

1 Steve W. Berman (*pro hac vice*)
2 Thomas E. Loeser (SBN 202724)
3 Robert F. Lopez (*pro hac vice*)
4 HAGENS BERMAN SOBOL SHAPIRO LLP
5 1918 Eighth Avenue, Suite 3300
6 Seattle, WA 98101
7 Telephone: (206) 623-7292
8 Facsimile: (206) 623-0594
9 steve@hbsslaw.com
10 toml@hbsslaw.com
11 robl@hbsslaw.com

12 Shana E. Scarlett (SBN 217895)
13 HAGENS BERMAN SOBOL SHAPIRO LLP
14 715 Hearst Avenue, Suite 202
15 Berkeley, CA 94710
16 Telephone: (510) 725-3000
17 Facsimile: (510) 725-3001
18 shanas@hbsslaw.com

19 *Attorneys for Plaintiffs and
20 the Proposed Class*

21
22 UNITED STATES DISTRICT COURT
23
24 NORTHERN DISTRICT OF CALIFORNIA
25
26 SAN JOSE DIVISION

27 DEAN SHEIKH, JOHN KELNER, TOM
28 MILONE, DAURY LAMARCHE, and MICHAEL
VERDOLIN, on behalf of themselves and all others
similarly situated,

Plaintiffs,

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

Defendant.

No. 5:17-cv-02193-BLF

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT**

Date: October 25, 2018
Time: 9:00 a.m.
Judge: Hon. Beth Labson Freeman
Dept.: Courtroom 3, 5th Floor

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1 PLEASE NOTE that on [], at 9:00 a.m., or as soon thereafter as may be heard in the
 2 courtroom of the Hon. Beth Labson Freeman, U.S. District Court for the Northern District of
 3 California, San Jose Division, Plaintiffs Dean Sheikh, John Kelner, Tom Milone, Daury Lamarche and
 4 Michael Verdolin will move, pursuant to Fed. R. Civ. P. 23(e), for an order:

- 5 1. Preliminarily approving the Settlement¹ they have reached with the Defendant;
- 6 2. Granting provisional certification of the Settlement Class, appointing the Plaintiffs as
 Settlement Class Representatives, and appointing Hagens Berman Sobol Shapiro LLP, by Steve W.
 Berman, Thomas E. Loeser and Robert F. Lopez, as Class Counsel for the Settlement Class;
- 7 3. Approving the Parties' proposed Notice program and directing Notice of the proposed
 Settlement to the Settlement Class;
- 8 4. Appointing KCC LLC, as the Settlement Administrator and directing it to carry out the
 duties assigned to it in the Settlement Agreement;
- 9 5. Approving the Parties' proposed procedures for objecting to the Settlement and
 requesting exclusion;
- 10 6. Staying all non-settlement-related proceedings in the this case pending final approval; and
- 11 7. Setting the following schedule:

Notice Date	No later than 45 days after Preliminary Approval
Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards	No later than 14 days prior to the Objection and Exclusion Deadline (referenced below as the Objection and Opt-Out Deadlines)
Claims Deadline	45 days after Notice Date
Opt-Out Deadline	45 days after Notice Date
Deadline for Objection to Settlement	45 days after Notice Date
Deadline for Objection to Motion for Attorneys' Fees, Costs, Expenses, and Service Awards	No later than 14 days after the Motion is filed
Motion for Final Approval	At least 10 days before Final Fairness Hearing
Responses to Objections	At least 10 days before Final Fairness Hearing
Final Fairness Hearing	Approximately 105 days after Preliminary Approval, subject to the Court's availability

26
 27 ¹ Unless otherwise indicated by context, all capitalized terms in this motion refer to capitalized terms
 28 in the Parties' Settlement Agreement.

I. SUMMARY OF ARGUMENT

Plaintiffs, owners and lessees of Tesla Model X and Model S vehicles who purchased Tesla's Enhanced Autopilot ("Enhanced Autopilot") in connection with their Tesla vehicles, move for preliminary approval of a Settlement regarding Tesla's delay in releasing Enhanced Autopilot features with capabilities that corresponded to the schedule previously represented by Tesla. The Settlement covers the claims of these owners and lessees in the United States and its territories. It provides for a non-reversionary sum of \$5,415,280.00 to satisfy these claims under the estimated payment table set forth in the Settlement Agreement; Class Representative Service Awards; and Plaintiffs' reasonable attorneys' fees, costs, and expenses as approved by the Court. There is no claims process associated with this Settlement; all Settlement Class members will be sent a check for their portion of the Settlement fund. The costs of administration and notice will be paid by Tesla in addition to the non-reversionary settlement fund.

The Parties reached this Settlement after vigorous investigation of the claims, mediation, and numerous follow-up conversations and exchanges of information, both mediated and direct. Plaintiffs allege that Tesla's statements on its website and in its ordering process led them to believe that the Enhanced Autopilot features would be available upon delivery of their vehicles or within a short time thereafter. While Tesla strongly denies any claim of wrongful conduct and contends that its statements were not misleading, Tesla has acknowledged that it took longer than it initially expected to roll out the features at issue, and accordingly agreed to this Settlement.

The Settlement appropriately reflects the realities and risks of litigation and is well calibrated to the facts of the case. Cash payments to the Settlement Class Members thus reflect: (1) the differences in Tesla's representations at the time each Settlement Class Member purchased his or her vehicle; (2) the Enhanced Autopilot features available when each Settlement Class Member took delivery of his or her vehicle; and (3) the number of months each owned the vehicle before the remaining features became available. Regarding Notice, the Parties have agreed to a strong, comprehensive program whose centerpiece is direct mailed notice to all potential Settlement Class Members.

As Plaintiffs demonstrate below, the Parties' Settlement Agreement is worthy of preliminary approval and presentation to the proposed Settlement Class.

II. STATEMENT OF ISSUES TO BE DECIDED

Should the Court preliminarily approve the Parties' Settlement, which is the product of intense, arm's-length negotiations, including mediation conducted by an experienced and esteemed mediator; and which provides valuable monetary compensation to a well-defined Settlement Class following implementation of a comprehensive Notice program?

Further, should the Court: provisionally certify a Settlement Class; order Notice; appoint the five Plaintiffs as Settlement Class Representatives; appoint Hagens Berman as Class Counsel for the Settlement Class; approve KCC LLC as Settlement Administrator; approve the Parties' proposed objection and exclusion procedures set forth in the Settlement Agreement; and schedule a Final Approval Hearing as well as a hearing on Plaintiffs' motion for Service Awards and recovery of Plaintiffs' attorneys' fees, costs, and expenses?

III. STATEMENT OF RELEVANT FACTS

A. Background facts

Tesla sells battery-powered electric vehicles in the United States and throughout the world. Beginning in or about October 2016, Tesla announced its new Hardware 2 (“HW2”) Model S and Model X vehicles. Tesla also announced that it would release the next generation Enhanced Autopilot for HW2 vehicles, which consumers had the option to purchase for \$5000.²

Enhanced Autopilot added new capabilities. As Tesla's website explained: "Your Tesla will match speed to traffic conditions, keep within a lane, automatically change lanes without requiring driver input, transition from one freeway to another, exit the freeway when your destination is near, self-park when near a parking spot and be summoned to and from your garage."

When Tesla announced Enhanced Autopilot in October 2016, the company stated that software for these features was “expected to complete validation and be rolled out to your car via an over-the-air update in December 2016, subject to regulatory approval.” (Tesla autopilot webpage, available at

² Consumers could also purchase Enhanced Autopilot later for \$6000.

1 <http://web.archive.org/web/20170123045718/https://www.tesla.com/autopilot> (capture from Jan. 23,
 2 2017) (last visited Mar. 20, 2017). On January 24, 2017, Tesla updated its website to state that “Tesla’s
 3 Enhanced Autopilot software has begun rolling out and features will continue to be introduced as
 4 validation is completed, subject to regulatory approval.”

5 Beginning in January 2017, Tesla began rolling out the Enhanced Autopilot features. The
 6 Enhanced Autopilot features were improved and augmented over time. Updates were released in
 7 February, March, May, June, and July. As of September 2017, all of the Enhanced Autopilot features
 8 had been delivered with the exception of On-ramp to Off-ramp and Smart Summon.

9 All Tesla HW2 vehicles are equipped with standard safety features. Tesla’s website describes its
 10 “standard safety features” to include: (1) Automatic Emergency Braking; (2) Front Collision Warning; (3)
 11 Side Collision Warning; and (4) Auto High Beams. In October 2016, Tesla’s website stated that the
 12 safety features would “become available in December 2016 and roll out through over-the-air updates.”
 13 On January 24, 2017, Tesla’s website was updated to state that the standard safety features “have begun
 14 rolling out through over-the-air updates.” The standard safety features were not available in December
 15 2016, but were rolled out beginning in January 2017; the rollout was completed in May 2017.³

16 **B. Plaintiffs and their claims**

17 Plaintiff Dean Sheikh is a resident of Denver, Colorado. He placed an order for his Model S 60
 18 D on November 20, 2016, paying a \$2,500 deposit. On November 24, 2016, his vehicle design was
 19 confirmed with a purchase price of \$81,200, inclusive of a \$5,000 payment for Enhanced Autopilot. He
 20 took delivery of his Model S 60 D on December 27, 2016.

21 Plaintiff John Kelner is a resident of Davie, Florida. On December 10, 2016, he placed an order
 22 for a Model S 90 D through Tesla’s online system, paying a \$2,500 deposit. On December 14, 2016, he
 23 paid a \$24,333.57 initial lease payment. His vehicle design was confirmed with a purchase price of
 24 \$108,700.00, inclusive of a \$5,000 payment for Enhanced Autopilot. He took delivery of his Tesla on
 25 December 16, 2016.

26
 27

 28 ³ The speed at which Automatic Emergency Braking was enabled was increased in June 2017.

1 Plaintiff Tom Milone is a resident of Jackson, New Jersey. He placed an order for his Model S
 2 90 D on November 23, 2016, paying a \$2,500 deposit. His vehicle design was confirmed with a
 3 purchase price of \$113,200.00, inclusive of a \$5,000 payment for Enhanced Autopilot. He took delivery
 4 of his Model S 90 D on December 29, 2016.

5 Plaintiff Daury Lamarche is a resident of Marlton, New Jersey. In the fall of 2016, he placed an
 6 order for a Model S 75 D and paid a \$2,500 deposit. His vehicle design was confirmed on December 3,
 7 2016, with a purchase price of \$94,950, inclusive of a \$5,000 payment for Enhanced Autopilot. Plaintiff
 8 Lamarche took delivery of his Model S 75 D on December 14, 2016.

9 Plaintiff Michael Verdolin is a resident of Chula Vista, California. He placed an order for his
 10 Model X P100D on June 26, 2016, paying a \$2,500 deposit. His vehicle design was confirmed on July 3,
 11 2016, with a purchase price of \$146,950, inclusive of a \$2,500 payment for original Autopilot. When
 12 Plaintiff Verdolin was told his car was ready, he learned that it would include the Enhanced Autopilot
 13 system instead of the original Autopilot system. Plaintiff Verdolin took delivery of his Model X P100 D
 14 on December 23, 2016.

15 At the time the Plaintiffs took delivery of their cars, the Enhanced Autopilot and standard safety
 16 features of the cars were not operational. The features became operational and were improved as the
 17 software for the features was rolled out over time. As of May 2017, the full suite of standard safety
 18 features was operational. As of September 2017, Enhanced Autopilot was fully functional, with the
 19 exception of On-ramp to Off-ramp and Smart Summon.

20 Plaintiffs alleged that Tesla's delay in providing the features violated California's Unfair
 21 Competition Law (UCL), Consumers Legal Remedies Act (CLRA), and False Advertising Law (FAL) on
 22 behalf of a nationwide class of Tesla owners and lessees. (*E.g.*, Dkt. No. 24 ¶¶ 121-28; 129-143; 144-51.)
 23 Plaintiffs also asserted claims under California's common law. Alternatively, Plaintiffs pled consumer
 24 protection and other claims under the laws of the states of each of the Class Representative Plaintiffs.
 25 (*E.g.*, Dkt. No. 24 ¶¶ 165-341.)

1 **C. Proceedings to-date**

2 Following an extensive investigation into the technology and real-world performance of Tesla
 3 vehicles and Enhanced Autopilot, Plaintiffs filed their original Complaint on April 19, 2017. (Dkt. No.

4.) On April 26, 2017, Plaintiffs filed an Amended Complaint, adding a California plaintiff and causes of
 5 action under California law. (Dkt. No. 6.) After extensive further investigation, including review of
 6 Plaintiffs' actual experiences with Enhanced Autopilot, Plaintiffs filed their Second Amended Complaint
 7 on July 19, 2017. (Dkt. No. 24.)

8 Following Plaintiffs' Second Amended Complaint, Tesla agreed to provide preliminary discovery
 9 to Plaintiffs as a prerequisite to possible early mediation discussions. (*See* Declaration of Thomas E.
 10 Loeser In Support of Plaintiffs' Motion for Preliminary Approval of Settlement ("Loeser Decl."), ¶ 2.)
 11 Following review of this discovery material, and further investigation of the claims and then-current
 12 status of Enhanced Autopilot and the standard safety features, Plaintiffs and Tesla agreed to engage in
 13 an early mediation, which was set for November 2, 2017, with Randall Wulff at Mr. Wulff's Oakland,
 14 California offices. (*See id.*, ¶ 3.)

15 The parties exchanged detailed mediation briefing and attended a full-day mediation session with
 16 Mr. Wulff on November 2, 2017. (*See* Loeser Decl., ¶ 4.) Through intensive discussions and with the
 17 active assistance of the mediator, the parties agreed on the contours of a settlement that would provide
 18 payments to owners and lessees of affected Model S and Model X Tesla vehicles who purchased
 19 Enhanced Autopilot with their vehicles based upon the dates such vehicles were ordered and the dates
 20 they were delivered. In essence, the agreed settlement would provide a variable payment based upon
 21 Tesla's website representations at the time a car was ordered, and the amount of time that the owner had
 22 the car prior to September 2017, when Enhanced Autopilot was substantially delivered.

23 As is often the case in complex settlements involving complex products and legal claims, the
 24 devil was in the details. The parties spent months following the initial mediation in detailed discussions,
 25 often several days per week, including reviewing and assessing confirmatory discovery concerning Tesla's
 26 technologies. (*See* Loeser Decl., ¶ 5.) Additionally, Plaintiffs' counsel engaged in multiple extended
 27 discussions with Plaintiffs and other Tesla owners and lessees concerning improvements and

1 developments of the Enhanced Autopilot and standard safety features, as these were periodically rolled
 2 out “over-the-air” to their cars. (*See id.*) Ultimately, on April 27, 2018, the Settlement was finalized and
 3 sent to Plaintiffs and Defendant for execution. (*See id.*, ¶ 5.)

4 **D. The Settlement**

5 **1. Settlement Class definition, class period, and claims period**

6 On May 15, 2018, following much negotiation and discussion, including numerous email
 7 exchanges; requests for, and production of, further data; telephone conferences; exchanges of drafts and
 8 terms; and consultation with clients, the Parties inked (via counsel) their Settlement Agreement. (Loeser
 9 Decl., ¶ 7.)

10 The Settlement Agreement defines the Settlement Class as:

11 All U.S. residents who purchased Enhanced Autopilot in
 12 connection with their purchase or lease of a Tesla Hardware 2 Model S or
 13 Model X vehicle delivered to them on or before September 30, 2017.
 (Loeser Decl., Ex. A, § I.A.)

14 The Settlement Class is the Nationwide Enhanced Autopilot Subclass proposed in the Second
 15 Amend Complaint. (*Compare* Loeser Decl. Ex. A, § I.A., *with* Dkt. No. 24, ¶ 110.) Based on discovery
 16 and analysis, including recent representations by Tesla, the Parties estimate that the proposed Settlement
 17 Class consists of approximately 32,905 members. (Loeser Decl., ¶ 9.)

18 The class period runs from the date the first HW2 Model S or Model X was ordered through
 19 September 30, 2017, the date by which the parties agree that Enhanced Autopilot was substantially
 20 delivered. (Loeser Decl., Ex. A, § I.A.) The Settlement does not require a claims process, all Settlement
 21 Class members who do not opt-out of the Settlement will be sent a check for their portion of the
 22 Settlement fund. (*Id.*, § II.B.)

23 **2. Relief to the Settlement Class**

24 **a. Generally**

25 The Settlement provides for a Settlement Fund of \$5,415,280.00 in non-reversionary monetary
 26 relief. (*Id.*, § II.A.) Based on discovery and analysis, including representations by Tesla, the features
 27 were continuously rolled out and updated commencing in January 2017. Rollout of the standard safety

1 features was complete in May 2017. As of September 30, 2017, Enhanced Autopilot features were
 2 substantially complete on all HW2 Tesla Model S and Model X vehicles. As part of the Settlement,
 3 Tesla has affirmed its commitment to release the remaining Enhanced Autopilot features (On-ramp to
 4 Off-ramp and Smart Summon). The Settlement Agreement provides payments intended to compensate
 5 Tesla owners for the delay between the delivery of their vehicles and the implementation of the
 6 Enhanced Autopilot features. The Settlement fund will be distributed to the Settlement Class net of:
 7 attorneys' fees, costs, and expenses (if approved); and Service Awards to the five proposed Class
 8 Representatives (if approved). (*Id.*, Ex. A, §§ II.A.1; II.A.3; V.) Separately and in addition to the
 9 Settlement Fund, Tesla will pay the costs of Class Notice and settlement administration. (*Id.*, Ex. A,
 10 § II.A.3). Plaintiffs and their counsel endorse the value and reasonableness of this proposed Settlement.
 11 (Loeser Decl., ¶ 11.)

12 **b. Direct payments to Settlement Class Members**

13 The proposed Settlement is claims-paid. (Loeser Decl., Ex. A, §§ II.B; IX.C.) Settlement Class
 14 Members will be paid a portion of the Settlement Fund based upon the date that they ordered their
 15 affected vehicle and the date that they took delivery of the vehicle. The Settlement Agreement provides
 16 a payment table that sets forth Settlement Class Members' payment amounts as follows:

Month class member took delivery	Oct-16	Nov-16	Dec-16	Jan-2017	Feb-2017	Mar-2017	Apr-2017	May-2017	Jun-2017	Jul-2017	Aug-2017	Sep-2017
Class members who purchased prior to January 24, 2017	\$280	\$280	\$280	\$280	\$225	\$200	\$150	\$125	\$100	\$75	\$50	\$25
Class members who purchased January 24, 2017 or later	NA	NA	NA	\$210	\$170	\$150	\$115	\$95	\$75	\$55	\$40	\$20

21 The payments set forth in the table above are approximate and could change based upon
 22 whether and the extent to which the Court approves Plaintiffs' requests for service awards and attorneys'
 23 fees and costs.

24 **c. Non-Monetary Benefit**

25 Tesla reaffirms its commitment to release any Enhanced Autopilot features that as of the
 26 Effective Date are not already released in Tesla HW2 Vehicles.

d. Secondary Distribution and Residual

The net Settlement Fund (after payment of service awards and attorneys' fees and costs, to the extent approved by the Court) will be distributed in its entirety to Settlement Class Members via check. To the extent any such checks are uncashed or undeliverable, the Settlement Agreement provides for a second distribution to recipients of all uncashed checks if the resulting amount per Settlement Class Member would equal or exceed \$15. The Settlement Agreement provides that any residual after the second distribution (or the first distribution if such residual would result in a per-Settlement Class Member payment of less than \$15), will be donated to the Ohio State University Center for Automotive Research and/or Texas A&M Transportation Institute, Center for Transportation Safety. (*See id.*, Ex. A, § IV.3.C.b.) Each has national reach and a reputation for advanced work in automobile sustainability, safety and efficiency. (*See* Loeser Decl., ¶ 12.)

3. Notice, opt-out procedures, and release

The Parties' Settlement provides for robust direct mail notice because Tesla presumptively has records of mailing addresses for all class members. (Loeser Decl., Ex. A, § IV.)

The Settlement Administrator shall establish and maintain a toll-free telephone number (“Toll-Free Number”), which Settlement Class Members may call to request copies of the Class Notice. The Settlement Administrator shall further establish and maintain a settlement website, at the address www.autopilotsettlement.com (“Settlement Website”), which shall include, without limitation, the Class Notice, copies of the Complaint, the Settlement Agreement, Frequently Asked Questions, and the Toll-Free Number. The Toll-Free Number and the Settlement Website shall be fully operative on or before the first date notice is mailed to the Settlement Class Members. (Loeser Decl., Ex. A, § IV.B.) Tesla will effect CAFA notice.

Thus, the Settlement Agreement provides for the best notice practicable under the circumstances. (Loeser Decl., ¶ 13.)

To reiterate, costs of Notice will be paid by Tesla, in addition to the Settlement Fund. (Loeser Decl., Ex. A, § II.A.3.) Prior to the Final Approval Hearing, the Settlement Administrator will file an

1 affidavit confirming that Notice has been provided as set forth in the Settlement Agreement and ordered
 2 by the Court.

3 The long-form notice describes the material terms of the Settlement and the procedures that
 4 Settlement Class Members must follow in order to object or opt-out of the Settlement. (Loeser Decl.,
 5 Ex. A (Notice attached as Exhibit A to the Settlement Agreement).) Any Settlement Class Member who
 6 wishes to be excluded from the Settlement need only opt-out by making a timely request in writing to
 7 the Settlement Administrator. (*See* Procedural Guidance for Class Action Settlements, United States
 8 District Court, Northern District of California, available at
 9 <https://www.cand.uscourts.gov/ClassActionSettlementGuidance> (last visited, May 7, 2018).)

10 If the Court grants final approval of the Settlement following Notice, and after the period for
 11 opt-out requests and objections expires, then the Settlement Class Members who have not excluded
 12 themselves from the Settlement Class will be deemed to have released all Released Claims against the
 13 Released Parties. (Loeser Decl., Ex. A, § VI.) The Released Claims are those “arising from or relating to
 14 the allegations in the Complaint and all complaints filed in this Action regarding Enhanced Autopilot
 15 and safety features. . . .” (*Id.*, § VI.B.1.)

16 **4. Service awards and attorneys’ fees, costs, and expenses**

17 The Parties have agreed that Plaintiffs may apply for Service Awards of no more than \$4,800 for
 18 each of the five Plaintiffs. (*Id.*, § V.B.) Plaintiffs have provided extensive information to counsel
 19 concerning their Tesla vehicles; assisted counsel with the preparation of complaints in this matter;
 20 worked with counsel on the multiple over-the-air rollouts of updates and changes to the software on
 21 their vehicles; consulted with counsel as requested, and on their own initiative, throughout the pendency
 22 of this case; monitored the proceedings on their own behalf and on behalf of the putative class; worked
 23 with counsel to prepare for mediation; gathered and reviewed documents, in consultation with counsel;
 24 and monitored various Tesla owner websites and blogs concerning the issues in this case. (Loeser Decl.,
 25 ¶ 15.) Also, Plaintiffs have consulted with counsel regarding the terms of the proposed Settlement and
 26 reviewed and approved the Settlement Agreement on their behalf and that of members of the proposed

1 Settlement Class. (*Id.*, ¶ 16.) Finally, each Plaintiff will be entitled to the same Settlement benefits,
 2 subject to the same conditions, as any other Settlement Class Member. (*Id.*, ¶ 17.)

3 As for Plaintiffs' attorneys' fees, costs, and expenses, the Settlement Agreement contemplates
 4 that Plaintiffs will make a request for these by motion. (*Id.*, ¶ 18.) Tesla reserves the right to oppose
 5 Plaintiffs' motion to the extent it exceeds the amount of \$976,000. (Loeser Decl., Ex. A, § V.A.)
 6 Plaintiffs' motion will be filed prior to the end of the objection and opt-out period and well in advance
 7 of the Final Approval Hearing. (Loeser Decl., Ex. A, § IV.H.3.) Reimbursement for Plaintiffs' costs and
 8 expenses will not be separately requested and instead will be paid from the fixed request set forth above.
 9 (Loeser Decl., Ex. A, § V.A.; Loeser Decl., ¶ 18.) Should the Court award fees, costs and expenses of
 10 \$976,000, this would represent 18% of the Settlement Fund.

11 IV. ARGUMENT

12 A. The Court should grant preliminary approval of the Parties' negotiated Settlement.

13 Settlements are to be encouraged in class-action lawsuits. The Court, however, must approve
 14 class settlements for them to become effective, and in so doing, it examines "whether a proposed
 15 settlement is 'fundamentally fair, adequate, and reasonable.'" *Burden v. SelectQuote Ins. Servs.*, 2013 WL
 16 1190634, at *2 (N.D. Cal. Mar. 21, 2013) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003)
 17 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1988))); *see also* Fed. R. Civ. P. 23(e).
 18 Approval of a class-action settlement proceeds through two stages: preliminary approval and final
 19 approval (with notice in between). *See* MANUAL FOR COMPLEX LITIGATION § 13.14, at 173 (4th ed.
 20 2004) ("This [approval of a settlement] usually involves a two-stage procedure. First, the judge reviews
 21 the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If
 22 so, the final decision on approval is made after the hearing."); 4 William B. Rubenstein, NEWBERG ON
 23 CLASS ACTIONS § 13.10 (5th ed. 2017) (discussing the two-step approval process). Because the
 24 Settlement in this matter passes the standards set for this first step in the process, Plaintiffs ask the Court
 25 to grant their request for preliminary approval.

1 **1. Negotiated class-action settlements are desirable.**

2 As the Ninth Circuit has stated, “there is an overriding public interest in settling and quieting
 3 litigation. This is particularly true in class action suits” *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229
 4 (9th Cir. 1989) (citing *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976)); *see also Churchill*
 5 *Vill., L.L.C. v. GE*, 361 F.3d 566, 576 (9th Cir. 2004). Settlement is desirable in class action suits
 6 because they are “an ever increasing burden to so many federal courts and . . . frequently present serious
 7 problems of management and expense.” *Van Bronkhorst*, 529 F.2d at 950.

8 Additionally, courts should give “proper deference” to negotiated compromises. The Ninth
 9 Circuit “has long deferred to the private consensual decision of the parties” to settle. *See Rodriguez v.*
 10 *West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). “[T]he court’s intrusion upon what is otherwise a
 11 private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent
 12 necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching
 13 by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
 14 reasonable and adequate to all concerned.” *Hanlon*, 150 F.3d at 1027 (citation omitted); *see also Chavez v.*
 15 *WIS Holding Corp.*, 2010 WL 11508280, at *1 (S.D. Cal. June 7, 2010) (“The Court gives weight to the
 16 parties’ judgment that the settlement is fair and reasonable.”) (citing *In re Pac. Enters. Sec. Litig.*, 47 F.3d
 17 373, 378 (9th Cir. 1995)).

18 **2. The Settlement meets the standards for preliminary approval.**

19 At the preliminary approval stage, the Court asks whether “[1] the proposed settlement appears
 20 to be the product of serious, informed, noncollusive negotiations, [2] has no obvious deficiencies, [3]
 21 does not improperly grant preferential treatment to class representatives or segments of the class, and [4]
 22 falls within the range of possible approval” *See, e.g., Burden*, 2013 WL 1190634, at *3 (citing *In re*
 23 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)); *accord Mathein v. Pier 1 Imports*
 24 (*U.S.*), Inc., 2017 WL 6344447, at *3 (E.D. Cal. Dec. 12, 2017) (citations omitted). Put another way, the
 25 Court should “make a preliminary determination on the fairness, reasonableness, and adequacy of the
 26 settlement terms” MANUAL FOR COMPLEX LITIG. (FOURTH) § 21.632.

1 Further, where, as here, the Settlement was attained via “arms-length negotiations,” following
 2 “meaningful discovery,” in which the Parties were represented by “experienced, capable” counsel, the
 3 Court may afford to it “a presumption of fairness, adequacy, and reasonableness.” *See, e.g., Arnold v.*
 4 *Ariz. Dep’t of Pub. Safety*, 2006 WL 2168637, at *11 (D. Ariz. July 31, 2006) (citing *Wal-Mart Stores, Inc. v.*
 5 *Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005)); 4 William B. Rubenstein, NEWBERG ON CLASS
 6 ACTIONS, *supra*, § 13.45, at 90 (5th ed. 2017) (fairness is usually presumed when a proposed class
 7 settlement, which was negotiated at arm’s length by counsel for the class, is presented for approval).
 8 Also, the involvement of a neutral mediator such as Randall Wulff is “a factor weighing in favor of a
 9 finding of non-collusiveness.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011);
 10 *In re OSI Sys., Inc. Derivative Litig.*, 2017 WL 5634607, at *3 (C.D. Cal. Jan. 24, 2017) (agreeing that a well-
 11 known neutral’s participation “weigh[ed] considerably against any inference of a collusive settlement”)
 12 (citation omitted).

13 Because a preliminary evaluation of the instant Settlement will reveal no “grounds to doubt its
 14 fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or
 15 segments of the class, or excessive compensation for attorneys,” and because the Settlement “appears to
 16 fall within the range of possible approval,” Plaintiffs submit that it passes this initial evaluation. *See* 4
 17 William B. Rubenstein, NEWBERG ON CLASS ACTIONS § 13.13 (5th ed. 2017); *see also In re Tableware*
 18 *Antitrust Litig.*, 484 F. Supp. 2d at 1079-80.

19 a. **The Settlement is the product of well-informed, vigorous, and thorough
 20 arm’s-length negotiation.**

21 In contemplating preliminary approval, one of the Court’s duties is to ensure that “the agreement
 22 is not the product of fraud or overreaching by, or collusion between, the negotiating parties”
 23 *Hanlon*, 150 F.3d at 1027 (internal quotes and citations omitted). As set forth above, the Settlement was
 24 achieved only after extensive investigation; review and analysis of confidential information provided
 25 directly to counsel by Tesla and much negotiation with the aid of a well-experienced and respected
 26 mediator. (Loeser Decl., ¶¶ 2-7.) Further, the Plaintiffs were represented throughout by experienced
 27 counsel. (*Id.*, ¶ 19 and Ex. D.)

Given the extensive pre-settlement investigation and pre-mediation discovery, Plaintiffs' counsel were well-situated to evaluate the strength and weakness of Plaintiffs' case. (*Id.*, ¶ 19.) Far from being the product of anything inappropriate, the Settlement at issue is the result of hard-fought, adversarial work. *Cf. Hanlon*, 150 F.3d at 1027 (no basis to disturb settlement where there was no evidence suggesting that the settlement was negotiated in haste or in the absence of information).

b. The Settlement bears no obvious deficiencies, including improper preferential treatment.

Also, the Settlement bears no obvious deficiencies. *See Burden*, 2013 WL 1190634, at *3. There are no patent defects that would preclude its approval by the Court, such that notifying the class and proceeding to a formal fairness hearing would be inappropriate or inefficient. *See* 4 William B. Rubenstein, NEWBERG ON CLASS ACTIONS, *supra*, § 13.13 (5th ed. 2017) (referring to the Court's inquiry as to, *inter alia*, "obvious deficiencies"). An examination of the Settlement will reveal no apparent unfairness or unreasonableness. *See In re Zurn Pex Plumbing Prods. Liab. Litig.*, 2012 WL 5055810, at *6 (D. Minn. Oct. 18, 2012) ("There are no grounds to doubt the fairness of the Settlement, or any other obvious deficiencies, such as unduly preferential treatment of a class representative or segments of the Settlement Class, or excessive compensation for attorneys.").

To the contrary, the Settlement provides cash relief to Class Members on a fair, claims-paid basis. (Loeser Decl., Ex. A, §§ II.B; IX.C.) Under the Settlement Agreement, there is no biased treatment of Class Members or segments of the class. (*See id.*) Variations in the amount each Settlement Class Member will receive are rationally based on the language on Tesla's website at the time the Settlement Class Member ordered his or her car; the features that were enabled at the time of delivery; and the length of time between the delivery of the car, the delivery of the safety features and substantial delivery of Enhanced Autopilot. This is proper. *See, e.g., In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 3648478, at *11 (N.D. Cal. July 7, 2016) (an "allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel"; "[i]t is reasonable to allocate the settlement funds to class members based on . . . the strength of their claims on the merits.") (citations omitted).

1 All Settlement Class Members, including the proposed Class Representatives, are treated equally.
 2 (Id.) As for Service Awards to the Class Representatives of up to \$4,800 each, such awards are supported
 3 by precedent and also by the time and attention that these Plaintiffs have devoted to this matter. *See, e.g.*,
 4 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (affirming approval of \$5,000
 5 service awards as “relatively small” and “well within the usual norms of ‘modest compensation’ paid to
 6 class representatives for services performed in the class action”) (citations omitted).

7 As for the possibility of *cy pres* distributions, the Ninth Circuit has stated that “[t]he *cy pres*
 8 doctrine allows a court to distribute unclaimed or non-distributable portions of a class action settlement
 9 fund to the ‘next best’ class of beneficiaries.” *Nachsin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011)
 10 (citation omitted). Here, such distributions would only occur under the limited circumstances where
 11 checks to Settlement Class Members (whose information is recent and well-maintained by Tesla as all
 12 Tesla sales are direct-to-consumers) go uncashed. And the two proposed *cy pres* recipients, with their
 13 national scope and their work on advanced automobile sustainability, safety and efficiency, are apt
 14 proposed beneficiaries. (*See* Loeser Decl., ¶ 15 and Exs. B & C.)

15 Finally, Plaintiffs will request approximately 18% of the Settlement Fund for attorneys’ fees, *well*
 16 *below* the Ninth Circuit’s benchmark 25% rate for recovery in the class context. Plaintiffs respectfully
 17 submit that their sub-benchmark fee is patently fair in light of the extensive time spent by counsel on
 18 this matter, their experience, and the results achieved for the proposed Settlement Class. Plaintiffs will
 19 demonstrate in their forthcoming motion that this rate will pass a cross-check for reasonableness.
 20 Moreover, the reasonableness of the fee request is further supported by counsels’ reimbursement of
 21 costs and expenses from the set fee amount.

22 **c. The Settlement falls within the range of possible approval.**

23 According to the Ninth Circuit, the Court should consider whether “the settlement, taken as a
 24 whole, is fair, reasonable and adequate to all concerned.” *Hanlon*, 150 F.3d at 1027 (internal quotes and
 25 citations omitted). Still, the Court at this point does not conduct the fuller analysis that occurs upon the
 26 motion for final approval. *E.g., Chin v. RCN Corp.*, 2010 WL 1257586, at *2 (S.D.N.Y. Mar. 12, 2010)
 27 (“In fact, ‘a full fairness analysis is neither feasible nor appropriate’ when evaluating a proposed

1 settlement agreement for preliminary approval.”) (citation omitted). Here, the Parties’ Settlement, which
 2 will result in a \$5,415,280.00 Settlement Fund in compromise of hotly contested claims falls within the
 3 range of possible approval, such that preliminary approval is warranted.

4 “To evaluate the ‘range of possible approval’ criterion, which focuses on ‘substantive fairness
 5 and adequacy,’ ‘courts primarily consider plaintiffs’ expected recovery balanced against the value of the
 6 settlement offer.’” *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1125 (E.D. Cal. 2009)
 7 (citing *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080). But it is “well-settled law that a proposed
 8 settlement may be acceptable even though it amounts to only a fraction of the potential recovery that
 9 might be available to the class members at trial.” *In re: Cathode Ray Tube*, 2016 WL 3648478, at *6 (citing
 10 *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (citing *Linney v.*
 11 *Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998))).

12 Here, as addressed above, discovery and information provided by the Defendant indicates that
 13 Enhanced Autopilot was substantially delivered within ten months of the earliest delivery date of the
 14 vehicles at issue. Plaintiffs sought to recover compensation for the delays they experienced between the
 15 time that they paid for the advertised features on their Tesla vehicles and the time such features were
 16 delivered. But they also acknowledged the possibility that Tesla might be able to demonstrate its
 17 representations were not misleading. Tesla contends that it communicated that Enhanced Autopilot
 18 features might not be released by December 2016, and that customers who purchased after January 24,
 19 2017, had even weaker claims because Tesla updated its website on that date to state that the Enhanced
 20 Autopilot features had “begun rolling out” and would continue to roll out over the coming months, and
 21 they did. “Approval of a class settlement is appropriate when plaintiffs must overcome significant
 22 barriers to make their case.” *In re: Cathode Ray Tube*, 2016 WL 3648478, at *6 (citation omitted).

