedly for no  
10 reason, and fails to brake when approaching large vehicles like trucks and buses. The Enhanced  
11 Autopilot remains less capable than the original autopilot that it replaced, and in any event places  
12 drivers and occupants of Tesla vehicles at risk of serious injury or death.

13 67. John's car should, in fact, have the Standard Safety features that he paid for, and he  
14 should have obtained a functional Enhanced Autopilot—at least one as good as the one on the car he  
15 drove a year earlier—for the \$5,000 premium that he paid to obtain it.

16 68. Plaintiff has been directly harmed by Tesla's actions as described in this complaint  
17 because he paid the list price for a vehicle that was advertised to have Standard Safety Features that  
18 the vehicle does not have. As a result, he did not get the benefit of the bargain he struck, and his car  
19 is necessarily worth less than he paid for it because it does not have the Standard Safety Features. In  
20 addition, Plaintiff has been directly harmed by Tesla because Plaintiff paid an additional \$5,000  
21 premium for an Enhanced Autopilot AP2.0 system that does not operate as advertised and is unsafe  
22 to use.

23 **c. New Jersey Plaintiff Tom Milone**

24 69. When starting to shop for a new vehicle Plaintiff Milone watched the Tesla video  
25 online that many of Tom's friends were talking about. It showed a Tesla Model S that can drive  
26 itself and is still on the Tesla website.<sup>20</sup> Tom understood the video to explain that a driver was just in  
27

28 <sup>20</sup> Tesla Autopilot webpage, <https://www.tesla.com/autopilot> (last visited Apr. 19, 2017).

1 the vehicle for legal purposes and that this vehicle could drive anyone from point A to B and even let  
2 the occupants out and go park itself. The website even mentioned that using a self-driving Tesla for  
3 car sharing and ride hailing for friends and family would be fine and details on the ride sharing  
4 would be released next year.

5 70. Tom was amazed at the video and noticed that all literature he had seen said that these  
6 features would be released December 2016. Having a sick mother-in-law that always needed to be  
7 picked up and brought to doctor appointments, food stores, etc., Tom thought he would have great  
8 use of this full self-driving system. Tom thought at the time that Autopilot and the advertised safety  
9 features were available because they were selling the features already.

10 71. On November 21, 2016, Tom paid a deposit on a new Model S with Enhanced  
11 AutoPilot (\$5,000) and the FSD (\$3,000).

12 72. Tom picked up his Tesla Model S on December 29th and was very excited to begin to  
13 use all the promised Standard Safety Features and the Autopilot. At the time of delivery, Tesla's  
14 website showed the Enhanced Auto Pilot and safety features would be rolled out by December 2016.  
15 Tom attempted to use the Enhanced Autopilot, but nothing happened. There was no TACC, no  
16 autosteer, no Automatic Emergency Braking, no auto-sensing wipers, no auto high-beams. Simply  
17 put, none of the safety features that Tesla promised as "standard" were on his car, and none of the  
18 Enhanced Autopilot features worked. Tom waited patiently for the features that he paid for, but they  
19 were never enabled. As of the filing of this complaint, Tom still has not received the functionality  
20 that he paid for.

21 73. While Tesla has released some updates to enable some AutoPilot functions, the  
22 system is nowhere near what was presented to Tom in Tesla's promotional material. Tom still does  
23 not have Automatic Emergency Braking, side collision warnings, Auto High Beams or Auto  
24 Windshield Wipers. The AutoPilot system that is available is limited to only highways and the  
25 system is not very stable. It does not see large objects such as trucks, and if a lane line fades the  
26 vehicle veers off to the side of the road. This rendered the Autopilot system unsafe to operate. The  
27 system falls far short of Tom's expectations based upon Tesla's promises.

28

1           74.     When Tom ordered his Tesla, he believed and relied on Tesla’s website and  
2 promotional materials that promised a suite of “Standard Safety Features” and “Enhanced  
3 Autopilot.” Tom believed Tesla when it promised these features would be available in December  
4 2016.

5           75.     On or about March 30, 2017, a second over-the-air update was sent to Tom’s car by  
6 Tesla. According to Tesla, this update allowed the TACC to operate at speeds up to 80 mph and  
7 purportedly improved the functionality of the Enhanced Autopilot and the Standard Safety Features.  
8 However, the Standard Safety Features that Tom was promised remain inoperable, including  
9 Automatic Emergency Braking, side collision warnings, auto-wipers and auto high beams. In  
10 addition, the Enhanced Autopilot remains unsafe to use as it continues to brake unexpectedly for no  
11 reason, and fails to brake when approaching large vehicles like trucks and buses. The Enhanced  
12 Autopilot remains less capable than the original autopilot that it replaced, and in any event places  
13 drivers and occupants of Tesla vehicles at risk of serious injury or death.

14           76.     Tom’s car should, in fact, have the Standard Safety features that he paid for, and he  
15 should have obtained a functional Enhanced Autopilot for the \$5,000 premium that he paid to obtain  
16 it.

17           77.     Plaintiff has been directly harmed by Tesla’s actions as described in this complaint  
18 because he paid the list price for a vehicle that was advertised to have Standard Safety Features that  
19 the vehicle does not have. As a result, he did not get the benefit of the bargain he struck, and his car  
20 is necessarily worth less than he paid for it because it does not have the Standard Safety Features. In  
21 addition, Plaintiff has been directly harmed by Tesla because Plaintiff paid an additional \$5,000  
22 premium for an Enhanced Autopilot AP2.0 system that does not operate as advertised and is unsafe  
23 to use.

24                   **d.     California Plaintiff Dan Whelan**

25           78.     Dan Whelan had been interested in Electric Vehicles (EVs) for many years and had  
26 been closely watching Tesla’s development. Dan owned three Toyota Priuses because he believed in  
27 the hybrid idea long before Tesla came on the market with their all-electric cars. Dan learned about  
28

1 Tesla from reading all their press releases online. Dan also visited Tesla’s design website many times  
2 to “build” his dream car.

3 79. Dan waited to place an order because he wanted to have the Enhanced Autopilot  
4 System and hardware for eventual full self-driving capability, which Tesla had indicated would not  
5 be released until the end of 2016. Soon after these features became available for purchase, on  
6 October 25, 2016, Dan ordered his Tesla Model S 60.

7 80. Dan saw video demonstrations of how enhanced autopilot and self-driving worked on  
8 the Tesla website. Dan also read the Tesla promotions online about how safe the new enhanced  
9 autopilot system would be because Tesla had added many more cameras and an improved radar  
10 detection system. Dan believed the representations on Tesla’s website and from its employees that  
11 the Standard Safety Features and a functional Enhanced Autopilot System would be released by the  
12 end of 2016. These features were particularly important to Dan since, as a 71-year-old driver, he  
13 could foresee a time when assistance from these features would make him safer on the road.

14 81. All of the marketing materials that Dan saw prior to the delivery of his car to him on  
15 December 8, 2016, indicated that Enhanced Autopilot would be available by the end of December  
16 2016 and would include all the function of AP1 plus many other functions, including the ability to  
17 change from one highway to another based on navigation input, and the ability to be upgraded to Full  
18 Self Driving (“FSD”) when the software was approved by regulators.

19 82. When Dan ordered his Tesla Model S 60 in late October 2016, the order form stated  
20 the following: “Tesla’s Enhanced Autopilot software is expected to complete validation and be  
21 rolled out to your car via an over-the-air update in December 2016 subject to regulatory approval.”

22 83. When Dan picked up his vehicle on December 8, 2016, the website made the same  
23 claim and the staff at the Tesla dealership confirmed that the software update was due as planned at  
24 the end of that month.

25 84. It was not disclosed to Dan that the Standard Safety Features on his car would be  
26 inoperable, or that AP2.0 would be delivered slowly, over the course of months, or even years.

27 85. Dan understood and relied upon Tesla’s marketing materials and order form that  
28 states that the Enhanced Autopilot “adds new capabilities to the Tesla Autopilot driving experience.”



1 Dan later learned that the Tesla Autopilot experience (AP1.0) was withdrawn by its primary supplier,  
2 Mobileye.

3 86. Dan believed Tesla's marketing materials and expected the Enhanced Autopilot to  
4 safely "change lanes without requiring driver input, transition from one freeway to another,[and] exit  
5 the freeway when your destination is near." But none of this was available on his car when he took  
6 delivery and none of these features exists as of the filing of this complaint. There is no set time table  
7 that has been disclosed for any of those options.

8 87. Dan also believed that the Standard Safety Features would be available on his car  
9 when delivered, or at least sometime in December 2016, as promised. But to date, Dan's car only  
10 has a rudimentary front collision warning. It does not have the rest of these features, including  
11 Automatic Emergency Braking. And there is no time table for this important safety feature.

12 88. To date, Dan's Tesla S is still missing many of the key software programs that were  
13 promised to him, and many of the software releases that Tesla has offered have been in "beta" mode.  
14 Worse yet, the autopilot features Dan has tried in his car were totally unsafe and, in Dan's opinion,  
15 could have resulted in accidents or injury if Dan hadn't taken immediate control of his Tesla.  
16 Specifically, the "auto-steering" and the "lane-holding" features of the Enhanced Autopilot system  
17 are unusable and dangerous in their present form. When engaged in Dan's neighborhood, the  
18 Enhanced Autopilot started jerking the steering wheel, then moving the Tesla in and out of the road  
19 lanes, in Dan's words, like a drunk was driving the car. The car then steered Dan in the direction of  
20 the curb and parked cars.

21 89. Dan does not trust his Tesla to autopilot him anywhere, and has no faith that the  
22 purported future "self-driving" features will ever operate safely as was promised him when he  
23 purchased the car. Dan had hoped that his Tesla would be able to take over many "driving functions"  
24 for him when he needed assistance sometime in the near future. And Dan's wife, who is having  
25 problems with night vision, was really looking forward to the Enhanced Autopilot features, which  
26 cost Dan a \$5,000 premium. Now, Dan's wife is too afraid to drive the Tesla at any time.

27 90. Dan feels that his trust has been broken with Tesla because Tesla over-promised and  
28 delivered an incomplete and unsafe product to him. The suite of Standard Safety Features that Dan

1 was promised remains inoperable, including Automatic Emergency Braking, side collision warnings,  
2 auto-wipers, and auto high beams.