23 So while Plaintiffs had what they believed to be strong affirmative theories and rebuttals to
 24 Tesla’s defenses, nonetheless, there was significant risk in proceeding further with litigation. Ultimately,
 25 after taking into account the risk, expense, complexity, and likely duration of further litigation, *see, e.g.*,
 26 *Burden*, 2013 WL 1190634, at *3, Plaintiffs and their experienced counsel, with the aid of the Parties’
 27 seasoned and well-respected mediator, were able to achieve a Settlement that allows for substantial

1 monetary relief to the Settlement Class. With all of these factors considered, the Settlement falls within
 2 the range of possible approval.

3 **B. The proposed Settlement Class merits provisional certification.**

4 Plaintiffs also ask that the Court provisionally certify the proposed Settlement Class. The
 5 proposed Settlement Class includes all owners of Tesla vehicles who purchased the Enhanced Autopilot
 6 in conjunction with their purchase of a Tesla Model S or Model X.

7 Provisional certification of the proposed Settlement Class will permit notice of the proposed
 8 Settlement to issue. Such notice will inform proposed Settlement Class Members of the existence and
 9 terms of the Settlement Agreement, of their right to be heard regarding its fairness, of their right to opt-
 10 out, and of the date, time, and place of the fairness hearing. *See MANUAL FOR COMPLEX LITIG.*
 11 (FOURTH) §§ 21.632, 21.633.

12 In a situation such as this, where the proposed class seeks only economic damages (as distinct
 13 from a class or classes seeking individualized personal injury and future-injury damages), class
 14 certification is proper. *E.g., Hanlon*, 150 F.3d at 1019-23. Here, there is one underlying type of event at
 15 issue (alleged delivery of vehicles with inoperative or incomplete Enhanced Autopilot and standard
 16 safety features), an alleged course of conduct common to all Settlement Class Members (alleged
 17 misrepresentation of the features that would be available upon delivery), and money damages at stake,
 18 such that this matter is amenable to class disposition. Also, without this class action and Settlement,
 19 most Settlement Class Members would be “without effective strength to bring their opponents into
 20 court at all.” *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997).

21 **1. The Rule 23(a) requirements for numerosity, commonality, typicality, and
 22 adequacy are met.**

23 To merit class certification, Plaintiffs must show that the class is so numerous that joinder is
 24 impracticable; questions of law or fact are common to the class; the claims of the representative
 25 Plaintiffs are typical of the claims of the class; and the proposed Class Representatives will protect the
 26 interests of the class fairly and adequately. Fed. R. Civ. P. 23(a). Plaintiffs meet these requirements.
 27
 28

1 **a. Numerosity**

2 Based on discovery and representations by Tesla, there are approximately 32,905 Settlement
 3 Class Members. (Loeser Decl., ¶ 9.) “[J]oinder of all members is [thus] impracticable.” *See* Fed. R. Civ.
 4 P. 23(a)(1). Given this large number, the requirement of numerosity is easily satisfied here. *See, e.g.*,
 5 *Immigrant Assistance Project of the L.A. Cnty. Fed’n of Labor v. INS*, 306 F.3d 842, 869 (9th Cir. 2002) (noting
 6 that numerosity requirement has been satisfied in cases involving 39 class members).

7 **b. Commonality**

8 As one court has summarized:

9 Commonality requires the existence of questions of law or fact that are
 10 common to the class. Fed. R. Civ. P. 23(a)(2). Commonality focuses on
 11 the relationship of common facts and legal issues among class members.
See, e.g., 1 William B. Rubenstein, *Newberg on Class Actions* § 3:19 (5th ed.
 12 2011). Courts construe this requirement permissively. *Hanlon v. Chrysler*
 13 *Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1988). “All questions of fact and law
 14 need not be common to satisfy the rule. The existence of shared legal
 15 issues with divergent factual predicates is sufficient, as is a common core
 16 of salient facts coupled with disparate legal remedies within the class.”
Id. In fact, it only takes one common question of fact or law shared
 17 between proposed class members to satisfy commonality. *Dukes*, 131 S.
 Ct. at 2556.

18 *Marilley v. Bonham*, 2012 WL 851182, at *4 (N.D. Cal. Mar. 13, 2012). The requirement of commonality
 19 is satisfied by Plaintiffs’ allegations.

20 Among the common questions raised are:

- 21 a. Whether the Defendant misrepresented the features of its
 22 automobiles that were available upon delivery through its
 23 common representations, including its website and ordering
 24 system;
- 25 b. Whether the vehicles had inoperable Enhanced Autopilot and
 26 standard safety features at the time of delivery;
- 27 c. Whether Tesla’s conduct violates consumer protection statutes,
 28 false advertising laws, sales contracts, and other laws as asserted in
 the Complaint;
- 29 d. Whether Plaintiffs and proposed class members overpaid for their
 30 Enhanced Autopilot systems;
- 31 e. Whether Plaintiffs and other putative class members are entitled
 32 to damages and other monetary relief for the delay in operability

of the Enhanced Autopilot and standard safety features and, if so, in what amount.

The Ninth Circuit cited a list of common questions including ones similar to these in *Chamberlain v. Ford Motor Co.*, 402 F.3d 952 (9th Cir. 2005), where it found commonality. See *id.* at 962 (citing simple questions of fact and law). Likewise here, the requirement of commonality is met.

c. Typicality

Typicality is met as well. In fact, “[c]ommonality and typicality are closely related and a finding of one will generally satisfy the other.” *Newman v. CheckRite Cal., Inc.*, 1996 WL 1118092, at *5 (E.D. Cal. Aug. 2, 1996) (citation omitted).

Rule 23(a)(3) requires that “the claims or defenses of the representative parties be typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3) “The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

Burden, 2013 WL 1190634, at *5. Here, the interests of the named Plaintiffs and Settlement Class Members align neatly.

Plaintiffs advanced the same claims as members of the Settlement Class they seek to represent, and they must satisfy the same legal elements that Settlement Class Members must satisfy. They share identical legal theories with putative Settlement Class Members, based on allegations that the Defendant violated the law by its delayed delivery of the features. Their alleged injuries are the same, too; like others in the proposed class, Plaintiffs allege that they paid up front for features that were not functional when their cars were delivered to them. Thus, Rule 23(a)(3) is satisfied.

d. Adequacy

It also must be determined whether Plaintiffs “will fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(a)(4). “In making this determination, courts must consider two questions: ‘(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?’” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (citation omitted). Plaintiffs meet this requirement as well.

1 First, Plaintiffs' claims are co-extensive with members of the putative class. All have an identical
 2 interest in establishing the Defendant's liability, and each allegedly has been injured in the same manner.
 3 All assert the same legal claims, and all seek identical relief. There is no conflict among them. Also,
 4 each Plaintiff has agreed to assume the responsibility of representing the Settlement Class. And all have
 5 acted accordingly, including by way of the means described above. (*See* Loeser Decl., ¶ 16.)

6 Second, as discussed and referenced in the declaration of counsel and as illustrated in the
 7 attached resumes, Plaintiffs' lawyers have extensive experience and expertise in prosecuting complex
 8 class actions, including consumer and commercial actions. (*Id.*, ¶ 19 and Ex. D.) Counsel have pursued
 9 this litigation vigorously, and they remain committed to advancing and protecting the common interests
 10 of all members of the Settlement Class. (Loeser Decl. ¶¶ 2-7, 19.)

11 Rule 23(a)(4) is satisfied.

12 **2. Common questions predominate, and a class action is the superior method to
 13 adjudicate Settlement Class Member claims.**

14 Once the prerequisites of Fed. R. Civ. P. 23(a) are satisfied, the Court must determine if one of
 15 the subparts of Rule 23(b) is also satisfied. Here, Rule 23(b)(3) is satisfied because questions common to
 16 Settlement Class Members predominate over questions affecting only individual Settlement Class
 17 Members, and the class action device provides the best method for the fair and efficient resolution of
 18 Settlement Class Members' claims. Furthermore, the Defendant does not oppose provisional Settlement
 19 Class certification for the purpose of giving effect to the Parties' Settlement.⁴ When addressing the
 20 propriety of class certification, the Court should consider the fact that, in light of the Settlement, trial
 21 will now be unnecessary, such that the manageability of the class for trial purposes is not relevant to the
 22 Court's inquiry. *E.g.*, *Hanlon*, 150 F.3d at 1021-23.

23
 24
 25 ⁴ As set forth in the Settlement Agreement, Tesla does not oppose conditional certification of the
 26 Settlement Class solely for purposes of the settlement embodied in the Settlement Agreement. If, for
 27 any reason, the Settlement is not approved by the Court, Tesla reserves all its defenses to class
 28 certification, and the Settlement Agreement provides that the stipulation for certification will become
 null and void and may not be used for any purpose.

1 **a. Common questions predominate.**

2 Rule 23(b)(3) requires an examination of whether “questions of law or fact common to the
 3 members of the class predominate over any questions affecting only individual members” “When
 4 common questions present a significant aspect of the case and they can be resolved for all members of
 5 the class in a single adjudication,” class treatment is justified. *Local Joint Exec. Bd. of Culinary/Bartender*
 6 *Trust Fund. v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Even one issue of central
 7 importance to the case and common to all class member claims can cause class litigation to be
 8 appropriate. *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1231-32 (9th Cir. 1996). Here, common
 9 questions predominate.

10 Common questions include whether the Defendant misrepresented the timing of its release of
 11 the features at issue and whether Plaintiffs and the putative class members overpaid for their cars
 12 because certain features were not available at the time of delivery. These common questions
 13 predominate over any issues affecting only individuals.

14 Predominance is established.

15 **b. Class treatment is the superior method for adjudicating claims of members
 of the proposed Settlement Class.**

16 As for the requirement in Fed. R. Civ. P. 23(b)(3) that the class action be “superior to other
 17 available methods for fair and efficient adjudication of the controversy,” class treatment will facilitate the
 18 fair and efficient resolution of all putative Settlement Class Members’ claims. Given that Plaintiffs are
 19 aware of up to 32,905 Settlement Class Members sharing common issues, the class device is the most
 20 efficient and fair means of adjudicating all these many claims. Class treatment is certainly far superior to
 21 tens of thousands of individual suits or piecemeal litigation; in this matter, it will fulfill its function of
 22 conserving scarce judicial resources and promoting the consistency of adjudication. *See, e.g., In re Apple*
In-App Purchase Litig., 2013 WL 1856713, at *4 (N.D. Cal. May 2, 2013). Accordingly, the superiority
 23 aspect of Rule 23(b)(3) is readily met.

24 **C. The Court should approve the proposed forms and methods of class Notice.**

25 “Rule 23(e)(1)(B) requires the court to ‘direct notice in a reasonable manner to all class members
 26 who would be bound by a proposed settlement, voluntary dismissal, or compromise’” MANUAL FOR
 27

1 COMPLEX LITIG. (FOURTH) § 21.312, at 293. In order to protect the rights of absent Settlement Class
 2 Members, the Court must direct the best notice practicable to them. *See, e.g., Phillips Petroleum Co. v. Shutts,*
 3 472 U.S. 797, 811-12 (1985); *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 174-75 (1974).

4 “Rule 23 … requires that individual notice in [opt-out] actions be given to class members who
 5 can be identified through reasonable efforts. Those who cannot be readily identified must be given the
 6 ‘best notice practicable under the circumstances.’” MANUAL FOR COMPLEX LITIG. (FOURTH) § 21.311,
 7 at 287. Here Plaintiffs have devised an intensive and best-notice-practicable Notice program that entails
 8 direct mailed notice to Settlement Class Members; a Settlement Website; and telephone access.

9 As for notice generally, it should: inform settlement class members of the “essential terms” of an
 10 agreement, including the benefits it provides; advise of other pertinent information, including as to
 11 attorneys’ fees; and describe pertinent procedural matters. MANUAL FOR COMPLEX LITIG. (FOURTH)
 12 § 21.312, at 295 (listing elements). Here, the Notice forms attached to the Settlement Agreement satisfy
 13 these requirements. (*See Loeser Decl., Ex. A (Exs. A and B (short- and long-form notices)).*)

14 The Notice program and documents are designed to afford notice in a comprehensive and
 15 reasonable manner. Plaintiffs respectfully ask the Court to approve them.

16 **D. The Court should set a schedule toward final approval of the Parties’ Settlement.**

17 Finally, if the Court grants preliminary approval and provisionally certifies the Settlement Class,
 18 respectfully, the Court should also set the schedule set forth above and in Plaintiffs’ proposed order.

19 **V. CONCLUSION**

20 For all of the foregoing reasons, Plaintiffs ask respectfully that the Court grant preliminary
 21 approval of the Parties’ Settlement, conditionally certify the proposed Settlement Class, and grant the
 22 other relief requested in this motion.

1 DATED: May 25, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP

2 By /s/ Steve W. Berman

Steve W. Berman

3 Steve W. Berman (*pro hac vice*)

4 Thomas E. Loeser (SBN 202724)

Robert F. Lopez (*pro hac vice*)

5 HAGENS BERMAN SOBOL SHAPIRO LLP

1918 Eighth Avenue, Suite 3300

Seattle, WA 98101

6 Telephone: (206) 623-7292

7 Facsimile: (206) 623-0594

steve@hbsslaw.com

toml@hbsslaw.com

robl@hbsslaw.com

9 Shana E. Scarlett (SBN 217895)

10 HAGENS BERMAN SOBOL SHAPIRO LLP

715 Hearst Avenue, Suite 202

11 Berkeley, CA 94710

Telephone: (510) 725-3000

12 Facsimile: (510) 725-3001

shanas@hbsslaw.com

13 *Attorneys for Plaintiffs and the Proposed Settlement Class*

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2018, I electronically transmitted the foregoing document to the Court Clerk using the ECF System for filing. The Clerk of the Court will transmit a Notice of Electronic Filing to all ECF registrants.

By /s/ Steve W. Berman
STEVE W. BERMAN

EXHIBIT “1”

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.:

DIVISION:

LEONARDO CRESPO,

Plaintiff,

vs.

TESLA, INC., a foreign corporation,

TESLA FLORIDA, INC., a Florida corporation,

Defendant.

COMPLAINT

1. This is a civil action brought by Plaintiff, Leonardo Crespo, a resident of Palm Beach Gardens, Florida, against Defendant Tesla , Inc., a foreign corporation authorized to do business in Palm Beach County, Florida, and its subsidiary, Tesla Florida, Inc., a Florida corporation, seeking revocation of acceptance of a vehicle under Fla. Stat. § 672.608 of the Uniform Commercial Code (UCC).

2. Plaintiff brings this claim for revocation of acceptance based on the statute's provision that allows such action when goods, after acceptance, are found to have a substantial nonconformity that impairs their value to the buyer. This claim is distinct from, and not governed by, Lemon Law, Magnuson-Moss Warranty Act, or other warranty-related statutes.

3. Plaintiff seeks a return to pre-contract conditions under Fla. Stat. § 672.608(3), including Defendant's repurchase of the vehicle, payment of the outstanding loan balance, refund of the down payment, reimbursement of loan payments and towing costs, and release of any lien on the vehicle.

4. This Court has jurisdiction under Florida law, as the transaction occurred in Florida and the Defendant conducts business in Palm Beach County, making the venue proper.

5. The Plaintiff has properly opted out of the arbitration clause imposed by the Defendant by adhering to the procedure outlined in the Order Agreement (see Exhibit A - Order Agreement) and sending a letter to Tesla, Inc. at P.O. Box 15430, Fremont, CA 94539-7970 (see Exhibit B - Opt Out of Arbitration).

FACTS OF THE CASE

6. On July 2, 2024, the Plaintiff bought a new Tesla Model X from the Defendant, order number RN122140103 (see Exhibit A - Order Agreement)

7. On July 9, 2024, the Plaintiff took delivery of a Tesla Model X (VIN: 7SAXCDE54RF446932) bought at Tesla Florida, located at 5544 Okeechobee Blvd, West Palm Beach, FL, 33417. (see Exhibit C - Lending Agreement)

8. Upon taking possession of the vehicle at 6 PM, the Plaintiff immediately discovered severe suspension issues impairing the vehicle's drivability. At 6:34 PM, the Plaintiff reported the defect via the Tesla App, stating: "The car is not drivable. I'm not taking it for service, it needs to be replaced." (see Exhibit D - Taking Delivery).

9. On July 10, 2024, the Plaintiff reported additional defects with the windshield, including texturization and optical distortion that caused headaches and nausea (see Exhibit E - Windshield Defects).

10. On July 11, 2024, loud steering wheel cracking noise and vibrations emerged impairing the vehicle's maneuverability and safety (see Exhibit F - Steering Wheel Defects).

11. On July 12, 2024, the Plaintiff reported excessive noise and vibration while driving over simple road signs. The noise and vibration were so intense that they were clearly captured by the phone's microphone (see Exhibit G - Suspension Defects).

12. On July 13, 2024, Plaintiff formally revoked acceptance of the vehicle by returning it to Tesla Florida and providing written notice to Tesla representative William Hoadley. Tesla acknowledged receipt of this revocation letter, which was also uploaded to the Tesla App, and initiated a buyback request. The Plaintiff explicitly rejected any repairs and made it clear that there was no intention of using the vehicle. These actions were consistent with a formal revocation of acceptance under Fla. Stat. § 672.608. (See Exhibit H - Revocation of Acceptance July 13).

13. Still on July 13, 2024, Tesla's representative William Hoadley informed the Plaintiff that Tesla would proceed with repairs to the vehicle regardless of the outcome of the repurchase request. This unilateral decision to repair the vehicle did not alter the Plaintiff's revocation of acceptance.

14. On July 26, 2024, Tesla refused to buy back the vehicle (see Exhibit I - Tesla Declines Repurchase).

15. On July 27, 2024, the Plaintiff formalized the revocation of acceptance through certified mail and email. The certified mail was delivered on July 29, 2024, and signed by Chelsea Winick (see Exhibit J - Revocation of Acceptance July 27).

16. The Plaintiff requested a copy of all messages exchanged with Tesla through the Tesla App. However, Tesla has ignored this request and subsequently deleted the entire

conversation with the Plaintiff from the Tesla App. Anticipating such action, the Plaintiff recorded a video of the entire conversation on his phone.

17. On August 13, 2024, despite being aware of the revocation, Tesla towed the vehicle (see Exhibit K - Alpine Towing).

18. The financing company TD Auto Finance collected the vehicle from Alpine Towing. On September 5, 2024, Plaintiff was forced to pay \$1,591 to TD Auto Finance to avoid having the vehicle being sold in order to pay the towing fees (see Exhibit L - Towing Fee).

19. On September 09, 2024, the Plaintiff retrieved the vehicle from Phantom Asset Recovery at 4201 Southwest 6th ave, Davie, FL, to avoid further fees from accruing.

LEGAL GROUNDS FOR REVOCATION

20. Under Fla. Stat. § 672.608, a buyer is entitled to revoke acceptance of goods if their nonconformity substantially impairs their **value to the buyer**.

21. The Plaintiff identified multiple defects shortly after taking possession of the vehicle, including suspension issues, windshield texturization and distortion causing headaches and nausea, and loud steering wheel noise and vibrations impairing maneuverability and safety. No reasonable buyer would pay full price for a brand new luxury vehicle with such issues.

22. Tesla's own service records from July 19, 2024, provide definitive evidence of the critical defects, explicitly mentioning the need to replace both "*damaged*" front halfshafts, the entire windshield, and components related to the steering wheel (see Exhibit M - Tesla Service Records).

23. The defects occurred immediately after delivery and in multiple unrelated critical areas—suspension, windshield, steering wheel—, fundamentally undermining the Plaintiff's

confidence in the car's reliability and long-term performance, which constitutes substantial impairment of value.

24. Each defect individually impaired the vehicle's value. However, it is the combination of these multiple defects that compounded the impairment of value to the Plaintiff, shattering confidence in the vehicle's reliability, safety, and long-term performance.

25. The simultaneous occurrence of these substantial problems across different areas in a short time indicates a profound lack of quality control and created an overwhelming sense of uncertainty regarding the vehicle's future reliability. Plaintiff had reasonable grounds to expect further problems, further devaluing the vehicle to him.

26. While the vehicle could technically be driven, it was unsafe and unsuitable for normal use. Plaintiff's limited and cautious use between July 9 and July 13, 2024, does not indicate acceptance, but rather a reasonable attempt to assess the severity of the defects.

27. From July 13, 2024, to July 26, 2024, while Tesla was processing the Plaintiff's buyback request, Tesla proceeded with repairs to the vehicle despite the Plaintiff's explicit revocation of acceptance and **rejection** of any repairs. Since the Plaintiff had already returned the vehicle to Tesla and relinquished responsibility for it, the Plaintiff had no control over Tesla's decision to attempt repairs.

28. The right to cure under Fla. Stat. § 672.605 does not apply here, as the Plaintiff revoked acceptance on July 13, 2024. Any repair attempts made after this revocation are irrelevant to the validity of the Plaintiff's claim.

29. Tesla's post-revocation repair attempts do not negate the Plaintiff's right to revoke, as the defects existed at delivery and substantially impaired the vehicle's value to the Plaintiff.

The right to revoke hinges on whether defects existed at the time of delivery and impaired the vehicle's value to the buyer, regardless of later repairs.

30. Under Fla. Stat. § 672.608(1)(b), a buyer may revoke acceptance of goods "without discovery of such nonconformity if his or her acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances."

31. Tesla represented that the vehicle was free of defects at the time of purchase. Plaintiff reasonably relied on this representation and was unaware of the major defects until after taking delivery.

32. The critical defects were not apparent at the time of delivery and only became fully evident after acceptance. This is precisely the type of situation the statute is designed to address, justifying the Plaintiff's right to revoke.

TIMELINESS OF REVOCATION

33. Fla. Stat. § 672.608(2) states: "*Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it.*" The Plaintiff reported the first major defect within 34 minutes of taking possession of the vehicle on July 9, 2024, using the Tesla App.

34. Plaintiff reported additional defects progressively—suspension on July 9, windshield on July 10, steering on July 11, suspension again on July 12—and revoked acceptance promptly on July 13, demonstrating timely action.

35. After Tesla refused to buy back the vehicle on July 26, 2024, Plaintiff formalized the revocation via certified mail and email on July 27, 2024, with the mail delivered on July 29, 2024. These actions were taken before any material change in the vehicle's condition, as required by law.

36. Plaintiff explicitly declined any repairs to the vehicle both in person to Tesla representative William Hoadley and in writing. Plaintiff's decision to leave the vehicle with Tesla after July 13, 2024, was part of the revocation process, not an acceptance of any repairs. Plaintiff did not use the vehicle after that date, reinforcing the rejection of the vehicle.

IMPROPER TOWING AFTER REVOCATION OF ACCEPTANCE

37. Tesla acted improperly by towing the vehicle on August 13, 2024, despite being fully aware of the Plaintiff's formal revocation of acceptance on July 13, 2024. Under **Fla. Stat. § 672.602(2)(b)**, the buyer is required only to hold the goods with reasonable care for a time sufficient to permit the seller to remove them. In this case, Tesla already had possession of the vehicle. After that, **§ 672.602(2)(c)** makes it clear that the "*buyer has no further obligations with regard to goods rightfully rejected*". Since Tesla had possession of the vehicle at its service center after the revocation, it was Tesla's responsibility to handle the vehicle in a commercially reasonable manner.

38. Tesla's decision to tow the vehicle from its service center, where it was already secure, was unnecessary and imposed additional financial burdens on the Plaintiff. In **Colonial Dodge, Inc. v. Miller, 420 Mich. 452 (1984)**, the court similarly held that after revocation, the seller must manage the goods appropriately without imposing additional costs on the buyer. Accordingly, Tesla is liable for all towing-related expenses incurred by the Plaintiff.

REBUTTAL TO POTENTIAL DEFENSES

39. Anticipating the Defendants' potential arguments against revocation of acceptance, the Plaintiff asserts the following rebuttals:

40. Tesla may attempt to frame this case as one involving the Lemon Law, Magnuson-Moss Warranty Act, or standard warranty claims; however, these are irrelevant to the issue of revocation of acceptance. The claim here is based solely on Fla. Stat. § 672.608's provision for revocation, which permits a buyer to revoke acceptance if nonconformities in the goods substantially impair their value to the buyer. The criteria and remedies under Lemon Law or warranty statutes do not apply to revocation, and therefore, any argument based on those laws is inapplicable and should be disregarded.

41. Tesla may argue that the defects did not substantially impair the vehicle's objective value. However, a vehicle with defects in the suspension, windshield, and steering wheel is objectively of significantly lower value to any reasonable buyer. Moreover, the Plaintiff asserts that revocation is based on the value of the goods to the buyer. The simultaneous occurrence of defects affecting these critical components immediately upon delivery substantially impaired the vehicle's value to the Plaintiff. While each defect alone would justify revocation, their combination further strengthens the Plaintiff's position. These significant defects shattered the Plaintiff's confidence in the vehicle, rendering it unsuitable for its intended use and severely impairing its value to him.

42. Tesla may argue that the Plaintiff should have allowed an opportunity for repair; however, under Fla. Stat. § 672.608, once substantial impairment is established, the buyer is not required to offer such an opportunity. Revocation of acceptance is a unilateral right, and any obligation to cure ends upon revocation. **Fla. Stat. § 672.605** only applies before revocation or

when time for performance remains. The Plaintiff explicitly rejected repairs and revoked acceptance on July 13, 2024, due to substantial defects. Despite this, Tesla proceeded with repairs while the buyback request was being processed, making their repair attempts legally irrelevant. Repair attempts allowed by Lemon Laws, Magnuson-Moss, and warranty statutes do not apply to revocation under Fla. Stat. § 672.608. The Florida UCC supports that revocation is effective upon notice, entitling the buyer to return to their pre-contract position. Therefore, Tesla's repairs after July 13 cannot affect the validity of the revocation.

43. Tesla may argue that it did not accept the Plaintiff's revocation; however, such acceptance is not required for it to be effective because revocation is a unilateral right exercised by the buyer. No formal acceptance by the seller is necessary for the revocation to take effect.

CASE LAW

44. Florida has adopted the Uniform Commercial Code (UCC), and Fla. Stat. § 672.608 mirrors the UCC's provisions on revocation of acceptance. Case law from other states interpreting the UCC is persuasive and directly applicable here.

45. The Plaintiff's claim is supported by relevant case law, including **Zabriskie Chevrolet, Inc. v. Smith**, 99 N.J. Super. 441 (1968), where the Superior Court of New Jersey upheld the buyer's right to revoke acceptance of a vehicle due to defects present at the time of delivery. In that case, the vehicle became inoperable shortly after purchase, and despite the seller's attempt to repair the defect, the buyer was entitled to revoke acceptance due to the substantial impairment of the vehicle's value.

46. **Zabriskie** further established that revocation remains valid even if the seller attempts repairs after the buyer has revoked acceptance. In this case, Tesla attempted to repair the vehicle post-revocation, but those efforts do not invalidate Plaintiff's rights under Fla. Stat. §

672.608. The key issue is the presence of defects at delivery, which is consistent with the holding in *Zabriskie*.

47. The **Zabriskie** court emphasized the buyer's right to expect that a new vehicle will be "mechanically new and factory furnished, operate perfectly, and be free of substantial defects". Here, Plaintiff expected a new luxury vehicle that met basic safety and quality standards. Instead, the vehicle exhibited severe mechanical defects that undermined its intended use and Plaintiff's confidence in its long-term reliability, reinforcing the validity of the revocation.

48. In **Colonial Dodge, Inc. v. Miller**, 420 Mich. 452 (1984), the Michigan Supreme Court upheld the buyer's right to revoke acceptance under the UCC due to a defect that impaired the vehicle's value to the buyer, even though the defect—a missing spare tire—was easily repairable. The court found that subjective concerns about safety and functionality justified revocation. In the present case, Plaintiff faced multiple serious defects, including critical safety concerns with the suspension, windshield, and steering systems. These defects had a far greater impact on the vehicle's value to the buyer than the issue in **Colonial Dodge** and therefore justify Plaintiff's revocation.

49. Like in **Colonial Dodge**, where the missing spare tire impacted the buyer's overall confidence in the vehicle, the immediate presence of multiple defects in separate areas in the Plaintiff's vehicle shattered his confidence in the vehicle's core value and trustworthiness.

50. **Colonial Dodge** also affirmed that after a buyer revokes acceptance, they have no further obligations regarding the goods. The burden is on the seller to handle retrieval or disposal of the defective item. In this case, Tesla's decision to tow the vehicle on August 13, 2024, despite being fully aware of Plaintiff's revocation, violated this principle. Tesla's actions placed

unnecessary burdens on Plaintiff and demonstrated bad faith. Therefore, Tesla is liable for all costs associated with this unjustified towing and any related financial burdens.

51. In both **Zabriskie** and **Colonial Dodge**, courts underscored the buyer's right to reject goods that fail to meet reasonable expectations of quality, even if repair attempts are made. Plaintiff's situation mirrors these rulings: Tesla delivered a vehicle that failed to conform to its promised quality, with substantial defects that impaired its value to Plaintiff. Plaintiff's revocation of acceptance is therefore fully justified under both the UCC and Fla. Stat. § 672.608.

RELIEF SOUGHT

52. **Fla. Stat. § 672.608(3)** states: "*A buyer who so revokes has the same rights and duties with regard to the goods involved as if he or she had rejected them.*" This statute seeks to restore both parties to their pre-contract positions as much as possible. Therefore, the Plaintiff is entitled to a return of the down payment, reimbursement for loan payments, repayment of towing costs, release of any lien on the vehicle, and full repayment of the outstanding loan balance. The Plaintiff seeks the following relief:

- f. Vehicle Repurchase: Tesla to repurchase the vehicle by refunding the Plaintiff the down payment, reimbursing all loan payments made, and paying off the remaining loan balance.
- g. Refund of Down Payment: Tesla to refund the Plaintiff the down payment of \$20,492.98. (see Exhibit C - Lending Agreement)
- h. Reimbursement of Loan Payments: Tesla to reimburse the Plaintiff for all loan payments made, including (see Exhibit N - TD Auto Finance)
 - Aug 19, 2024 = \$1,163.15.
 - Sep 22, 2024 = \$1,163.15.

- i. Full Repayment of the Remaining Loan Balance: Tesla to pay off the entire outstanding loan balance owed to TD Auto Finance as of the date of judgment, including any accrued interest, to fully release the Plaintiff from any financial obligations related to the vehicle (see Exhibit N - TD Auto Finance)
- j. Payment of Towing Costs: Tesla to cover all costs related to the towing of the vehicle, including the \$1,591.00 paid to TD Auto Finance to retrieve the vehicle and prevent its sale. (See Exhibit L - Towing Fee)
- k. Release of Lien: Tesla to ensure the release of any lien on the vehicle.
- l. Costs and Fees: The Plaintiff seeks reimbursement for all costs incurred in bringing this action, including court fees and any additional expenses.
- m. Alternative Relief: The Plaintiff also seeks such other and further relief as the Court deems just and proper.

CONCLUSION

53. The Plaintiff has fulfilled all legal requirements under Fla. Stat. § 672.608 for revocation of acceptance and respectfully requests that the Court order Tesla to repurchase the vehicle and provide the relief sought in this Complaint.

Respectfully submitted,

/s/ Leonardo Crespo
Leonardo Crespo
Plaintiff, Pro Se
13536 Bernoulli Way, Palm Beach Gardens, FL, 33418
Email: leo@leocrespo.com
Phone: 725-225-6889
Date: September 26, 2024

Filing # 207803548 E-Filed 09/27/2024 11:53:38 AM

**Motor Vehicle Order Agreement****Vehicle Configuration**

Customer Information		Description	Total in USD
Leonardo Crespo		Model X Dual Motor All-Wheel Drive	\$77,990
89014		Ultra Red Paint	\$2,500
[REDACTED]5889		20" Cyberstream Wheels	Included
[REDACTED]le[REDACTED].com		Black and White Premium Interior with Walnut Décor	\$2,000
		Five Seat Interior	Included
		Steering Wheel	Included
		Autopilot	Included
Order Number	RN122140103	Pay-as-you-go Supercharging	Included
		Tow Package	Included
Order Fee	\$250	Subtotal	\$82,490
Order placed with electronically accepted terms	07/02/2024	Destination Fee	\$1,390
		Order Fee	\$250
		Total	\$84,130

Price indicated does not include taxes and governmental fees, which will be calculated as your delivery date nears. You will be responsible for these additional taxes and fees.



**Motor Vehicle Order Agreement
Terms & Conditions**

Documentation. Your Motor Vehicle Order Agreement (the "Agreement") is made up of the following documents:

1. **Vehicle Configuration:** The Vehicle Configuration describes the vehicle that you configured and ordered, including pricing (excluding taxes and official or government fees).
2. **Final Price Sheet:** The Final Price Sheet will be provided to you as your delivery date nears. It will include final pricing based on your final Vehicle Configuration and will include taxes and official or governmental fees.
3. **Terms & Conditions:** These Terms & Conditions are effective as of the date you place your order and make your Order Fee (the "Order Date").

Agreement to Purchase. You agree to purchase the vehicle (the "Vehicle") described in your Vehicle Configuration from Tesla, Inc. or its affiliate ("we," "us" or "our"), pursuant to the terms and conditions of this Agreement. Your Vehicle is priced and configured based on features and options available at the time of order and you can confirm availability with a Tesla representative. Options, features or hardware released or changed after you place your order may not be included in or available for your Vehicle. If you are purchasing a used Vehicle, it may exhibit signs of normal wear and tear in line with its respective age and mileage.

Purchase Price, Taxes and Official Fees. The purchase price of the Vehicle is indicated in your Vehicle Configuration. This purchase price does not include taxes and official or government fees, which could amount to up to 10% or more of the Vehicle purchase price. Because these taxes and fees are constantly changing and will depend on many factors, such as where you register the Vehicle, they will be calculated closer to the time of delivery and indicated on your Final Price Sheet. You are responsible for paying these additional taxes and fees. If Tesla is registering your Vehicle, this will be due when you pay the purchase price. If you are registering your Vehicle in a self-registration state, the sales tax and state-applicable registration fees may be due at time of registration. If you present a check for any payment, we may process the payment as a normal check transaction, or we may use information from your check to make a one-time electronic fund transfer from your account, in which case your bank account will reflect this transaction as an Electronic Fund Transfer. If you are purchasing a used Vehicle, your Order Deposit will be applied to your Purchase Price.

Order Process; Cancellation; Changes. After you submit your completed order, we will begin the process of preparing and coordinating your Vehicle delivery. At this point, you agree that any paid Order Fee, Order Deposit and Transportation fee have been earned. If you cancel your order or breach this Agreement and we cancel your order, you agree that we may retain as liquidated damages the Order Fee, Order Deposit and Transportation Fee, to the extent not otherwise prohibited by law. You acknowledge that the Order Fee, Order Deposit and Transportation Fee are a fair and reasonable estimate of the actual damages we have incurred or may incur in transporting, remarketing, and reselling the Vehicle, costs which are otherwise impracticable or extremely difficult to determine. If you make changes to your order, you may be subject to potential price increases for any pricing adjustments made since your original Order Date. Any changes made by you to your Vehicle Configuration, including changes to the delivery location or estimated delivery date, will be reflected in a subsequent Vehicle Configuration that will form part of this Agreement. The Order Fee, Order Deposit, Transportation Fee and this Agreement are not made or entered into in anticipation of or pending any conditional sale contract.

Delivery; Transfer of Title. If you are picking up your Vehicle in a state where we are licensed to sell the Vehicle, we will notify you of when we expect your Vehicle to be ready for delivery at your local Tesla Delivery Center, or other location as we may agree to. You agree to schedule and take delivery of your Vehicle within three (3) days of this date. If you do not respond to our notification or are unable to take delivery within the specified period, your Vehicle may be made available for sale to other customers. For new vehicles, if you do not take delivery within fourteen (14) days of our first attempt to notify you, Tesla may cancel your order and keep your Order Fee.

If you wish to pick up your Vehicle in a state where we are not licensed to sell the Vehicle, you agree that the sale is transacted in the state listed in the Seller's address above (the "Contracting State"). In such a case, the risk of loss of the Vehicle transfers to you in the Contracting State, and legal title to the Vehicle transfers to you in the Contracting State, at the time that Tesla receives your final payment in its entirety. If available, Tesla may, on your behalf and at your cost, coordinate the shipment of your Vehicle to you, generally from our factory in California or another state where we are licensed to sell the Vehicle. In such a case, you agree that this is a shipment contract under which Tesla will coordinate the shipping of the Vehicle to you via a third-party common carrier or other mode of transport. Upon the transfer of title, your Vehicle will be insured at no cost to you, and you will be the beneficiary of any claims for damage to the Vehicle or losses occurring while the Vehicle is in transit. To secure your final payment and performance



under the terms of this Agreement, we will retain a security interest in the Vehicle and all proceeds therefrom until your obligations have been fulfilled.

The estimated delivery date of your Vehicle, if provided, is only an estimate as we do not guarantee when your Vehicle will actually be delivered. Your actual delivery date is dependent on many factors, including your Vehicle's configuration and manufacturing availability.

Incentives. Tesla makes no promises, warranties or guarantees regarding fund availability or your eligibility for any incentives, rebates and tax credits (the "Incentives") related to the Vehicle. If Tesla has credited your Purchase Price for the amount of an Incentive, but you do not qualify for the Incentive, you shall reimburse Tesla for the amount of the credit. Failure to reimburse Tesla will constitute a default under this Agreement at which time Tesla may exercise any remedies available to it, including repossession of the Vehicle.

Agreement to Arbitrate. Please carefully read this provision, which applies to any dispute between you and Tesla, Inc. and its affiliates, (together "Tesla").

If you have a concern or dispute, please send a written notice describing it and your desired resolution to resolutions@tesla.com.

If not resolved within 60 days, you agree that any dispute arising out of or relating to any aspect of the relationship between you and Tesla will not be decided by a judge or jury but instead by a single arbitrator in an arbitration administered by the American Arbitration Association (AAA) under its Consumer Arbitration Rules. This includes claims arising before this Agreement, such as claims related to statements about our products. You further agree that any disputes related to the arbitrability of your claims will be decided by the court rather than an arbitrator, notwithstanding AAA rules to the contrary.

To initiate the arbitration, you will pay the filing fee directly to AAA and we will pay all subsequent AAA fees for the arbitration, except you are responsible for your own attorney, expert, and other witness fees and costs unless otherwise provided by law. If you prevail on any claim, we will reimburse you your filing fee. The arbitration will be held in the city or county of your residence. To learn more about the Rules and how to begin an arbitration, you may call any AAA office or go to www.adr.org.

The arbitrator may only resolve disputes between you and Tesla, and may not consolidate claims without the consent of all parties. The arbitrator cannot hear class or representative claims or requests for relief on behalf of others purchasing or leasing Tesla vehicles. In other words, you and Tesla may bring claims against the other only in your or its individual capacity and not as a plaintiff or class member in any class or representative action. If a court or arbitrator decides that any part of this agreement to arbitrate cannot be enforced as to a particular claim for relief or remedy, then that claim or remedy (and only that claim or remedy) must be brought in court and any other claims must be arbitrated.

If you prefer, you may instead take an individual dispute to small claims court.

You may opt out of arbitration within 30 days after signing this Agreement by sending a letter to: Tesla, Inc.; P.O. Box 15430; Fremont, CA 94539-7970, stating your name, Order Number or Vehicle Identification Number, and intent to opt out of the arbitration provision. If you do not opt out, this agreement to arbitrate overrides any different arbitration agreement between us, including any arbitration agreement in a lease or finance contract.

Connectivity. Standard Connectivity is included in your Vehicle, at no additional cost, for eight (8) years beginning on the first day your Vehicle was delivered as new by Tesla, or the first day it is put into service (for example used as a demonstrator or company vehicle), whichever comes first. A trial of Premium Connectivity will be included following delivery of the Vehicle. Once this trial is over as detailed at www.tesla.com/support/connectivity, you may subscribe to Premium Connectivity or your Vehicle will return to Standard Connectivity. Features included in Premium Connectivity are subject to change and may be limited or unavailable due to Obsolete Hardware. You understand and agree that the cellular or other network needed for any Connectivity is provided by your local telecommunications company and other external providers, and that we are not liable for any parts, software, upgrades or any other costs (including labor) needed to use or maintain network connectivity or compatibility with any features or services externally supplied to the Vehicle. Any connectivity issues (including for quality, functionality or coverage) or gaps in service unrelated to a hardware fault or failure are not covered by Tesla warranties.

Obsolete Hardware and Future Firmware Updates. The Vehicle will regularly receive over-the-air software updates that add new features and enhance existing ones over Wi-Fi. Future software updates may not be provided for your Vehicle, or may not include all



existing or new features or functionality, due to your Vehicle's age, configuration, data storage capacity or parts, after the expiration of your Warranty. We are not liable for any parts or labor or any other cost needed to update or retrofit the Vehicle so that it may receive these updates, or any Vehicle issues occurring after the installation of any software updates due to obsolete, malfunctioning (except as covered by your Warranty) or damaged hardware.

Privacy Policy; Payment Terms for Services; Supercharger Fair Use Policy. Tesla's Customer Privacy Policy; Payment Terms for Services and Supercharger Fair Use Policy are incorporated into this Agreement and can be viewed at www.tesla.com/about/legal.

Warranty. You will receive access to the Tesla New Vehicle Limited Warranty or the Tesla Used Vehicle Limited Warranty, as applicable, at or prior to the time of Vehicle delivery or pickup. The warranty version applicable to your Vehicle is that which was in effect when the Vehicle was first delivered or picked up from Tesla directly, including by any previous owners. You may also obtain a written copy of your warranty from us upon request and view the current version at our website.

Limitation of Liability. We are not liable for any incidental, special or consequential damages arising out of this Agreement. Your sole and exclusive remedy under this Agreement will be limited to reimbursement of your Order Fee, Order Deposit and Transportation Fee.

No Resellers; Discontinuation; Cancellation. Tesla and its affiliates sell cars directly to end-consumers, and we may unilaterally cancel any order that we believe has been made with a view toward resale of the Vehicle or that has otherwise been made in bad faith, and we'll keep your Order Fee, Order Deposit and Transportation Fee. This includes orders for which a third-party is facilitating or brokering the sale, or if the vehicles are to be exported to somewhere other than where you tell us you will be registering the Vehicle. We may also cancel your order and refund your Order Fee, Order Deposit and Transportation Fee if we discontinue a product, feature or option after the time you place your order. We work to fulfill your order as quickly as we can. If you become unresponsive to us or fail to complete a requested action to progress towards delivery of your Vehicle, we may cancel your order and keep your Order Fee, Order Deposit and Transportation Fee. Alternatively, Tesla may give you the option to reconfigure your Vehicle at the current pricing.

Default and Remedies. You will be in default and/or breach of this Agreement if any one of the following occurs (except as prohibited by law): you fail to perform an obligation that you have undertaken in the Agreement; or we, in good faith, believe that you cannot, or will not pay or perform the obligations you have agreed to in this Agreement. You will also be in default and/or breach of this Agreement if you provide false or misleading information in your order, or do anything else the law says is a default. If you are in default, we may, after any legally required notice or waiting period: (i) do anything to protect our interest in the Vehicle, including repossessing the Vehicle using legally permitted means, (ii) locate and disable the Vehicle electronically using our remote dynamic vehicle connection described in our Privacy Policy, (iii) sue you for damages or to get the Vehicle back, and/or (iv) charge you for amounts we spend taking these actions, including but not limited to attorney fees and costs.

Governing Law; Integration; Assignment. Except as provided below, the terms of this Agreement are governed by, and to be interpreted according to, the laws of the State in your address indicated on your Vehicle Configuration. Prior agreements, oral statements, negotiations, communications or representations about the Vehicle sold under this Agreement are superseded by this Agreement. Terms relating to the purchase not expressly contained herein are not binding. We may assign this Agreement at our discretion to one of our affiliated entities.

State-Specific Provisions. You acknowledge that you have read and understand the provisions applicable to you in the State-Specific Provisions attachment to this Agreement.

This Agreement is entered into and effective as of the date you accept this Agreement, by electronic means or otherwise. By confirming and accepting this Agreement, you agree to the terms and conditions of this Agreement.



State Specific Provisions

For **NEW YORK** residents: If the Vehicle is not delivered in accordance with the Agreement within 30 days following the estimated delivery date, you have the right to cancel the Agreement and receive a full refund, unless the delay in delivery is attributable to you.

If this motor vehicle is classified as a used motor vehicle, the dealer named above certifies that the entire vehicle is in condition and repair to render, under normal use, satisfactory and adequate service upon the public highway at the time of delivery.

The dealer named above further certifies that this vehicle complies with the inflatable restraint system requirements found in section 419-a of New York State Vehicle and Traffic Law.

The amount indicated on the sales contract or lease agreement for registration and title fees is an estimate. In some instances, it may exceed the actual fees due the Commissioner of Motor Vehicles. The dealer will automatically, and within 60 days of securing such registration and title, refund any amount overpaid for such fees.

For **MASSACHUSETTS** residents: ATTENTION PURCHASER: All vehicles are WARRANTED as a matter of state law. They must be fit to be driven safely on the roads and must remain in good running condition for a reasonable period of time. If you have significant problems with the Vehicle or if it will not pass a Massachusetts inspection, you should notify us immediately. We may be required to fix the car or refund your money. THIS WARRANTY IS IN ADDITION TO ANY OTHER WARRANTY GIVEN BY US.

For **MICHIGAN** residents and purchasers: The terms of this Agreement are governed by, and are to be interpreted according to, Michigan law. The sale of your vehicle will be transacted outside of Michigan, and in a state in which Tesla has a license to sell vehicles, as explained in the body of the Agreement.

For **WASHINGTON, D.C.** residents:

NOTICE TO PURCHASER

IF, AFTER A REASONABLE NUMBER OF ATTEMPTS, THE MANUFACTURER, ITS AGENT, OR AUTHORIZED DEALER IS UNABLE TO REPAIR OR CORRECT ANY NON-COMFORMITY, DEFECT, OR CONDITION WHICH RESULTS IN SIGNIFICANT IMPAIRMENT OF THE MOTOR VEHICLE, THE MANUFACTURER, AT THE OPTION OF THE CONSUMER, SHALL REPLACE THE MOTOR VEHICLE WITH A COMPARABLE MOTOR VEHICLE, OR ACCEPT RETURN OF THE MOTOR VEHICLE FROM THE CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE, INCLUDING ALL SALES TAX, LICENSE FEES, REGISTRATION FEES, AND ANY SIMILAR GOVERNMENT CHARGES. IF YOU HAVE ANY QUESTIONS CONCERNING YOUR RIGHTS, YOU MAY CONTACT THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Seller certifies that the information contained in the itemization of the purchase price, including the Vehicle Configuration, and required by Chapter 3 (Buying, Selling and Financing Motor Vehicles) of Title 16 of the Code of D.C. Municipal Regulations, is true to the best of our knowledge.

For **RHODE ISLAND** residents: Rhode Island law requires that all motor vehicles sold at retail must be in such condition as to pass a State safety inspection at the time of sale so as to protect consumers.

For **VIRGINIA** residents: IF YOU ARE FINANCING THIS VEHICLE, PLEASE READ THIS NOTICE: YOU ARE PROPOSING TO ENTER INTO A RETAIL INSTALLMENT SALES CONTRACT WITH THE DEALER. PART OF YOUR CONTRACT INVOLVES FINANCING THE PURCHASE OF YOUR VEHICLE. IF YOU ARE FINANCING THIS VEHICLE AND THE DEALER INTENDS TO TRANSFER YOUR FINANCING TO A FINANCE PROVIDER SUCH AS A BANK, CREDIT UNION OR OTHER LENDER, YOUR VEHICLE PURCHASE DEPENDS ON THE FINANCE PROVIDER'S APPROVAL OF YOUR PROPOSED RETAIL INSTALLMENT SALES CONTRACT. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS APPROVED WITHOUT A CHANGE THAT INCREASES THE COST OR RISK TO YOU OR THE DEALER, YOUR PURCHASE CANNOT BE CANCELLED. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS NOT APPROVED, THE DEALER WILL NOTIFY YOU VERBALLY OR IN WRITING. YOU CAN THEN DECIDE TO PAY FOR THE VEHICLE IN SOME OTHER WAY OR YOU OR THE DEALER CAN CANCEL YOUR



PURCHASE. IF THE SALE IS CANCELLED, YOU NEED TO RETURN THE VEHICLE TO THE DEALER WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR. ANY DOWN PAYMENT OR TRADE-IN YOU GAVE THE DEALER WILL BE RETURNED TO YOU. IF YOU DO NOT RETURN THE VEHICLE WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE OF CANCELLATION, THE DEALER MAY LOCATE THE VEHICLE AND TAKE IT BACK WITHOUT FURTHER NOTICE TO YOU AS LONG AS THE DEALER FOLLOWS THE LAW AND DOES NOT CAUSE A BREACH OF THE PEACE WHEN TAKING THE VEHICLE BACK. IF THE DEALER DOES NOT RETURN YOUR DOWN PAYMENT AND ANY TRADE-IN WHEN THE DEALER GETS THE VEHICLE BACK IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR, THE DEALER MAY BE LIABLE TO YOU UNDER THE VIRGINIA CONSUMER PROTECTION ACT.

Filing # 207803548 E-Filed 09/27/2024 11:53:38 AM

From:
Leonardo Crespo
13536 Bernoulli Way, Palm Beach Gardens, 33418 FL

31 July 2024

To:
Tesla, Inc.; P.O. Box 15430; Fremont, CA 94539-7970,

Tesla,

I opt out of arbitration provision.

Name = Leonardo Crespo
Vehicle Identification Number = 7SAXCDE54RF446932
Order number = RN122140103

Leonardo Crespo



Leonardo Crespo <leo@leocrespo.com>

USPS eReceipt

DoNotReply@receipt.usps.gov <DoNotReply@receipt.usps.gov>
To: LE
pc.com

 UNITED STATES POSTAL SERVICE®			
PALM BEACH GARDENS 3329 FAIRCHILD GARDENS AVE PALM BEACH GARDENS, FL 33410-8998 (800)275-8777			
08/01/2024 12:39 PM			
Product	Qty	Unit Price	
		Price	
PM Express 1-Day	1	\$46.30	
Fremont, CA 94539			
Weight: 0 lb 80 oz			
Signature Not Required			
Scheduled Delivery Date			
Fr 08/02/2024 06:00 PM			
Money Back Guarantee			
Topics:  			
Insurance		\$0.00	
Up to \$100.00 Included			
Total		\$46.30	
Grand Total:		\$46.30	
Credit Card Receipt		\$46.30	
Card Name: VISA			
Account #: XXXXXXXXXX			
Approval #: XXXXXXXXXX			
Trans ID #: XXXXXXXXXX			
AID: AD0000000031010 Contactless			
AL: VISA CREDIT			
In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.			
Save this receipt as evidence of insurance. For information on filing an insurance claim go to https://www.usps.com/usps/claims.htm or call 1-800-222-1811.			
Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Text messaging rates apply. You may also visit www.usps.com/USPS_Tracking or call 1-800-222-1811.			
Preview your Mail Track your Packages Sign up for FREE! @ informmedelivery.usps.com All sales final on stamps and postage. Returns for guaranteed services only. Thank you for your business.			
Tell us about your experience. Go to: https://postalexperience.com/postex/ or call 1-800-410-7420.			
<small> UFN: 119448-0109 Receipt #: 840-3210099-3-0452314-2 Clerk: 22 </small>			
<small> Privacy Act Statement: Your information will be used to provide you with an electronic receipt for your purchase transaction via email. Collection is authorized by 39 USC 401, 403, and 404. Providing the information is voluntary, but if not provided, we will be unable to process your request to receive an electronic receipt. We do not disclose your information to third parties without your consent except to federal law enforcement to act on your behalf or request, or as legally required. This includes the following limited circumstances: to a congressional office on your behalf; to financial entities regarding financial transactions issued to a U.S. Post Office account; to contractors and other entities acting as required by law or in legal proceedings; to contractors and other entities acting as to fulfill the service (service providers); to process servers; to domestic government agencies if needed as part of their duties; and to a foreign government agency for violations and alleged violations of law. For more information on our privacy policies visit www.usps.com/privacypolicy. </small>			
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Tracking Number:

[Remove X](#)

EI982704388US

[Copy](#) [Add to Informed Delivery](#)

Scheduled Delivery by

FRIDAY

2 August 2024 by 6:00pm

Your item was picked up at the post office at 3:20 pm on August 9, 2024 in FREMONT, CA 94539. The item was signed for by T TESLA.

Get More Out of USPS Tracking:

[USPS Tracking Plus®](#)

Delivered

Delivered, Individual Picked Up at Post Office

FREMONT, CA 94539

August 9, 2024, 3:20 pm

[See All Tracking History](#)

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Text & Email Updates



Proof of Delivery



USPS Tracking Plus®



Product Information



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LAW 553-FL-ARB-e 1/24**RETAIL INSTALLMENT SALE CONTRACT – SIMPLE FINANCE CHARGE
(WITH ARBITRATION PROVISION)**

Buyer Name and Address Leonardo Crespo 13536 Bernoulli Way Palm Beach Gardens, FL 33418	Co-Buyer Name and Address	Seller-Creditor (Name and Address) Tesla Florida Inc 5544 Okeechobee Boulevard West Palm Beach, FL 33417 Palm Beach
Buyer's Birth Month: [REDACTED] Cell: N/A Email: N/A	Co-Buyer's Birth Month: Cell: N/A Email: N/A	

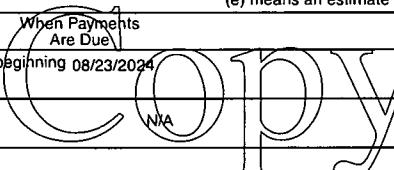
You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements in this contract. You agree to pay the Seller-Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis at the Base Rate of 6.29 % per year. The Truth-In-Lending Disclosures below are part of this contract.

You have thoroughly inspected, accepted, and approved the vehicle in all respects.

New/Used/ Demo	Year	Make and Model	Weight (lbs.)	Vehicle Identification Number	Primary Use For Which Purchased
New	2024	Tesla Model X	6,122	7SAXCDE54RF446932	Personal, family, or household unless otherwise indicated below <input type="checkbox"/> business <input type="checkbox"/> agricultural <input type="checkbox"/> N/A

You agree that we advised you whether, based on seller's knowledge, the vehicle was titled, registered, or used as a taxicab, police vehicle, short term rental or is a vehicle that is rebuilt or assembled from parts, a kit car, a replica, a flood vehicle, or a manufacturer buy back.

FEDERAL TRUTH-IN-LENDING DISCLOSURES					
ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of \$ 20,492.98 is	
6.29 %	\$ 14,319.80	\$ 69,427.00	\$ 83,746.80	\$ 104,239.78	

Your Payment Schedule Will Be:			(e) means an estimate
Number of Payments	Amount of Payments	When Payments Are Due	
72	1,163.15	Monthly beginning 08/23/2024	
N/A	N/A	N/A	

Or As Follows:			N/A
<p>Late Charge. If payment is not received in full within 10 days after it is due, you will pay a late charge of 5 % of each installment.</p> <p>Prepayment. If you pay early, you may have to pay a penalty.</p> <p>Security Interest. You are giving a security interest in the vehicle being purchased.</p> <p>Additional Information: See this contract for more information including information about nonpayment, default, prepayment penalties, any required repayment in full before the scheduled date and security interest.</p>			

<p>Returned Payment Charge: If any check or other payment instrument you give us is dishonored or any electronic payment you make is returned unpaid, you will pay a charge of \$25 if the payment amount is \$50 or less; \$30 if the payment amount is over \$50 but not more than \$300; \$40 if the payment amount is over \$300; or such amount as permitted by law.</p> <p>Florida documentary stamp tax required by law in the amount of \$ 243.25 has been paid or will be paid directly to the Department of Revenue.</p> <p>Certificate of Registration No. 310841368-004</p>			
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<p>You assign all manufacturer rebates and cash back incentives used as a downpayment on this contract to seller. You agree to complete all documents required for assignment of rebates and incentives.</p>			
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<p>Electronic Contracting and Signature Acknowledgment. You agree that (i) this contract is an electronic contract executed by you using your electronic signature, (ii) your electronic signature signifies your intent to enter into this contract and that this contract be legally valid and enforceable in accordance with its terms to the same extent as if you had executed this contract using your written signature and (iii) the authoritative copy of this contract ("Authoritative Copy") shall be that electronic copy that resides in a document management system designated by us for the storage of authoritative copies of electronic records, which shall be deemed held by us in the ordinary course of business. Notwithstanding the foregoing, if the Authoritative Copy is converted by printing a paper copy which is marked by us as the original (the "Paper Contract"), then you acknowledge and agree that (1) your signing of this contract with your electronic signature also constitutes issuance and delivery of such Paper Contract, (2) your electronic signature associated with this contract, when affixed to the Paper Contract, constitutes your legally valid and binding signature on the Paper Contract and (3) subsequent to such conversion, your obligations will be evidenced by the Paper Contract alone.</p>			
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ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (including \$ <u>5,098.13</u> sales tax)	\$ <u>89,228.13</u> (1)
2 Total Downpayment =	
Gross Trade-In Allowance	\$ <u>0.00</u>
Less Pay Off Made By Seller (e)	\$ <u>0.00</u>
Equals Net Trade In	\$ <u>0.00</u>
+ Cash	\$ <u>20,492.98</u>
+ Other _____	\$ <u>N/A</u>
+ Other _____ FedEVIncentive	\$ <u>0.00</u>
(If total downpayment is negative, enter "0" and see 5J below)	\$ <u>20,492.98</u> (2)
3 Unpaid Balance of Cash Price (1 minus 2)	\$ <u>68,735.15</u> (3)
4 Predelivery Service Fees	
A Predelivery Service Charge	\$ <u>N/A</u>
B Electronic Registration Filing Fee	\$ <u>N/A</u>
C N/A	\$ <u>N/A</u>
These charges represent costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale.	
Total Predelivery Service Fees	\$ <u>N/A</u> (4)
5 Other Charges Including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts):	
A Cost of Optional Credit Insurance Paid to Insurance Company or Companies. Life	\$ <u>N/A</u>
Disability	\$ <u>N/A</u>
B Vendor's Single Interest Insurance Paid to Insurance Company	\$ <u>N/A</u>
C Other Optional Insurance Paid to Insurance Company or Companies	\$ <u>N/A</u>
D Optional Gap Contract	\$ <u>N/A</u>
E Official Fees Paid to Government Agencies	\$ <u>33.50</u>
F Government Documentary Stamp Taxes	\$ <u>243.25</u>
G Government Taxes Not Included in Cash Price	\$ <u>N/A</u>
H Government License and/or Registration Fees Registration Fee	\$ <u>415.10</u>
I Government Certificate of Title Fees	\$ <u>N/A</u>
J Other Charges (Seller must identify who is paid and describe purpose)	
to N/A for Prior Credit or Lease Balance (e)	\$ <u>0.00</u>
to N/A for N/A	\$ <u>N/A</u>
to N/A for N/A	\$ <u>N/A</u>
to N/A for N/A	\$ <u>N/A</u>
to N/A for N/A	\$ <u>N/A</u>
to N/A for N/A	\$ <u>N/A</u>
to N/A for N/A	\$ <u>N/A</u>
to N/A for N/A	\$ <u>N/A</u>
to N/A for N/A	\$ <u>N/A</u>
Total Other Charges and Amounts Paid to Others on Your Behalf	\$ <u>691.85</u> (5)
6 Loan Processing Fee Paid to Seller (Prepaid Finance Charge)	\$ <u>N/A</u> (6)
7 Amount Financed (3 plus 4 plus 5)	\$ <u>69,427.00</u> (7)
8 Principal Balance (6+7)	\$ <u>69,427.00</u> (8)

OPTION: You pay no finance charge if the Amount Financed, item 7, is paid in full on or before
N/A, Year N/A. SELLER'S INITIALS N/A

OPTIONAL GAP CONTRACT. A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in Item 5D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term <u>N/A</u> Mos.	<u>N/A</u>
I want to buy a gap contract.	Name of Gap Contract
Buyer Signs X <u>N/A</u>	Co-Buyer Signs X [REDACTED]

Agreement to Arbitrate: By signing below, you agree that, pursuant to the Arbitration Provision on page 6 of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.

Buyer Signs X Leonardo Crespo

Co-Buyer Signs X [REDACTED]

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

OPTIONAL SERVICE CONTRACTS

You are not required to buy a service contract to obtain credit. Your choice of service contract providers for any service contracts you buy will not affect our decision to sell or extend credit to you.

REJECTION OR REVOCATION

If you are permitted under Florida's Uniform Commercial Code to reject or revoke acceptance of the vehicle and you claim a security interest in the vehicle because of this, you must either: (a) post a bond in the amount of the disputed balance; or (b) deposit all installment payments as they become due into the registry of a court of competent jurisdiction.

SERVICING AND COLLECTION CONTACTS

In consideration of our extension of credit to you, you agree to provide us your contact information for our servicing and collection purposes. You agree that we may use this information to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you. You agree to allow our agents and service providers to contact you as agreed above.

You agree that you will, within a reasonable time, notify us of any change in your contact information.

APPLICABLE LAW

Federal law and the law of the state of Florida apply to this contract.

NEGATIVE CREDIT REPORT NOTICE

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

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Insurance. You may buy the physical damage insurance this contract requires from anyone you choose who is acceptable to us. You may also provide the physical damage insurance through an existing policy owned or controlled by you that is acceptable to us. You are not required to buy any other insurance to obtain credit unless the box indicating Vendor's Single Interest Insurance is required is checked below. Your choice of insurance providers will not affect our decision to sell you the vehicle or extend credit to you.

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance

<input type="checkbox"/> Credit Life:	<input type="checkbox"/> Buyer	<input type="checkbox"/> Co-Buyer	<input type="checkbox"/> Both	<input type="checkbox"/> Credit Disability:	<input type="checkbox"/> Buyer	<input type="checkbox"/> Co-Buyer	<input type="checkbox"/> Both
---------------------------------------	--------------------------------	-----------------------------------	-------------------------------	---	--------------------------------	-----------------------------------	-------------------------------

Term _____	N/A	Term _____	N/A
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Premium: Credit Life \$ _____	N/A	Credit Disability \$ _____	N/A
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Insurance Company Name _____	N/A	Home Office Address _____	N/A
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Credit life insurance and credit disability insurance are not required to obtain credit. Your decision to buy or not to buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. If you choose this insurance, the cost is shown in Item 5A of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments.

If the box above is checked to indicate that you want credit life insurance, please read and sign the following acknowledgments:

1. You understand that you have the option of assigning any other policy or policies you own or may procure for the purpose of covering this extension of credit and that the policy need not be purchased from us in order to obtain the extension of credit.

<input checked="" type="checkbox"/> Buyer	N/A	N/A	Date	<input checked="" type="checkbox"/> Co-Buyer	N/A	N/A	Date
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2. You understand that the credit life coverage may be deferred if, at the time of application, you are unable to engage in employment or unable to perform normal activities of a person of like age and sex. (You need not sign this acknowledgement if the proposed credit life insurance policy does not contain this restriction.)

<input checked="" type="checkbox"/> Buyer	N/A	N/A	Date	<input checked="" type="checkbox"/> Co-Buyer	N/A	N/A	Date
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3. You understand that the benefits under the policy will terminate when you reach a certain age and affirm that your age is accurately represented on the application or policy.

<input checked="" type="checkbox"/> Buyer	N/A	N/A	Date	<input checked="" type="checkbox"/> Co-Buyer	N/A	N/A	Date
---	-----	-----	------	--	-----	-----	------

<input type="checkbox"/>	N/A	N/A	Date	<input type="checkbox"/>	N/A	N/A	Date
--------------------------	-----	-----	------	--------------------------	-----	-----	------

Insurance Company Name & Address	N/A	Type of Insurance	N/A	Premium \$	N/A		
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<input type="checkbox"/>	N/A	N/A	Date	<input type="checkbox"/>	N/A	N/A	Date
--------------------------	-----	-----	------	--------------------------	-----	-----	------

Insurance Company Name & Address	N/A	Type of Insurance	N/A	Premium \$	N/A		
----------------------------------	-----	-------------------	-----	------------	-----	--	--

<input type="checkbox"/>	N/A	N/A	Date	<input type="checkbox"/>	N/A	N/A	Date
--------------------------	-----	-----	------	--------------------------	-----	-----	------

Insurance Company Name & Address	N/A	Type of Insurance	N/A	Premium \$	N/A		
----------------------------------	-----	-------------------	-----	------------	-----	--	--

<input type="checkbox"/>	N/A	N/A	Date	<input type="checkbox"/>	N/A	N/A	Date
--------------------------	-----	-----	------	--------------------------	-----	-----	------

Insurance Company Name & Address	N/A	Type of Insurance	N/A	Premium \$	N/A		
----------------------------------	-----	-------------------	-----	------------	-----	--	--

<input type="checkbox"/>	N/A	N/A	Date	<input type="checkbox"/>	N/A	N/A	Date
--------------------------	-----	-----	------	--------------------------	-----	-----	------

Insurance Company Name & Address	N/A	Type of Insurance	N/A	Premium \$	N/A		
----------------------------------	-----	-------------------	-----	------------	-----	--	--

<input type="checkbox"/>	N/A	N/A	Date	<input type="checkbox"/>	N/A	N/A	Date
--------------------------	-----	-----	------	--------------------------	-----	-----	------

Insurance Company Name & Address	N/A	Type of Insurance	N/A	Premium \$	N/A		
----------------------------------	-----	-------------------	-----	------------	-----	--	--

<input type="checkbox"/>	N/A	N/A	Date	<input type="checkbox"/>	N/A	N/A	Date
--------------------------	-----	-----	------	--------------------------	-----	-----	------

Insurance Company Name & Address	N/A	Type of Insurance	N/A	Premium \$	N/A		
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Other Optional Insurance

Other optional insurance is not required to obtain credit. Your decision to buy or not buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost.

I want the insurance checked above.

<input checked="" type="checkbox"/> Buyer Signature	N/A	N/A	Date	<input checked="" type="checkbox"/> Co-Buyer Signature	N/A	N/A	Date
---	-----	-----	------	--	-----	-----	------

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

VENDOR'S SINGLE INTEREST INSURANCE (VSI insurance): If the preceding box is checked, the Creditor requires VSI insurance for the initial term of the contract to protect the Creditor for loss or damage to the vehicle (collision, fire, theft, concealment, skip). VSI insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. You may choose the insurance company through which the VSI insurance is obtained. If you elect to purchase VSI insurance through the Creditor, the cost of this insurance is \$ _____ N/A _____ and is also shown in item 5B of the Itemization of Amount Financed. The coverage is for the initial term of the contract.

You authorize us to purchase Vendor's or Lender's Single Interest Insurance.

Buyer Signs X	N/A	Co-Buyer Signs X	N/A	Date: _____	N/A
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OTHER IMPORTANT AGREEMENTS**1. FINANCE CHARGE AND PAYMENTS**

- a. **How we will figure Finance Charge.** We will treat any Prepaid Finance Charge as fully earned on the date of this contract. We will figure the rest of the finance charge on a daily basis at the Base Rate on the unpaid part of your Principal Balance. Your Principal Balance is the sum of the Amount Financed and the Prepaid Finance Charge, if any.
 - b. **How we will apply payments.** We may apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of your Principal Balance and to other amounts you owe under this contract in any order we choose as the law allows.
 - c. **How late payments or early payments change what you must pay.** We based the Finance Charge, Total of Payments, and Total Sale Price shown on page 1 of this contract on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
 - d. **You may prepay.** You may prepay all or part of your Principal Balance at any time. If the contract is paid in full within six months after the date you sign it, we may impose an acquisition charge, not exceeding \$75, for services performed on your behalf for processing this contract. If you prepay, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
 - e. **You may ask for a payment extension.** You may ask us for a deferral of the scheduled due date of all or any part of the payment (extension). If we agree to your request, we may charge you a \$15 extension fee. You must maintain the physical damage insurance required by this contract (see 2.01) during any extension. If you do not have this insurance, we may buy it and charge you for it as this contract says. You may extend the term of any optional insurance you bought with this contract to cover the extension if the insurance company or your insurance contract permits it, and you pay the charge for extending this insurance.
- If you get a payment extension, you will pay additional finance charges at the Base Rate on the amount extended during the extension. You will also pay any additional insurance charges resulting from the extension, and the \$15 extension fee if we charge you this fee.

2. YOUR OTHER PROMISES TO US

- a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. **Security Interest.**
You give us a security interest in:
 - The vehicle and all parts or goods put on it;
 - All money or goods received (proceeds) for the vehicle;
 - All insurance, maintenance, service, or other contracts we finance for you; and
 - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.

This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.

d. Insurance you must have on the vehicle.

You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. You agree to name us on your insurance policy as loss payee. If you do not have this insurance, we may, if we choose, buy physical

damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium for the insurance and a finance charge at the highest rate the law permits. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.

- e. **What happens to returned insurance, maintenance, service, or other contract charges.** If we obtain a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. **You may owe late charges.** You will pay a late charge on each late payment as shown on page 1 of this contract. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.
If you pay late, we may also take the steps described below.
- b. **You may have to pay all you owe at once.** If you break your promises (default), we may demand that you pay all you owe on this contract at once. Default means:
 - You do not pay any payment on time;
 - You give false, incomplete, or misleading information during credit application;
 - You start a proceeding in bankruptcy or one is started against you or your property; or
 - You break any agreements in this contract.
- c. **You may have to pay collection costs.** If we hire an attorney to collect what you owe, you will pay the attorney's fee and court costs as the law allows. This includes any attorneys' fees we incur as a result of any bankruptcy proceeding brought by or against you under federal law.
- d. **We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device (such as GPS), you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you. If you do not ask for these items back, we may dispose of them as the law allows.
- e. **How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.
- f. **We will sell the vehicle if you do not get it back.** If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle.

We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.

- g. **What we may do about optional insurance, maintenance, service, or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, you agree that we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

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Trade-In Vehicle		Trade-In Vehicle	
Year <u>N/A</u>	Make <u>N/A</u>	Year <u>N/A</u>	Make <u>N/A</u>
Model <u></u>	N/A	Model <u></u>	N/A
VIN <u></u>	N/A	VIN <u></u>	N/A
Gross Trade-In Allowance \$ <u>0.00</u>		Gross Trade-In Allowance \$ <u>N/A</u>	
Payoff Made by Seller \$ <u>0.00</u>	(e)	Payoff Made by Seller \$ <u>N/A</u>	(e)
Lienholder <u>N/A</u>		Lienholder <u>N/A</u>	

You assign to Seller all of your rights, title and interest in such trade-in vehicle(s). Except as expressly stated to Seller in writing, you represent that your trade-in vehicle(s) has not been involved in an accident, has not had any major body damage or required any major engine repair, and was not previously used as a taxicab, police vehicle, short term rental or is a vehicle that is rebuilt or assembled from parts, a kit car, a replica, a flood vehicle, or a manufacturer buy back.

Buyer Initials  Co-Buyer Initials 

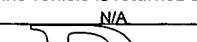
Trade-In Payoff Agreement: Seller relied on information from you and/or the lienholder or lessor of your trade-in vehicle to arrive at the trade-in payoff amount shown above and in Item 2 of the Itemization of Amount Financed as the Pay Off Made by Seller. You understand that the amount quoted is an estimate.

Seller agrees to pay the payoff amount shown above and in Item 2 to the lienholder or lessor of the trade-in vehicle, or its designee. If the actual payoff amount is more than the amount shown above and in Item 2 you must pay the Seller the excess on demand. If the actual payoff amount is less than the amount shown above and in Item 2 Seller will refund to you any overage Seller receives from your prior lienholder or lessor. Except as stated in the "NOTICE" below, any assignee of this contract will not be obligated to pay the Pay Off Made by Seller shown above and in Item 2 or any refund.

Buyer Signature X 

Co-Buyer Signature X 

SELLER'S RIGHT TO CANCEL - If Buyer and Co-buyer sign here, the provisions of the Seller's Right to Cancel section below, which gives the Seller the right to cancel if Seller is unable to assign this contract within N/A days, will apply. If you fail to return the vehicle within 48 hours after receipt of the notice of cancellation, you agree to pay Seller a charge of \$ N/A per day from the date of cancellation until the vehicle is returned or repossessed.