3 91. Over-the-air updates have been sent to Dan's car by Tesla. According to Tesla, the  
4 most recent update allowed the TACC to operate at speeds up to 80 mph and purportedly improved  
5 the functionality of the Enhanced Autopilot and the Standard Safety Features. However, except for  
6 front collision warning, the Standard Safety Features that Dan was promised remain inoperable,  
7 including Automatic Emergency Braking, side collision warnings, auto-wipers, and auto high beams.  
8 In addition, the Enhanced Autopilot remains unsafe to use as it continues to brake unexpectedly for  
9 no reason, and fails to brake when approaching large vehicles like trucks and buses. The Enhanced  
10 Autopilot remains less capable than the original autopilot that it replaced, and in any event places  
11 Plaintiff, and all drivers and occupants of Tesla vehicles, at risk of serious injury or death.

12 92. The Enhanced Autopilot Features are simply too dangerous to be used, and are  
13 therefore completely useless notwithstanding the \$5,000 premium that Dan paid for Enhanced  
14 Autopilot.

15 93. In Dan's car there is still no Automatic Emergency Braking, there are no side  
16 collision warnings, there is no auto high-beam, and the auto-sensing wipers remain inoperative. All  
17 of these features were advertised as "standard" and included in the base price of the car. Yet they  
18 were inoperable on delivery of the car, and they remain inoperable today.

19 94. Plaintiff has been directly harmed by Tesla's actions as described in this complaint  
20 because he paid for a vehicle that was advertised to have Standard Safety Features that the vehicle  
21 does not have. As a result, he did not get the benefit of the bargain he struck, and his car is  
22 necessarily worth less than he paid for it because it does not have the Standard Safety Features. In  
23 addition, Plaintiff has been directly harmed by Tesla because Plaintiff paid an additional \$5,000  
24 premium for an Enhanced Autopilot AP2.0 system that does not operate as advertised and is unsafe  
25 to use.

26 **C. Tesla's Violation of the Motor Vehicle Safety Act**

27 95. Based on the foregoing, Tesla has violated the Motor Vehicle Safety Act (the "Act").  
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1           96. That Act requires immediate action when a manufacturer determines or should  
2 determine that a safety defect exists. *United States v. General Motors Corp.*, 574 F. Supp. 1047,  
3 1050 (D.D.C. 1983). A safety defect is defined by regulation to include any defect that creates an  
4 “unreasonable risk of accidents occurring because of the design, construction, or performance of a  
5 motor vehicle” or “unreasonable risk of death or injury in an accident.” 49 U.S.C. § 30102(a)(8).  
6 Within five days of learning about a safety defect, a manufacturer must notify NHTSA and provide a  
7 description of the vehicles potentially containing the defect, including “make, line, model year, [and]  
8 the inclusive dates (month and year) of manufacture,” a description of how these vehicles differ from  
9 similar vehicles not included in the recall, and “a summary of all warranty claims, field or service  
10 reports, and other information” that formed the basis of the determination that the defect was safety  
11 related. 49 U.S.C. § 30118(c); 49 C.F.R. § 573.6(b)–(c). Then, “within a reasonable time” after  
12 deciding that a safety issue exists, the manufacturer must notify the owners of the defective vehicles.  
13 49 C.F.R. §§ 577.5(a), 577.7(a). Violating these notification requirements can result in a maximum  
14 civil penalty of \$15,000,000. 49 U.S.C. § 30165(a)(1).

15           97. Tesla vehicles equipped with AP2.0 have safety defects, as described above. Yet  
16 Tesla has not complied with its obligations under the Act. Certainly Plaintiffs have received no  
17 notice that they were sold a defective vehicle.

#### 18 **D. Tesla’s False Advertising and Fraudulent Misrepresentations**

19           98. Tesla marketed AP2.0 via its website and through its company-owned-and-operated  
20 dealerships.

21           99. Putative class members paid large premiums to purchase and lease the Affected  
22 Vehicles. Had Tesla disclosed that its “Standard Safety Features” were completely inoperable upon  
23 delivery, and—except for front collision warning—are as yet still unavailable, it would not have  
24 been able to command the extraordinarily high base price of its cars.

25           100. Customers had to pay an extra \$5,000 for cars equipped with the Enhanced Autopilot  
26 AP2.0 software. The difference in the MSRP of vehicles with and without AP2.0 software directly  
27 and proportionally increased the agreed-upon cash value of the vehicles, which directly and  
28 proportionally increased the monthly lease and/or purchase, interest, and tax payments. Class

1 members were harmed from the day they drove their Affected Vehicle off the lot because they did  
2 not get that for which they paid.

3 101. In addition, many putative class members purchased extended service agreements for  
4 their Affected Vehicles because they intended to own the vehicles for many years beyond the initial  
5 warranty. However, as a result of the unavailability of the Standard Safety Features, and  
6 inoperability of the Enhanced Autopilot AP2.0 system, class members no longer want to own the  
7 Affected Vehicles; accordingly, they have lost the value of the extended warranties that they  
8 purchased.

9 102. As a result of Tesla's unfair, deceptive, and/or fraudulent business practices, owners  
10 and lessees of the Affected Vehicles, including the Plaintiffs, have suffered losses in money and/or  
11 property. Had Plaintiffs and putative class members known of the lack of Standard Safety Features  
12 and the AP2.0 inoperability and defects at the time they purchased or leased their Affected Vehicles,  
13 they would not have purchased or leased their vehicles at all, or they would have paid substantially  
14 less for the vehicles than they did, and/or they would not have paid the \$5,000 premium for  
15 Enhanced Autopilot AP2.0 software.

## 16 VI. CLASS ALLEGATIONS

17 103. Plaintiffs bring this action pursuant to the provisions of Rule 23(a), (b)(2), and (b)(3)  
18 of the Federal Rules of Civil Procedure, on behalf of themselves and the following proposed class:

### 19 **Nationwide Class**

20 All persons or entities who purchased or leased a Tesla Model S or  
21 Model X vehicle that was equipped with the hardware necessary for  
22 use of Enhanced Autopilot (AP2.0).

### 23 **Nationwide Enhanced Autopilot Subclass**

24 All members of the Nationwide class who, in connection with the  
25 purchase of their Tesla, purchased the Enhanced Autopilot software  
26 option.

27 104. As an alternative Class, if California law does not apply to all owners of Affected  
28 Vehicles, Plaintiffs bring this action pursuant to the provisions of Rule 23(a), (b)(2), and (b)(3) of the  
Federal Rules of Civil Procedure, on behalf of themselves and the following proposed classes:

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**California Class**

All persons or entities who, in the state of California, purchased or leased a Tesla Model S or Model X vehicle that was equipped with the hardware necessary for use of Enhanced Autopilot (AP2.0).

**California Enhanced Autopilot Subclass**

All members of the California class who, in connection with the purchase of their Tesla, purchased the Enhanced Autopilot software option.

**Colorado Class**

All persons or entities who, in the state of Colorado, purchased or leased a Tesla Model S or Model X vehicle that was equipped with the hardware necessary for use of Enhanced Autopilot (AP2.0).

**Colorado Enhanced Autopilot Subclass**

All members of the Colorado class who, in connection with the purchase of their Tesla, purchased the Enhanced Autopilot software option.

**Florida Class**

All persons or entities who, in the state of Florida, purchased or leased a Tesla Model S or Model X vehicle that was equipped with the hardware necessary for use of Enhanced Autopilot (AP2.0).

**Florida Enhanced Autopilot Subclass**

All members of the Florida class who, in connection with the purchase of their Tesla, purchased the Enhanced Autopilot software option.

**New Jersey Class**

All persons or entities who, in the state of New Jersey, purchased or leased a Tesla Model S or Model X vehicle that was equipped with the hardware necessary for use of Enhanced Autopilot (AP2.0).

**New Jersey Enhanced Autopilot Subclass**

All members of the New Jersey class who, in connection with the purchase of their Tesla, purchased the Enhanced Autopilot software option.

1           105. Excluded from the proposed classes are Tesla, its employees, officers, directors, legal  
2 representatives, heirs, successors, wholly or partly owned, and its subsidiaries and affiliates, Tesla  
3 dealers, and the judicial officers and their immediate family members and associated court staff  
4 assigned to this case, and all persons who make a timely election to be excluded from the proposed  
5 classes.

6           106. Certification of Plaintiffs' claims for classwide treatment is appropriate because  
7 Plaintiffs can prove the elements of their claims on a classwide basis using the same evidence as  
8 would be used to prove those elements in individual actions alleging the same claims.

9           107. This action has been brought and may be properly maintained on behalf of the classes  
10 proposed herein under Federal Rule of Civil Procedure 23.

11           108. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the classes  
12 proposed herein are so numerous and geographically dispersed that individual joinder of all proposed  
13 class members is impracticable. While Plaintiffs believe that there are thousands of members of the  
14 proposed classes, the precise number of class members is unknown to them, but may be ascertained  
15 from Tesla's books and records. Class members may be notified of the pendency of this action by  
16 recognized, court-approved notice dissemination methods, which may include U.S. Mail, electronic  
17 mail, Internet postings, and/or published notice.

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

- 21           a. Whether Tesla engaged in the conduct alleged herein;
- 22           b. Whether Tesla designed, advertised, marketed, distributed,  
23 leased, sold, or otherwise placed Affected Vehicles into the  
stream of commerce in the United States;
- 24           c. Whether the Affected Vehicles contain one or more safety  
25 defects, including the inoperability of the Standard Safety  
Features and Enhanced Autopilot;
- 26           d. Whether Tesla knew about the defect(s), and, if so, for how  
27 long;

- e. Whether Tesla designed, manufactured, marketed, and distributed Affected Vehicles and the AP2.0 system;
- f. Whether Tesla's conduct violates consumer protection statutes, false advertising laws, sales contracts, and other laws as asserted herein;
- g. Whether Plaintiffs and proposed class members overpaid for their Affected Vehicles and the AP2.0 system;
- h. Whether Plaintiffs and other putative class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- i. Whether Plaintiffs and other putative class members are entitled to damages and other monetary relief and, if so, in what amount.

110. Typicality. Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' 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.

111. Adequacy. Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate proposed class representatives because their interests do not conflict with the interests of the other members of the proposed classes they seek to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The interests of the proposed classes will be fairly and adequately protected by Plaintiffs and their counsel.

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

113. Superiority. Federal Rule of Civil Procedure 23(b)(3): A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and putative class members are relatively small

1 compared to the burden and expense that would be required to individually litigate their claims  
2 against Tesla, so it would be impracticable for the members of the proposed classes to individually  
3 seek redress for Tesla’s wrongful conduct. Moreover, even if class members could afford individual  
4 litigation, the court system could not. Individualized litigation creates a potential for inconsistent or  
5 contradictory judgments, and it increases the delay and expense to all parties and the court system.  
6 By contrast, the class action device presents far fewer management difficulties and provides the  
7 benefits of single adjudication, economy of scale, as well as comprehensive supervision by a single  
8 court.

9 **VII. CASUES OF ACTION ON BEHALF OF THE NATIONWIDE CLASS**

10 **COUNT I**

11 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW**  
12 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**

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

15 115. Plaintiffs bring this count on behalf of themselves and the Nationwide Class and  
16 Nationwide Enhanced Autopilot Subclass (“Nationwide class”).

17 116. California’s Unfair Competition Law (“UCL”), CAL. BUS. & PROF. CODE § 17200, *et*  
18 *seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act  
19 or practice and unfair, deceptive, untrue or misleading advertising.”

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

- 22 a. By knowingly and intentionally concealing from Plaintiff and the  
23 other class members that the Affected Vehicles suffer from a  
24 design defect while obtaining money from Plaintiff and the class;
- 25 b. By marketing Affected Vehicles and the AP2.0 systems as  
26 possessing functional, or near-functional, and defect-free Standard  
27 Safety Features
- 28 c. By marketing Affected Vehicles and the AP2.0 systems as  
possessing functional, or near-functional, and defect-free Enhanced  
Autopilot;





1           124. California’s Consumers Legal Remedies Act (“CLRA”), CAL. BUS. & PROF. CODE  
2 § 1750, *et seq.*, proscribes “unfair methods of competition and unfair or deceptive acts or practices  
3 undertaken by any person in a transaction intended to result or which results in the sale or lease of  
4 goods or services to any consumer.”

5           125. The Affected Vehicles, as well as the Enhanced Autopilot AP2.0 system, are “goods”  
6 as defined in CAL. BUS. & PROF. CODE § 1761(a).

7           126. Plaintiffs and other putative Nationwide class members are “consumers” as defined in  
8 CAL. BUS. & PROF. CODE § 1761(d), and Plaintiffs, the other class members, and Tesla are “persons”  
9 as defined in CAL. BUS. & PROF. CODE § 1761(c).

10           127. As alleged above, Tesla made numerous representations concerning the benefits,  
11 performance, and safety features of the Affected Vehicles and the Enhanced Autopilot AP2.0 system,  
12 and vehicles equipped with it, that were misleading, all of which emanated from Tesla’s headquarters  
13 in California.

14           128. In purchasing or leasing the Affected Vehicles, Plaintiffs and other putative  
15 Nationwide class members were deceived by Tesla’s failure to disclose that the Standard Safety  
16 Features in the Affected Vehicles were inoperable and, when sold with the Enhanced Autopilot, were  
17 equipped with a defective Enhanced Autopilot AP2.0 system.

18           129. Tesla’s conduct as described herein was and is in violation of the CLRA. Tesla’s  
19 conduct emanates entirely from its headquarters in California and violates at least the following  
20 enumerated CLRA provisions:

- 21           a. CAL. CIV. CODE § 1770(a)(2): Misrepresenting the approval or  
22 certification of goods;
- 23           b. CAL. CIV. CODE § 1770(a)(5): Representing that goods have  
24 sponsorship, approval, characteristics, uses, benefits, or quantities  
25 which they do not have;
- 26           c. CAL. CIV. CODE § 1770(a)(7): Representing that goods are of a  
27 particular standard, quality, or grade, if they are of another;
- 28           d. CAL. CIV. CODE § 1770(a)(9): Advertising goods with intent not to  
sell them as advertised; and

1 e. CAL. CIV. CODE § 1770(a)(16): Representing that goods have been  
2 supplied in accordance with a previous representation when they  
3 have not.

4 130. Tesla knew, should have known, or was reckless in not knowing of the defective  
5 design and/or manufacture of the Affected Vehicles and the Enhanced Autopilot AP2.0 system, and  
6 that the Affected Vehicles were not suitable for their intended use.

7 131. The facts concealed and omitted by Tesla in its interactions with Plaintiffs and the  
8 other putative class members are material in that a reasonable consumer would have considered them  
9 to be important in deciding whether to purchase or lease the Affected Vehicles or pay a lower price.  
10 Had Plaintiffs and other class members known about the defective nature of the Affected Vehicles,  
11 they would not have purchased or leased the Affected Vehicles, or they would not have paid the  
12 prices they paid, including the \$5,000 premium for the Enhanced Autopilot AP2.0 system.

13 132. Plaintiffs and the Class have provided Tesla with notice of its violations of the CLRA  
14 pursuant to CAL. CIV. CODE § 1782(a). The notice was transmitted to Tesla on April 25, 2017.

15 133. In accordance with CAL. CIV. CODE § 1780(a), Plaintiffs and members of the Subclass  
16 seek injunctive relief for Tesla's violations of the CLRA.

17 134. While Plaintiffs and the Class do not seek to recover damages under the CLRA in this  
18 Complaint, after mailing appropriate notice and demand in accordance with Civil Code  
19 § 1782(a) & (d), Plaintiffs will subsequently amend this Complaint to also include a request for  
20 compensatory and punitive damages because Plaintiffs and other putative California class members  
21 have suffered injury in fact and actual damages resulting from Tesla's material omissions and  
22 misrepresentations because they paid an inflated purchase or lease price for the Affected Vehicles.

23 135. In an amendment to this complaint, following the notice sent on April 25, 2017,  
24 Plaintiffs will seek an additional award against Tesla, under CAL. CIV. CODE § 1780(b), of up to  
25 \$5,000 for each Class member who qualifies as a "senior citizen" or "disabled person" under the  
26 CLRA. Plaintiff Dan Whelan is 71 years old at the time of this complaint. Tesla knew or should  
27 have known that its conduct was directed to one or more class members like Plaintiff Whelan who  
28 are senior citizens or disabled persons. Tesla's conduct caused Plaintiff Whelan and additional senior  
citizens or disabled persons to suffer a substantial loss of property set aside for retirement or for

1 personal or family care and maintenance, or assets essential to the health or welfare of the senior  
2 citizen or disabled person. One or more proposed class members who are senior citizens or disabled  
3 persons are substantially more vulnerable to Tesla’s conduct because of age, poor health or infirmity,  
4 impaired understanding, restricted mobility, or disability, and each of them suffered substantial  
5 physical, emotional, or economic damage resulting from Tesla’s conduct.

6 136. Plaintiffs further seek an order enjoining Tesla’s unfair or deceptive acts or practices,  
7 costs of court, attorneys’ fees under CAL. CIV. CODE § 1780(e), and any other just and proper relief  
8 available under the CLRA.

9 **COUNT III**

10 **VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW**  
11 **(CAL. BUS. & PROF. CODE § 17500, *et seq.*)**

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

14 138. Plaintiffs bring this Count on behalf of themselves and the Nationwide class.

15 139. CAL. BUS. & PROF. CODE § 17500 states: “It is unlawful for any . . . corporation . . .  
16 with intent directly or indirectly to dispose of real or personal property . . . to induce the public to  
17 enter into any obligation relating thereto, to make or disseminate or cause to be made or  
18 disseminated . . . from this state before the public in any state, in any newspaper or other publication,  
19 or any advertising device, . . . or in any other manner or means whatever, including over the Internet,  
20 any statement . . . which is untrue or misleading, and which is known, or which by the exercise of  
21 reasonable care should be known, to be untrue or misleading.”

22 140. Tesla caused to be made or disseminated throughout California and the United States,  
23 through advertising, marketing, and other publications emanating from its headquarters in California,  
24 statements that were untrue or misleading, and which were known, or which by the exercise of  
25 reasonable care should have been known to Tesla, to be untrue and misleading to consumers,  
26 including Plaintiffs and other putative class members.

1           141. Tesla has violated CAL. BUS. & PROF. CODE § 17500 because the misrepresentations  
2 and omissions regarding the safety, reliability, and functionality of Affected Vehicles, as set forth in  
3 this complaint were material and likely to deceive a reasonable consumer.

4           142. Plaintiffs and other putative Nationwide class members have suffered an injury in  
5 fact, including the loss of money or property, as a result of Tesla's unfair, unlawful, and/or deceptive  
6 practices. In purchasing or leasing their Affected Vehicles, Plaintiffs and other putative class  
7 members relied on the misrepresentations and/or omissions of Tesla with respect to the safety,  
8 performance, and reliability of the Affected Vehicles, including representations as to the Standard  
9 Safety Features and the Enhanced Autopilot. Tesla's representations turned out not to be true  
10 because the Affected Vehicles are distributed with faulty, defective, and inoperable Standard Safety  
11 Features and faulty, defective, unsafe, and inoperable Enhanced Autopilot AP2.0 systems, rendering  
12 essential vehicle functions erratic and dangerous. Had Plaintiffs and other class members known this,  
13 they would not have purchased or leased their Affected Vehicles, or paid a \$5,000 premium for the  
14 Enhanced Autopilot AP2.0 system, and/or paid as much for them. Accordingly, Plaintiffs and other  
15 putative Nationwide class members overpaid for their Affected Vehicles and did not receive the  
16 benefit of their bargain.

17           143. All of the wrongful conduct alleged herein occurred, and continues to occur, in the  
18 conduct of Tesla's business, which is headquartered and has its principal operations in California.  
19 Tesla's wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated  
20 and repeated, which emanates from California and occurs both in the state of California and  
21 nationwide.

22           144. Plaintiffs, individually, and on behalf of other putative class members, request that  
23 this Court enter such orders or judgments as may be necessary to enjoin Tesla from continuing its  
24 unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the other putative class  
25 members any money Tesla acquired by unfair competition, including restitution and/or restitutionary  
26 disgorgement, and for such other relief set forth below.

**COUNT IV**

**FRAUD BY CONCEALMENT  
(BASED ON CALIFORNIA LAW)**

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

146. Plaintiffs bring this count on behalf of themselves and the Nationwide class.

147. Tesla concealed and suppressed material facts concerning the quality of its vehicles and the Tesla brand.

148. More specifically, Tesla concealed and suppressed material facts concerning the design, safety, performance, and quality of the Affected Vehicles, the Standard Safety Features, and its Enhanced Autopilot AP2.0 system. As alleged in this Complaint, notwithstanding its promises regarding Standard Safety Features and its Enhanced Autopilot AP2.0 system, Tesla knowingly and intentionally designed and incorporated Standard Safety Features that simply did not exist at the time of purchase and delivery of Affected Vehicles and do not presently exist. In addition, Tesla sold and installed in Affected Vehicles an Enhanced Autopilot AP2.0 system that it knew was unsafe to use and would impair the safe operation of the vehicle.