X 
Buyer Signs

N/A

X 
Co-Buyer Signs

N/A

Seller's Right to Cancel

- Seller agrees to deliver the vehicle to you on the date this contract is signed by Seller and you. You understand that it may take a few days for Seller to verify your credit, locate financing for you on the exact terms shown on page 1 of this contract, and assign this contract to a financial institution. You agree that Seller has the number of days stated above to assign this contract. You agree that if Seller is unable to assign this contract within this time period to any one of the financial institutions with whom Seller regularly does business under an assignment acceptable to Seller, Seller may cancel this contract. Seller's right to cancel this contract ends upon assignment of this contract.
- If Seller elects to cancel per Paragraph a above, Seller will give you written notice (or in any other manner in which actual notice is given to you). In that event, you may have the option of negotiating and signing a new contract with different financing terms (for example, a larger down payment, a higher annual percentage rate, a required cosigner, etc.) or you may pay with alternate funds arranged by you.
- Upon receipt of the notice of cancellation, you must return the vehicle to Seller within 48 hours in the same condition as when sold other than reasonable wear for the time you had it. If Seller has already sold the Trade-in, the Seller will pay you the proceeds of the sale less any reasonable expenses incurred in connection with holding, preparing, reconditioning and selling the Trade-in and any prior credit or lease balance paid by Seller to a prior lienholder or lessor on your behalf.
- If you do not return the vehicle within 48 hours after receipt of the notice of cancellation, you agree that Seller may use any lawful means to take it back (including repossession if done peacefully) and you will be liable for all expenses incurred by Seller in taking the vehicle from you, including reasonable attorney's fees. If you fail to return the vehicle within 48 hours after receipt of the notice of cancellation, you agree to pay Seller the charge shown in the Seller's Right to Cancel provision above for each day you do not return the vehicle after receipt of the notice of cancellation.
- While the vehicle is in your possession, all terms of this contract, including those relating to use of the vehicle and insurance for the vehicle, are in full force and you assume all risk of loss or damage to the vehicle. You must pay all reasonable costs for repair of any damage done to the vehicle while the vehicle is in your possession. Seller may deduct from any consideration due to you under paragraph c. above Seller's reasonable costs to repair the vehicle and any daily charges you incur if you fail to return the vehicle within 48 hours after receipt of the notice of cancellation. If Seller cancels this contract, the terms of this Seller's Right to Cancel provision (including those above) remain in effect even after you no longer have possession of the vehicle.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only to goods or services obtained primarily for personal, family or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

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ARBITRATION PROVISION**PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS**

1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN YOU AND US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, any allegation of waiver of rights under this Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this Vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Provision shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator only on an individual basis and not as a plaintiff in a collective or representative action, or a class representative or member of a class on any class claim. The arbitrator may not preside over a consolidated, representative, class, collective, injunctive, or private attorney general action. You expressly waive any right you may have to arbitrate a consolidated, representative, class, collective, injunctive, or private attorney general action. You or we may choose the American Arbitration Association (www.adr.org) or National Arbitration and Mediation (www.namadr.com) as the arbitration organization to conduct the arbitration. If you and we agree, you or we may choose a different arbitration organization. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law and the applicable statute of limitations. The arbitration hearing shall be conducted in the federal district in which you reside unless the Seller-Creditor is a party to the claim or dispute, in which case the hearing will be held in the federal district where this transaction was originated. We will pay the filing, administration, service, or case management fee and the arbitrator or hearing fee up to a maximum of \$5,000, unless the law or the rules of the chosen arbitration organization require us to pay more. You and we will pay the filing, administration, service, or case management fee and the arbitrator or hearing fee over \$5,000 in accordance with the rules and procedures of the chosen arbitration organization. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.

You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate any related or unrelated claims by filing any action in small claims court, or by using self-help remedies, such as repossession, or by filing an action to recover the vehicle, to recover a deficiency balance, or for individual or statutory public injunctive relief. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, other than waivers of class rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. You agree that you expressly waive any right you may have for a claim or dispute to be resolved on a class basis in court or in arbitration. If a court or arbitrator finds that this class arbitration waiver is unenforceable for any reason with respect to a claim or dispute in which class allegations have been made, the rest of this Arbitration Provision shall also be unenforceable.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding.

Buyer Signs X Leonardo CrespoCo-Buyer Signs X

If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.

See the rest of this contract for other important agreements.

NOTICE TO THE BUYER: a) Do not sign this contract before you read it or if it contains any blank spaces. b) You are entitled to an exact copy of the contract you sign. Keep it to protect your legal rights.

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You acknowledge that you have read all pages of this contract, including the arbitration provision above, before signing below. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X Leonardo Crespo Date 07/09/2024 Co-Buyer Signs X Date N/A

If the "business" use box is checked in "Primary Use for Which Purchased": Print Name N/A Title N/A

Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X N/A Address N/A

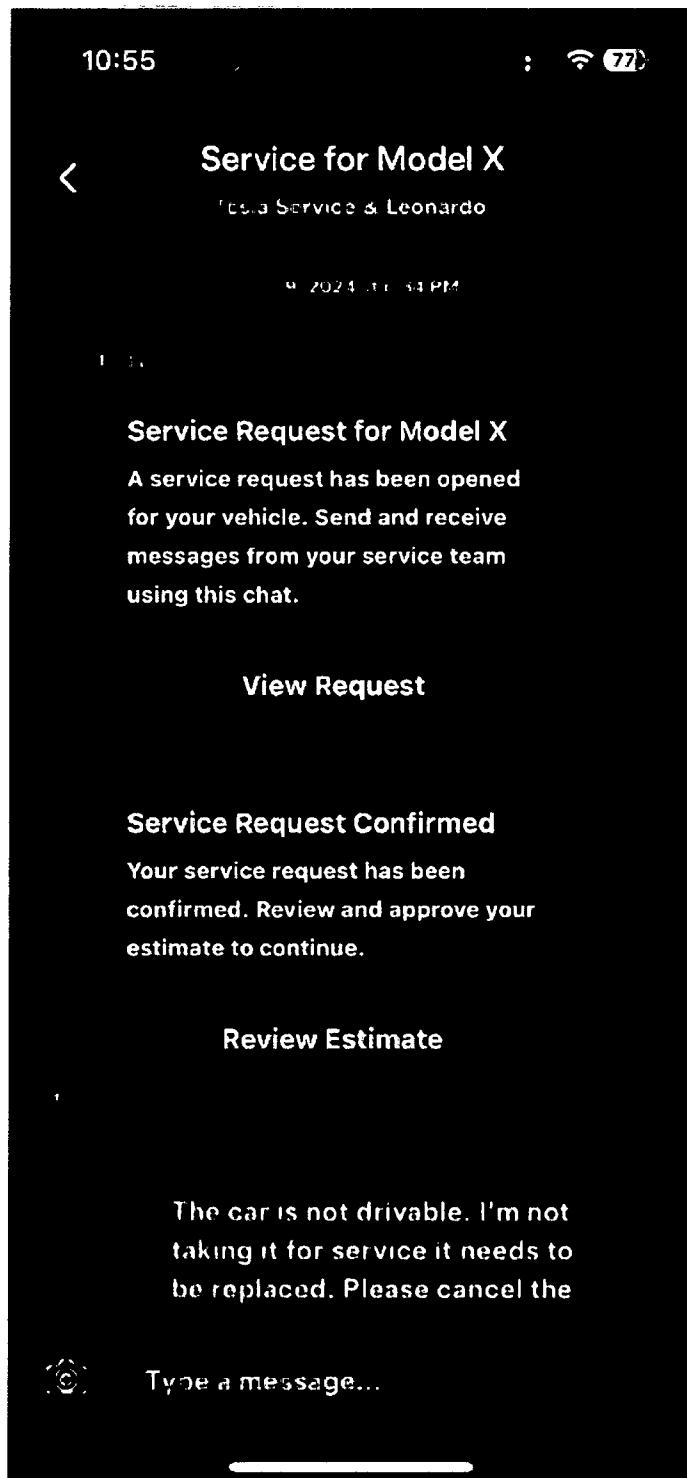
Seller Signs Tesla Florida Inc Date 07/09/2024 By X Tracy Jones Title President

LAW FORM NO. 553-FL-ARB-e (REV. 1/24)

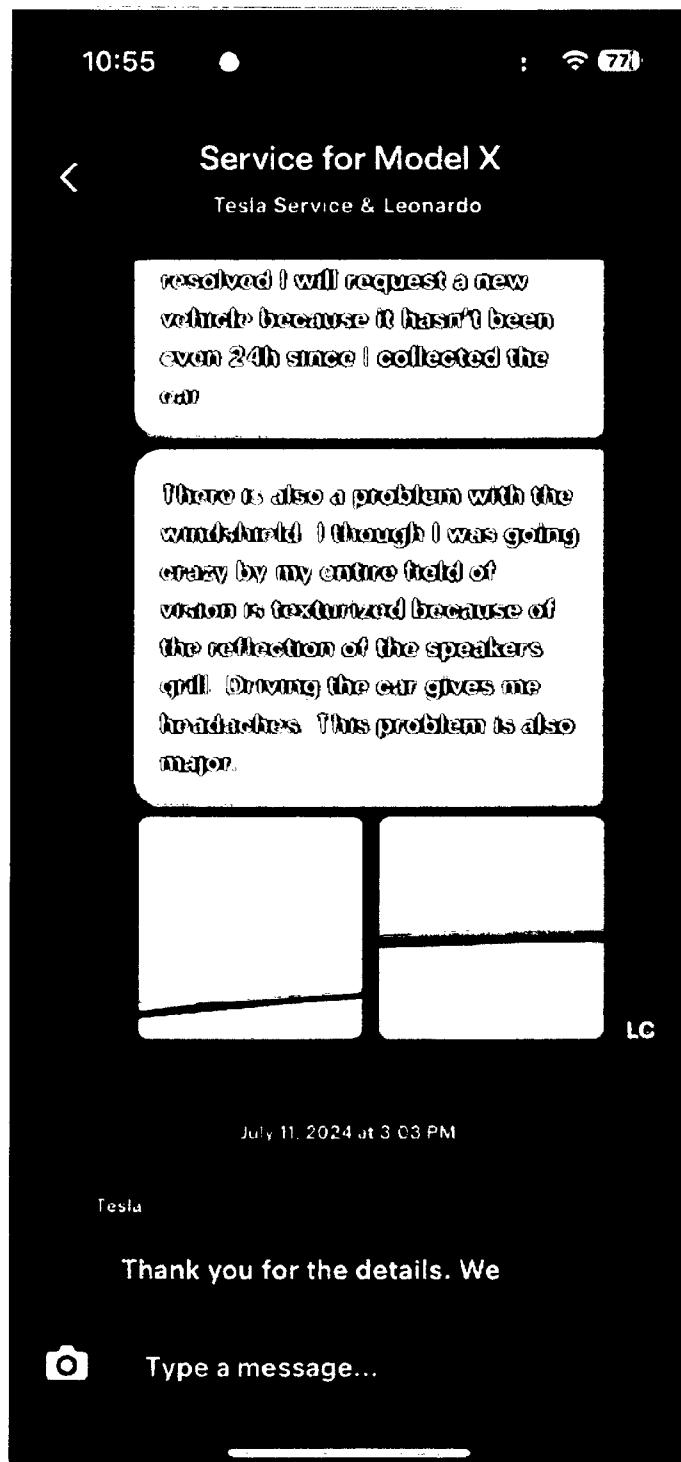
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THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO CONTENT OR
FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

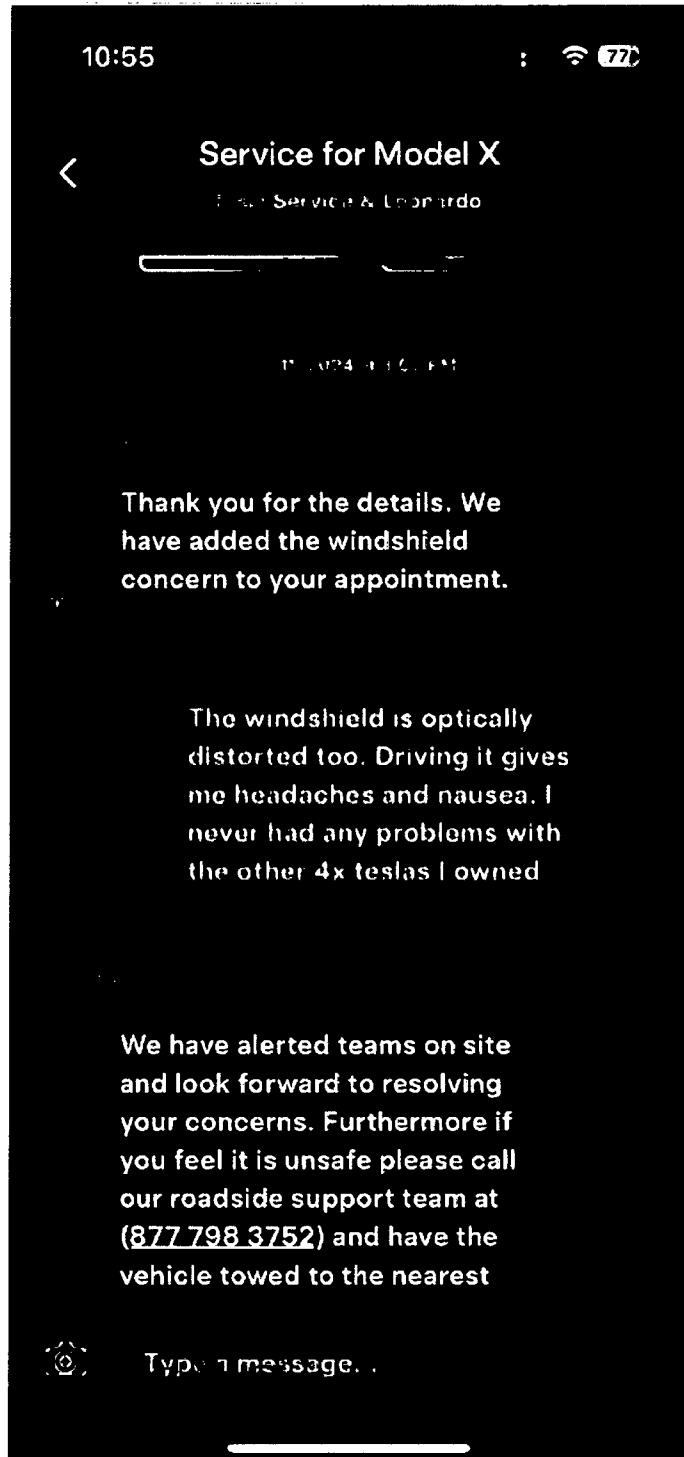
LAW 553-FL-ARB-e 1/24 v1 Page 6 of 6

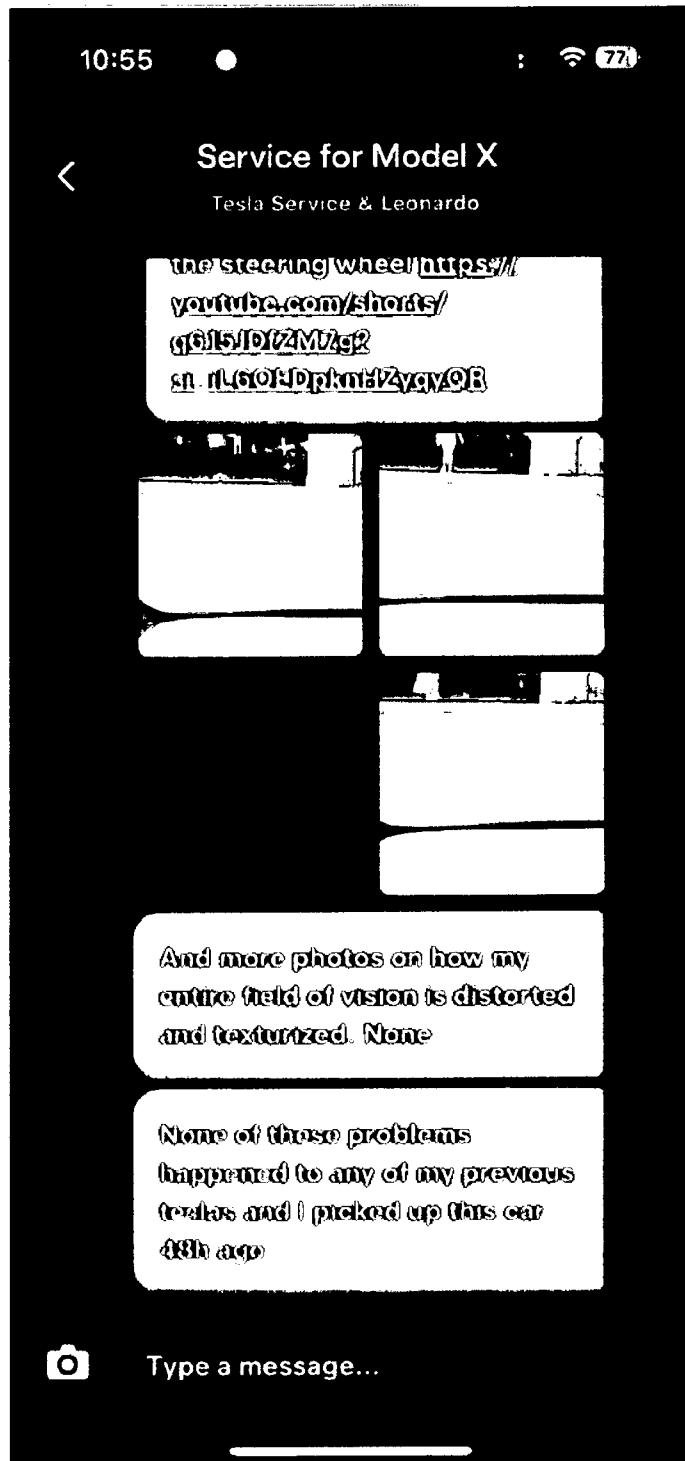
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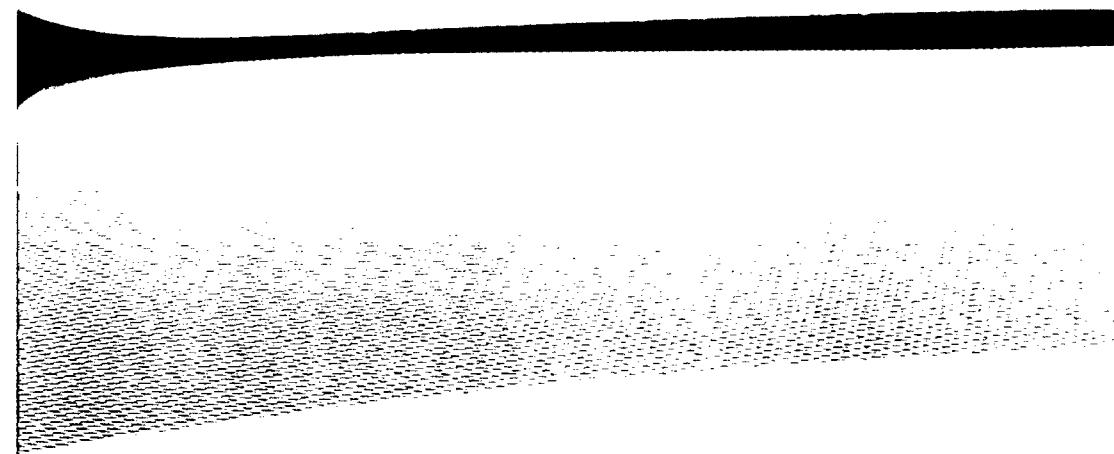


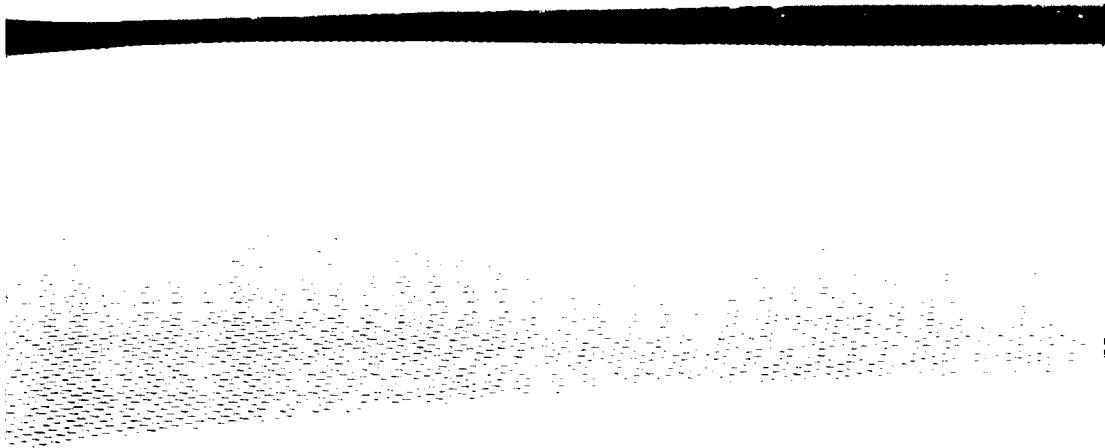
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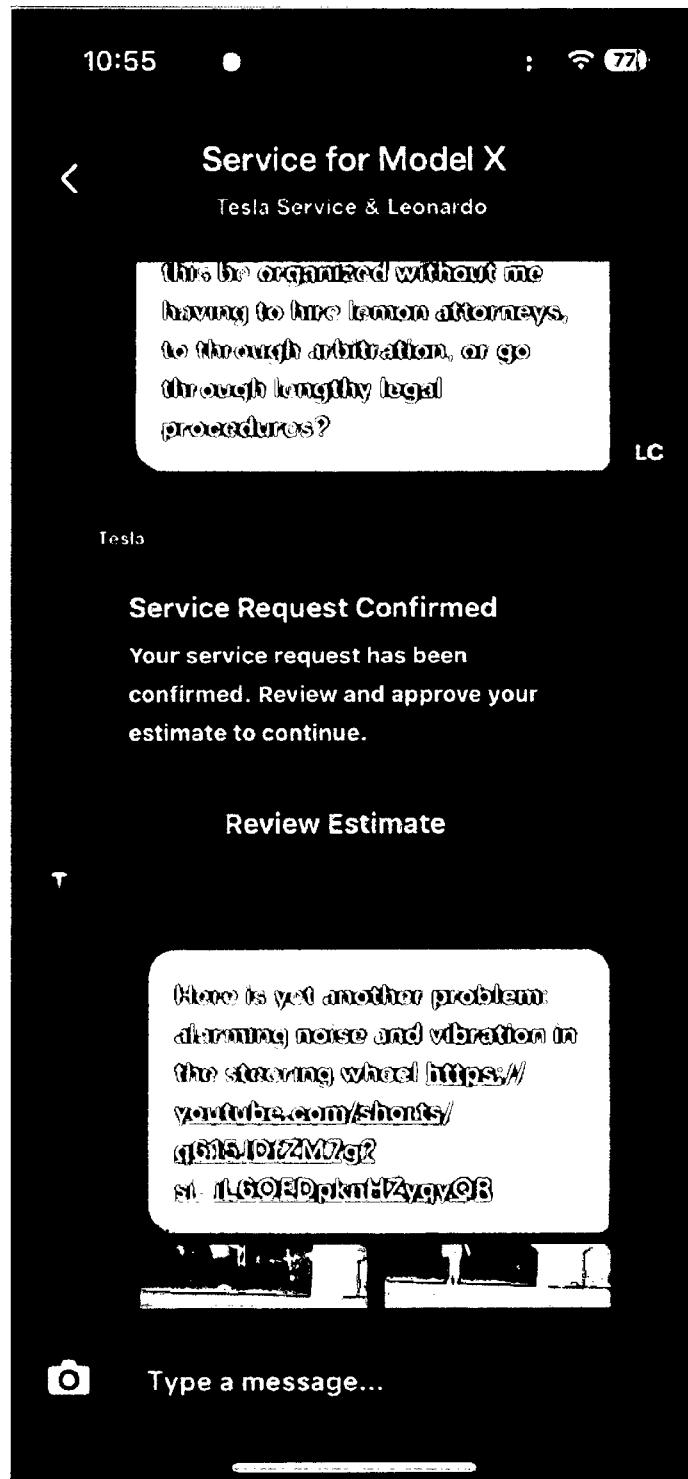






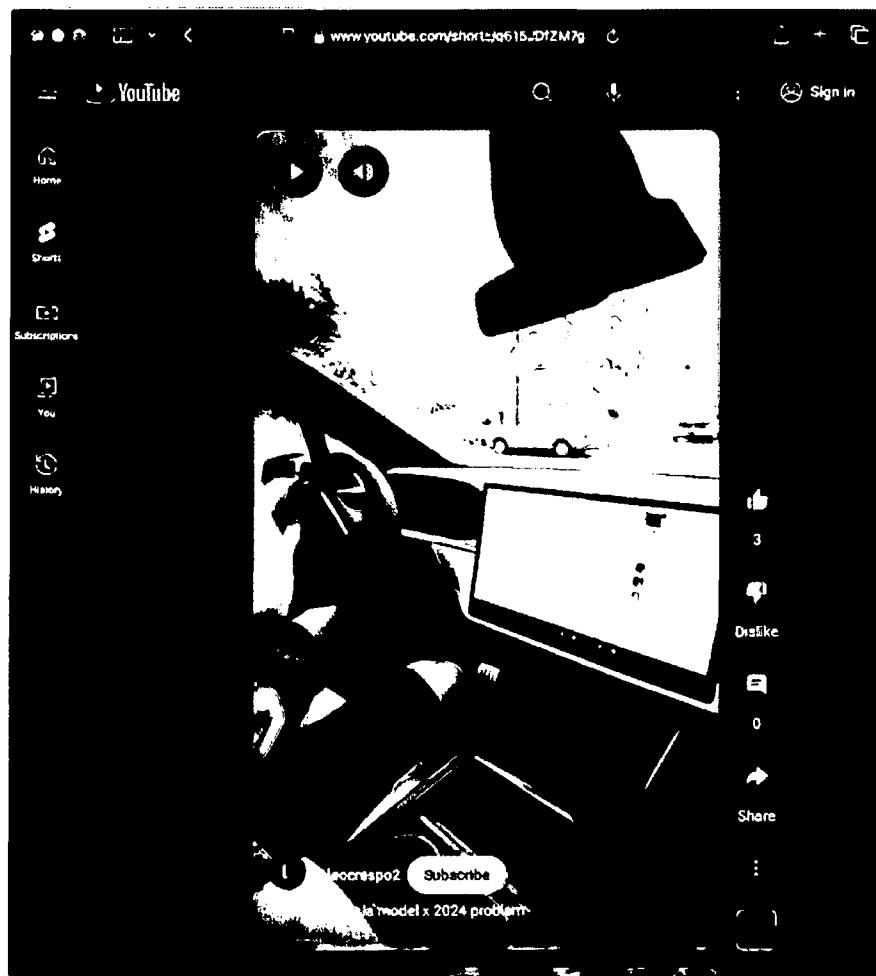


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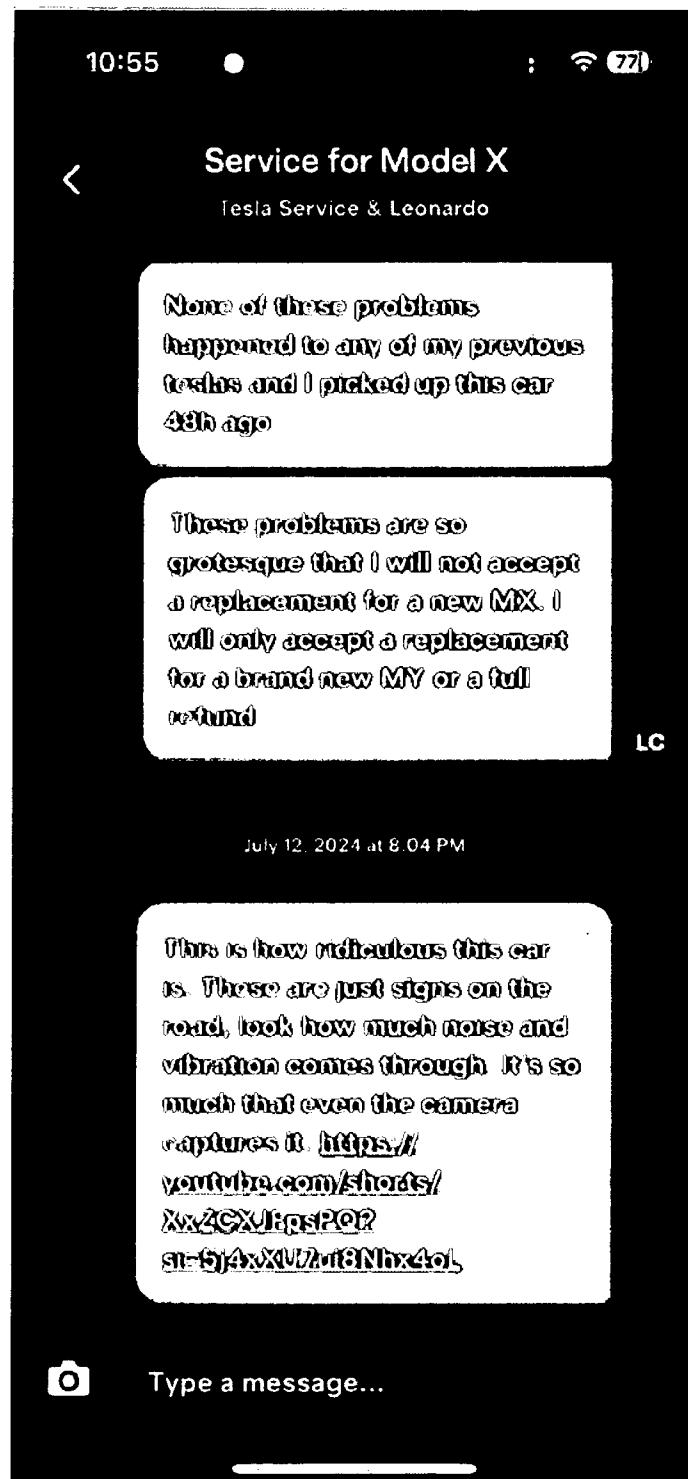


VIDEO

youtube.com/shorts/q615JDfZM7g



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VIDEO

www.youtube.com/shorts/XxZCXJFpsPQ



Filing # 207803548 E-Filed 09/27/2024 11:53:38 AM

From: Leonardo Crespo
13536 Bernoulli Way, Palm Beach Gardens FL 33418
leo@p6.com 6889

To: Tesla Florida
5544 Okeechobee Blvd, West Palm Beach, FL 33417
Attn: Service Center

July 13 2024

Dear Tesla,

I am writing to request a replacement for my recently purchased Tesla Model X, acquired three days ago. This was also requested via email, SMS, and the Tesla App. As a loyal Tesla customer for 7 years, this being the fifth Tesla I have owned, I am disappointed to report significant issues that have rendered the vehicle unsafe to drive.

As you can see by my purchase history, I have owned four Teslas before: a Model X, Model 3, and two Model Ys. I have never had a more negative experience than this purchase.

Safety and Usability Concerns:

1. Suspension and Shock Absorption Issues:

- **No shock absorption, no suspension.** The vehicle lacks proper suspension or shock absorption. Every road imperfection is excessively felt through the driver's seat and steering wheel, compromising driving comfort and safety. I was told this was an issue with the tires but it definitely isn't.
- **Driving Stability:** The excessive bumpiness and vibrations impair driving stability and control, increasing the risk of accidents, especially at higher speeds or in adverse weather conditions.
- **Driver Distraction and Fatigue:** Persistent vibrations cause distraction and physical strain, leading to increased driver fatigue and reduced reaction times.
- **Handling and Maneuverability:** Impaired handling due to constant tremors negatively impacts the vehicle's ability to avoid hazards, increasing collision risks.
- **Driver and Passenger Comfort:** The discomfort extends to passengers, making the vehicle impractical for longer trips or daily commutes, contrary to the expectations for a premium vehicle.

Video of the wobbling suspension with no shock absorption going over simple road signs:
<https://youtube.com/shorts/XxZCXJFpsPQ>
(sent to the Service Center via Tesla App)

Scan the QR code to watch the video



2. Windshield Reflection Issue:

- **Gross windshield visibility issues:** A severe and constant visual distraction occurs due to the reflection of the speaker grille on the windshield, creating a texturized field of vision that impairs visibility. Several photos were provided to the Service Center via the Tesla App.
- **Visual Impairment:** The reflection significantly distracts and impairs my ability to see the road clearly, posing a serious safety hazard.
Driving Comfort: The issue causes eye strain and fatigue over extended periods, reducing my ability to focus on driving and impacting the vehicle's overall usability.

Photos (sent to the Service Center via Tesla App)

3. Windshield Distortion Issue:

- Content viewed through the windshield appears distorted, causing nausea and headaches. This distortion affects a large area of the windshield, not just a specific spot, severely impacting visibility and comfort.
- **Visual Impairment:** The widespread distortion significantly distracts and impairs my ability to see the road clearly, increasing the risk of accidents.

4. Steering Wheel Creaking Sound and Vibration:

- The steering wheel emits a loud creaking noise when turned, with the crack felt through the steering wheel and the bottom of the car. This issue is more evident when maneuvering for parking but also occurs during turns.
- **Handling and Maneuverability:** The noise and vibration compromise the precision and ease of steering, especially during low-speed maneuvers, affecting the vehicle's handling and overall driving safety.