149. Tesla did so in order to boost sales of its vehicles and in order to falsely assure purchasers and lessees of Tesla vehicles that Tesla is a reputable manufacturer and that Tesla's vehicles and self-driving system are safe, reliable, and able to perform as promised. The false representations were material to consumers, both because they concerned the safety of the Affected Vehicles and because the representations played a significant role in the value of the vehicles.

150. Plaintiffs and proposed Nationwide class members viewed advertising on Tesla's website—which was designed and implemented in California—read promotional materials, and heard Tesla dealer sales pitches that promised Standard Safety Features comparable to those in other similarly priced luxury vehicles and safe Enhanced Autopilot capabilities if they also purchased Tesla's expensive Enhanced Autopilot AP2.0. They had no way of knowing that Tesla's representations were false and gravely misleading. Plaintiffs and class members did not and could not unravel Tesla's deception on their own.

1           151. Tesla had a duty to disclose the true safety features and performance of its Affected  
2 Vehicles, and the Enhanced Autopilot AP2.0 system, because knowledge of the scheme and its  
3 details were known and/or accessible only to Tesla; Tesla had superior knowledge and access to the  
4 facts; and Tesla knew the facts were not known to, or reasonably discoverable by, Plaintiffs and  
5 members of the putative class. Tesla also had a duty to disclose because it made many general  
6 affirmative representations about the about the safety and qualities of Affected Vehicles and the  
7 Enhanced Autopilot AP2.0 system, as set forth above, which were misleading, deceptive, and  
8 incomplete without the disclosure of: (a) the additional facts set forth above regarding the actual  
9 performance of these vehicles and Enhanced Autopilot AP2.0 software; (b) its actual decision to put  
10 sales and profits over safety; and (c) its actual practices with respect to the vehicles and system at  
11 issue. Having volunteered to provide information to Plaintiffs and the proposed class, Tesla had the  
12 duty to disclose not merely the partial truth, but the entire truth. These omitted and concealed facts  
13 were material because they directly impact the safety and the value of the Affected Vehicles  
14 purchased or leased by Plaintiffs and the Nationwide class. Whether a vehicle is safe to drive, and  
15 whether that vehicle's manufacturer tells the truth with respect to the vehicle's real abilities, are  
16 material concerns to a consumer, as evidenced by the exorbitant base prices of Affected Vehicles  
17 (\$72,000-\$135,000+) and \$5,000 premium paid for Tesla vehicles equipped with the Enhanced  
18 Autopilot AP2.0 system.

19           152. Tesla actively concealed and/or suppressed these material facts, in whole or in part, to  
20 pad and protect its profits and to burnish the perception that its vehicles were at the leading edge of  
21 safety and autopilot technology, which perception would enhance the brand's image and garner Tesla  
22 more money. But it did so at the expense of Plaintiffs and the class.

23           153. On information and belief, Tesla still has not made full and adequate disclosures and  
24 continues to defraud Plaintiffs and the class by concealing material information regarding the safety  
25 and performance of Affected Vehicles and the Enhanced Autopilot AP2.0 system.

26           154. Plaintiffs and the class were unaware of these omitted material facts and would not  
27 have acted as they did if they had known of the concealed and/or suppressed facts, in that they would  
28 not have purchased Affected Vehicles manufactured by Tesla, would not have paid the \$5,000

1 premium for Enhanced Autopilot AP2.0, and/or would not have continued to drive their Affected  
 2 Vehicles or would have taken other affirmative steps. Plaintiffs' and the class members' actions were  
 3 justified. Tesla was in exclusive control of the material facts, and such facts were not known to the  
 4 public, Plaintiffs, or the class.

5 155. Because of the concealment and/or suppression of the facts, Plaintiffs and the class  
 6 sustained damage because they did not receive the value for: (1) the base purchase price of their  
 7 Affected Vehicles, which were supposed to have been equipped with functional Standard Safety  
 8 Features by December 2016, but were not so equipped; and (2) the \$5,000 premium paid for  
 9 Enhanced Autopilot functionality when that functionality was not available as promised in December  
 10 2016, and remains unavailable to this day. Had Plaintiffs and members of the class been aware of  
 11 the grave safety issues attendant to, and the real-world performance of, the Affected Vehicles and  
 12 Tesla's Enhanced Autopilot AP2.0 system, Plaintiffs and fellow putative class members who  
 13 purchased or leased the Affected Vehicles would have paid less for their vehicles and the Enhanced  
 14 Autopilot AP2.0 system, or they would not have purchased or leased them at all.

15 156. Accordingly, Tesla is liable to Plaintiffs and the proposed Nationwide class for  
 16 damages in an amount to be proven at trial.

17 157. Tesla's acts were done maliciously, oppressively, deliberately, with intent to defraud,  
 18 and in reckless disregard of Plaintiffs' and the class members' rights and well-being, and as part of  
 19 efforts to enrich itself in California at the expense of consumers. Tesla's conduct warrants an  
 20 assessment of punitive damages in an amount sufficient to deter such conduct in the future, which  
 21 amount is to be determined according to proof.

## 22 **VIII. CAUSES OF ACTION ON BEHALF OF THE ALTERNATE CLASSES**

### 23 **A. California**

#### 24 **COUNT I**

#### 25 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200, et seq.)**

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



1           159. Plaintiff Whelan brings this count on behalf of himself and the alternative California  
2 Class and California Enhanced Autopilot Subclass (“California class”).

3           160. California’s Unfair Competition Law (“UCL”), CAL. BUS. & PROF. CODE § 17200, *et*  
4 *seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act  
5 or practice and unfair, deceptive, untrue or misleading advertising.”

6           161. Tesla’s conduct, as described herein, was and is in violation of the UCL. Tesla’s  
7 conduct violates the UCL in at least the following ways:

8           f. By knowingly and intentionally concealing from Plaintiff and the  
9 other class members that the Affected Vehicles suffer from a  
design defect while obtaining money from Plaintiff and the class;

10           g. By marketing Affected Vehicles and the AP2.0 systems as  
11 possessing functional, or near-functional, and defect-free Standard  
Safety Features

12           h. By marketing Affected Vehicles and the AP2.0 systems as  
13 possessing functional, or near-functional, and defect-free Enhanced  
Autopilot;

14           i. By violating federal laws, including the Motor Vehicle Safety Act  
15 and attendant regulations, and by failing to recall vehicles that  
16 contain a safety defect; and

17           j. By violating other California laws, including California laws  
18 governing false advertising and consumer protection.

19           162. Tesla’s misrepresentations and omissions alleged herein caused Plaintiff and putative  
20 class members to make their purchases or leases of their Affected Vehicles, including the AP2.0  
21 system. Absent these misrepresentations and omissions, Plaintiff and the other class members would  
22 not have purchased or leased these vehicles, would not have purchased or leased these Affected  
23 Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative  
24 vehicles that did not contain defective AP2.0 software.

25           163. Accordingly, Plaintiff and other putative California class members have suffered  
26 injury in fact, including lost money or property, as a result of Tesla’s misrepresentations and  
27 omissions.  
28

1 164. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices by  
2 Tesla under CAL. BUS. & PROF. CODE § 17200.

3 165. Plaintiff requests that this Court enter such orders or judgments as may be necessary  
4 to enjoin Tesla from continuing its unfair, unlawful, and/or deceptive practices, and to restore to  
5 Plaintiffs and members of the class any money it acquired by unfair competition, including  
6 restitution and/or restitutionary disgorgement, as provided in CAL. BUS. & PROF. CODE §§ 17203  
7 & 3345; and for such other relief as is set forth below.

8  
9 **COUNT II**

10 **VIOLATION OF CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT**  
11 **(CAL. BUS. & PROF. CODE § 1750, *et seq.*)**

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

14 167. Plaintiff Whelan brings this count on behalf of himself and the California class.

15 168. California’s Consumers Legal Remedies Act (“CLRA”), CAL. BUS. & PROF. CODE  
16 § 1750, *et seq.*, proscribes “unfair methods of competition and unfair or deceptive acts or practices  
17 undertaken by any person in a transaction intended to result or which results in the sale or lease of  
18 goods or services to any consumer.”

19 169. The Affected Vehicles, as well as the Enhanced Autopilot AP2.0 system, are “goods”  
20 as defined in CAL. BUS. & PROF. CODE § 1761(a).

21 170. Plaintiff and other putative California class members are “consumers” as defined in  
22 CAL. BUS. & PROF. CODE § 1761(d), and Plaintiff, the other class members, and Tesla are “persons”  
23 as defined in CAL. BUS. & PROF. CODE § 1761(c).

24 171. As alleged above, Tesla made numerous representations concerning the benefits,  
25 performance, and safety features of the Affected Vehicles and the Enhanced Autopilot AP2.0 system,  
26 and vehicles equipped with it, that were misleading.

27 172. In purchasing or leasing the Affected Vehicles, Plaintiff and other putative California  
28 class members were deceived by Tesla’s failure to disclose that the Standard Safety Features in the

1 Affected Vehicles were inoperable and, when sold with the Enhanced Autopilot, were equipped with  
2 a defective Enhanced Autopilot AP2.0 system.

3 173. Tesla's conduct as described herein was and is in violation of the CLRA. Tesla's  
4 conduct violates at least the following enumerated CLRA provisions:

- 5 f. CAL. CIV. CODE § 1770(a)(2): Misrepresenting the approval or  
6 certification of goods;
- 7 g. CAL. CIV. CODE § 1770(a)(5): Representing that goods have  
8 sponsorship, approval, characteristics, uses, benefits, or quantities  
9 which they do not have;
- 10 h. CAL. CIV. CODE § 1770(a)(7): Representing that goods are of a  
11 particular standard, quality, or grade, if they are of another;
- 12 i. CAL. CIV. CODE § 1770(a)(9): Advertising goods with intent not to  
13 sell them as advertised; and
- 14 j. CAL. CIV. CODE § 1770(a)(16): Representing that goods have been  
15 supplied in accordance with a previous representation when they  
16 have not.

17 174. Tesla knew, should have known, or was reckless in not knowing of the defective  
18 design and/or manufacture of the Affected Vehicles and the Enhanced Autopilot AP2.0 system, and  
19 that the Affected Vehicles were not suitable for their intended use.

20 175. The facts concealed and omitted by Tesla in its interactions with Plaintiff and the  
21 other putative class members are material in that a reasonable consumer would have considered them  
22 to be important in deciding whether to purchase or lease the Affected Vehicles or pay a lower price.  
23 Had Plaintiff and other class members known about the defective nature of the Affected Vehicles,  
24 they would not have purchased or leased the Affected Vehicles, or they would not have paid the  
25 prices they paid, including the \$5,000 premium for the Enhanced Autopilot AP2.0 system.

26 176. Plaintiff and the Class have provided Tesla with notice of its violations of the CLRA  
27 pursuant to CAL. CIV. CODE § 1782(a). The notice was transmitted to Tesla on April 25, 2017.

28 177. In accordance with CAL. CIV. CODE § 1780(a), Plaintiff and members of the Subclass  
seek injunctive relief for Tesla's violations of the CLRA.

1 178. While Plaintiff and the Class do not seek to recover damages under the CLRA in this  
2 Complaint, after mailing appropriate notice and demand in accordance with Civil Code  
3 § 1782(a) & (d), Plaintiff will subsequently amend this Complaint to also include a request for  
4 compensatory and punitive damages because Plaintiff and other putative California class members  
5 have suffered injury in fact and actual damages resulting from Tesla's material omissions and  
6 misrepresentations because they paid an inflated purchase or lease price for the Affected Vehicles.

7 179. In an amendment to this complaint, following the notice sent on April 25, 2017,  
8 Plaintiff will seek an additional award against Tesla, under CAL. CIV. CODE § 1780(b), of up to  
9 \$5,000 for each California Class member who qualifies as a "senior citizen" or "disabled person"  
10 under the CLRA. Plaintiff Dan Whelan is 71 years old at the time of this complaint. Tesla knew or  
11 should have known that its conduct was directed to one or more California class members like  
12 Plaintiff who are senior citizens or disabled persons. Tesla's conduct caused Plaintiff and additional  
13 senior citizens or disabled persons to suffer a substantial loss of property set aside for retirement or  
14 for personal or family care and maintenance, or assets essential to the health or welfare of the senior  
15 citizen or disabled person. One or more proposed California class members who are senior citizens  
16 or disabled persons are substantially more vulnerable to Tesla's conduct because of age, poor health  
17 or infirmity, impaired understanding, restricted mobility, or disability, and each of them suffered  
18 substantial physical, emotional, or economic damage resulting from Tesla's conduct.

19 180. Plaintiff further seeks an order enjoining Tesla's unfair or deceptive acts or practices,  
20 costs of court, attorneys' fees under CAL. CIV. CODE § 1780(e), and any other just and proper relief  
21 available under the CLRA.

22 **COUNT III**

23 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW**  
24 **(CAL. BUS. & PROF. CODE § 17500, et seq.)**

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

27 182. Plaintiff Whelan brings this Count on behalf of himself and the California class.

1           183. CAL. BUS. & PROF. CODE § 17500 states: “It is unlawful for any . . . corporation . . .  
2 with intent directly or indirectly to dispose of real or personal property . . . to induce the public to  
3 enter into any obligation relating thereto, to make or disseminate or cause to be made or  
4 disseminated . . . from this state before the public in any state, in any newspaper or other publication,  
5 or any advertising device, . . . or in any other manner or means whatever, including over the Internet,  
6 any statement . . . which is untrue or misleading, and which is known, or which by the exercise of  
7 reasonable care should be known, to be untrue or misleading.”

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

13           185. Tesla has violated CAL. BUS. & PROF. CODE § 17500 because the misrepresentations  
14 and omissions regarding the safety, reliability, and functionality of Affected Vehicles, as set forth in  
15 this complaint were material and likely to deceive a reasonable consumer.

16           186. Plaintiff and other putative California class members have suffered an injury in fact,  
17 including the loss of money or property, as a result of Tesla’s unfair, unlawful, and/or deceptive  
18 practices. In purchasing or leasing their Affected Vehicles, Plaintiff and other putative class  
19 members relied on the misrepresentations and/or omissions of Tesla with respect to the safety,  
20 performance, and reliability of the Affected Vehicles, including representations as to the Standard  
21 Safety Features and the Enhanced Autopilot. Tesla’s representations turned out not to be true  
22 because the Affected Vehicles are distributed with faulty, defective, and inoperable Standard Safety  
23 Features and faulty, defective, unsafe, and inoperable Enhanced Autopilot AP2.0 systems, rendering  
24 essential vehicle functions erratic and dangerous. Had Plaintiff and other class members known this,  
25 they would not have purchased or leased their Affected Vehicles, or paid a \$5,000 premium for the  
26 Enhanced Autopilot AP2.0 system, and/or paid as much for them. Accordingly, Plaintiff and other  
27 putative California class members overpaid for their Affected Vehicles and did not receive the  
28 benefit of their bargain.

1 187. All of the wrongful conduct alleged herein occurred, and continues to occur, in the  
2 conduct of Tesla's business. Tesla's wrongful conduct is part of a pattern or generalized course of  
3 conduct that is still perpetuated and repeated, both in the state of California and nationwide.

4 188. Plaintiff, individually, and on behalf of other putative California class members,  
5 requests that this Court enter such orders or judgments as may be necessary to enjoin Tesla from  
6 continuing its unfair, unlawful, and/or deceptive practices and to restore to Plaintiff and the other  
7 putative class members any money Tesla acquired by unfair competition, including restitution and/or  
8 restitutionary disgorgement, and for such other relief set forth below.

9 **COUNT IV**

10 **FRAUD BY CONCEALMENT**

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

13 190. Plaintiff Whelan brings this count on behalf of himself and the California class.

14 191. Tesla concealed and suppressed material facts concerning the quality of its vehicles  
15 and the Tesla brand.

16 192. More specifically, Tesla concealed and suppressed material facts concerning the  
17 design, safety, performance, and quality of the Affected Vehicles, the Standard Safety Features, and  
18 its Enhanced Autopilot AP2.0 system. As alleged in this Complaint, notwithstanding its promises  
19 regarding Standard Safety Features and its Enhanced Autopilot AP2.0 system, Tesla knowingly and  
20 intentionally designed and incorporated Standard Safety Features that simply did not exist at the time  
21 of purchase and delivery of Affected Vehicles and do not presently exist. In addition, Tesla sold and  
22 installed in Affected Vehicles an Enhanced Autopilot AP2.0 system that it knew was unsafe to use  
23 and would impair the safe operation of the vehicle.

24 193. Tesla did so in order to boost sales of its vehicles and in order to falsely assure  
25 purchasers and lessees of Tesla vehicles that Tesla is a reputable manufacturer and that Tesla's  
26 vehicles and self-driving system are safe, reliable, and able to perform as promised. The false  
27 representations were material to consumers, both because they concerned the safety of the Affected  
28 Vehicles and because the representations played a significant role in the value of the vehicles.

1           194. Plaintiff and proposed California class members viewed advertising on Tesla's  
2 website, read promotional materials, and heard Tesla dealer sales pitches that promised Standard  
3 Safety Features comparable to those in other similarly priced luxury vehicles and safe Enhanced  
4 Autopilot capabilities if they also purchased Tesla's expensive Enhanced Autopilot AP2.0. They had  
5 no way of knowing that Tesla's representations were false and gravely misleading. Plaintiff and  
6 California class members did not and could not unravel Tesla's deception on their own.

7           195. Tesla had a duty to disclose the true safety features and performance of its Affected  
8 Vehicles, and the Enhanced Autopilot AP2.0 system, because knowledge of the scheme and its  
9 details were known and/or accessible only to Tesla; Tesla had superior knowledge and access to the  
10 facts; and Tesla knew the facts were not known to, or reasonably discoverable by, Plaintiff and  
11 members of the putative California class. Tesla also had a duty to disclose because it made many  
12 general affirmative representations about the about the safety and qualities of Affected Vehicles and  
13 the Enhanced Autopilot AP2.0 system, as set forth above, which were misleading, deceptive, and  
14 incomplete without the disclosure of: (a) the additional facts set forth above regarding the actual  
15 performance of these vehicles and Enhanced Autopilot AP2.0 software; (b) its actual decision to put  
16 sales and profits over safety; and (c) its actual practices with respect to the vehicles and system at  
17 issue. Having volunteered to provide information to Plaintiff and the proposed California class, Tesla  
18 had the duty to disclose not merely the partial truth, but the entire truth. These omitted and  
19 concealed facts were material because they directly impact the safety and the value of the Affected  
20 Vehicles purchased or leased by Plaintiff and the California Class. Whether a vehicle is safe to drive,  
21 and whether that vehicle's manufacturer tells the truth with respect to the vehicle's real abilities, are  
22 material concerns to a consumer, as evidenced by the exorbitant base prices of Affected Vehicles  
23 (\$72,000-\$135,000+) and \$5,000 premium paid for Tesla vehicles equipped with the Enhanced  
24 Autopilot AP2.0 system.

25           196. Tesla actively concealed and/or suppressed these material facts, in whole or in part, to  
26 pad and protect its profits and to burnish the perception that its vehicles were at the leading edge of  
27 safety and autopilot technology, which perception would enhance the brand's image and garner Tesla  
28 more money. But it did so at the expense of Plaintiff and the California class.

1           197. On information and belief, Tesla still has not made full and adequate disclosures and  
2 continues to defraud Plaintiff and the California class by concealing material information regarding  
3 the safety and performance of Affected Vehicles and the Enhanced Autopilot AP2.0 system.

4           198. Plaintiff and the California class were unaware of these omitted material facts and  
5 would not have acted as they did if they had known of the concealed and/or suppressed facts, in that  
6 they would not have purchased Affected Vehicles manufactured by Tesla, would not have paid the  
7 \$5,000 premium for Enhanced Autopilot AP2.0, and/or would not have continued to drive their  
8 Affected Vehicles or would have taken other affirmative steps. Plaintiff's and the California class  
9 members' actions were justified. Tesla was in exclusive control of the material facts, and such facts  
10 were not known to the public, Plaintiff, or the California class.