Video of the steering wheel cracking:
<https://www.youtube.com/shorts/q615JdfZM7g>
(sent to the Service Center via Tesla App)

Scan the QR code to watch the video



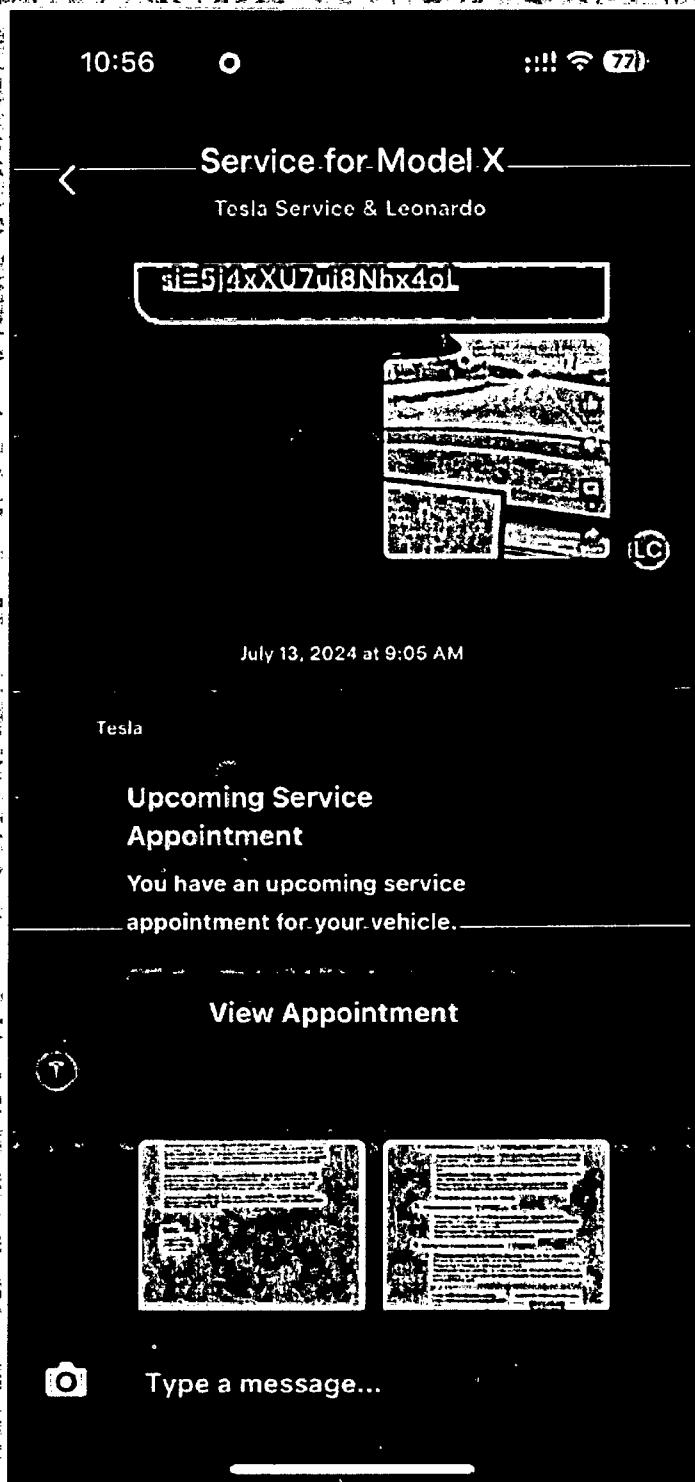
These issues constitute substantial defects (Windshield + Steering Wheel + Suspension + Shock absorption) that impair the use, value, and safety of the vehicle. Given my positive experiences with my previous four Teslas (a Model X, Model 3, and two Model Ys), I believe this is an isolated case of a poorly constructed vehicle, and I am willing to remain loyal and accept a replacement. However, given the atrocious quality of this car, I no longer believe the Model X is a viable option and **I will only accept a replacement for a Model Y because none of my previous Model Y's had any issues like this Model X does.**

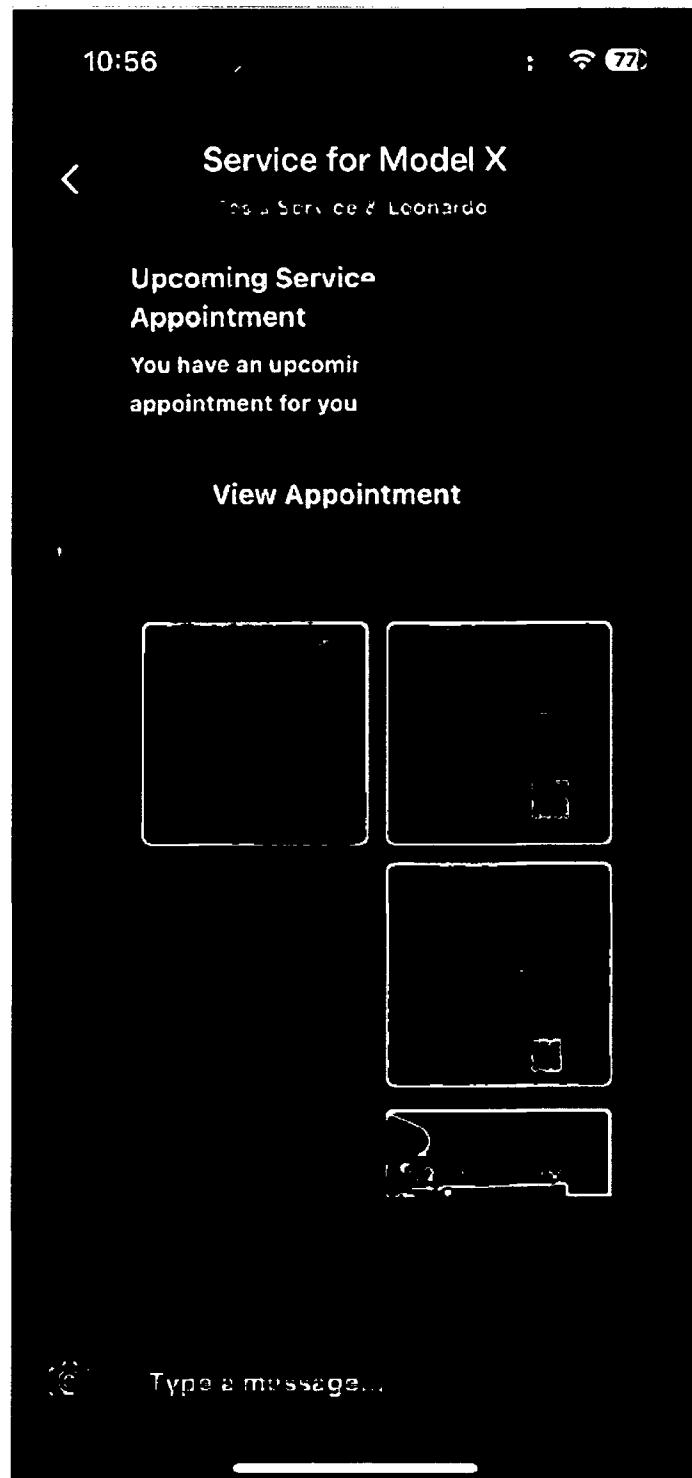
Due to the severe safety concerns, I have stopped driving the vehicle and dropped it today, which underscores the urgency of my request for a replacement or refund. I prefer to remain a loyal Tesla customer and request a smooth and uncomplicated replacement. I need a car for daily use, and I purchased this brand-new vehicle in good faith from Tesla, as I have done many times before.

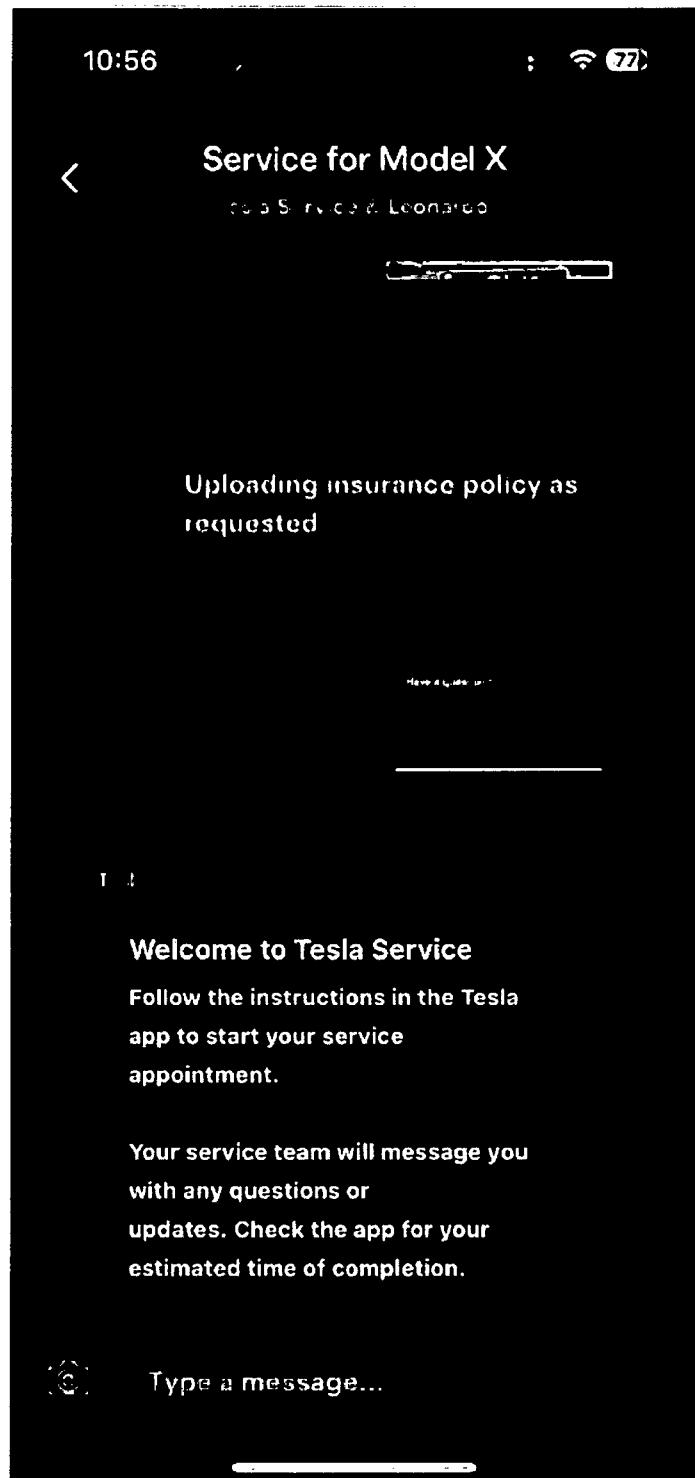
Thank you for your prompt attention to this issue. I look forward to your favorable response and resolution. I have dropped this letter along with the vehicle at the service center at 5544 Okeechobee Blvd, West Palm Beach, FL 33417

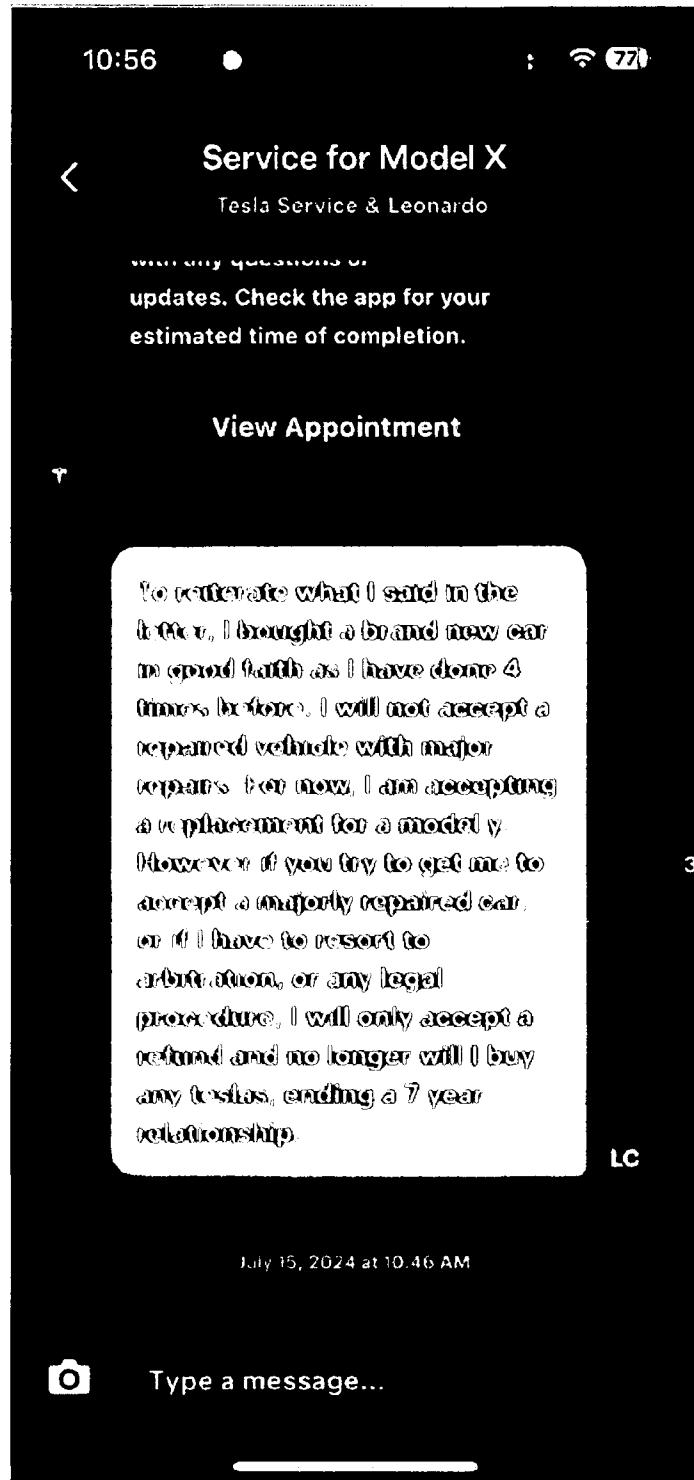
Sincerely,

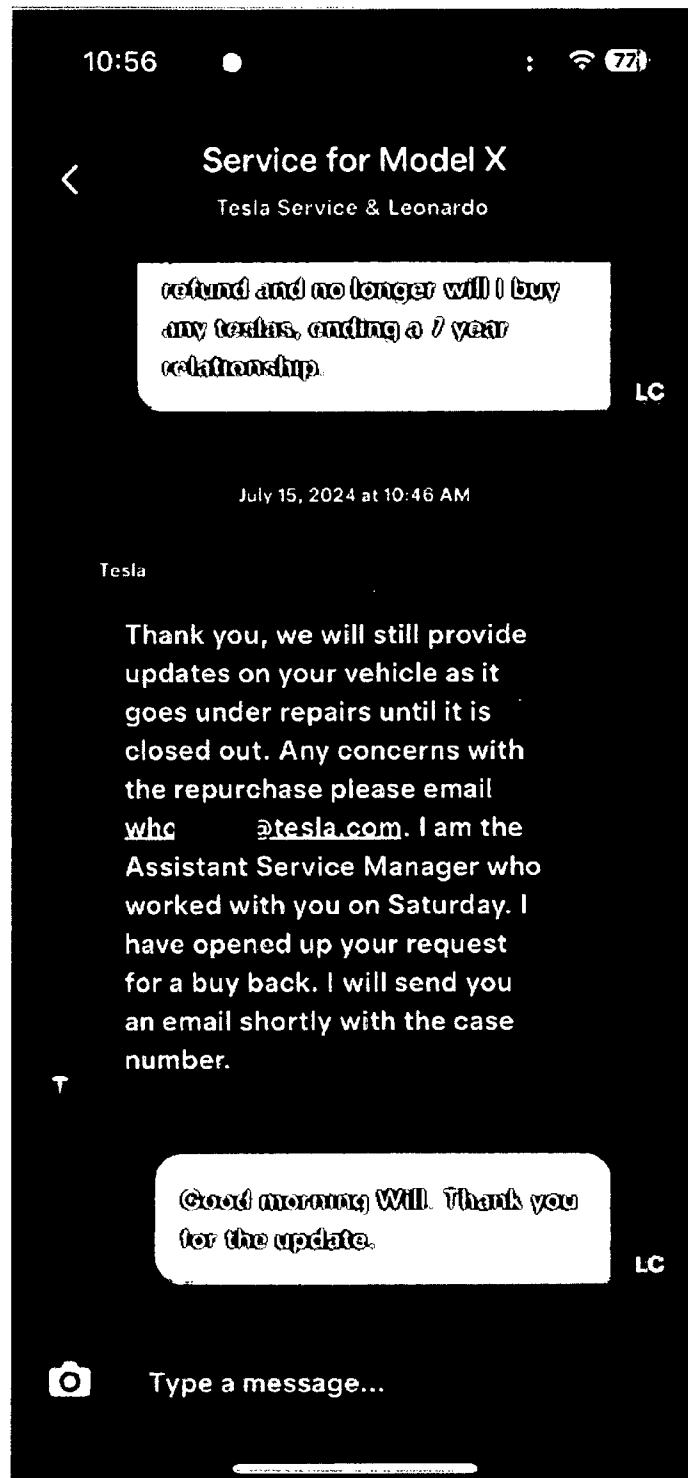
Leonardo Crespo
leo@eo.com
6889











Leonardo Crespo --- 7SAXCDE54RF446932 Model X

From: William Hoadley | who @tesla.com
To: leo@leocrespo.com | leo spo.com
Cc: William Hoadley | who @tesla.com, Steven Ortiz | ste @tesla.com

July 26 at 16:20

Afternoon Mr. Crespo

Tesla has reviewed your concern and your request for a vehicle repurchase.

Tesla respectfully declines your request.

After reviewing your concern and your vehicle's service history,

Tesla has made the determination that your vehicle is not a repurchase candidate.

Sincerely,

William Hoadley

Associate Service Manager

5544 Okeechobee Blvd, West Palm Beach Florida, 33417

T. 561.841. E. who @tesla.com

Filing # 207803548 E-Filed 09/27/2024 11:53:38 AM

Leonardo Crespo
13536 Bernoulli Way, Palm Beach Gardens, FL, 33418
leo po.com - 6889

To: Tesla Florida
5544 Okeechobee Blvd, West Palm Beach, FL 33417
Attn: Legal Department

July-27-2024

Notice of Revocation of Acceptance of Tesla Model X

Dear Tesla,

I am writing to formally notify you of my revocation of acceptance of the Tesla Model X, VIN 7SAXCDE54RF446932, which I purchased on July 9, 2024. Upon taking possession of the vehicle, I immediately discovered several significant defects that substantially impair the vehicle's value, safety, and usability. These defects include:

- Lack of shock absorption
- Lack of suspension
- Windshield distortions and texturizations
- Steering wheel issues

These defects were detected and reported on July 9, 10, and 11, 2024, immediately following the purchase. The severity and nature of these defects indicate a fundamental lack of quality control, and I do not feel confident that the vehicle is safe to drive.

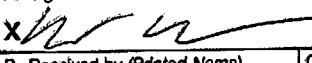
Given these substantial impairments and ongoing safety concerns, I hereby revoke my acceptance of the Tesla Model X under the Uniform Commercial Code (UCC) as adopted in Florida, specifically Section 672.608. This statute allows for revocation of acceptance when nonconformities substantially impair the value of the goods and the acceptance was reasonably induced by the difficulty of discovery before acceptance or by the seller's assurances.

The vehicle was left on July 13 at Tesla Service Center in West Palm Beach and I will not be retrieving it due to the safety concerns mentioned. I request that Tesla immediately process the return of the vehicle and provide a full refund of the purchase price, including all associated costs and fees.

Please contact me at 6889 or leo po.com with a prompt response to this notice to resolve this matter without the need for further legal action.

Sincerely,

Leonardo Crespo

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY																	
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Complete items 1, 2, and 3. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature </p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) Chelsea Winice</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																	
<p>1. Article Addressed to: Tesla Florida 5544 Okeechobee Blvd West Palm Beach, FL 33417</p> <p>9590 9402 7106 1251 7956 84</p> <p>2. Article Number (Transfer from service label) 020 3160 0001 6070 4522</p>		<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Collect on Delivery Restricted Delivery		<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																		
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™																		
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																		
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™																		
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery																		
<input type="checkbox"/> Collect on Delivery Restricted Delivery																			
<input type="checkbox"/> Insured Mail																			
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																			
<p>PS Form 3811, July 2020 PSN 7530-02-000-9053</p> <p>Domestic Return Receipt</p>																			

Filing # 207803548 E-Filed 09/27/2024 11:53:38 AM

TOWING NOTICE OF CLAIM OF LIEN AND PROPOSED SALE**TOWING OPERATOR:**

ALPINE TOWING INC D/B/A GALACTIC TOWING
 2500 E TAMARIND AVE
 WEST PALM BEACH, FL 33407
 561-899-0992

OTHER PARTIES WITH INTEREST IN VEHICLE:

VEHICLE OWNER MAILING 1: LEONARDO AUGUSTO R D C Q CRESPO
 13536 BERNOULLI WAY, PALM BEACH GARDENS, FL 33418

LIENHOLDER MAILING 1: TD BANK NA
 PO BOX 875, WILMINGTON, OH 45177-0675

INSURANCE COMPANY: PROGRESSIVE SELECT INS CO C/O SALVAGE
 DEPT.
 5920 LANDERBROOK DR, BOX L31A, MAYFIELD HEIGHTS, OH 44124

VEHICLE OWNER 1:

LEONARDO AUGUSTO R D C Q CRESPO
 8381 NW 68TH ST
 MIAMI, FL 33166-2663

YEAR 2024 MAKE TESL VIN or HIN 7SAXCDE54RF446932 LIC PLATE (If Known) RGXH74

2500 E TAMARIND AVE, WEST PALM BEACH, FL 33407
 PHYSICAL STORAGE LOCATION OF TOWED VEHICLE OR VESSEL

EACH OF YOU ARE HEREBY NOTIFIED THAT THE ABOVE DESCRIBED VEHICLE OR VESSEL WAS TOWED AT THE REQUEST OF Kevin Vo- sr advisor at tesla dealership ON 08/13/2024 AND THE ABOVE NAMED TOWING-STORAGE OPERATOR IS IN POSSESSION OF AND CLAIMS A LIEN, AS PROVIDED IN SUBSECTION (2)(b) OF S. 713.78 F.S., ON THE ABOVE DESCRIBED MOTOR VEHICLE OR VESSEL FOR TOWING AND STORAGE CHARGES ACCUMULATED IN THE AMOUNT OF \$442.00 (TOTAL AMOUNT DUE).

ITEMIZED STATEMENT OF ACCRUED CHARGES (Due as of the date this notice was mailed):

OWNING CHARGES: \$142.00 RECOVERY CHARGES: \$0.00 STORAGE CHARGES: \$58.00 FOR 2 DAYS, AT \$29.00 PER DAY.
 EN RELEASE ADMINISTRATIVE FEE (MAY NOT EXCEED \$250.00): \$0.00 COUNTY/MUNICIPALITY ADMINISTRATIVE FEE: \$242.00
 WHEN PERMITTED, PURSUANT TO S. 713.78, STORAGE CHARGES MAY BE DUE OR CONTINUE TO ACCUMULATE AT THE RATE OF \$29.00 PER DAY.

HE LIEN CLAIMED BY THE ABOVE-NAMED TOWING-STORAGE OPERATOR IS SUBJECT TO ENFORCEMENT PURSUANT TO S. 713.78 F.S., AND UNLESS SAID VEHICLE, OR VESSEL IS REDEEMED FROM SAID TOWING-STORAGE OPERATOR BY PAYMENT AS ALLOWED BY LAW, THE ABOVE-DESCRIBED VEHICLE OR VESSEL MAY BE SOLD TO SATISFY THE LIEN. IF THE VEHICLE OR VESSEL IS NOT REDEEMED AND THAT VEHICLE OR VESSEL REMAINS UNCLAIMED, OR FOR WHICH THE CHARGES FOR RECOVERY, TOWING, OR STORAGE SERVICES REMAIN UNPAID, MAY BE SOLD FREE OF ALL PRIOR LIENS AFTER 35 DAYS IF THE VEHICLE OR VESSEL IS AN OLDER MODEL VEHICLE (MORE THAN 3 MODEL YEARS OLD) AND AFTER 57 DAYS IF THE VEHICLE OR VESSEL IS A NEWER MODEL VEHICLE (3 MODEL YEARS OLD OR LESS). THE OWNER, LIENHOLDER, OR INSURANCE COMPANY, IF ANY, HAS THE RIGHT TO A HEARING AS SET FORTH IN SUBSECTION (5) OF S. 713.78 FS, THE ABOVE DESIGNATED TOWING-STORAGE OPERATOR PROPOSES TO SELL THE VEHICLE OR VESSEL AS FOLLOWS:

PUBLIC SALE TO BE HELD AT 3500 N.W. 67TH STREET, MIAMI, FL 33147
 COMMENCING AT 9:00 AM ON THE 16TH DAY OF OCTOBER, 2024

STATEMENT OF OWNERS RIGHTS

NOTICE THAT THE VEHICLE OR VESSEL OWNER, LIENHOLDER, OR INSURANCE COMPANY INSURING THE VEHICLE OR VESSEL, MAY INITIATE JUDICIAL PROCEEDINGS IN THE COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE VEHICLE OR VESSEL IS STORED TO DETERMINE WHETHER THE VEHICLE OR VESSEL WAS WRONGFULLY TAKEN OR WITHHELD OR WHETHER FEES WERE WRONGFULLY CHARGED.

NOTICE THAT, REGARDLESS OF WHETHER JUDICIAL PROCEEDINGS HAVE BEEN INITIATED, AT ANY TIME BEFORE THE SALE OF THE VEHICLE OR VESSEL, THE VEHICLE OR VESSEL OWNER, LIENHOLDER, OR INSURANCE COMPANY MAY HAVE THEIR VEHICLE OR VESSEL RELEASED UPON POSTING WITH THE COURT IN THE COUNTY IN WHICH THE VEHICLE OR VESSEL IS HELD A CASH OR SURETY BOND OR OTHER ADEQUATE SECURITY EQUAL TO THE AMOUNT OF THE ACCRUED CHARGES SET FORTH IN THIS NOTICE OF LIEN, PLUS ACCRUED STORAGE CHARGES AT THE TIME OF RELEASE OF THE VEHICLE OR VESSEL IF ANY, TO ENSURE THE PAYMENT OF SUCH CHARGES IN THE EVENT A COURT DETERMINES THAT THE VEHICLE OR VESSEL WAS NOT WRONGFULLY TAKEN OR WITHHELD OR FEES WERE NOT WRONGFULLY CHARGED.

NOTICE THAT THE VEHICLE OR VESSEL OWNER, LIENHOLDER, OR INSURANCE COMPANY MAY NOT BE REQUIRED TO INITIATE JUDICIAL PROCEEDINGS IN ORDER TO POST THE BOND IN THE REGISTRY OF THE COURT AND NOT REQUIRED TO USE A PARTICULAR FORM FOR POSTING THE BOND UNLESS THE CLERK PROVIDES SUCH FORM.

NOTICE THAT ANY PROCEEDS FROM THE SALE OF THE VEHICLE OR VESSEL REMAINING AFTER PAYMENT OF THE AMOUNT DUE FOR RESONABLE TOWING AND STORAGE CHARGES AND COST OF THE SALE TO THE TOWING-STORAGE OPERATOR MUST BE DEPOSITED WITH THE CLERK OF THE CIRCUIT COURT FOR DISPOSITION IF CLAIMED BY THE OWNER OR LIENHOLDER AS PROVIDED IN SUBSECTION (6) OF S. 713.78, F.S.

NOTES: THE 35- OR 57-DAY TIME FRAME THAT THE MOTOR VEHICLE OR VESSEL MUST BE HELD AFTER THE TOW DATE SHOULD NOT INCLUDE THE DAY OF TOWING AND STORAGE, OR THE DATE OF THE SALE. FAILURE OF THE TOWING-STORAGE OPERATOR TO MAKE GOOD FAITH EFFORTS TO COMPLY WITH NOTICE REQUIREMENTS PRECLUDES CHARGING ANY STORAGE. FAILURE TO PROVIDE THE NOTICE IN ACCORDANCE WITH S. 713.78(4), INCLUDING THE REQUIREMENT TO SEND THE NOTICES WITHIN 5 DAYS NOT INCLUDING SATURDAY, SUNDAY, OR FEDERAL HOLIDAYS, LIMITS THE STORAGE CHARGES TO ONLY 5 DAYS. NO NOTICE OF LIEN MAY BE SENT LESS THAN 30 DAYS BEFORE THE SALE ON A VEHICLE OR VESSEL THAT IS AN OLDER MODEL VEHICLE OR LESS THAN S2 DAYS ON A VEHICLE OR VESSEL THAT IS A NEWER MODEL VEHICLE. THE TOWING-STORAGE OPERATOR MUST PUBLISH A NOTICE OF SALE AT LEAST 20 DAYS BEFORE THE DATE OF SALE ON THE PUBLICLY AVAILABLE WEBSITE MAINTAINED BY AN APPROVED THIRD-PARTY SERVICE.

DATED THIS 14TH DAY OF AUGUST, 2024

TOWING COMPANY OR TRANSPORT COMPANY

FLAVIA N GARCIA

(SIGNATURE OF LIENOR OR AUTHORIZED AGENT'S NAME)

ALPINE311526-WPB

Filing # 207803548 E-Filed 09/27/2024 11:53:38 AM



Leonardo Crespo <leo@po.com>

TD Auto Finance Payment Processed

DoNotReply@billmatrix.com <DoNotReply@billmatrix.com>
To: *LEO PO.COM* <LEO@PO.COM>

Thu, Sep 5, 2024 at 12:15 PM

Dear TD Auto Finance Customer,

Your one-time payment made on 09/05/2024 11:44:25 AM ET of \$1591.00 was successfully processed for account ending in ████.

Here are the details of the payment:

Confirmation Number: 1987526880
Payment Amount: \$1591.00

The payment was funded from the following payment account:

Card Number ending in: ████

Please save this confirmation for future reference.

If you have any questions regarding this transaction, please contact TD Auto Finance toll-free at 1-800-556-8172.

Thank you,
TD Auto Finance

Please do not reply to this message. Replies to this address are routed to an unmonitored mail box.

TD Auto Finance
27777 Inkster Rd.
Farmington Hills, MI 48334

TD Auto Finance is a division of TD Bank, N.A.

© The TD logo and other trademarks are the property of the Toronto-Dominion Bank or its subsidiaries.

TD Auto Finance Find a Dealer About us

Principal Balance **\$68,003.44**

2024 TESLA MODEL X (X0323)

Amount Due **\$1,163.15**
Payment Due Date **10/23/2024**

Activity **Date's** **Statements & Documents**

From	To
Vehicle Details	Next Payment

Date	Amount	Payment Type	Status	Actions
+ Sep 23, 2024	\$1,163.15	PAYMENT	Completed	
+ Sep 5, 2024	\$1,591.00	PAYMENT	Completed	
Sep 5, 2024	-\$1,591.00	PAYMENT ADJUSTMENT	Completed	
Sep 5, 2024	\$1,591.00	FEES PAYMENT	Completed	
Aug 30, 2024	-\$1,591.00	FEES ASSESSMENT	Completed	
+ Aug 19, 2024	\$1,163.15	PAYMENT	Completed	

Pay your bill your way
When it comes to paying your auto account, you have options.

- One-time payments - Schedule a payment for your amount due or principal up to a month away from today's date
- Recurring payments - Set up a series of payments that repeat bi-weekly (the same weekday every two weeks) or monthly (the same day of every month)

Status type
Easily track the status of past, current, and future transactions.

- Pending - Payments waiting to be processed within the next 30 days.
- Completed - All transactions that have been posted to your account.
- Canceled - Any payment that you canceled or was unable to be processed and therefore unposted.

Need to talk to us directly? [Contact us](#) >

Filing # 207803548 E-Filed 09/27/2024 11:53:38 AM



Tesla Florida
 5544 Okeechobee Boulevard
 West Palm Beach, FL, US 33417-4436
 Ph.: 561.841.9281

Paid

Invoice

SERVICE DEPARTMENT HOURS
 Mon-Fri 8am-6pm
 Saturday-Sunday Sat 8am-4pm, Sun Appt only

M.V.R.T.# MV102734
 E.P.A.ID# FLR000208702

Invoice date	Invoice number
19-Jul-2024	3000S0010615155
Due Date	
19-Jul-2024	
Date/Time Received	Date/Time Promised
13-Jul-2024 15:46:52	20-Jul-2024 17:15:54
Odometer In	Odometer Out
258 Miles	267 Miles
Ready Date	
19-Jul-2024 18:10:41	
Service Advisor	Intended Method of Payment
William Hoadley	u25A1 Cash u25A1 Credit card u25A1 Check u25A1 No charge

Bill To
Leonardo Crespo

Mobile Phone		Vehicle Identification Number	
		7SAXCDE54RF446932	
Year	Model	License Plate Number	Colour
2024	MODEL X		Ultra Red Paint

Job Number	Description Of Work	Amount (USD)				
1	<p>Concern: Customer states: Every road imperfection is excessively felt through the drivers seat and steering wheel . also vibration feel throughout vehicle Any speed</p> <p>Repair Notes: Diagnosed and Replaced LH Front Halfshaft Assembly. Replaced RH Front Halfshaft Assembly. Vibration caused by damage front halfshafts, both front halfshafts replaced</p> <p>Correction: Front Suspension Noise Diagnosis</p> <p>Correction: Rebalance 4 Tires (Road Force)</p> <p style="text-align: right;">Pay Type: Rectification</p>	0.00				
2	<p>Concern: Customer states: Every road imperfection is excessively felt through the drivers seat and steering wheel . also vibration feel throughout vehicle Any speed</p> <p>Repair Notes: Diagnosed and Replaced LH Front Halfshaft Assembly. Replaced RH Front Halfshaft Assembly. Vibration caused by damage front halfshafts, both front halfshafts replaced</p> <p>Correction: Halfshaft - Front Drive Unit - LH (Remove & Replace) - Remove and Replace</p> <p>Parts Replaced or Added</p> <table> <thead> <tr> <th>Part</th> <th>Quantity</th> </tr> </thead> <tbody> <tr> <td>HALFSHAFT ASSY, FR, LEFT HAND(1420113-</td> <td>1.00</td> </tr> </tbody> </table>	Part	Quantity	HALFSHAFT ASSY, FR, LEFT HAND(1420113-	1.00	0.00
Part	Quantity					
HALFSHAFT ASSY, FR, LEFT HAND(1420113-	1.00					

	<p>00-B) NUT HF M24X1.5 [8.8] 1.00 ZNFL-W(1020297-00-A) WASHER SAFETY 2.00 M24X39(1020296-00-B)</p> <p>Correction: Halfshaft - Front Drive Unit - RH (Remove & Replace) - Remove and Replace</p> <p>Parts Replaced or Added</p> <table> <thead> <tr> <th>Part</th><th>Quantity</th></tr> </thead> <tbody> <tr> <td>HALFSHAFT ASSY, FR, RIGHT HAND(1420119- 00-B)</td><td>1.00</td></tr> <tr> <td>NUT HF M24X1.5 [8.8] ZNFL-W(1020297-00-A)</td><td>1.00</td></tr> <tr> <td>WASHER SAFETY M24X39(1020296-00-B)</td><td>1.00</td></tr> </tbody> </table> <p>Pay Type: Basic Vehicle Limited Warranty</p>	Part	Quantity	HALFSHAFT ASSY, FR, RIGHT HAND(1420119- 00-B)	1.00	NUT HF M24X1.5 [8.8] ZNFL-W(1020297-00-A)	1.00	WASHER SAFETY M24X39(1020296-00-B)	1.00	
Part	Quantity									
HALFSHAFT ASSY, FR, RIGHT HAND(1420119- 00-B)	1.00									
NUT HF M24X1.5 [8.8] ZNFL-W(1020297-00-A)	1.00									
WASHER SAFETY M24X39(1020296-00-B)	1.00									
3	<p>Concern: Check tire pressure and condition</p> <p>Repair Notes: Automated Tire Pressure Check (No Adjustment Needed).</p> <p>Correction: Automated Tire Pressure Check (No Adjustment Needed)</p> <p>Pay Type: Goodwill - Service</p>	0.00								
4	<p>Concern: Customer states: There is also a problem with the windshield. The entire field of vision is textured because of the reflection of the speakers grill. Glass looks textured and distorted. Driving the car gives me headaches. This problem is also major.</p> <p>Repair Notes: Replaced Windshield (Vehicles with 2nd Generation or Later Autopilot Hardware).</p> <p>Correction: Windshield (Remove & Replace) - Remove and Replace</p> <p>Parts Replaced or Added</p> <table> <thead> <tr> <th>Part</th><th>Quantity</th></tr> </thead> <tbody> <tr> <td>WINDSHIELD ASSEMBLY(1810156- 99-E)</td><td>1.00</td></tr> <tr> <td>BETAPRIME - 10 MILILITER BOTTLE(1059658-00-A)</td><td>1.00</td></tr> <tr> <td>SEALANT - BETASEAL EXPRESS - 400 MILILITER BOTTLE(1048645-00-A)</td><td>2.00</td></tr> </tbody> </table> <p>Pay Type: Rectification</p>	Part	Quantity	WINDSHIELD ASSEMBLY(1810156- 99-E)	1.00	BETAPRIME - 10 MILILITER BOTTLE(1059658-00-A)	1.00	SEALANT - BETASEAL EXPRESS - 400 MILILITER BOTTLE(1048645-00-A)	2.00	0.00
Part	Quantity									
WINDSHIELD ASSEMBLY(1810156- 99-E)	1.00									
BETAPRIME - 10 MILILITER BOTTLE(1059658-00-A)	1.00									
SEALANT - BETASEAL EXPRESS - 400 MILILITER BOTTLE(1048645-00-A)	2.00									

5	<p>Concern: Customer states when turning the steering wheel left and right hear a noise creaking noise from the steering wheel down to the accelerator</p> <p>Repair Notes: Metal plate under front aeroshield removed, and cleaned. Foam tape installed between metal parts</p> <p>Correction: Front Suspension Noise Diagnosis</p> <p>Correction: Perform Post-Repair Validation Test Drive</p> <p style="text-align: right;">Pay Type: Rectification</p>	0.00												
6	<p>Concern: Customer provided keys placed in the vehicle glove box</p> <p>Repair Notes: .</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;"></th> <th style="width: 15%; text-align: center;">Correction: NO LABOR PERFORMED</th> <th style="width: 15%; text-align: center;">Labor Hours</th> <th style="width: 15%; text-align: center;">Price</th> <th style="width: 15%; text-align: center;">Adjustment</th> <th style="width: 15%; text-align: center;">Subtotal</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td style="text-align: center;">0.00</td> <td style="text-align: center;">0.00</td> <td style="text-align: center;">0.00</td> <td style="text-align: center;">0.00</td> </tr> </tbody> </table> <p style="text-align: right;">Pay Type: Customer Pay</p> <p>Total Parts Amount 0.00 Total Labor Amount 0.00 Labor Hours 0.00</p>		Correction: NO LABOR PERFORMED	Labor Hours	Price	Adjustment	Subtotal			0.00	0.00	0.00	0.00	0.00
	Correction: NO LABOR PERFORMED	Labor Hours	Price	Adjustment	Subtotal									
		0.00	0.00	0.00	0.00									

Service Center hourly rate: USD 305

Notes: To assess your vehicle's Tire Wear and Condition, please see the Tire Care and Maintenance section from the digital Owner's Manual in your car.