11           199. Because of the concealment and/or suppression of the facts, Plaintiff and the  
12 California class sustained damage because they did not receive the value for: (1) the base purchase  
13 price of their Affected Vehicles, which were supposed to have been equipped with functional  
14 Standard Safety Features by December 2016, but were not so equipped; and (2) the \$5,000 premium  
15 paid for Enhanced Autopilot functionality when that functionality was not available as promised in  
16 December 2016, and remains unavailable to this day. Had Plaintiff and members of the California  
17 class been aware of the grave safety issues attendant to, and the real-world performance of, the  
18 Affected Vehicles and Tesla's Enhanced Autopilot AP2.0 system, Plaintiff and fellow putative  
19 California class members who purchased or leased the Affected Vehicles would have paid less for  
20 their vehicles and the Enhanced Autopilot AP2.0 system, or they would not have purchased or leased  
21 them at all.

22           200. Accordingly, Tesla is liable to Plaintiff and the proposed California class for damages  
23 in an amount to be proven at trial.

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



1 **B. Colorado**

2 **COUNT I**

3 **VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT**  
4 **(COLO. REV. STAT. § 6-1-101, *ET SEQ.*)**

5 202. Plaintiff realleges and incorporates by reference all paragraphs as though fully set  
6 forth herein.

7 203. Plaintiff Dean Sheikh brings this Count on behalf of himself and the alternative  
8 Colorado Class and Colorado Enhanced Autopilot Subclass (“Colorado class”).

9 204. Tesla is a “person” under § 6-1-102(6) of the Colorado Consumer Protection Act  
10 (“Colorado CPA”), COLO. REV. STAT. § 6-1-101, *et seq.*

11 205. Plaintiff and Colorado class members are “consumers” for purposes of COLO. REV.  
12 STAT. § 6-1-113(1)(a) who purchased or leased one or more Affected Vehicles.

13 206. The Colorado CPA prohibits deceptive trade practices in the course of a person’s  
14 business. Tesla engaged in deceptive trade practices prohibited by the Colorado CPA, including:  
15 (1) knowingly making a false representation as to the characteristics, uses, and benefits of the  
16 Affected Vehicles that had the capacity or tendency to deceive Colorado Class members; (2)  
17 representing that the Affected Vehicles are of a particular standard, quality, and grade even though  
18 Tesla knew or should have known they are not; (3) advertising the Affected Vehicles with the intent  
19 not to sell them as advertised; and (4) failing to disclose material information concerning the  
20 Affected Vehicles that was known to Tesla at the time of advertisement or sale with the intent to  
21 induce Colorado Class members to purchase, lease, or retain the Affected Vehicles.

22 207. In the course of business, Tesla willfully failed to disclose and actively concealed the  
23 defects in the AP2.0 system discussed herein, and it otherwise engaged in activities with a tendency  
24 or capacity to deceive. Tesla also engaged in unlawful trade practices by employing deception,  
25 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of  
26 any material fact with intent that others rely upon such concealment, suppression, or omission, in  
27 connection with the sale of Affected Vehicles.

1           208. Tesla knew that it had designed and installed a defective AP2.0 system and knew that  
2 the system would not be ready as advertised. Tesla knew this information but concealed all of it.

3           209. Tesla was also aware that it valued profits over safety, and that it was manufacturing,  
4 selling, and distributing vehicles throughout the United States that did not perform as advertised and  
5 that jeopardized the safety of the vehicles' occupants. Tesla concealed this information as well.

6           210. By failing to disclose that the AP2.0 system was defective, by marketing Tesla  
7 vehicles as safe, reliable, and of high quality, and by presenting Tesla as a reputable manufacturer  
8 that valued safety and stood behind its vehicles after they were sold, Tesla engaged in deceptive  
9 business practices in violation of the Colorado CPA.

10           211. Tesla's unfair or deceptive acts or practices were likely to and did in fact deceive  
11 reasonable consumers, including Plaintiff and the other Class members, about the true performance  
12 of the AP2.0 system and when it would be fully and safely functional, the quality of the Tesla brand,  
13 the devaluing of safety and performance at Tesla, and the true value of the Affected Vehicles.

14           212. Tesla intentionally and knowingly misrepresented material facts regarding the  
15 Affected Vehicles with intent to mislead Plaintiff and the Colorado class.

16           213. Tesla knew or should have known that its conduct violated the Colorado CPA.

17           214. As alleged above, Tesla made material statements about the safety and performance  
18 of the Affected Vehicles and the Tesla brand that were either false or misleading.

19           215. Tesla owed Plaintiff and the Colorado class a duty to disclose the true safety,  
20 performance, and reliability of the Affected Vehicles, and the devaluing of safety and performance at  
21 Tesla, because Tesla:

- 22           a. Possessed exclusive knowledge that it valued profits and cost-  
23 cutting over safety and performance, and that it was  
24 manufacturing, selling, and distributing vehicles throughout the  
25 United States that did not perform as advertised;
- 26           b. Intentionally concealed the foregoing from Plaintiff and the  
27 Class; and/or
- 28           c. Made incomplete representations about the safety and  
performance of the Affected Vehicles generally, and the  
defective AP2.0 system in particular, while purposefully

1 withholding material facts from Plaintiff and the Class that  
2 contradicted these representations.

3 216. Because Tesla fraudulently concealed the defective nature of the AP2.0 system and  
4 the true performance of its vehicles bearing the AP2.0 system, resulting in a raft of negative publicity  
5 once the defects finally began to be disclosed, the value of the Affected Vehicles has diminished. In  
6 light of the stigma attached to those vehicles by Tesla's conduct, they are now worth significantly  
7 less than they otherwise would be.

8 217. Tesla's fraudulent sales and deployment of the defective AP2.0 system and the true  
9 performance of Tesla vehicles equipped with this system were material to Plaintiff and the Colorado  
10 class. A vehicle made by a reputable manufacturer of safe, high-performing electric vehicles is safer  
11 and worth more than an otherwise comparable vehicle made by a disreputable manufacturer of  
12 unsafe electric vehicles that conceals defects rather than promptly remedying them.

13 218. Plaintiff and the Colorado class suffered ascertainable loss caused by Tesla's  
14 misrepresentations and its concealment of and failure to disclose material information. Class  
15 members who purchased the Affected Vehicles either would have paid less for their vehicles or  
16 would not have purchased or leased them at all but for Tesla's violations of the Colorado CPA.

17 219. Tesla had an ongoing duty to all Tesla customers to refrain from unfair and deceptive  
18 practices under the Colorado CPA. All owners of Affected Vehicles suffered ascertainable loss in  
19 the form of the diminished value of their vehicles as a result of Tesla's deceptive and unfair acts and  
20 practices made in the course of Tesla's business.

21 220. Tesla's violations present a continuing risk to Plaintiff and the Colorado class as well  
22 as to the general public. Tesla's unlawful acts and practices complained of herein affect the public  
23 interest.

24 221. As a direct and proximate result of Tesla's violations of the Colorado CPA, Plaintiff  
25 and the Colorado class have suffered injury-in-fact and/or actual damage.

26 222. Pursuant to COLO. REV. STAT. § 6-1-113, Plaintiff, individually and on behalf of the  
27 Colorado class, seeks monetary relief against Tesla measured as the greater of (a) actual damages in  
28

1 an amount to be determined at trial and discretionary trebling of such damages, or (b) statutory  
2 damages in the amount of \$500 for himself and each Colorado class member.

3 223. Plaintiff also seeks an order enjoining Tesla's unfair and/or deceptive acts or  
4 practices, punitive damages, and attorneys' fees, and any other just and proper relief available under  
5 the Colorado CPA.

6 **COUNT II**

7 **FRAUD BY CONCEALMENT**

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

10 225. Plaintiff Sheikh brings this Count on behalf of himself and the Colorado class.

11 226. Tesla concealed and suppressed material facts concerning the quality of Tesla  
12 vehicles and the Tesla brand.

13 227. Tesla concealed and suppressed material facts concerning the safety, performance,  
14 and quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding their promises  
15 as to the readiness and capabilities of the AP2.0 system, Tesla knowingly and intentionally designed  
16 and incorporated a system that would not permit safe operation of the vehicle.

17 228. Tesla did so in order to boost confidence in its vehicles and falsely assure purchasers  
18 and lessees of Tesla vehicles that Tesla is a reputable manufacturer that stands behind its vehicles  
19 after they are sold, and that its vehicles are safe, reliable, and perform as promised. The false  
20 representations were material to consumers, both because they concerned the safety of the Affected  
21 Vehicles and because the representations played a significant role in the value of the vehicles.

22 229. Plaintiff and Colorado class members viewed advertising on Tesla's website and  
23 elsewhere that touted the features and availability of the AP2.0 system. They had no way of  
24 knowing that Tesla's representations were false and gravely misleading. Plaintiff and Colorado class  
25 members did not and could not unravel Tesla's deception on their own.

26 230. Tesla had a duty to disclose the true performance of Tesla vehicles equipped with an  
27 AP2.0 system because knowledge of the scheme and its details were known and/or accessible only to  
28 Tesla; Tesla had superior knowledge and access to the facts; and Tesla knew the facts were not

1 known to, or reasonably discoverable, by Plaintiff and the Colorado class. Tesla also had a duty to  
2 disclose because it made many general affirmative representations about the about the qualities of its  
3 vehicles equipped with the AP2.0 system, starting with references to them as vehicles with *auto-pilot*  
4 capabilities, as set forth above, which were misleading, deceptive, and incomplete without the  
5 disclosure of the additional facts set forth above regarding the actual performance of its vehicles, its  
6 actual decision to put sales and profits over safety, and its actual practices with respect to the  
7 vehicles at issue. Having volunteered to provide information to Plaintiff, Tesla had the duty to  
8 disclose not just the partial truth, but the entire truth. These omitted and concealed facts were  
9 material because they directly impact the safety and the value of the Affected Vehicles purchased or  
10 leased by Plaintiff and the Colorado class. Whether a vehicle is safe to drive, and whether that  
11 vehicle's manufacturer tells the truth with respect to the vehicle's capabilities, performance, and  
12 safety are material concerns to a consumer, as evidenced by the approximately \$5,000 premium paid  
13 for the Teslas equipped with an AP2.0 system.

14         231. Tesla actively concealed and/or suppressed these material facts, in whole or in part, to  
15 pad and protect its profits and to avoid the perception that its vehicles did not or could not perform as  
16 other premium vehicles on the market, including as to safety features of these vehicles, which  
17 perception would hurt the brand's image and cost Tesla money, and it did so at the expense of  
18 Plaintiff and the Colorado class.