All parts are new unless otherwise specified.

Accepted Payment Methods: Major Credit Cards (Visa, Mastercard, AMEX, etc.), Debit Card, Cashier's Check

You agree that: You are entitled to a price estimate for the repairs you have authorized. The repair price may be less than the estimate but shall not exceed (1) any price limited estimate or (2) any parts and labor estimate by more than 10%. Additional repairs may not be performed without your consent. This estimated price for authorized repairs will be honored if your vehicle is delivered to Tesla's facility within the time period agreed to by you and Tesla. You may waive your right to a written estimate and require that you be notified if the price exceeds an amount you have specified. Tesla is not responsible for any personal items left in your vehicle; Tesla and its employees may access and operate your vehicle including on streets, highways, or public roadways for the sole purpose of testing and/or inspection of repairs; Tesla may update your vehicle's software in the course of a repair or as part of the standard vehicle maintenance process per your owner's manual and New Vehicle Limited Warranty; Tesla and its employees may access, download and use the information stored on your vehicle's data recorder to service and diagnose issues with your vehicle, and Tesla may store and aggregate such data for its own purposes; an express mechanic's lien is hereby acknowledged on your vehicle to secure the amount of repairs, storage and other applicable fees; the vehicle owner's insurance provides exclusive coverage for the vehicle while it is in Tesla's possession; and you may be charged storage fees of \$35/day from the fourth working day after you are notified that repairs on your vehicle are complete and that the vehicle is ready for pick up.

Total Parts (USD)	0.00
Total Labor (USD)	0.00
Discount	0.00
Subtotal (USD)	0.00
Tax	0.00
Total Amount (USD)	0.00
Amount Due From Customer (USD)	0.00
Paid by Customer (USD)	0.00

Tesla disclaims all express or implied warranties with respect to any repairs or products used in repairs, except as may be set forth in your Tesla-issued New or Used Vehicle Limited Warranty, Tesla Parts, Body, and Paint Repair Limited Warranty or other extended service

agreement. Tesla is not responsible for repairs not performed by, or components not installed by, Tesla. Any parts (including tires/wheels) removed or replaced by Tesla during vehicle service will become the property of Tesla. However, at the time you authorize repairs, you may request to receive (subject to any applicable core charge, which you agree to pay) or inspect replaced parts (excluding inflatable restraint system components), except body shop repair parts and parts required to be returned to the manufacturer or a third party under a warranty, trade-in or exchange agreement, which will only be presented to you for examination and not returned.

I authorize the repair work, including parts, materials and labor, on my vehicle to be done pursuant to the terms and conditions as set forth in this service agreement document.

Signature:

Date:

FullName:

PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW AND SIGN:

I UNDERSTAND THAT UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE IF MY FINAL BILL WILL EXCEED \$100.

I REQUEST A WRITTEN ESTIMATE.

I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE REPAIR COSTS DO NOT EXCEED \$_____. THE SHOP MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

I DO NOT REQUEST A WRITTEN ESTIMATE.

SIGNED: _____ DATE: _____

You further agree and acknowledge that:

- You have the right to inspect your vehicle on Tesla premises prior to payment.
- Tesla is not responsible for loss or damage to the vehicle or any articles left in the vehicle in case of fire, theft, hail, wind, or any other causes beyond its control;
- Tesla personnel will turn off any photo or video capturing devices, such as dashboard cameras, once they receive the vehicle in preparation for service and your vehicle's Tesla dash cam will be enabled when you pick up your Tesla from this Service visit;
- Labor charges are not based solely on actual service personnel's time but are aggregate prices for specific services or repairs, which may include flat rates based on industry manuals and vehicle condition;
- Waste storage and disposal fees are charged separately when applicable to specific services or repairs, and represent costs and profits to Tesla which are calculated based on average annualized costs across Tesla service facilities;
- Items purchased over the counter or online directly from Tesla may be returned within 30 days with a proof of purchase and must be in their original and uninstalled condition with factory labeling attached and in factory packaging (if supplied);
- Tesla-branded parts purchased directly from Tesla over-the-counter, online or purchased and installed by Tesla Service are covered under the Tesla Parts, Body, and Paint Repair Limited Warranty for a period of 12 months subject to the applicable terms, conditions and exclusions and available at <https://www.tesla.com/support/vehicle-warranty>;
- All charges for repairs, including labor, parts and materials furnished, are due and payable simultaneously with the return of your vehicle or prior to return upon the expiration of three (3) working days after notice has been sent by Tesla that the vehicle is ready;
- If applicable, you have the right to choose the licensed repair shop where the damage to your vehicle will be repaired;
- All crash parts supplied meet the standards used in manufacturing the original equipment replaced;
- If any repair, storage and other applicable fees remain unpaid for thirty (30) days after a request for payment, Tesla may pursue collection and you will be responsible for paying all reasonable attorney's fees and costs for such collection;
- If provided a loaner or rental vehicle, the vehicle must be returned within 24 hours of such notification or a daily usage rate of up to \$100 USD and applicable fees will be charged until the return of such loaner vehicle;
- The repair work may not be completed prior to the date and time noted under Date/Time Promised and Tesla may adjust the estimated completion date upon notification to you and is not responsible for any delays caused by the unavailability of parts or parts shipments; and
- Tesla (and any of its subsidiaries) may contact you via emails, calls, SMS or other messages including through the Tesla app (collectively, "messages") to obtain authorization and provide updates regarding this Service visit and your vehicle. Standard SMS message and data rates may apply. You can withdraw your consent to receive automated SMS messages at any time by replying "STOP" or providing written notification to Tesla's customer representative.

BILLING & PAYMENT OPTIONS

Paperless Statement: Go Green! Sign up for Paperless Statements at TDAutoFinance.com and get e-mail reminders when your new statements are ready to view.

Online Payments: We make it easy with so many ways to pay! Explore online payment options like one-time, recurring, or principal only payments at TDAutoFinance.com

Automatic Payments: A convenient way to pay! Have payments automatically debited from your checking account every month on your due date.

Pay by Mail: Mail a check or money order with a payment coupon in the envelope included in your monthly billing statement. While your payment may be processed the same day it is received, please allow up to 7-10 business days for receipt of funds and processing of your payment.

Pay by Phone: To make a payment over the phone, call us at 1-800-556-8172.

REGISTER FOR ONLINE ACCESS AT**TDAUTOFINANCE.COM**

- Make payments on your account and view payment history
- Enroll in Paperless Statements to receive email alerts when your statement is ready to view
- Update your address and contact information
- Request a payoff quote and schedule your payment
- Automatic Payment enrollment
- Contact Us using the Secure Message Center to safely and securely ask questions

IMPORTANT LEGAL DISCLOSURES

Check Processing: When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check. When we process your check payment as an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution. The conversion of your check to an electronic fund transfer allows us to more efficiently and accurately process your payment and update your TD Auto Finance account.

Payoff Amount: Your initial payoff amount is governed by and calculated under the terms of your contract and may differ from the payoff amount provided on this statement. If you would like to pay off your vehicle, please call us at the toll-free number printed on the front of this statement and we will provide you with an up-to-date payoff amount and instructions to execute the payoff process. You can also receive a payoff quote online at TDAutoFinance.com. Explore your payoff options or schedule your payment online.

Telephone Communication Regarding Your Account: Please be aware that by providing TD Auto Finance or TD Bank, N.A. with a telephone number or confirming that TD Auto Finance or TD Bank, N.A. may call you at a telephone number, you are consenting to be contacted at that number. Such contact may include automated and pre-recorded message calls as well as text messages, if applicable. Please note that calls to us or from us may be recorded or monitored for quality assurance and training purposes.

ADDITIONAL INFORMATION

If your address, home phone number or work phone number changes, please visit TDAutoFinance.com or notify us using this form and mail it with your remittance. Please be advised that funds received will first be applied to the total outstanding amount due including fees.

Payments that Exceed the Amount Due: If you paid more than the total amount due, any amounts paid that exceed the total amount due as of the date of your payment is received will automatically be applied toward your next scheduled payment(s) and future billing statements(s) will reflect a lower amount or \$0 due for the scheduled payment. If you want amounts paid that exceed the total amount due to reduce the principal, you need to continue to make your regular monthly payment.

I have a new address and/or phone number(s) below:

New Billing Address													
	Number	Street	Apt #										
City					State	Zip							
Home	[] [] []			[] [] []				[] [] []				[] []	
Cell	[] [] []			[] [] []				[] [] []				[] []	

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Dashboard Account Summary Make a Payment Account Options ▾

Principal Balance
\$68,003.44

2024 TESLA MODEL X (X0323)

Amount Due **\$1,163.15**
Payment Due Date **10/23/2024**

 Make A Payment  Enable Automatic Payment  Payoff Quote

Activity	Date	Statements & Documents	
From <input type="text" value="Sep 1, 2024"/>	To <input type="text" value="Sep 30, 2024"/>		
 Sep 23, 2024	\$1,163.15	PAYMENT	Completed
 Sep 5, 2024	\$1,591.00	PAYMENT	Completed
Sep 5, 2024	-\$1,591.00	PAYMENT ADJUSTMENT	Completed
Sep 5, 2024	\$1,591.00	FEES PAYMENT	Completed
Aug 30, 2024	-\$1,591.00	FCC ASSESSMENT	Completed
 Aug 19, 2024	\$1,163.15	PAYMENT	Completed

Pay your bill your way
When it comes to paying your auto account, you have options.

- One-time payments - Schedule a payment for your amount due or principal up to a month away from today's date
- Recurring payments - Set up a series of payments that repeat bi-weekly (the same weekday every two weeks) or monthly (the same day of every month).

Status type
Easily track the status of past, current, and future transactions.

- Pending - Payments waiting to be processed within the next 30 days.
- Completed - All transactions that have been posted to your account.
- Canceled - Any payment that you canceled or was unable to be processed and therefore unposted.

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Your Payment was Received

From: TDAutoFinance.com | no td.com
To: leo po.com

August 19 at 16:27

Your Payment was Received

Dear LEONARDO CRESPO,

This e-mail serves as confirmation that your scheduled online payment in the amount of \$1,163.15 has been processed. Please review your payment details below:

Payment details:

Account Number: [REDACTED]

Confirmation #: 200000010083012072

Payment Date: 08/19/2024

Payment Amount: \$1,163.15

Have questions? You can contact Customer Service at **1-800-556-8172**.

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A RESPONSE *****

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Your Payment was Received

From: TD**A**uto**F**inance.com | no td.com
To: leo po.com

September 23 at 15:53

Your Payment was Received

Dear LEONARDO CRESPO,

This e-mail serves as confirmation that your scheduled online payment in the amount of \$1,163.15 has been processed. Please review your payment details below:

Payment details:

Account Number: [REDACTED]

Confirmation #: 200000010083475116

Payment Date: 09/22/2024

Payment Amount: \$1,163.15

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Tarek H. Zohdy (SBN 247775)
Tarek.Zohdy@capstonelawyers.com
Cody R. Padgett (SBN 275553)
Cody.Padgett@capstonelawyers.com
Laura E. Goolsby (SBN 321721)
Laura.Goolsby@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Raymond Flores

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAYMOND FLORES,

Plaintiff,

V.

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

Defendant.

Case No.:

COMPLAINT FOR:

- (1) Violations of California Civil Code, §§ 1750 *et seq.* (California Consumer Legal Remedies Act — Injunctive Relief Only);
 - (2) Violations of California Unfair Competition Law, §§ 17500 *et seq.* (False Advertising Law — Injunctive Relief Only);
 - (3) Violations of California Business & Professions Code §§ 17200 *et seq.* (Unfair Business Practices — Injunctive Relief Only);
 - (4) Violations of California Business & Professions Code, §§ 17200 *et seq.* (Unlawful Business Practices— Injunctive Relief Only);

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This case arises out of Tesla Inc. d/b/a Tesla Motors, Inc.’s (“Defendant” or “Tesla”) unfair and deceptive marketing of its electric vehicles’ mileage range. Specifically, Plaintiff seeks to compel Tesla to disclose to the public that, with respect to Tesla Model 3, S, Y and X (collectively the “Tesla Vehicles”):

(1) Tesla’s advertised total mileage range for the Tesla Vehicles is based on charging the Vehicle to 100%, but Tesla discourages charging its vehicles to 100%; therefore, Tesla’s advertised mileage range for the Tesla Vehicles is misleading; (2) the range of the Tesla Vehicles can drop by up to 50% in cold weather, compared to advertised ranges; and (3) that the ranges of the Tesla Vehicles were not estimated based on U.S. Environmental Protection Agency (“EPA”) standardized formulae—despite Tesla advertising the range estimates as “EPA estimates”—but instead based on Tesla’s own proprietary software method and algorithms for calculating range, which allowed for a more aggressive estimate of total electric vehicle range.

15 2. Tesla advertises its vehicles to the general purchasing public, and the
16 public is harmed because Tesla advertises exaggerated driving ranges of its electric
17 vehicles.

18 3. In or around June 2023, Plaintiff Raymond Flores (“Plaintiff”)
19 purchased a new 2023 Tesla Model Y vehicle designed, manufactured, marketed,
20 distributed, sold, and warranted by Tesla. Tesla representatives had told him to
21 expect a mileage range of 325 miles, which is also the number advertised on Tesla’s
22 website. A 325 mile range was Plaintiff’s main reason for purchasing a Tesla
23 instead of other EV vehicles. However, since purchasing, Plaintiff has not gotten
24 any more than 250 miles on a full charge, which is about 75 miles (or roughly 23%)
25 less than advertised. When Plaintiff complained to Tesla about the low mileage in
26 or around July 2023, Tesla representatives told him that it would eventually get
27 better. However, the range has not improved over time.

4. As a result of Tesla's business practices described herein, Plaintiff has suffered an ascertainable loss of time and money due to purchase of a vehicle based on Tesla's misleading and deceptive marketing of its vehicles' mileage in that he would not have purchased this vehicle or would have paid less for it, had Tesla not acted as alleged herein. Accordingly, Plaintiff has standing to seek public injunctive relief.

5. The reduced range of the vehicle has impacted Plaintiff's cost of operating the vehicle in various ways. Plaintiff has had to charge the vehicle more frequently, leading to increased electricity costs over time. With its reduced range, Plaintiff's vehicle has depreciated and will continue to depreciate in value faster than those that maintain a longer range. The vehicle's reduced range has also caused "range anxiety," where Plaintiff is constantly concerned about running out of battery before reaching his destination. This has caused him to take longer routes to ensure he passes by charging stations or avoids certain trips altogether. These longer routes have caused increased monetary costs.

JURISDICTION AND VENUE

6. This action is brought by Plaintiff individually, as a consumer in California. The value of injunctive relief sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

7. Tesla, through its business of distributing, selling, and leasing the Tesla Vehicles, has established sufficient contacts in this district such that personal jurisdiction is appropriate. Tesla is deemed to reside in this district pursuant to 28 U.S.C. § 1391(a).

8. This Court has personal jurisdiction over Tesla because it has consented to jurisdiction by registering to conduct business in the state; maintains sufficient minimum contacts in California; and otherwise intentionally avails itself of the markets within California through promotion, sale, marketing and distribution

1 of its vehicles, which renders the exercise of jurisdiction by this Court proper and
2 necessary.

3 9. Venue is proper in this District pursuant to 28 U.S.C. § 1331(a)-(c). A
4 substantial part of the events or omissions giving rise to the claims occurred in this
5 District.

6 **PARTIES**

7 10. Plaintiff Raymond Flores is a California citizen who resides in
8 Bakersfield, California in Kern County, California. On or around June 29, 2023,
9 Plaintiff purchased his 2023 Tesla Model Y online from Tesla's website and picked
10 up the vehicle from Tesla's location in Fresno, California, located at 2988 North
11 Burl Avenue, Fresno, CA 93727 on or around June 30, 2023.

12 11. Tesla Motors, Inc. was and is, upon information and belief, a
13 corporation organized and in existence under the laws of the State of Delaware and
14 conducts business in the State of California.

15 12. At all relevant times, Tesla was and is engaged in the business of
16 designing, manufacturing, marketing, distributing, selling, leasing, and
17 warranting Tesla-branded vehicles in California, and throughout the United
18 States of America.

19 **FACTUAL ALLEGATIONS**

20 13. Tesla designs and manufactures electric vehicles that are advertised
21 and sold to the general public, including millions of consumers in California and
22 nationwide.

23 14. On July 27, 2023, Reuters published a Special Report entitled "Tesla
24 Created Secret Team to Suppress Thousands of Driving Range Complaints" in
25 which it asserted that "Tesla years ago began exaggerating its vehicles' potential
26 driving distance – by rigging their range-estimating software. The company decided
27 about a decade ago, for marketing purposes, to write algorithms for its range meter
28 that would show drivers 'rosy' projections for the distance it could travel on a full

1 battery, according to a person familiar with an early design of the software for its
2 in-dash readouts. Then, when the battery fell below 50% of its maximum charge,
3 the algorithm would show drivers more realistic projections for their remaining
4 driving range, this person said. To prevent drivers from getting stranded as their
5 predicted range started declining more quickly, Tesla vehicles were designed with
6 a “safety buffer,” allowing about 15 miles (24 km) of additional range even after
7 the dash readout showed an empty battery, the source said.”¹

8 15. According to Reuters, the directive to present the optimistic range
9 estimates came from Tesla Chief Executive Officer Elon Musk, this person said.
10 “Elon wanted to show good range numbers when fully charged,” the person said,
11 adding: “When you buy a car off the lot seeing 350-mile, 400-mile range, it makes
12 you feel good.”²

13 16. The Reuters Special Report states that, according to Reuters’
14 interviews with three automotive experts who have tested or studied the Tesla’s
15 vehicles, the Tesla Vehicles often fail to achieve their advertised range estimates
16 and the projections provided by the cars’ own equipment.³

17 17. Tesla Vehicles provide range estimates in real-time. The intention is to
18 provide the driver with contemporaneous updates on the electric vehicle battery’s
19 performance, which directly correlate to the range the vehicle can be driven.
20 Generally, accurate range estimates help to ensure that, as the battery drains, the
21 driver knows to pull over at a charging station before the battery drains completely,
22 leaving the driver and occupants stranded. Inaccurate range estimates can, indeed,
23 lead a driver to being stranded, as the battery drains completely—and unexpectedly,
24 based upon inaccurate range information.

25 1 ¹ Reuters, “Tesla created secret team to suppress thousands of driving range complaints”
26 available at: <https://www.reuters.com/investigates/special-report/tesla-batteries-range/> (last
27 accessed, Nov. 13, 2023).

28 ² *Id.*

³ *Id.*

1 18. Tesla vehicles provide range estimates in two ways. First, through a
2 meter on the screen that is always displayed. This meter can be toggled to indicate
3 either the electric vehicle battery percentage remaining or the range (measured in
4 miles or kilometers) remaining. Second, through the vehicle's navigation system,
5 which estimates the range (indicated in battery percentage) remaining, as compared
6 to the set destination. However, if no destination is inputted into the navigation
7 system, the vehicle will not indicate a range estimate through this second method.

8 19. Following purchase, each Tesla Vehicle sets a suggested charge
9 limit—that is, an upper limit to stop charging the battery. For example, if an 80%
10 limit is set, the battery will continue to charge until it reaches 80% capacity, then
11 will stop charging. This effectively ensures that the battery cannot be fully charged
12 to 100%. A consumer can manually override the charge limit. However, Tesla
13 recommends that consumers not exceed the suggested charge limit. Tesla
14 specifically suggests that consumers “[c]harge the battery to the appropriate charge
15 limit for your vehicle based on the installed battery.”⁴ Tesla suggests that Tesla
16 owners should charge their vehicle to full 100% capacity only sparingly.

17 20. Setting charge limits directly impacts total range. Tesla's advertised
18 total range of its vehicles are based on a full charge. However, because Tesla
19 discourages owners from ever charging their vehicles to 100%, it is increasingly
20 difficult—if not impossible—to ever reach that advertised range. For example,
21 setting the vehicle's charge limit at 80% can reduce the total range by hundreds of
22 miles, compared to the advertised range. Based upon Tesla's suggested charge
23 limits, Tesla vehicles cannot reach the total ranges Tesla advertises. Notably, while
24 Tesla openly advertises its total range estimates (which already are exaggerated) to
25 consumers at the point of purchase, it does not indicate to consumers that they can
26 expect to limit the vehicle's total range by setting charge limits.

27

28 ⁴ Tesla, “Range Tips” available at:
<https://www.tesla.com/support/range#:~:text=Charge%20the%20battery%20to%20the,app%20and%20drag%20the%20slider.> (last accessed, Nov. 13, 2023).

1 21. Moreover, Tesla exaggerates its Vehicles' range. Electric cars can lose
2 driving range for a lot of the same reasons as gasoline cars, but to a greater degree.⁵
3 The cold is a particular drag on EVs, slowing the chemical and physical reactions
4 inside their batteries and requiring a heating system to protect them.⁶ Reuters
5 reported that data collected in 2022 and 2023 from more than 8,000 Tesla Vehicles
6 by Recurrent, a Seattle-based EV analytics company, showed that the vehicles'
7 dashboard range meters did not change their estimates to reflect hot or cold outside
8 temperatures, which can greatly reduce range.⁷ Recurrent found that Tesla's four
9 models almost always calculated that they could travel more than 90% of their
10 advertised EPA range estimates regardless of external temperatures.⁸

11 22. Indeed, in 2023, the Korea Fair Trade Commission ("KFTC") cited
12 Tesla for false advertising for this omission.⁹ The KFTC found that Tesla failed to
13 tell customers that cold weather can drastically reduce its cars' range.¹⁰ It cited tests
14 by the country's environment ministry that showed Tesla cars lost up to 50.5% of
15 the company's claimed ranges in cold weather.¹¹ The KFTC also flagged certain
16 statements on Tesla's website, including one that claimed about a particular model:
17 "You can drive 528 km (328 miles) or longer on a single charge."¹² Regulators
18 required Tesla to remove the "or longer" phrase and publicly admit it had misled
19 consumers.¹³ Musk and two local executives did so in a June 19 statement,

21
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⁵ See *supra* note 1.

23 ⁶ See *supra* note 1.

24 ⁷ See *supra* note 1.

25 ⁸ See *supra* note 1.

26 ⁹ See *supra* note 1.

27 ¹⁰ See *supra* note 1.

28 ¹¹ See *supra* note 1.

¹² See *supra* note 1.

¹³ See *supra* note 1.

1 acknowledging “false/exaggerated advertising.”¹⁴ South Korean regulators also
2 fined Tesla about \$2.1 million for falsely advertised driving ranges on its local
3 website between August 2019 and December 2022.¹⁵

4 23. Like their gas-powered counterparts, new electric vehicles are required
5 by U.S. federal law to display a label with fuel-efficiency information.¹⁶ In the case
6 of EVs, this is stated in miles-per-gallon equivalent (MPGe), allowing consumers
7 to compare them to gasoline or diesel vehicles.¹⁷ The labels also include estimates
8 of total range: how far an EV can travel on a full charge, in combined city and
9 highway driving.¹⁸

10 24. EV makers have a choice in how to calculate a model’s range.¹⁹ They
11 can use a standard EPA formula that converts fuel-economy results from city and
12 highway driving tests to calculate a total range figure.²⁰ Or, automakers can conduct
13 additional tests to come up with their own range estimate.²¹ The only reason to
14 conduct more tests is to generate a more favorable estimate, said Gregory Pannone,
15 a retired auto-industry veteran cited by Reuters.²² Pannone coauthored a study of
16 21 different brands of electric vehicles, published in April 2023 by SAE
17 International, an engineering organization.²³ The research found that, on average,
18 the cars fell short of their advertised ranges by 12.5% in highway driving.²⁴ Pannone
19

20 ¹⁴ See *supra* note 1.

21 ¹⁵ See *supra* note 1.

22 ¹⁶ See *supra* note 1.

23 ¹⁷ See *supra* note 1.

24 ¹⁸ See *supra* note 1.

25 ¹⁹ See *supra* note 1.

26 ²⁰ See *supra* note 1.

27 ²¹ See *supra* note 1.

28 ²² See *supra* note 1.

²³ See *supra* note 1.

²⁴ See *supra* note 1.

1 told Reuters that three Tesla models posted the worst performance, falling short of
2 their advertised ranges by an average of 26%.²⁵

3 25. Tesla does not use EPA's standardized formula for any of its Vehicles.
4 Instead, Tesla conducts its own additional range tests on all of its models, resulting
5 in inflated estimates compared to the ranges drivers actually experience.²⁶

6 26. By contrast, many other automakers, including Ford, Mercedes and
7 Porsche, continue to rely on the EPA's standardized formula to calculate potential
8 range, according to agency data for 2023 models.²⁷ Doing so ensures that the
9 potential range advertised to consumers reflects more conservative estimates based
10 on real-world driving conditions, Pannone said.²⁸

11 27. Jonathan Elfalan, vehicle testing director for the automotive website
12 Edmunds.com, conducted an extensive examination of vehicles from Tesla and
13 other major automakers, including Ford, General Motors, Hyundai and Porsche.²⁹
14 All five Tesla models tested by Edmunds failed to achieve their advertised range,
15 the website reported in February 2021.³⁰ All but one of 10 other models from other
16 manufacturers exceeded their advertised range.³¹ Tesla complained to Edmunds that
17 the test failed to account for the safety buffer programmed into Tesla's in-dash range
18 meters.³² So, Edmunds did further testing, this time running the vehicles, as Tesla
19 requested, past the point where their range meters indicated the batteries had run
20 out.³³

21
22 ²⁵ See *supra* note 1.

23 ²⁶ See *supra* note 1.

24 ²⁷ See *supra* note 1.

25 ²⁸ See *supra* note 1.

26 ²⁹ See *supra* note 1.

27 ³⁰ See *supra* note 1.

28 ³¹ See *supra* note 1.

29 ³² See *supra* note 1.

30 ³³ See *supra* note 1.

28. Only two of six Tesla vehicles tested matched their advertised range, Edmunds reported in March 2021.³⁴ The tests found no fixed safety buffer.³⁵ Edmunds has continued to test electric vehicles, using its own standard method, to see if they meet their advertised range estimates.³⁶ As of July, no Tesla vehicle had met their own advertised range estimates, Elfalan said.³⁷ “They've gotten really good at exploiting the rule book and maximizing certain points to work in their favor involving EPA tests...[t]he practice can “misrepresent what their customers will experience with their vehicles,” Elfalan told Reuters.³⁸

29. Recurrent also tested other automakers' in-dash range meters – including the Ford Mustang Mach-E, the Chevrolet Bolt and the Hyundai Kona – and found them to be more accurate.³⁹ The Kona's range meter generally underestimated the distance the car could travel, the tests showed.⁴⁰ Recurrent conducted the study with the help of a National Science Foundation grant.⁴¹ Tesla, Case said, has consistently designed the range meters in its cars to deliver aggressive rather than conservative estimates: "That's where Tesla has taken a different path from most other automakers."⁴²

30. To address an overwhelming number of customer complaints regarding driving range and requests for service appointments to address the issue, in the summer of 2022, Tesla created a “Diversion Team” in Las Vegas to handle only range cases, according to the people familiar with the matter, as cited by

³⁴ See *supra* note 1.

³⁵ See *supra* note 1.

³⁶ See *supra* note 1.

³⁷ See *supra* note 1.

³⁸ See *supra* note 1.

³⁹ See *supra* note 1.

⁴⁰ See *supra* note 1.

⁴¹ See *supra* note 1.

⁴² See *supra* note 1.

1 Reuters.⁴³ Diversion Team employees were instructed to thwart any customers
2 complaining about poor driving range from bringing their vehicles in for service
3 and to cancel as many range-related appointments as possible.⁴⁴

4 31. Advisers would normally run remote diagnostics on customers' cars
5 and try to call them, the people said.⁴⁵ They were trained to tell customers that the
6 EPA-approved range estimates were just a prediction, not an actual measurement,
7 and that batteries degrade over time, which can reduce range.⁴⁶ Advisors would
8 offer tips on extending range by changing driving habits.⁴⁷ If the remote diagnostics
9 found anything else wrong with the vehicle that was not related to driving range,
10 advisors were instructed not to tell the customer, one of the sources said.⁴⁸ Managers
11 told them to close the cases.⁴⁹

12 32. Tesla also updated its phone app so that any customer who complained
13 about range could no longer book service appointments, one of the sources said.⁵⁰
14 Instead, they could request that someone from Tesla contact them.⁵¹ It often took
15 several days before owners were contacted because of the large backlog of range
16 complaints, the source said.⁵²

17 33. The app update also routed all U.S. range complaints to the Nevada
18 diversion team, which started in Las Vegas and later moved to the nearby suburb of
19
20

21 ⁴³ See *supra* note 1.

22 ⁴⁴ See *supra* note 1.

23 ⁴⁵ See *supra* note 1.

24 ⁴⁶ See *supra* note 1.

25 ⁴⁷ See *supra* note 1.

26 ⁴⁸ See *supra* note 1.

27 ⁴⁹ See *supra* note 1.

28 ⁵⁰ See *supra* note 1.

⁵¹ See *supra* note 1.

⁵² See *supra* note 1.

1 Henderson.⁵³ The team was soon fielding up to 2,000 cases a week, which
2 sometimes included multiple complaints from customers frustrated they couldn't
3 book a service appointment, one of the people said.⁵⁴

4 34. The team was expected to close about 750 cases a week.⁵⁵ To
5 accomplish that, office supervisors told advisers to call a customer once and, if there
6 was no answer, to close the case as unresponsive, the source said.⁵⁶ When customers
7 did respond, advisers were told to try to complete the call in no more than five
8 minutes.⁵⁷

9 35. In late 2022, managers aiming to quickly close cases told advisors to
10 stop running remote diagnostic tests on the vehicles of owners who had reported
11 range problems, according to one of the people familiar with the diversion team's
12 operations.⁵⁸ "Thousands of customers were told there is nothing wrong with their
13 car" by advisors who had never run diagnostics, the person said.⁵⁹ Reuters could not
14 establish how long the practice continued.⁶⁰

15 36. Tesla recently stopped using its diversion team in Nevada to handle
16 range-related complaints, according to the person familiar with the matter.⁶¹ Virtual
17 service advisors in an office in Utah are now handling range cases, the person said.⁶²
18 Reuters could not determine why the change was made.⁶³

19

20 ⁵³ See *supra* note 1.

21 ⁵⁴ See *supra* note 1.

22 ⁵⁵ See *supra* note 1.

23 ⁵⁶ See *supra* note 1.

24 ⁵⁷ See *supra* note 1.

25 ⁵⁸ See *supra* note 1.

26 ⁵⁹ See *supra* note 1.

27 ⁶⁰ See *supra* note 1.

28 ⁶¹ See *supra* note 1.

29 ⁶² See *supra* note 1.

30 ⁶³ See *supra* note 1.

1 37. Tesla was aware that its advertised electric vehicle ranges for the Tesla
2 Vehicles were exaggerated and exceeded the actual range of the vehicle when
3 driven in real-world driving conditions. Tesla, which employs its own proprietary
4 method for calculating the range of its electric vehicles, was aware that this method
5 of calculation produced aggressive and exaggerated range estimates. Further, Tesla
6 was aware that various driving and environmental factors negatively impacted the
7 electric vehicle's range and that these factors were likely to occur in real-world
8 driving conditions.

9 38. Nevertheless, despite knowing this, Tesla did not inform consumers of
10 this information when advertising their electric vehicle range estimates. For
11 example, Tesla could have warned potential purchasers that cold weather would
12 drastically lower the electric vehicle's range, but Tesla did not issue such a warning,
13 instead only advertising an exaggerated range estimate.

14 39. Tesla also was aware that its advertised range estimates were based on
15 driving the electric vehicle with a full 100% charge of the electric vehicle battery.
16 However, because Tesla suggests to customers that they establish a charge limit on
17 their vehicles well-below full capacity, Tesla was aware that, in reality, customers
18 would be unable to ever actually experience the full advertised range. Tesla should
19 have warned potential purchasers that the ranges of the Tesla Vehicles could be
20 negatively impacted by various driving and environmental factors that were likely
21 to exist; but Tesla did not.

22 40. Tesla should have warned potential purchasers that the ranges of the
23 Tesla Vehicles were estimated based on full 100% battery charge, but that Tesla
24 suggested that its model vehicles not be charged to full 100% battery charge on a
25 regular basis.

26 41. Tesla should have warned potential purchasers that the ranges of the
27 Tesla Vehicles were not estimated based on EPA standardized formulae—despite
28 Tesla advertising the range estimates as “EPA estimates”—but instead based on

Tesla's own proprietary method and algorithms for calculating range, which allowed for a more aggressive estimate of total electric vehicle range.

42. Tesla's conduct in falsely advertising its estimated vehicle ranges harmed Plaintiff at the point of sale and continues to harm members of the general public.

FIRST CAUSE OF ACTION

Violation of California Civil Code § 1750, *et seq.*

(California Consumer Legal Remedies Act—Injunctive Relief Only)

43. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

44. Plaintiff brings this cause of action on behalf of himself and the general California public.

45. Tesla is a “person” as defined by California Civil Code § 1761(c).

46. Plaintiff is a “consumer” within the meaning of California Civil Code § 1761(d) because he purchased his Tesla Vehicle primarily for personal, family, or household use.

47. The Consumers Legal Remedies Act (“CLRA”) prohibits “unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer[.]” Cal. Civ. Code § 1770(a).

48. By misrepresenting the actual driving range for the Tesla Vehicles to Plaintiff and the general public, Tesla violated California Civil Code § 1770(a), as it represented that the Tesla Vehicles had characteristics and benefits that they do not have, represented that the Tesla Vehicles and their driving range were of a particular standard, quality, or grade when they were actually of another, and advertised goods or services with the intent not to sell them as advertised. *See* Cal. Civ. Code §§ 1770(a)(5) (7) & (9).

1 49. Tesla's unfair and deceptive acts or practices occurred repeatedly in
2 Tesla's trade or business, and were capable of deceiving a substantial portion of the
3 purchasing public.

4 50. Tesla knew that the Tesla Vehicles were incapable of reaching the
5 actual advertised and represented range.

6 51. As a result of their reliance on Tesla's misrepresentations and
7 omissions, owners and/or lessees of the Tesla Vehicles, including Plaintiff, suffered
8 an ascertainable loss of money, property, and/or value of their Tesla Vehicles.

9 52. Tesla was under a duty to Plaintiff and the general public to disclose
10 the actual driving range of the Tesla Vehicles because:

- 11 a. Tesla was in a superior position to know the true state of facts
12 about the Tesla Vehicles' driving range;
- 13 b. Plaintiff and the general public could not reasonably have been
14 expected to learn or discover that their vehicles could never reach
15 the advertised and represented range; and
- 16 c. Tesla knew that Plaintiff and the general public could not
17 reasonably have been expected to learn of or discover Tesla's
18 misrepresentations until after purchasing their Tesla Vehicles.

19 53. In misrepresenting the range of the Tesla Vehicles, Tesla knowingly
20 and intentionally misrepresented and concealed material facts and breached its duty
21 not to do so.

22 54. The facts Tesla misrepresented, concealed from, or failed to disclose
23 to Plaintiff and the general public are material in that a reasonable consumer would
24 have considered them to be important in deciding whether to purchase or lease the
25 Tesla Vehicles or pay less. Had Plaintiff known that the Tesla Vehicles' were
26 incapable of reaching the represented and advertised range, he would not have
27 purchased or leased the Tesla Vehicle or would have paid less for it.