19         232. On information and belief, Tesla has still not made full and adequate disclosures and  
20 continues to defraud Plaintiff and the Colorado class by concealing material information regarding  
21 the safety and performance of its vehicles.

22         233. Plaintiff and the Colorado class were unaware of these omitted material facts and  
23 would not have acted as they did if they had known of the concealed and/or suppressed facts, in that  
24 they would not have purchased the AP2.0-equipped vehicles manufactured by Tesla, and/or would  
25 not have continued to drive their Affected Vehicles or would have taken other affirmative steps.  
26 Plaintiff's and the Colorado class members' actions were justified. Tesla was in exclusive control of  
27 the material facts and such facts were not known to the public, Plaintiff, or the Colorado class.  
28



1           241. Tesla has benefitted from selling and leasing defective cars whose value was  
2 artificially inflated by Tesla’s concealment of the defective AP2.0 system at a profit, and Plaintiff  
3 and the Colorado class have overpaid for the cars and been forced to pay other costs.

4           242. Thus, all Colorado class members conferred a benefit on Tesla.

5           243. It is inequitable for Tesla to retain these benefits.

6           244. Plaintiff and the Colorado class were not aware of the true facts about the Affected  
7 Vehicles and did not benefit from Tesla’s conduct.

8           245. Tesla knowingly accepted the benefits of its unjust conduct.

9           246. As a result of Tesla’s conduct, the amount of its unjust enrichment should be  
10 disgorged, in an amount according to proof.

11 **C. Florida**

12 **COUNT I**

13 **VIOLATION OF FLORIDA’S UNFAIR &**  
14 **DECEPTIVE TRADE PRACTICES ACT**  
**(FLA. STAT. § 501.201, ET SEQ.)**

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

17           248. Plaintiff John Kelner brings this Count on behalf of himself and the alternative  
18 Florida Class and Florida Enhanced Autopilot Subclass (“Florida class”).

19           249. Plaintiff and Florida class members are “consumers” within the meaning of the  
20 Florida Unfair and Deceptive Trade Practices Act (“FUDTPA”), FLA. STAT. § 501.203(7).

21           250. Tesla engaged in “trade or commerce” within the meaning of FLA. STAT.  
22 § 501.203(8).

23           251. The FUDTPA prohibits “[u]nfair methods of competition, unconscionable acts or  
24 practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” FLA.  
25 STAT. § 501.204(1).

26           252. In the course of business, Tesla willfully failed to disclose and actively concealed the  
27 defective AP2.0 system discussed herein and otherwise engaged in activities with a tendency or  
28 capacity to deceive. Tesla also engaged in unlawful trade practices by employing deception,

1 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of  
2 any material fact with intent that others rely upon such concealment, suppression, or omission, in  
3 connection with the sale of Affected Vehicles.

4 253. Tesla knew it had designed and installed a defective AP2.0 system and knew that the  
5 system did not work as advertised. Tesla also knew that it could not meet its delivery timeline, but it  
6 concealed all of that information.

7 254. Tesla was also aware that it valued profits over safety, and that it was manufacturing,  
8 selling, and distributing vehicles throughout the United States that did not perform as advertised and  
9 jeopardized the safety of the vehicles' occupants. Tesla concealed this information as well.

10 255. By failing to disclose that defects in the AP2.0 system, by misrepresenting its delivery  
11 date, by marketing Tesla vehicles as safe, reliable, and of high quality, and by presenting Tesla as a  
12 reputable manufacturer that valued safety and stood behind their vehicles after they were sold, Tesla  
13 engaged in deceptive business practices in violation of the FUDTPA.

14 256. Tesla's unfair or deceptive acts or practices were likely to and did in fact deceive  
15 reasonable consumers, including Plaintiff and the other Florida class members, about the true  
16 performance of Tesla vehicles equipped with AP2.0 systems, the quality of the Tesla brand, the  
17 devaluing of safety and performance at Tesla, and the true value of the Affected Vehicles.

18 257. Tesla intentionally and knowingly misrepresented material facts regarding the  
19 Affected Vehicles with intent to mislead Plaintiff and the Florida class.

20 258. Tesla knew or should have known that its conduct violated the FUDTPA.

21 259. As alleged above, Tesla made material statements about the safety and performance  
22 of the Affected Vehicles and the Tesla brand that were either false or misleading.

23 260. Tesla owed Plaintiff a duty to disclose the true safety, performance, and reliability of  
24 the Affected Vehicles, and the devaluing of safety and performance at Tesla, because Tesla:

- 25 a. Possessed exclusive knowledge that they valued profits and  
26 cost-cutting over safety and performance, and that they were  
27 manufacturing, selling, and distributing vehicles throughout the  
28 United States that did not perform as advertised;



- 1           b.     Intentionally concealed the foregoing from Plaintiff and the  
2                 Florida class; and/or
- 3           c.     Made incomplete representations about the safety and  
4                 performance of the Affected Vehicles generally, and the  
5                 defective AP2.0 system in particular, while purposefully  
6                 withholding material facts from Plaintiff and the Florida class  
7                 that contradicted these representations.

6           261.    Because Tesla fraudulently concealed defects in its AP2.0 system (as well as its  
7 anticipated delivery date) and the true performance of Tesla vehicles equipped with AP2.0 systems,  
8 resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the  
9 Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Tesla's  
10 conduct, they are now worth significantly less than they otherwise would be.

11           262.    Tesla's fraudulent use of the defective AP2.0 system and the true performance of  
12 Tesla vehicles equipped with this system were material to Plaintiff and the Florida class. A vehicle  
13 made by a reputable manufacturer of safe, high-performing electric vehicles is safer and worth more  
14 than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe electric  
15 vehicles that conceals defects rather than promptly remedying them.

16           263.    Plaintiff and the Florida class suffered ascertainable loss caused by Tesla's  
17 misrepresentations and their concealment of and failure to disclose material information. Class  
18 members who purchased the Affected Vehicles either would have paid less for their vehicles or  
19 would not have purchased or leased them at all but for Tesla's violations of the FUDTPA.

20           264.    Tesla had an ongoing duty to all Tesla customers to refrain from unfair and deceptive  
21 practices under the FUDTPA. All owners of Affected Vehicles suffered ascertainable loss in the  
22 form of the diminished value of their vehicles as a result of Tesla's deceptive and unfair acts and  
23 practices made in the course of Tesla's business.

24           265.    Tesla's violations present a continuing risk to Plaintiff and the Florida class as well as  
25 to the general public. Tesla's unlawful acts and practices complained of herein affect the public  
26 interest.

1           266. As a direct and proximate result of Tesla’s violations of the FUDTPA, Plaintiff and  
2 the Florida class have suffered injury-in-fact and/or actual damage.

3           267. Plaintiff and the Florida class are entitled to recover their actual damages under FLA.  
4 STAT. § 501.211(2) and attorneys’ fees under FLA. STAT. § 501.2105(1).

5           268. Plaintiff also seeks an order enjoining Tesla’s unfair and/or deceptive acts or  
6 practices, punitive damages, and attorneys’ fees, and any other just and proper relief available under  
7 the FUDTPA.

8   **COUNT II**

9   **FRAUD BY CONCEALMENT**

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

12           270. Plaintiff Kelner brings this Count on behalf of himself and the Florida class.

13           271. Tesla concealed and suppressed material facts concerning the quality of its vehicles  
14 and the Tesla brand.

15           272. Tesla concealed and suppressed material facts concerning the safety, performance,  
16 and quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding its promises as  
17 to capabilities of the AP2.0 system and its anticipated delivery date, Tesla knowingly and  
18 intentionally designed and incorporated a system that would undermine safe operation of its vehicles.

19           273. Tesla did so in order to boost confidence in its vehicles and falsely assure purchasers  
20 and lessees of Tesla vehicles that Tesla is a reputable manufacturer that stands behind its vehicles  
21 after they are sold, and that its vehicles are safe, reliable, and perform as promised. The false  
22 representations were material to consumers, both because they concerned the safety of the Affected  
23 Vehicles and because the representations played a significant role in the value of the vehicles.

24           274. Plaintiff and Florida class members viewed advertising on Tesla’s website and other  
25 forums that promised extensive auto-pilot and safety features. They had no way of knowing that  
26 Tesla’s representations were false and gravely misleading. Plaintiff and Florida class members did  
27 not and could not unravel Tesla’s deception on their own.

28

1           275. Tesla had a duty to disclose the true performance of the Affected Vehicles because  
2 knowledge of the scheme and its details were known and/or accessible only to Tesla; Tesla had  
3 superior knowledge and access to the facts; and Tesla knew the facts were not known to, or  
4 reasonably discoverable, by Plaintiff and the Florida class. Tesla also had a duty to disclose because  
5 it made many general affirmative representations about the about the qualities of vehicles equipped  
6 with the AP2.0 system, starting with references to them as vehicles with an *auto-pilot* system, as set  
7 forth above, which were misleading, deceptive, and incomplete without the disclosure of the  
8 additional facts set forth above regarding the actual performance of its vehicles, its actual decision to  
9 put sales and profits over safety, and its actual practices with respect to the vehicles at issue. Having  
10 volunteered to provide information to Plaintiff, Tesla had the duty to disclose not just the partial  
11 truth, but the entire truth. These omitted and concealed facts were material because they directly  
12 impact the safety and the value of the Affected Vehicles purchased or leased by Plaintiff and the  
13 Florida class. Whether a vehicle is safe to drive, and whether that vehicle's manufacturer tells the  
14 truth with respect to the vehicles performance and capabilities are material concerns to a consumer,  
15 as evidenced by the approximately \$5,000 premium paid for Tesla vehicles equipped with the AP2.0  
16 system.

17           276. Tesla actively concealed and/or suppressed these material facts, in whole or in part, to  
18 pad and protect its profits and to avoid the perception that its vehicles did not or could not perform as  
19 other premium vehicles on the market, which perception would hurt the brand's image and cost Tesla  
20 money, and it did so at the expense of Plaintiff and the Florida class.

21           277. On information and belief, Tesla has still not made full and adequate disclosures and  
22 continues to defraud Plaintiff and the Florida class by concealing material information regarding the  
23 safety and performance of its vehicles.

24           278. Plaintiff and the Florida class were unaware of these omitted material facts and would  
25 not have acted as they did if they had known of the concealed and/or suppressed facts, in that they  
26 would not have purchased the AP2.0 system-equipped vehicles manufactured by Tesla, and/or would  
27 not have continued to drive their Affected Vehicles or would have taken other affirmative steps.

28

1 Plaintiff's and the Florida class members' actions were justified. Tesla was in exclusive control of  
2 the material facts and such facts were not known to the public, Plaintiff, or the Florida class.

3 279. Because of the concealment and/or suppression of the facts, Plaintiff and the  
4 Florida class sustained damage because they did not receive the value for the approximately \$5,000  
5 premium paid, and they own vehicles that diminished in value as a result of Tesla's concealment of,  
6 and failure to timely disclose, the actual safety and performance of Tesla vehicles with the AP2.0  
7 system. Had they been aware of the true safety and performance of the Affected Vehicles, Plaintiff  
8 and Florida class members who purchased or leased the Affected Vehicles would have paid less for  
9 their vehicles or would not have purchased or leased them at all.

10 280. The value of all Florida class members' Affected Vehicles has diminished as a result  
11 of Tesla's fraudulent concealment of the true capabilities of the AP2.0 system, which has greatly  
12 tarnished the Tesla brand and made any reasonable consumer reluctant to purchase any of the  
13 Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.  
14 In addition, Florida class members are entitled to damages for loss of use, costs of additional fuel,  
15 costs of unused warranties, and other damages to be proven at trial.

16 281. Accordingly, Tesla is liable to Plaintiff and the Florida class for damages in an  
17 amount to be proven at trial.

18 282. Tesla's acts were done maliciously, oppressively, deliberately, with intent to defraud,  
19 and in reckless disregard of Plaintiff's and the Florida class members' rights and well-being, to  
20 enrich Tesla. Tesla's conduct warrants an assessment of punitive damages in an amount sufficient to  
21 deter such conduct in the future, which amount is to be determined according to proof.

22 **COUNT III**

23 **UNJUST ENRICHMENT**

24 283. Plaintiff realleges and incorporates by reference all paragraphs as though fully set  
25 forth herein.

26 284. In the event that no adequate legal remedy is available, Plaintiff Kelner brings this  
27 Count in the alternative on behalf of himself and the Florida class.

28 285. Tesla has received and retained a benefit from Plaintiff, and inequity has resulted.

1           286. Tesla has benefitted from selling and leasing defective cars whose value was  
2 artificially inflated by Tesla’s concealment of the defective AP2.0 system at a profit, and Plaintiff  
3 and the Florida class have overpaid for the cars and been forced to pay other costs.

4           287. Thus, all Florida class members conferred a benefit on Tesla.

5           288. It is inequitable for Tesla to retain these benefits.

6           289. Plaintiff and the Florida class were not aware of the true facts about the Affected  
7 Vehicles and did not benefit from Tesla’s conduct.

8           290. Tesla knowingly accepted the benefits of its unjust conduct.

9           291. As a result of Tesla’s conduct, the amount of its unjust enrichment should be  
10 disgorged, in an amount according to proof.

11 **D. New Jersey**

12 **COUNT I**

13 **VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT**  
14 **(N.J. STAT. ANN. § 56:8-1, ET SEQ.)**

15           292. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

16           293. Plaintiff Tom Milone brings this action on behalf of himself and the alternative New  
17 Jersey Class and New Jersey Enhanced Autopilot Subclass (“New Jersey class”) against Tesla.

18           294. Plaintiff, the New Jersey class members, and Tesla are persons under the New Jersey  
19 Consumer Fraud Act, N.J. STAT. ANN. § 56:8-1(d).

20           295. Tesla engaged in “sales” of “merchandise” within the meaning of N.J. STAT. ANN.  
21 § 56:8-1(c), (e). Tesla’s actions as set forth herein occurred in the conduct of trade or commerce.

22           296. The New Jersey Consumer Fraud Act (“New Jersey CFA”) makes unlawful “[t]he act,  
23 use or employment by any person of any unconscionable commercial practice, deception, fraud, false  
24 pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of  
25 any material fact with the intent that others rely upon such concealment, suppression or omission, in  
26 connection with the sale or advertisement of any merchandise or real estate, or with the subsequent  
27 performance of such person as aforesaid, whether or not any person has in fact been misled, deceived  
28 or damaged thereby.” N.J. STAT. ANN. § 56:8-2.

1           297. In the course of Tesla’s business, Tesla intentionally or negligently concealed and  
2 suppressed material facts concerning the capabilities and anticipated delivery date of its AP2.0  
3 system. Tesla accomplished this by designing and installing defective software in the Affected  
4 Vehicles and misrepresenting the delivery date for safe, functional software. Defects in the software  
5 package actually render Affected Vehicles unsafe to drive, as set forth herein. The result was what  
6 Tesla intended—consumers gave it their hard-earned money for a system that did not work, and that  
7 would not be delivered consistent with its representations. Plaintiff and New Jersey class members  
8 had no way of discerning that Tesla’s representations were false and misleading because Tesla’s  
9 AP2.0 system was extremely sophisticated technology and because they had no way of knowing  
10 when it actually would be ready for real-world use. Plaintiff and New Jersey class members did not  
11 and could not unravel Tesla’s deception on their own.

12           298. Tesla thus violated the provisions of the New Jersey CFA, at a minimum by:  
13 (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which  
14 they do not have; (2) representing that the Affected Vehicles are of a particular standard, quality, and  
15 grade when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as  
16 advertised; (4) failing to disclose information concerning the Affected Vehicles with the intent to  
17 induce consumers to purchase or lease the Affected Vehicles; and (5) otherwise engaging in conduct  
18 likely to deceive.

19           299. Tesla engaged in misleading, false, unfair, or deceptive acts or practices that violated  
20 the New Jersey CFA by installing, failing to disclose and/or actively concealing defects in its AP2.0  
21 system; by misrepresenting the date by which this system would be ready for safe, real-world  
22 deployment; by marketing its vehicles as safe, reliable, and of high quality; and by presenting itself  
23 as a reputable manufacturer that valued safety and that stood behind its vehicles after they were sold.

24           300. Tesla compounded the deception by repeatedly asserting that the Affected Vehicles  
25 were safe and of high quality, and by claiming to be a reputable manufacturer that valued safety and  
26 stood behind its vehicles after they were sold.

1           301. By violating federal laws, including the Motor Vehicle Safety Act and attendant  
2 regulations, and by failing to recall vehicles that contain a safety defect, Tesla violated federal law  
3 and therefore engaged in conduct that violates the New Jersey CFA.

4           302. Tesla knew it had designed and installed a defective AP2.0 system in the Affected  
5 Vehicles, and it knew it could not deliver a safe AP2.0 system with the capabilities it touted, but it  
6 concealed all of that information. Tesla also knew that it valued profits over safety and compliance  
7 with the law, and that it was manufacturing, selling, and distributing vehicles throughout the United  
8 States that violated federal law, but it concealed this information as well.

9           303. Tesla intentionally and knowingly misrepresented material facts regarding the  
10 Affected Vehicles with intent to mislead Plaintiff and the New Jersey class.

11           304. Tesla knew or should have known that its conduct violated the New Jersey CPA.

12           305. Defendant owed Plaintiff and New Jersey class members a duty to disclose, truthfully,  
13 all the facts concerning the AP2.0 system and vehicles equipped with it because it:

- 14           a. Possessed exclusive knowledge that it was manufacturing,  
15 selling, and distributing vehicles throughout the United States  
that did not comply with federal law;
- 16           b. Intentionally concealed the foregoing from regulators, Plaintiff,  
17 New Jersey class members; and/or
- 18           c. Made incomplete or negligent representations about the safety  
19 and capabilities of the Affected Vehicles, as well as the date by  
20 which a safe and capable AP2.0 system would actually be  
delivered, while purposefully withholding material facts from  
Plaintiff that contradicted these representations.

21           306. Tesla fraudulently concealed the defects in the AP2.0 system and the true safety and  
22 performance of Affected Vehicles, resulting in a raft of negative publicity once Tesla's fraud was  
23 exposed. The value of the Affected Vehicles has therefore plummeted. In light of the stigma Tesla's  
24 misconduct attached to the Affected Vehicles, the Affected Vehicles are now worth less than they  
25 otherwise would be worth.

26           307. Tesla's fraudulent behavior regarding the AP2.0 system and its concealment of the  
27 true relevant facts as described herein were material to Plaintiff and the New Jersey class. A vehicle  
28

1 made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable  
2 vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than  
3 promptly remedying them.

4 308. Tesla's unfair or deceptive acts or practices were likely to and did in fact deceive  
5 regulators and reasonable consumers, including Plaintiff and New Jersey class members, about the  
6 true safety and capabilities of Tesla-branded vehicles equipped with the AP2.0 system, the quality of  
7 the Tesla brand, and integrity at Tesla, and the true value of the Affected Vehicles.

8 309. Plaintiff and New Jersey class members suffered ascertainable loss and actual  
9 damages as a direct and proximate result of Tesla's misrepresentations and its concealment of and  
10 failure to disclose material information. Plaintiff and the New Jersey class members who purchased  
11 or leased the Affected Vehicles would not have purchased or leased them at all and/or—if the  
12 vehicles' true nature had been disclosed and mitigated—would have paid significantly less for them.  
13 Plaintiff and members of the putative New Jersey class also suffered diminished value of their  
14 vehicles, as well as lost or diminished use.

15 310. Tesla had an ongoing duty to all Tesla customers to refrain from unfair and deceptive  
16 practices under the New Jersey CFA in the course of its business.

17 311. Tesla's violations present a continuing risk to Plaintiff as well as to the New Jersey  
18 class and general public. Tesla's unlawful acts and practices complained of herein affect the public  
19 interest.

20 312. As a result of the foregoing wrongful conduct of Tesla, Plaintiff and the New Jersey  
21 class have been damaged in an amount to be proven at trial, and they seek all just and proper  
22 remedies, including, but not limited to, actual and statutory damages, treble damages, an order  
23 enjoining defendant's deceptive and unfair conduct, costs, and reasonable attorneys' fees under N.J.  
24 STAT. ANN. § 56:8-19, and all other just and appropriate relief.

25 **REQUEST FOR RELIEF**

26 WHEREFORE, Plaintiffs, individually and on behalf of members of the proposed classes,  
27 respectfully request that the Court enter judgment in their favor and against defendant, as follows:  
28