55. Plaintiff is a reasonable consumer who does not expect the Tesla Vehicle to fail to reach the represented and advertised range. This is the reasonable and objective consumer expectation relating to a Tesla Vehicle's advertised range.

56. Plaintiff is therefore entitled to, and does, seek injunctive relief pursuant to California Civil Code section 1780(a)(2) to “enjoin the methods, acts or practices” that violate section 1770. Specifically, Plaintiff seeks public injunctive relief enjoining Tesla’s unfair or deceptive acts or practices to prevent future injury to the general public. In addition, Plaintiff seeks an award of attorneys’ fees and costs under California Civil Code section 1780(e), and orders granting all similar relief available.

SECOND CAUSE OF ACTION

**(Violation of California Business & Professions Code §§ 17500, et seq.)
(False Advertising Law – Injunctive Relief Only)**

57. Plaintiff incorporates by reference the allegations contained in each and every paragraph of this Complaint.

58. Tesla is a “person” as defined by California Business & Professions Code sections 17201, as it is a corporation, firm, partnership, joint stock company, and/or association.

59. Tesla has violated, and continues to violate, Section 17500 of the California Business and Professions Code by failing to disclose and disseminating untrue and misleading advertising to Plaintiff and the other members of the general public.

60. Tesla has disseminated and continues to disseminate untrue and misleading advertising by knowingly and intentionally misleading Plaintiff and the public about the true nature of the driving range of the Tesla Vehicles.

61. Tesla disseminated such untrue and misleading advertisements with the intent to induce Plaintiff and other members of the general public to purchase its vehicles.

62. Tesla knew, or by the exercise of reasonable care should have known,

1 about the true nature of the vehicle range throughout the relevant period. Tesla
2 should have disclosed accurate and truthful information concerning the vehicle
3 range in its advertising and through its authorized dealerships.

4 63. Accordingly, Tesla was well aware of the false and misleading nature
5 of its failure to disclose accurate and truthful information concerning the vehicle
6 range.

7 64. Plaintiff reasonably relied on Tesla's representations and/or omissions
8 made in connection with its vehicles. Plaintiff was induced to purchase a Tesla-
9 branded product based on the belief that the purchased vehicle would have the
10 driving range advertised by Tesla.

11 65. Tesla's representations and/or omissions made in connection with its
12 Vehicles were likely to deceive reasonable consumers by obfuscating the true nature
13 of the driving range.

14 66. Had Plaintiff known that the vehicle would not have the driving range
15 as advertised, he would not have purchased his vehicle or would have paid less for
16 it.

17 67. Plaintiff would consider purchasing or leasing similar Tesla vehicles
18 in the future if Plaintiff could rely on Tesla's representations regarding the vehicles.

19 68. As a direct and proximate result of Tesla's untrue and misleading
20 advertising, Tesla has improperly acquired money from Plaintiff.

21 69. Plaintiff brings this cause of action for public injunctive relief pursuant
22 to Section 17535 of the California Business and Professions Code. Tesla's
23 violations of Section 17500 are ongoing because it continues to advertise and
24 engage in misrepresentations and failures to disclose to the public at large regarding
25 its vehicle range, thus increasing the safety risk to the general public. Unless
26 restrained by this Court, Tesla will continue to engage in untrue and misleading
27 advertising, representations, and failures to disclose, as alleged above, in violation
28

1 of Section 17500. Accordingly, Plaintiff seeks an injunction enjoining Tesla from
2 continuing to violate Section 17500.

3 **THIRD CAUSE OF ACTION**

4 **(Violation of California Business & Professions Code §§ 17200, *et seq.*
5 (Unfair Business Practices- Injunctive Relief Only)**

6 70. Plaintiff incorporates by reference the allegations contained in each
7 and every paragraph of this Complaint.

8 71. Tesla is a “person” as defined by California Business & Professions
9 Code sections 17201, as it is a corporation, firm, partnership, joint stock company,
and/or association.

10 72. Tesla’s conduct, as alleged herein, has been, and continues to be,
11 unfair, and harmful to Plaintiff and to the general public. Plaintiff has suffered injury
12 in fact as a result of Tesla’s unfair business practices. Plaintiff seeks to enforce
13 important rights affecting the public interest within the meaning of Code of Civil
14 Procedure section 1021.5.

15 73. Tesla’s activities, namely knowingly and intentionally misleading
16 Plaintiff and the public about the true nature of the range of the Tesla Vehicles, has
17 caused and will cause harm to Plaintiff and the general public. Tesla knew or
18 reasonably should have known about the true nature of the vehicle range throughout
19 the relevant period. Tesla should have disclosed accurate and truthful information
20 concerning the vehicle range in its advertising and through its authorized
21 dealerships. Tesla was in a superior position to know the true facts related to the
22 vehicle range, and Plaintiff and the general public could not reasonably be expected
23 to learn or discover the true facts related to the Tesla Vehicles’ range.

24 74. Plaintiff brings this cause of action for public injunctive relief pursuant
25 to Section 17200, *et seq.*, including Section 17203, of the California Business and
26 Professions Code. Tesla’s violations of Section 17200 are ongoing because it
27 continues to advertise and engage in misrepresentations and failures to disclose to
28 the public at large regarding its vehicle range, thus increasing the safety risk to the

1 general public. Unless restrained by this Court, Tesla will continue to engage in
2 untrue and misleading advertising, representations, and failures to disclose, as
3 alleged above, in violation of Section 17200. Accordingly, Plaintiff seeks an
4 injunction enjoining Tesla from continuing to violate Section 17200.

5 **FOURTH CAUSE OF ACTION**

6 **Violation of California Business & Professions Code §§ 17200, et seq.
(Unlawful Business Practices - Injunctive Relief Only)**

7 75. Plaintiff incorporates by reference the allegations contained in each
8 and every paragraph of this Complaint.

9 76. Tesla is a “person” as defined by California Business & Professions
10 Code section 17201, as it is a corporation, firm, partnership, joint stock company,
11 and/or association.

12 77. Tesla’s conduct, as alleged herein, has been, and continues to be,
13 unlawful, and harmful to Plaintiff and to the general public. Plaintiff has suffered
14 injury in fact as a result of Tesla’s unlawful business practices. Plaintiff seeks to
15 enforce important rights affecting the public interest within the meaning of Code of
16 Civil Procedure section 1021.5.

17 78. Tesla’s activities, namely knowingly and intentionally misleading
18 Plaintiff and the public about the true nature of the range of the Tesla Vehicles, have
19 caused and will cause harm to Plaintiff and the purchasing general public.

20 79. As stated, Tesla’s failures are a violation of Cal. Civ. Code
21 §§1770(a)(5), (7), & (9). Thus, Tesla’s violations constitute an unlawful business
22 practice in violation of California Business & Professions Code sections 17200, et
23 seq.

24 80. Plaintiff brings this cause of action for public injunctive relief pursuant
25 to Section 17200, et seq., including Section 17203, of the California Business and
26 Professions Code. Tesla’s violations of Section 17200 are ongoing because it
27 continues to advertise and engage in misrepresentations and failures to disclose to
28 the public at large, thus increasing the safety risk to the general public. Unless

1 restrained by this Court, Tesla will continue to engage in untrue and misleading
2 advertising, representations, and failures to disclose, as alleged above, in violation
3 of Section 17200. Accordingly, Plaintiff seeks an injunction enjoining Tesla from
4 continuing to violate Section 17200.

5 **PRAYER FOR RELIEF**

6 81. Plaintiff requests the Court to enter judgment against Tesla, as follows:

- 7 a. An order enjoining Tesla from continuing to violate California's
8 Consumer Legal Remedies Act and Unfair Competition Law as
9 described herein;
- 10 b. An order granting injunctive and declaratory relief to remedy
11 Tesla's violations of California law, including but not limited to an
12 order declaring the parties' respective legal rights and obligations
13 and enjoining Tesla from continuing their unlawful and unfair
14 business practices;
- 15 c. An award of attorneys' fees and costs, as permitted by law;
- 16 d. An award of attorneys' fees and costs pursuant to California Code
17 of Civil Procedure section 1021.5; and
- 18 e. Leave to amend the Complaint to conform to the evidence
19 produced at trial.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a trial by jury of any and all issues in this action so
22 triable.
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1 Dated: December 18, 2023

Respectfully submitted,

2 Capstone Law APC

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4

By: /s/ Tarek H. Zohdy

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Tarek H. Zohdy

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Cody R. Padgett

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Laura H. Goolsby

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Attorneys for Plaintiff Raymond Flores

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

CHUCK JOO

*

Plaintiff,

*

v.

TESLA MOTORS INC.

*

Defendant.

*

Please Serve:

CT Corporation System, Registered Agent

*

4701 Cox Road Ste. 285

*

Glen Allen, VA 23060-6808 USA

*

COMPLAINT

Now into Court, through undersigned counsel, comes Plaintiff Chuck Joo and moves the Court for judgment against Defendant TESLA MOTORS INC. based on the following facts and law:

JURISDICTION

1. This Honorable Court has Diversity Jurisdiction of this civil action pursuant to 28 U.S. Code § 1332, as the Plaintiff is a citizen of Fairfax, Virginia, and the Defendant, TESLA MOTORS INC. is a corporation organized under the laws of Delaware with a principal place of business located in Austin, Texas. The amount in controversy exceeds \$75,000.00.
2. This Honorable Court has Federal Question Jurisdiction of this civil action pursuant to 28 U.S.C. §1331. Plaintiff Chuck Joo, asserts a claim pursuant to the Magnuson-Moss

Warranty Act, 15 U.S. Code §§ 2301-2312. The amount in controversy exceeds \$50,000.00.

VENUE

3. Venue in this Honorable Court is proper pursuant to 28 U.S. Code §1331 as this Judicial District is where a substantial part of the events and/or omissions giving rise to the claims occurred. Venue in the Alexandria Division is proper pursuant to Local Civil Rule 3 because this is where a substantial part of the events and/or omissions giving rise to the claims occurred.

FACTS

4. On August 6, 2022, Plaintiff Chuck Joo, purchased a 2022 Model Y Tesla, with 15 miles on the odometer from Tesla in Vienna, Virginia, an authorized warranty repair agent of the 2022 Tesla, that is the subject of this Complaint. The total delivered price was \$58,713.01.

5. On September 15, 2022, Plaintiff Chuck Joo, sought warranty repair for damage found on the roof pillar at delivery. Plaintiff also sought repair for damage on the front bumper. In addition to these damages to the vehicle, Plaintiff also sought repair about the low volume for phone calls, on the receiving end.

6. On September 17, 2022, Plaintiff returned to Tesla seeking service due to the trunk liner having been improperly installed.

7. On November 4, 2022, Plaintiff returned to Tesla seeking service due to an unusual noise projecting out of the left, front side of vehicle.

8. On November 8, 2022, Plaintiff returned to Tesla seeking service due to the ongoing noise projecting from the driver's side of the vehicle.

9. On November 9, 2022, Plaintiff again returned to Tesla seeking repair because of the continual noise coming from the driver's side of the vehicle, which was increasing in duration and frequency.

10. On December 13, 2022, Plaintiff for the fourth time, returned to Tesla seeking repair due to his vehicle producing a loud, buzzing noise while driving.

COUNT ONE –
MOTOR VEHICLE WARRANTY ENFORCEMENT ACT
VIRGINIA CODE §59.1-207.9 ET SEQ. "LEMON LAW"

11. The allegations of paragraphs 1-10 are re-piled and incorporated herein by reference.
12. The Plaintiff is a consumer as defined by the Virginia Motor Vehicle Warranty Enforcement Act. (Hereinafter referred to as the "Virginia Lemon Law") Virginia Code §59.1-207.11. et seq. and has received due notice under the same statute.
13. The Virginia Lemon Law requires a manufacturer to "*make such repairs as are necessary to conform the vehicle to such warranty*" that are provided to the consumer.
14. Defendant TESLA MOTORS INC. has been unable to repair the Plaintiff's vehicle after a reasonable number of attempts. Specifically, Virginia Code §59.1-207.13(B)(3) provides that "*it shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to any warranty and that the motor vehicle is significantly impaired if during the period of eighteen months following the date of original delivery of the motor vehicle to their consumer... The motor vehicle is out of service due to repair for a cumulative total of thirty calendar days.*" There were four repair attempts for the same excessive noise and the warranty defect continues to exist. It is therefore presumed that the Plaintiff's vehicle has been subject to repair a

reasonable number of attempts and is significantly impaired in its use, market value and safety.

15. Plaintiff seeks to recover as damages the purchase price of his vehicle in the amount of \$58,713.01 as well as all finance charges, all incidental costs, compensation in the amount of \$10,000.00 for inconvenience and loss of use, or a comparable replacement vehicle to the Plaintiff, reasonable attorney fees in the amount of \$600.00 per hour, or one-third of the amount recovered, whichever of the two is greater, expert witness fees, and court costs. See, Virginia Code §59.1-207.14.

COUNT TWO
VIOLATION OF THE MAGNUSSON-MOSS ACT (15 U.S. CODE §2301)

16. The Plaintiff is a consumer as defined in U.S. Code §2301(3). The Defendant is a supplier and warrantor as defined in 15 U.S. Code §2301(1).
17. The vehicle was manufactured after July 4, 1975, and an express Limited Warranty and an implied Warranty of Merchantability were given to the Plaintiff as a part of the purchase as those warranties met the definition written warranty and implied warranty as contained in 15 U.S. Code §2301 - (7) respectively.
18. The limited warranty has failed its essential purpose and the Defendant has violated the Act due its inability to repair or replace the nonconformities within a reasonable time and has refused to provide the Plaintiff with a refund as required in 15 U.S. Code §2304(a)(1) and (4).
19. The Defendant has also breached its Implied Warranty of Merchantability since the vehicle, in view of the nonconformity that exists, and the Defendant's inability to correct

them, is not fit for its ordinary purpose for which the vehicle is being used, 28 U.S. Code §2308, 2310(d).

WHEREFORE, Plaintiff Chuck Joo, moves this Honorable Court to enter judgment in his favor against Defendant TESLA MOTORS INC., in the amount of \$58,713.01 as well as all incidental costs, compensation in the amount of \$10,000.00 for inconvenience and loss of use, interest payments, or a comparable replacement vehicle acceptable to the Plaintiff, reasonable attorney fees in the amount of \$600.00 per hour, or one-third of the amount recovered, whichever of the two is greater, expert witness fees, pre-judgment interest running from the date of the first attempt, post-judgment interest, court costs, and all other damages, equity and /or law may seem meet.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted

Chuck Joo

/s/ James B. Feinman

James B. Feinman, Esq. (VSB No. 28125)
James B. Feinman & Associates
P.O. Box 697
Lynchburg, VA 24505
(434) 846-7603 (phone)
(434) 846-0158 (fax)
jb@feinman.com

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff, Cross-defendant and
Respondent,

v.

CONAGRA GROCERY PRODUCTS
COMPANY et al.,

Defendants and Appellants;

THE SHERWIN-WILLIAMS
COMPANY,

Defendant, Cross-complainant and
Appellant.

H040880
(Santa Clara County
Super. Ct. No. CV788657)

After a lengthy court trial, the People of the State of California (plaintiff) prevailed in this representative public nuisance action against defendants ConAgra Grocery Products Company (ConAgra), NL Industries, Inc. (NL), and the Sherwin-Williams Company (SWC).¹ The trial court ordered ConAgra, NL, and SWC to pay \$1.15 billion into a fund to be used to abate the public nuisance created by interior residential lead paint in the 10

¹ Plaintiff's action was brought on behalf of the residents of Santa Clara County, San Francisco City and County, Alameda County, Los Angeles County, Monterey County, City of Oakland, City of San Diego, San Mateo County, Solano County, and Ventura County. In this opinion, we will refer to these two cities, seven counties, and one city and county as the 10 jurisdictions.

California jurisdictions represented by plaintiff. ConAgra, NL, and SWC (collectively defendants) challenge the court’s judgment on many grounds. They contend, among other things, that the court’s judgment is not supported by substantial evidence of knowledge, promotion, causation, or abatability. Defendants also challenge the judgment on separation of powers and due process grounds, claim that they were erroneously denied a jury trial, and assert that the trial court made other prejudicial procedural and evidentiary errors.² We conclude that the trial court’s judgment must be reversed because substantial evidence does not support causation as to residences built after 1950. We also direct the trial court to hold further proceedings on remand regarding the appointment of a suitable receiver. We reject the remainder of defendants’ contentions.

I. Plaintiff’s Evidence at Trial

“[L]ead is a toxin and causes irreversible brain damage.” Childhood lead poisoning is “the number one environmental health problem for children” in California. “Childhood lead poisoning at the level at which it is occurring is definitely an epidemic in California.” “The most common source of lead exposure to children in California is lead-based paint and how it contributes to soil and dust contamination in and around housing.”³ Experts have reached a consensus “that lead-based paint is a predominant source of childhood lead exposure [in] pre-1978 housing.”⁴ Children in pre-1946 housing are subject to “three times

² This is but a partial list of their contentions. SWC and ConAgra also each assert an individual contention.

³ “Lead-based paint” is not the only source of childhood lead exposure. Children in the 10 jurisdictions have also been exposed to lead from occupational sources (such as lead dust brought home by construction workers), leaded gasoline, imported goods (such as pottery, Mexican candy, and toys), home remedies (such as “Greta” and “Azarcon”), cosmetics, jewelry, spices, and chapulines (grasshoppers).

⁴ “‘Lead-based paint’ means paint or other surface coatings that contain an amount of lead equal to, or in excess of: [¶] (a) one milligram per square centimeter (1.0 mg/cm²); or

the percentage of elevations in blood lead level” as those in post-1978 housing. Lead in homes accounts for at least 70 percent of all childhood lead poisonings. Lead paint is a major contributor to blood lead levels because the lead content of paint is high, while most other lead sources have only trace amounts. And the most common type of lead paint contains white lead carbonate, which is highly absorbable. Between 1929 and 1974, more than 75 percent of the white lead carbonate produced in this country was used in lead paint. Through the 1940s, lead paint contained as much as 50 percent lead.

“Children are exceptionally vulnerable” to lead because “they explore their environment with typical hand-to-mouth contact behavior.” Lead paint chips “taste sweet,” which may explain why children ingest them. Young children are at especially high risk from residential lead paint because they spend the vast majority of their time in their homes. Infants and young children also absorb much more lead than older children and adults. Because children are smaller, lead intake has a proportionally larger impact on their bodies, and children absorb lead more easily. Children are also more vulnerable to the toxic effects of lead because their biological systems are still developing.

The “brain effects [of lead exposure] in children are irreversible,” so the “only option is to prevent the exposure in the first place.” There is “no safe exposure level” for lead “[b]ecause no measurable level of lead in blood is known to be without deleterious effects, and because once engendered the effects appear to be irreversible.” Blood lead levels less than 5 micrograms per deciliter (mcg/dL)⁵ can cause children to suffer impaired intellect and behavioral problems.⁶ “[E]ven among children with the lowest levels of lead exposure,” studies suggest that “there is ongoing harm down to the lowest measurable

[¶] (b) half of one percent (0.5%) by weight.” (Cal. Code Regs., tit. 17, § 35033.) This is what we mean when we use “lead paint” in this opinion.

⁵ A microgram (mcg) is a millionth of a gram. A deciliter (dL) is a tenth of a liter.

⁶ Bone lead levels are a better indicator than blood lead levels of the impact of lead on intellectual abilities. Blood lead levels may underestimate the impact of lead exposure.

levels.” “[B]lood lead levels below 5 micrograms per deciliter are associated with decreased academic achievement, diminished IQ scores, or intellectual abilities, cognitive abilities, attention-related behavior problems and antisocial behaviors . . .” Lead exposure as a child continues to impact the body when the child becomes an adult. It “has reproductive effects, it has impacts on things like birth weight, and even fertility, delays fertility,” and it can be associated with cardiovascular disease.

Even intact lead paint poses a potential risk of future lead poisoning to children because lead paint surfaces will inevitably deteriorate. “[A]ll paint eventually deteriorates. On certain surfaces it deteriorates more rapidly than others[;] mainly those surfaces are high-use surfaces, such as windows and doors.” Paint deteriorates when it is exposed to ultraviolet light, water, fungus (such as mildew), friction, or abrasion. More than one-third of pre-1978 homes nationwide with intact lead paint have lead dust.⁷ In contrast, only 6 percent of homes without lead paint have lead dust. Lead in soil adjacent to homes generally comes from lead paint, not leaded gas emissions, because post-1978 housing has no soil lead.⁸

Most of the housing in the 10 jurisdictions was built before 1980, with the percentages ranging from 51 to 83 percent and is therefore presumed to contain lead paint.⁹

⁷ “‘Lead-contaminated dust’ means dust that contains an amount of lead equal to, or in excess of: [¶] (a) forty micrograms per square foot ($40\text{mg}/\text{ft}^2$) for interior floor surfaces; or [¶] (b) two hundred and fifty micrograms per square foot ($250\text{mg}/\text{ft}^2$) for interior horizontal surfaces; or [¶] (c) four hundred micrograms per square foot ($400\text{mg}/\text{ft}^2$) for exterior floor and exterior horizontal surfaces.” (Cal. Code Regs., tit. 17, § 35035.)

⁸ “‘Lead-contaminated soil’ means bare soil that contains an amount of lead equal to, or in excess of, four hundred parts per million (400 ppm) in children’s play areas and one thousand parts per million (1000 ppm) in all other areas.” (Cal. Code Regs., tit. 17, § 35036.)

⁹ “‘Presumed lead-based paint’ means paint or surface coating affixed to a component in or on a structure constructed prior to January 1, 1978.” (Cal. Code Regs., tit. 17, § 35043.)

Pre-1940 homes are three times as likely to have lead-based paint hazards,¹⁰ with 86 percent having lead-based paint hazards and 67 percent having “significant” lead-based paint hazards such as “deteriorated lead-based paint.”¹¹ “[H]omes with lead-based paint are 10 times more likely than homes without lead-based paint to have dust lead levels on floors and on window sills above the federal limits.” And “homes with lead-based paint are more likely to have soil lead levels on the exterior of the home above the EPA [(federal Environmental Protection Agency)] criteria limits.” Even when lead paint is “intact,” soil levels can exceed EPA limits. Lead paint creates soil lead “by the friction and impact surfaces, opening and closing windows and doors on a home with lead-based paint,” from the deterioration of exterior lead paint, and from “sanding and scraping” when repainting. When there is lead in the soil, it is often tracked into the home, creating household lead dust.

Since the 19th century, the medical profession has recognized that lead paint is toxic and a poison. An 1878 article by an English doctor recognized that the use of lead paint on the interiors of homes could have poisonous effects on the people who lived in the home. An 1895 article by a San Francisco doctor recounted how a child had been poisoned by lead paint that she had scratched off her crib. A 1904 article by a doctor in Queensland, Australia described multiple cases of children being poisoned by lead dust from lead paint on walls and railings of a house. He believed that the lead dust had been ingested by the children after it got on their fingers and thereby into their mouths. His investigation found

¹⁰ “‘Lead hazard’ means deteriorated lead-based paint, lead contaminated dust, lead contaminated soil, disturbing lead-based paint or presumed lead-based paint without containment, or any other nuisance which may result in persistent and quantifiable lead exposure.” (Cal. Code Regs., tit. 17, § 35037.)

¹¹ “‘Deteriorated lead-based paint’ means lead-based paint or presumed lead-based paint that is cracking, chalking, flaking, chipping, peeling, non-intact, failed, or otherwise separating from a component.” (Cal. Code Regs., tit. 17, § 35022.)

lead dust on interior walls where the paint was still in “good condition.”¹² An authoritative 1907 textbook edited by a noted American doctor, which was widely used in medical education, discussed the 1904 article and observed that children had been poisoned by lead paint on woodwork in their homes that had produced lead dust and gotten onto their hands.¹³ These articles “recognized the dust pathway from paint on a wall, to dust on the floor, to the hands of children, into their mouth[s], as a way of ingestion.”

Many medical articles by doctors in the early 20th century described lead poisoning of children from lead paint. A 1917 article by an American doctor discussed the 1904 Australian article and also described the cases of multiple children who had gnawed lead paint off furniture and died. A 1926 article discussed the case of a child who had died from lead poisoning after she “gnawed” lead paint off her bed. A 1933 article pointed out that “children get exposed to lead-based paint in the homes by their common tendency to put things in their mouth[s].” It also stated that most cases involved infants and small children and that children were more susceptible to lead poisoning than adults. Another 1933 article noted: “It must be obvious that for every child who becomes paralysed by lead there must be literally hundreds who have been affected by the poison in some more or less minor degree.” “[T]he extent of the lead paint menace has been minimized, and in consequence, literally thousands of children have been allowed to run the risks of lead absorption.”

¹² In 1922, Queensland, Australia banned lead paint from areas to which young children had access.

¹³ Plaintiff presented an expert who testified that in 1909 public health officials and doctors were suggesting that there be legislation banning lead paint due to the risk of exposure for children. This expert cited his own 2005 article in which he asserted that researchers had stated in 1909 that “[p]aint containing lead should never be employed where children, especially young children, are accustomed to play,” and “[a] number of European countries banned lead-based paint soon thereafter.” He also relied on a seven-page “annotated bibliography” that he had prepared, which listed, but did not include, numerous articles that he had reviewed.

Published medical articles in this era recognized that even small amounts of lead could cause children to suffer harm. A 1931 British Medical Journal article discussed the “insidious” effects of “infinitesimal doses of lead” over a long period of time. A 1935 American medical journal article suggested that there were “insidious” “cumulative effects of infinitesimal doses of lead” that could be “obscure.” A 1938 British medical article stated that “the harmful effects of continued small doses of lead begin from the moment the lead is absorbed” and can lead to a long series of “subtle” harms. It opined that “there is no threshold below which still smaller doses can be regarded as being without some adverse effect.” A 1943 American medical journal article discussed the impact of early childhood subacute lead poisoning on a child’s intelligence and subsequent academic achievement; it called for a ban on interior residential use of lead paint.

Knowledge about the toxic properties of lead paint was not limited to the medical profession. In May 1910, the United States House of Representatives’ Committee on Interstate and Foreign Commerce held a hearing on a bill aimed at preventing lead poisoning. The bill would have required products containing white lead to “be labeled conspicuously and securely with a skull and crossbones and the words: ‘White lead: poison.’” The sponsor of the bill noted that France had already “entirely prohibited the use of white lead because of its injurious character” and that “all countries of Europe” had already enacted legislation like his proposal. He spoke of “the injurious effect of these atoms of white lead that are filling the air now; they come loose from doors, from window sills, from everywhere, we inhale them and consequently disease is caused which physicians do not understand and can not say what it really is, but it is, in many cases, simply a case of lead poisoning.” Another proponent of the bill observed that “the most eminent scientists and doctors of Great Britain” had “found that the small particles that result from chalking, especially from internal painting and external painting as well, when taken by inhalation into the lungs, are absorbed and become a poison to the system.” This congressional

hearing was attended by an attorney for “practically all of the paint manufacturers of this country” who stated their opposition to the proposal. The bill failed.

A few years later, in 1914, Henry Gardner, who was the assistant director of the Institute of Industrial Research and also the director of the Paint Manufacturers Association’s Educational Bureau, published a speech that he had given to the International Association of Master House Painters and Decorators of the United States and Canada at that association’s annual convention in February 1914. In this speech, Gardner acknowledged that “the presence of [white lead] dust in the atmosphere of a room is very dangerous to the health of the inmates” and that “[l]ead poisoning may occur through inhalation of [lead] dust . . .”

Despite this evidence of the toxic properties of white lead, the main use for white lead in the 20th century was as a pigment for paint.¹⁴ NL, SWC, and ConAgra’s predecessor, Fuller, were among the handful of companies that manufactured white lead carbonate pigments during the 20th century, and all three of them used white lead carbonate pigment to make paint. NL, SWC, and Fuller were all leaders in the lead paint industry, and they knew at that time that lead dust was poisonous. They were also aware that lead paint “powders and chalks” “soon after it is applied” and routinely produces lead dust after a couple of years.

In 1922, NL, SWC, and Fuller were making white lead carbonate pigment, using it in their paints, and promoting white lead pigment in paint for use on and in residential homes. Sales of white lead peaked in 1922. There was a decrease in the use of lead paint in the 1920s and early 1930s. By 1944, during World War II, the use of lead paint for residential interiors had declined to a low level.

¹⁴ Plaintiff’s experts defined “lead-based paint” as either paint containing lead pigment or paint that was “either considered 100 percent or 70 percent pure white lead . . . or alternatively mixed paint with . . . ‘high-lead content.’”

NL manufactured white lead carbonate pigment from 1891 to 1978, and it had manufacturing facilities in San Francisco and Los Angeles that manufactured white lead carbonate pigments in California between 1900 and 1972. It sold those pigments to California paint manufacturers, used them in its own paint products sold in California, and advertised and promoted paint products containing those pigments for residential use within the 10 jurisdictions during that same period. NL “kept up with the medical literature” about lead poisoning. NL’s 1912 annual report acknowledged that lead dust was a “danger to the health” of workers exposed to it in the making of white lead. By the mid to late 1920s, NL knew that children who chewed on things painted with lead paint could get lead poisoning and die from it. Nevertheless, NL’s lead paints were marketed for residential use and sold in and advertised in the 10 jurisdictions between 1900 and 1972. NL produced a handbook for consumers in 1950 that instructed them to use lead paint on the interiors of their homes.

ConAgra’s predecessor, Fuller, manufactured white lead carbonate pigment from 1894 until at least 1958. Fuller manufactured white lead carbonate pigment at its San Francisco factory until 1898, when it moved its factory to South San Francisco. At this factory, Fuller refined white lead carbonate and was a “major producer” of lead paint. Fuller also had a plant in Los Angeles. Fuller’s lead paints were sold at its own stores and by independent dealers in all 10 jurisdictions between 1894 and 1961.¹⁵ Fuller knew that lead dust was poisonous. In 1919, an article about Fuller’s South San Francisco plant noted that lead dust is poisonous.

SWC began manufacturing paints containing white lead carbonate pigments in 1880. SWC’s internal publication, The Chameleon, published an article in 1900 that acknowledged the many dangers of lead paint. It stated: “A familiar characteristic of white lead is its tendency to crumble from the surface, popularly known as chalking”; “It is also familiarly known that white lead is a deadly cumulative poison”; and “This noxious quality

¹⁵ Fuller also produced and sold non-lead paints.

becomes serious in a paint that disintegrates and is blown about by the wind.” In 1910, SWC bought a lead mine, which it utilized to manufacture white lead carbonate pigment from 1910 to 1947 for use in its own paints. SWC stopped manufacturing white lead carbonate in 1947, but it continued to make lead paint until 1958.¹⁶ SWC had plants in Emeryville and later in Los Angeles that manufactured paint containing white lead carbonate. SWC continued to sell lead paint until 1972. SWC removed all lead from its residential paints by the end of 1972.

Two trade associations, the Lead Industries Association (LIA) and the National Paint, Varnish, and Lacquer Association (NPVLA) promoted the use of lead paint. Fuller, NL, and SWC were members of both the LIA and the NPVLA. The LIA, which was created in 1928, promoted the use of white lead pigments in residential paint by sponsoring two advertising campaigns, the Forest Products Better Paint campaign and the White Lead Promotion campaign, in the first half of the 20th century. The LIA knew that white lead was being attacked from “a health standpoint,” and these campaigns were designed to increase the consumption of lead.

The LIA provided its members with information about lead hazards and lead poisoning that was available in medical and scientific literature at the time. NL was present at a 1930 LIA board of directors meeting at which a 1930 article about lead poisoning of babies and children from chewing lead paint off of cribs was discussed. The article, which ran in the U.S. Daily, a publication “Presenting the Official News” of the government, stated that lead poisoning from “chewing paint from toys, cradles, and woodwork” was “a more frequent occurrence” than previously thought and noted that even a small amount of lead could kill a child. The article also noted that “[c]hildren are very susceptible to lead” and that the “most common sources of lead poisoning in children are paint on various objects within reach of a child and lead pipes . . .”

¹⁶

Some of SWC’s paints did not contain white lead pigment.

In 1934, the LIA launched its Forest Products campaign, which promoted lead paint for interior residential use. At a 1935 LIA annual meeting, it was acknowledged that childhood lead poisoning disproportionately affected poor and minority children and that there were thousands of cases annually. Yet the LIA fought against the imposition of regulations on lead. A 1937 LIA conference on lead poisoning was attended by representatives from NL and SWC, and Fuller received a transcript of the conference. Both industrial lead poisoning and childhood lead poisoning were discussed at the 1937 conference. There was discussion of research that showed it was nearly impossible to get rid of lead once it got into a child's body. Attendees at the conference were asked by the head of the LIA not to discuss what they learned at the conference in order to avoid unfavorable publicity connecting lead paint to lead poisoning. The LIA's Forest Products campaign continued through 1941.

The NPVLA, unlike the LIA, represented paint manufacturers regardless of whether they used lead pigments.¹⁷ The NPVLA ran advertising campaigns promoting paint throughout the first half of the 20th century. One was called Save the Surface in 1920 and 1921. The other was called Clean Up Paint Up and was ongoing in 1949. All three companies were involved in both advertising campaigns. Neither of the NPVLA's campaigns distinguished between lead paint and non-lead paint, but these campaigns included advertisements promoting all three companies' lead paint products.

Lead paint was banned in the United States in 1978. (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 302 (*Santa Clara I*).) In 1991, the Centers for Disease Control (the CDC) set the "level of concern" for lead at a blood lead level (BLL) of 10 mcg/dL.¹⁸ In 2012, the CDC replaced this standard with a "reference

¹⁷ Fuller was a member of the NPVLA from 1933 to 1962. NL was an NPVLA member from 1933 to 1977. SWC was a member of the NPVLA from 1933 to 1981.

¹⁸ The impact of blood lead levels below 10 mcg/dL was not well understood until 2005.

value” of 5 mcg/dL, which represents the top 2.5 percent of BLLs in children under the age of five. “[T]he reference value simply denotes the worst or the highest exposed children in a population.” At that point, national data reflected that 5.3 percent of children living in pre-1950 housing had BLLs exceeding that value, while only 0.4 percent of children living in post-1978 housing had BLLs exceeding that value.

In 1995, the California Legislature enacted the Childhood Lead Poisoning Prevention Act of 1991. (Health & Saf. Code, §§ 105275, 124125; Stats. 1995, ch. 415, § 8.) This act created the Childhood Lead Poisoning Prevention Program (CLPPP). (Health & Saf. Code, § 124125.) The Childhood Lead Poisoning Prevention Branch (CLPPB), a division of California’s Department of Public Health, was accorded the role of coordinating the state’s approach to childhood lead exposure and childhood lead poisoning. The CLPPB devotes its resources to outreach, education, case management programs to track those who have been lead poisoned or exposed to lead, and programs to address lead hazards. The CLPPB also contracts with and supervises 43 county CLPPPs.

The CLPPB focuses on children who are one or two years old. Health care providers are required to order that a child be screened for lead poisoning at age one and at age two if “the child receives services from a publicly funded program for low-income children.” (Cal. Code Regs., tit. 17, § 37100.) Medical laboratories are required to report all BLLs to the CLPPB. (Health & Saf. Code, § 124130; Stats. 2002, ch. 931, § 11.) The CLPPB considers it a “case” of lead poisoning if a child’s BLL exceeds 19.5 mcg/dL or persistently exceeds 14.5 mcg/dL. In such cases, a public health nurse and an environmental health specialist visit the child’s home to try to determine potential sources of the lead poisoning.

National average BLLs have declined precipitously since the 1970s, falling by about 90 percent. In 1980, it was estimated that 88.3 percent of children had BLLs in excess of 10 mcg/dL. By 2008, it was estimated that less than one percent of children had BLLs over 10

mcg/dL.¹⁹ Nevertheless, in 2010, around 22,000 children under the age of six in California had BLLs over 4.5 mcg/dL. And at the time of trial in 2013, California had more than 2,000 children with BLLs over 10 mcg/dL and more than 15,000 additional children with BLLs over 5 mcg/dL. Children in California with BLLs over 9.5 mcg/dL represented 0.35 percent of California's children.²⁰

Children in the 10 jurisdictions are continuing to be exposed to lead from the lead paint in their homes and to suffer deleterious effects from that lead. Although only a small percentage of the children in these jurisdictions are screened for lead, thousands of children are found to have BLLs of concern each year.

Lead poisoning from lead paint is “the number one environmental children’s health issue in Alameda County.” The primary cause of lead poisoning in Alameda County is lead paint. About 75 percent of Alameda County’s homes are pre-1980, which amounts to 430,000 units. Nearly 174,000 of those units are pre-1950. Alameda County is able to screen only 46 percent of the children under the age of six who are poor and live in pre-1978 homes. Alameda County’s CLPPP opens a case only when there is a lead-poisoned child with a BLL of 20 mcg/dL or two BLLs of 15 mcg/dL. In 2012, 14 children met that standard in Alameda County. That triggers an investigation of the home and education of the parents about sources of exposure. There is no funding for remediation. Alameda County’s CLPPP also tries to do outreach and education to families with children who have BLLs of 5 mcg/dL or higher,²¹ but there is no funding for dealing with these children. In 2010, there were 14 children in that category.

¹⁹ The prevalence of elevated BLLs in children under the age of six in California appeared to have declined 60 percent from 2003 to 2010.

²⁰ Because the laboratories doing the tests lack the ability to report precise results, BLLs of 4.5 are rounded up to 5 and BLLs of 9.5 are rounded up to 10.

²¹ The limits of detection do not permit such precise measurement, so the CLPPP actually provides these services when the BLL is over 4.5 mcg/dL.

for “inside” use.⁴³ In addition, SWC participated in the LIA’s Forest Products campaign from 1937 to 1941, which promoted lead paint for interior residential use and particularly for use on doors and window frames.

SWC had the requisite knowledge in 1900 of the public health hazard posed by lead paint, but it nevertheless continued to promote lead paint for interior residential use thereafter. This evidence supports the trial court’s finding that SWC engaged in the requisite wrongful promotion.

4. Causation

Defendants contend that plaintiff did not produce substantial evidence that *their* promotions of lead paint for interior residential use were a substantial factor in *causing* the nuisance that the trial court required them to abate. First, they contend that there was no evidence that their promotions actually had an impact on the use of lead paint on residential interiors. Second, they contend that their wrongful promotions were too remote from the current presence of any public health hazard created by interior residential lead paint, which, they claim, is largely due to owner neglect, renovations, intervening actors (architects, painters, etc.), and repainting that has taken place in the interim. Third, they argue that, because they did not promote lead paint for interior residential use after 1950, they could not be held responsible for use of lead paint on residential interiors of homes built after 1950. The trial court’s judgment required defendants to remediate interior lead paint in all homes built before 1980, even though most of those homes were built after 1950. Fourth, they maintain that there was no evidence that their promotions of lead paint

⁴³ Although many of the advertisements for SWC paints were placed by hardware stores or other retailers, SWC paid half of the cost of advertising by its authorized dealers, so these advertisements may properly be attributed to SWC. A 1924 lumber store advertisement in Monterey for Monarch lead paint suggested that it could be used for interiors. However, the stipulation between SWC and plaintiff was that this paint contained lead between 1925 and 1930, which does not include 1924 when this advertisement was placed.

for interior residential use had a causal connection to the water leaks and soil lead that the court ordered them to remediate. Fifth, defendants claim that plaintiff was required to show that their individual lead paints are currently present in a large number of homes in the 10 jurisdictions. Sixth, they argue that due process requires that their liability for remediation be proportionate to their individual contributions.

Causation is an element of a cause of action for public nuisance. (*Melton v. Bousted* (2010) 183 Cal.App.4th 521, 542.) “A connecting element to the prohibited harm must be shown.” (*In re Firearm Cases* (2005) 126 Cal.App.4th 959, 988 (*Firearm Cases*).) The parties agree that the causation element of a public nuisance cause of action is satisfied if the conduct of a defendant is a substantial factor in bringing about the result. (*Citizens for Odor Nuisance Abatement v. City of San Diego* (2017) 8 Cal.App.5th 350, 359 [applying substantial factor standard in a public nuisance action].) “‘The substantial factor standard is a relatively broad one, requiring only that the contribution of the individual cause be more than negligible or theoretical.’ [Citation.] Thus, ‘a force which plays only an “infinitesimal” or “theoretical” part in bringing about injury, damage, or loss is not a substantial factor’ [citation], but a very minor force that does cause harm is a substantial factor [citation].” (*Bockrath v. Aldrich Chemical Co., Inc.* (1999) 21 Cal.4th 71, 79.)

a. Impact and Remoteness

In this case, there was plenty of evidence that defendants’ affirmative promotions of lead paint for interior residential use played at least a “minor” role in creating the nuisance that now exists.

First, all three defendants participated in the LIA’s Forest Products campaign. The Forest Products campaign began in 1934. In 1935, the LIA reported that its Forest Products campaign had resulted in some manufacturers of leadless paints “changing their formulas to include lead.” In 1939, the LIA reported to its members that, as a result of the Forest Products campaign, (1) “[a]ll the principal producers of soft and hard lumber in the United States . . . specify white lead or high grade prepared paint which contains white lead”

through the “distributi[on of] painting instruction leaflets (2,000,000 copies)”; (2) “[s]ome paint companies have increased the lead content of their paint”; and (3) “sash and door manufacturers” would be producing “20,000,000 labels to be affixed to nearly all the sash and doors in the United States, featuring the use of white lead and high-grade prepared paint.” In 1941, the LIA reported that the benefits of the Forest Products campaign were continuing. “Lumber associations continued distributing, at their own expense, thousands of painting leaflets recommending white lead or the highest grade prepared paints to be used on their products” and that the “National Door Manufacturing Association” was “the latest to use painting leaflets” to promote the use of white lead. The lumber manufacturers were continuing to include “painting instruction leaflets” with their lumber products. Since lead paint on doors and windows is one of the most hazardous uses for children due to the dust created by their friction surfaces, this campaign played a significant role in creating the nuisance that now exists.

Second, both NL and Fuller gave consumers of their lead paints explicit instructions to use those paints on residential interiors. Fuller’s 1931 brochure for its lead paint contained “Directions for Use” instructing consumers to use this lead paint for residential interiors. Since Fuller’s advertisements frequently suggested that consumers obtain brochures from a Fuller dealer, the brochure’s “Directions for Use” constituted instructions to all those who purchased Fuller’s lead paint to use it for residential interiors. NL produced its 1929 paint book, which promoted lead paint for interior residential use, and NL published its 1950 “Handbook on Painting,” which explicitly recommended that consumers use white lead paint on interior surfaces.

In sum, by persuading window and door manufacturers to attach written recommendations to all windows and doors that lead paint should be used on those windows and doors, *all three defendants* certainly played a significant role in causing lead paint to be used on at least some of those windows and doors. Further, NL and Fuller, by explicitly instructing consumers to use their lead paints on residential interiors, played an even more

direct role in causing lead paint to be used in such a manner. Again, the trial court could reasonably infer that at least some of those who were the targets of these recommendations heeded them. That is all that the substantial factor test requires.

We cannot credit defendants' claim that there was no evidence that their promotions were even "a very minor force"—"a substantial factor"—in causing the presence of lead paint on residential interiors in the 10 jurisdictions. The LIA's extensive advertising campaigns, in which all three defendants participated, affirmatively promoted to painters, architects, retailers, and consumers the use of lead paint on residential interiors, and each defendant also individually promoted to consumers lead paint for use on residential interiors in the 10 jurisdictions. The LIA judged its promotional campaigns to be a success, and the fact that lead paint remains in place on residential interiors in many homes throughout the 10 jurisdictions decades after all of these promotions ceased reflects that this belief was accurate. We find reasonable the inference that each individual defendant's promotion of lead paint for interior residential use, both through the LIA promotional campaigns and their individual promotions, were at least "a very minor force" in leading to the current presence of interior residential lead paint in a substantial number of homes in the 10 jurisdictions.

Defendants also contend that their wrongful promotions were too remote from the current hazard to be its "legal cause." They claim that, due to the lapse of time, this hazard is more closely attributable to owner neglect, renovations, painters, architects, and repainting. "A tort is a legal cause of injury only when it is a substantial factor in producing the injury." (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 572.) "“‘Legal cause’ exists if the actor’s conduct is a ‘substantial factor’ in bringing about the harm and there is no rule of law relieving the actor from liability. [Citations.]”” [Citations.] “The doctrine of proximate cause limits liability; i.e., in certain situations where the defendant’s conduct is an actual cause of the harm, he will nevertheless be absolved because of the manner in which the injury occurred.””” (*Lombardo v. Huysentruyt* (2001) 91 Cal.App.4th 656, 665-666.)

“‘Proximate cause involves *two* elements.’ [Citation.] ‘One is *cause in fact*. An act is a cause in fact if it is a necessary antecedent of an event.’ [Citation.] . . . [¶] By contrast, the second element focuses on public policy considerations. Because the purported causes of an event may be traced back to the dawn of humanity, the law has imposed additional ‘limitations on liability other than simple causality.’ [Citation.] ‘These additional limitations are related not only to the degree of connection between the conduct and the injury, but also with public policy.’ [Citation.] Thus, ‘proximate cause’ “is ordinarily concerned, not with the fact of causation, but with the various considerations of policy that limit an actor’s responsibility for the consequences of his conduct.”” (*Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037, 1045.) “[T]here is no bright line demarcating a legally sufficient proximate cause from one that is too remote. Ordinarily the question will be for the [factfinder], though in some instances undisputed evidence may reveal a cause so remote that a court may properly decide that no rational trier of fact could find the needed nexus.” (*People v. Roberts* (1992) 2 Cal.4th 271, 320, fn. 11.)

Defendants argue that they should be absolved of responsibility for the current hazard because their wrongful conduct was “too remote” and “attenuated” from the current hazard.⁴⁴ This was a question of fact for the trial court. A rational factfinder could have concluded that defendants’ wrongful promotions of lead paint for interior residential use were not unduly remote from the presence of interior residential lead paint placed on those residences during the period of defendants’ wrongful promotions and within a reasonable period thereafter. The connection between the long-ago promotions and the current

⁴⁴ The cases that defendants rely on provide no support for their argument. For instance, the portion of *Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764 (*Cabral*) that they cite concerned a duty determination, not a causation determination. (*Cabral*, at p. 779.) The firearm manufacturers in *Firearm Cases, supra*, 126 Cal.App.4th 959, unlike defendants, did not affirmatively promote their products for a dangerous use. (*Firearm Cases*, at pp. 988-989.) *City of Chicago v. American Cyanamid Co.* (Ill. App. Ct. 2005) 355 Ill.App.3d 209 was decided under Illinois law.

presence of lead paint was not particularly attenuated. Those who were influenced by the promotions to use lead paint on residential interiors in the 10 jurisdictions were the single conduit between defendants' actions and the current hazard. Under these circumstances, the trial court could have reasonably concluded that defendants' promotions, which were a substantial factor in creating the current hazard, were not too remote to be considered a legal cause of the current hazard even if the actions of others in response to those promotions and the passive neglect of owners also played a causal role. The court could therefore have concluded that defendants' promotions were the "legal cause" of the current nuisance.

b. Post-1950 Homes

We find merit in defendants' claim that the record lacks substantial evidence to support the court's finding that their wrongful promotions were causally connected to post-1950 homes containing interior lead paint built before 1980.

Plaintiff claims that defendants' wrongful promotions "sustained, increased, and prolonged the use of lead paint in homes *throughout the 20th century.*" (Italics added.) It asserts that this can be "inferred" from the "sheer breadth of Defendants' promotional activities" and the fact that there is currently lead paint in homes in the 10 jurisdictions. Plaintiff also claims that NL continued to promote lead paint for interior residential use beyond 1950.

First of all, plaintiff did not produce any evidence of an affirmative promotion by NL, SWC, or Fuller of lead paint for interior residential use after 1950. The advertisements that plaintiff identifies as post-1950 NL promotions did not promote *lead* paint for interior residential use. Those advertisements promoted NL's "Dutch Boy" *brand* of paints and identified interior residential use as one of the uses for NL's "Dutch Boy" brand of paints without suggesting that any *lead* paint be used for interiors. NL stipulated at trial that its "White Lead-in-Oil" and three of its "Dutch Boy" paints contained white lead, and plaintiff presented no evidence that any other NL paint product contained lead. Since NL

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Case No. 15-25-00001-CV

COURT OF APPEALS
FOR THE
FIFTEENTH DISTRICT OF TEXAS – AUSTIN

FILED IN
15th COURT OF APPEALS
AUSTIN, TEXAS
3/3/2025 10:43:19 PM
CHRISTOPHER A. PRINE
Clerk

CREATEAI HOLDINGS INC.,

Appellant,

v.

BOT AUTO TX INC.,

Appellee.

On Appeal from the 11th Judicial District of the Business Court
of Harris County, Texas
Honorable Sofia Adrogué, President Judge

BRIEF OF APPELLANT
Oral Argument Requested

Timothy J. McCarthy
State Bar No. 24123750
tmccarthy@dykema.com

Cliff P. Riley
State Bar No. 24094915
criley@dykema.com

Salvador J. Robles
State Bar No. 24121800
srobles@dykema.com

Aaron J. Kotulek
State Bar No. 24137483
akotulek@dykema.com

DYKEMA GOSSETT PLLC

Isaac Villarreal
State Bar No. 24054553
ivillareal@dykema.com

Amanda Gordon
State Bar No. 24103737
agordon@dykema.com
DYKEMA GOSSETT PLLC
5 Houston Center
1401 McKinney St., Suite 1625
Houston, Texas 77010
Telephone: (713) 904-6900
Facsimile: (214) 462-6401

1717 Main Street, Suite 4200
Dallas, Texas 75201
Telephone: (214) 462-6400
Facsimile: (214) 462-6401

IDENTITY OF PARTIES AND COUNSEL

Appellant: **CreateAI Holdings, Inc. (formerly known as TuSimple Holdings, Inc.)**

Trial & Appellate Counsel: **Timothy J. McCarthy**
State Bar No. 24123750
tmccarthy@dykema.com

Cliff P. Riley
State Bar No. 24094915
criley@dykema.com

Salvador J. Robles
State Bar No. 24121800
srobles@dykema.com

Aaron J. Kotulek
State Bar No. 24137483
akotulek@dykema.com

DYKEMA GOSSETT PLLC
1717 Main Street, Suite 4200
Dallas, Texas 75201
214.462.6400

Isaac Villareal
State Bar No. 24054553
ivillareal@dykema.com

Amanda Gordon
State Bar No. 24103737
agordon@dykema.com
DYKEMA GOSSETT PLLC
5 Houston Center
1401 McKinney St., Suite 1625
Houston, Texas 77010
713.904.6900

Appellee: **Bot Auto TX, Inc.**

Trial & Appellate Counsel: **Joseph A. Fischer, III**
tfischer@jw.com
Texas Bar No. 00789292
Tori C. Emery
temery@jw.com
Texas Bar No. 24126228

JACKSON WALKER, LLP
1401 McKinney, Suite 1900
Houston, TX 77010
(713) 752-4530

STATEMENT OF THE CASE

<i>Nature of the case:</i>	In this trade secrets misappropriation suit, CreateAI Holdings Inc., (“Appellant” or “CreateAI”) filed a petition against Appellee Bot Auto TX Inc. (“Bot Auto”) for violations of the Texas Uniform Trade Secrets Act and sought a temporary injunction after Appellee, Bot Auto, commenced business operations using confidential, proprietary, and trade secret information that belonged to Appellant. Appellant poured hundreds of millions of dollars into researching and developing technology for an autonomous driving system that would allow for the fully autonomous operation of semi-trucks on open public roads without a human in the vehicle or remote human intervention, i.e. “driver-out” operations. The confidential, proprietary, and trade secret information that Appellee Bot Auto misappropriated included, but is not limited to, Appellant’s redundant power and steering systems relating to driver-out operations of commercial vehicles.
<i>Trial Court:</i>	Hon. Sofia Adrogué; in the Business Court Division of the Eleventh District Sitting in Harris County, Texas; Cause No. 24-BC11A-0007
<i>Trial Court Disposition:</i>	On December 28, 2024, the Court denied Appellant’s Application for Temporary Injunction against Bot Auto TX Inc. and dissolved the order granting Appellant’s Application for Temporary Restraining Order to Preserve the Status Quo entered on October 28, 2024.

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STATEMENT REGARDING ORAL ARGUMENT

This case requires the Court to determine whether Appellant sufficiently established some evidence that Appellee misappropriated Appellant's trade secrets in violation of the Texas Uniform Trade Secrets Act ("TUTSA") and has suffered probable, imminent, and irreparable harm as a result. This case involves complex technology that Appellant originally created for purposes of developing the first autonomous trucking technology to achieve fully autonomous operation of a semi-truck on open public roads without a human in the vehicle or remote human intervention, and an open question of law under TUTSA. Thus, Appellant believes oral argument would aid the Court in resolving these issues.

ISSUES PRESENTED

In this trade secrets misappropriation suit, Appellant sought a temporary and permanent injunction against Appellee, but the trial court denied Appellant's application for temporary injunction and dissolved the temporary restraining order previously entered by the court.

- Issue 1.*** Whether the trial court erred in denying Appellant's Application for Temporary Injunction when Appellant presented more than "some evidence" of misappropriation of trade secret information, and thus a probable right of relief upon a claim for violation of the Texas Uniform Trade Secrets Act.
- Issue 2.*** Whether the trial court erred in denying Appellant's Application for Temporary Injunction because Appellant's showing established a presumption of probable, imminent, and irreparable harm as a matter of law.

STATEMENT OF JURISDICTION

The Fifteenth Court of Appeals has jurisdiction over this case pursuant to Texas Civil Practice & Remedies Code § 15.014(a)(4) because the 11th Judicial District of the Business Court of Harris County, Texas denied Appellant's Application for Temporary and Permanent Injunction on December 28, 2024, and Appellant filed a timely notice of interlocutory appeal on December 31, 2024.

STATEMENT OF PROCEDURAL HISTORY

This Appeal arises out of a trade secret dispute, involving the misappropriation by Appellee, Bot Auto TX Inc. (“Bot Auto”), of trade secrets belonging to Appellant, CreateAI Holdings Inc. (formerly known as TuSimple Holdings Inc.) (“Appellant”). On October 1, 2024, seeking to protect its goodwill and trade secrets, Appellant submitted its Original Petition and Application for Temporary Injunction. CR0006-0039.

On October 2, 2024, Bot Auto agreed to the entry of a Stipulation and Order, prohibiting Bot Auto from transferring or disseminating Appellant’s technology. CR0173-0176.

On October 28, 2024, Bot Auto agreed to extend the duration of the Stipulation and Order. CR0858-0862.

Despite this, upon hearing but without making any findings of fact, on December 28, 2024, the trial court denied Appellant’s Application for Temporary and Permanent Injunctions. CR1091-1093.

Accordingly, on December 30, 2024, Appellant submitted its Request for Findings of Fact and Conclusion of Law regarding the trial court’s Order. CR1094-1098. Desiring to prevent the imminent misappropriation of its trade secrets, Appellant submitted its Notice of Accelerated Appeal on December 31, 2024.

CR1151-1154. To date, the trial court has not issued any findings of fact or conclusions of law pursuant to Appellant's request.

TO THE HONORABLE JUSTICES OF THE COURT:

Appellant CreateAI Holdings Inc. files this interlocutory appeal following the trial court's denial of Appellant's Application for Temporary Injunction. This case stems from Appellee Bot Auto TX Inc.'s ("Bot Auto") brazen theft of Appellant's advanced self-driving technology, which Bot Auto misappropriated from Appellant when its founder, Xiaodi Hou, who was Appellant's former Chief Technology Officer ("CTO"), Chief Executive Officer ("CEO"), and member of its Board of Directors, was terminated as CTO and CEO of Appellant and ultimately resigned from Appellant's Board of Directors, and started Bot Auto using the same technology developed by Appellant. Appellant filed suit against Bot Auto for violating the Texas Uniform Trade Secrets Act ("TUTSA") and sought a temporary injunction merely restraining Bot Auto from further disseminating the trade secrets that it had misappropriated from Appellant. Despite an abundance of evidence to support Appellant's request for a temporary injunction, the trial court denied Appellant's application. Appellant, now, respectfully requests that this Court reverse the trial court's decision and remand with instructions to the trial court to enter the requested temporary injunction for the reasons set forth below.

STATEMENT OF FACTS

A. Appellant’s Autonomous Trucking Technology Business Relies on its Confidential, Proprietary, and Trade Secret Information.

In 2015, Xiaodi Hou co-founded TuSimple Holdings, Inc., now known as CreateAI Holdings Inc., the Appellant in this matter. Appellant develops and markets autonomous trucking technology, in the United States and internationally. CR0010 and CR0016.

Over the course of many years and upon the investment of hundreds of millions of dollars, Appellant developed substantial confidential, proprietary, and trade secret information. CR0010.

Through its efforts, Appellant became a leader in the autonomous driving sector. CR0010. Appellant previously partnered with UPS, Navistar, Penske Truck Leasing, and McLane (the grocery and food service supply chain holding of Berkshire Hathaway), and worked with overseas customers and co-developers in Sweden, Japan and China. CR0010-0011.

Appellant is the first company focused on autonomous trucking technology to achieve fully autonomous operation of a semi-truck on open public roads without a human in the vehicle or remote human intervention—i.e. “driver-out” operation. CR0011. This achievement was the result of Appellant researching and developing its technology over the course of seven years and investing hundreds of millions of U.S. dollars. CR0011.

Appellant's autonomous trucking technology is highly complex, and consists of numerous different systems and technologies working together to allow an equipped truck to travel safely and reliably to its destination. Among these individual proprietary technologies are three that are key to the success of Appellant's overall autonomous trucking technology:

- a. Appellant has developed proprietary sensor suite technology and a custom perception housing (the "Sensor Suite Technology") that enables a truck to "see" its surroundings in real time, and to detect other vehicles, pedestrians, road conditions, hazards, and numerous other external and environmental factors, thereby allowing the vehicle to travel safely and reliably to a given destination.
- b. Appellant has developed proprietary autonomous decision-making technology (the "Autonomous Decision-Making Technology") that includes and incorporates know-how regarding the real-word situations and conditions that a truck will encounter on the road, including "edge cases" – that is, unusual but hazardous situations, such as unexpected obstacles, emergency vehicles, and unsafe driving by other vehicles – that are rare but are also critical to the ability of an autonomous vehicle to operate safely.
- c. Appellant has developed proprietary safety technology (the "Automatic Safety Technology") that includes certain redundant systems and subsystems that provide "fail-safe" and "fail-operational" capabilities of the self-driving vehicles equipped with its technology, and ensure that in the event of an unexpected loss of power or other malfunction in a critical system, the self-driving truck will be able to bring itself to a safe stop and call for assistance, and thus to ensure safe operation on the public roads.

CR0007

"Driver-out" capability is the ability of the truck to drive from a terminal (for instance, a warehouse or a parking lot) to another terminal without a human driver

or safety operator. CR0011. This requires the vehicle itself to deal with all of the driving challenges associated with driving at full speed on a highway, and it requires the vehicle to have proper “fail-safe” and “fail-operational” systems built in. CR0011. A “fail-safe” vehicle is one that automatically responds to a fault in the system (such as a failure of sensors or software, or a mechanical issue) by bringing itself safely to a stop without being a hazard to other vehicles on the road. CR0011. A “fail-operational” vehicle is one that can continue to perform sufficiently, even in the event of a system fault, to slowly come to stop and thus prevent accidents on the road. CR0011.

To achieve safe “driver-out” road operations, Appellant developed a market-leading autonomous driving system, consisting *inter alia* of its proprietary sensor suite and housing; a proprietary centralized onboard computer running a wide array of artificial intelligence models in real time and incorporating Appellant’s know-how regarding road conditions and edge cases; and proprietary designs of redundant power and steering systems to ensure safety in driving operations. CR0012.

The Sensor Suite Technology enables the autonomous driving system to identify and track objects around the truck (including coverage of what would otherwise be blind spots), and operate safely on the road even without a human driver. CR0012. It incorporates numerous trade secrets, including those directed to the following: The design of the suite of sensors, including the design of

redundancies in the sensor suite; the specifications of those sensors; certain non-public aspects of the arrangement and alignment of the sensors; the manner in which the information from those sensors is “fused,” within an Appellant-designed computer unit; and certain non-public aspects of the design of the physical perception housing for the sensors and the manner in which the housing is designed to protect such sensors from certain environmental conditions. CR0012. Certain specific details and implementations of these aspects of the Sensor Suite Technology constitute highly valuable trade secrets of Appellant (the “Sensor Suite Technology Trade Secrets”). CR0012. The Sensor Suite Technology Trade Secrets are reflected in confidential and proprietary materials, including certain schematics and design documents; software and artificial intelligence models (including the sensor fusion software and the various modules therein); physical hardware and components; and certain knowledge and know-how. CR0012-0013.

To develop the Sensor Suite Technology and its autonomous trucking technology more generally, Appellant operated a fleet of over 70 Class 8 trucks (i.e., freight trucks) in the United States, and approximately 30 such trucks in Japan and China, to collect road trip data and test its systems over the course of seven years. CR0013. Collectively, these vehicles travelled over 10 million miles—the equivalent of over 100 years of human professional freight driving experience—to collect data. CR0013. Appellant’s personnel and automated software analyzed,

structured, and annotated this data to identify a wide range of road objects and driving behaviors. CR0013.

The data collected over seven years and 10 million miles was used to ‘train’ Appellant’s autonomous driving software and artificial intelligence models so that the software and models can correctly identify objects and conditions; predict the behavior of other drivers and actors; and plan and execute the optimal trajectory of trucks, all in real time. CR0013.

A critical portion of that data, and of the know-how that Appellant developed, pertains to “edge cases” (also referred to as “corner cases”)—objects or events that an autonomous vehicle may encounter during operations and that present difficult or hazardous contingencies to the system when they do arise. CR0013. Edge cases include the presence of pedestrians or animals in unusual road settings; the unexpected presence or arrival of first responder vehicles; unanticipated environment conditions; or unexpected driving behavior by other vehicles on the road. CR0013.

Edge case data, and its treatment and annotation, are extremely important to the business of Appellant, because they provide direction and prioritization in the software and model development—that is, which product development problems to tackle and in what order of priority. CR0013-0014. They are also critical in providing direction on how to build a *safe* system that can address even unusual conditions and

events on the road even during “driver-out” operations. CR0014. The know-how developed from testing conducted over seven years and 10 million miles—including its know-how regarding data annotation and direction and prioritization of technology development efforts—constitutes trade secret information of Appellant. CR0014.

Appellant also developed proprietary Automatic Safety Technology to ensure that self-driving trucks equipped with its systems are “fail-safe”—i.e., capable of responding to malfunctions in ways that prevent harm to the system and to persons—and “fail-operational”—i.e., capable of continuing to operate sufficiently to bring the vehicle to a safe stop and to call for attention and repair. CR0014.

Finally, and centrally for purposes of this appeal, Appellant invested several years and hundreds of millions of dollars to develop the Automatic Safety Technology. CR0014. The technology incorporates numerous trade secrets, including those directed to the following: Certain redundant components and systems; the design and requirements for backup components and systems; the operation of such redundant components and systems; the conditions under which such redundant components and systems are invoked; the identification and remediation of faults in hardware and software systems; and the interoperability of such redundant and backup components and systems with primary components and systems. CR0015. The specific details and implementations of these aspects of the

Automatic Safety Technology constitute highly valuable trade secrets of Appellant (“the Automatic Safety Technology Trade Secrets”). CR0015. The Automatic Safety Technology Trade Secrets are and were reflected in confidential and proprietary materials, including certain schematics and design documents; software and models; physical hardware and components; testing and validation protocols; and certain knowledge and know-how. CR0015.

Appellant took extensive and cost-intensive measures to ensure that each of the Sensor Suite Technology Trade Secrets, the Autonomous Decision-Making Technology, and the Automatic Safety Technology Trade Secrets (collectively, the “Trade Secrets”) are kept confidential. CR0015. Access to materials reflecting the Trade Secrets is and has been limited to only those individuals and employees who require such access in connection with their responsibilities in developing Appellant’s autonomous trucking technology. CR0015.

Additionally, Appellant required each employee to sign an Employee Proprietary Information and Inventions Agreement (“EPIIA”) that contained specific provisions to protect against disclosure of the Trade Secrets. CR0015-0016. Finally, the Trade Secrets are protected information under a National Security Agreement between Appellant and certain agencies of the United States Government and access to and dissemination of that information is strictly controlled under that Agreement—so long as it remains within the control of Appellant. CR0016.

In the fiscal year prior to the tenure of Xiaodi Hou as Appellant’s CEO—fiscal year 2021—Appellant spent approximately \$260 million on product development and other operations. CR0016. During Hou’s tenure as CEO, in 2022, Appellant’s capital expenditures rose by over 25%, to approximately \$330 million. CR0016. This scale of investment was necessary for the development of the highly complex and advanced technologies that are at the heart of Appellant’s business, and to their safe and reliable development. CR0016.

B. Hou, and Other Former Employees of Appellant Now Employed by Bot Auto, Had Comprehensive Access to Appellant’s Confidential, Proprietary, and Trade Secret Information, and Misappropriated It.

Xiaodi Hou, co-founder of Appellant, became a leader in the development of Appellant’s perception technologies—the sensor suite and perception housing, and the software and models underlying them—and understood them from the ground up. CR0016. Hou was also intimately involved in the collection and processing of trip data and the development of Appellant’s edge case know-how. CR0016. Lei Wang was Appellant’s head of planning—the head of the development of technologies by which autonomous trucks “plan” their driving activities on the road, in real time. CR0016. Wang worked with Hou on both the development of those systems and the redundant safety systems. CR0016.

In March 2022, Hou was named CEO of Appellant. CR0016. In the second calendar quarter of 2022, Hou promoted Lei Wang to Executive Vice President,

Technology, making him the most senior technical employee of Appellant and giving him access, along with Hou, to most, if not all, of Appellant’s Proprietary Information. CR0016-0017.

In October 2022, Hou was fired from his post as CEO of Appellant. CR0017. Appellant’s Board of Directors based its decision upon its “loss of trust and confidence” in Hou’s judgment and leadership, his lack of candor, and as a result of information developed upon investigation—which indicated that Hou had improperly diverted confidential data, design information, and key employee information to a Chinese company that had then been established by Hou’s former co-founder of Appellant. CR0017. This incident led to a federal investigation of the potential transfer of Appellant’s advanced technology to parties in China, which ultimately cleared Appellant of wrongdoing but led to a severe downturn in Appellant’s capital position and to a restructuring of its operations. CR0017.

As a substantial shareholder of Appellant, Hou remained on the board for a brief period of time after his termination, until March 2023. CR0017.

Bot Auto’s website domain name was established, upon information and belief, by Xiaodi Hou, on or about December 5, 2022. CR0017. Hou then relocated to Harris County, Texas, incorporated Bot Auto and commenced operations from offices in Harris County. CR0017.

On or about December 12, 2022, Appellant learned that several key employees, including Lei Wang, had long been conducting Company work, using Company Proprietary Information (as defined below), on their personal computers. CR0017. Lei Wang informed Appellant that he had already removed such information from his personal computer, but did not advise as to what else he had done with that information. CR0017. An investigation—which was conducted without the knowledge of Hou’s plans to establish Bot Auto or the employee solicitation issues discussed below—indicated that Appellant data, source code, and design information, including trade secret information—had indeed resided on the personal computers in question. CR0017-0018.

In late December 2023 and January 2024, Brian Moore, Appellant’s former Vice President of Government Affairs and CFIUS Security Officer, reached out to Appellant to attempt to buy from Appellant a truck outfitted with TuSimple’s sensor suite and perception housing. CR0018. Moore sought assurances that the identity of the buyer on whose behalf he was acting would not be disclosed. CR0018.

In late January and February 2023, two former and current employees of Appellant communicated to it that they had heard rumors that Hou was establishing a new company, and that he was soliciting key employees of Appellant to join his new venture. CR0018. In early March 2023, Appellant interviewed several such

employees, and they all denied having received any such solicitation from Hou. CR0018.

One employee then asked to be interviewed again. CR0018. In that latter interview, the employee advised that he had answered the questions in the previous interview as he had been instructed—by Hou. CR0018. He revealed that Hou had indeed contacted him and solicited his employment at a new venture, and was soliciting multiple key employees of Appellant. CR0018. That employee advised that Hou’s first such efforts took place in November 2022, shortly after Hou’s ouster as CEO; that Hou still had collaborators in Appellant’s employ, working to effect a transition; that Hou had been alerted to the upcoming interviews regarding his solicitation of key Company employees and had contacted those employees prior to their interviews; and that the key employees’ cooperation in the investigation of their use of personal computers had been a tactic, intended to cover their tracks in connection with their departure to the new venture. CR0018.

The Board of Directors asked Appellant’s outside corporate counsel to conduct a formal investigation, which would entail interviewing Hou. CR0019. Hou resigned from the Board in March 2023 after being notified that he would be interviewed by counsel. CR0019.

The nature of Hou’s former positions as CTO and CEO of Appellant required that he have access to Appellant’s confidential, proprietary, and trade secret

information, including but not limited to proprietary inventions, artificial intelligence learning models, and both positive and negative “know-how,” which Appellant spent significant time and expense creating and developing. CR0019.

As an early employee and director of Appellant from August 2015 until March 2023, Hou’s knowledge of Appellant’s confidential, proprietary, and trade secret information was developed entirely in Appellant’s employ and within the ambit of his contractual and fiduciary duties to Appellant. CR0019. Appellant’s employment of Hou is the only employment listed by Hou on his LinkedIn profile, prior to his final departure from Appellant in early 2023; Hou is in fact now the CEO of Bot Auto, but prior to September 27, 2024, listed his employment not as Bot Auto, but as “Stealth Mode.” CR0019.

Similarly, Lei Wang also recently listed his current employment, on his public LinkedIn profile, as “Stealth.” CR0019. Brian Moore also listed his employment, on his public LinkedIn profile, as “Stealth.” CR0019. Upon information and belief, Wang, Moore, and multiple other key former employees of Appellant are now employed by or associated with Bot Auto. CR0019.

Hou, Wang, and the other involved key employees each signed an Employee Proprietary Information and Inventions Agreement (“EPIIA”) with Appellant.¹ CR0019.

The EPIIA executed by Hou includes the following language regarding each employee’s obligations with regard to Appellant’s confidential, proprietary, and trade secret information:

I agree that all Assigned Inventions (and all other financial, business, legal and technical information regarding or relevant to any Company Interest that is not generally publicly known), including the identity of and any other information relating to Appellant’s employees, Affiliates and Business Partners (as such terms are defined below), that I develop, learn or obtain during my employment or that are received by or for Appellant in confidence, constitute “Proprietary Information” [of Appellant]. I will hold in strict confidence and not directly or indirectly disclose or use any Proprietary Information, except as required within the scope of my employment. My obligation of nondisclosure and nonuse of Proprietary Information under this Section shall continue until I can document that it is or becomes readily generally available to the public without restriction through no fault of mine (understanding that breach of this Agreement would be such a fault) or, if a court requires a shorter duration, then the maximum time allowable by law will control.

CR0020.

The EPIIA also includes the following language regarding the survival of the employee’s obligations after termination of employment relationship:

¹ To be clear, Appellant does not claim for breach of the EPIIA, but cites it here to show that Hou, and the other former employees at issue, know well that the technologies upon which they worked at Appellant were Assigned Inventions and Proprietary Information of Appellant.

I agree that any change or changes in my employment title, duties, compensation, or equity interest after the signing of this Agreement shall not affect the validity or scope of this Agreement. I agree that the terms of this Agreement, and any obligations I have hereunder, shall continue in effect after termination of my employment, regardless of the reason, and whether such termination is voluntary or involuntary, and that Appellant is entitled to communicate my obligations under this Agreement to any of my potential or future employers. I will provide a copy of this Agreement to any potential or future employers of mine, so that they are aware of my obligations hereunder. This Agreement, and any obligations I have hereunder, also shall be binding upon my heirs, executors, assigns and administrators, and shall inure to the benefit of Appellant, its Affiliates, successors and assigns. This Agreement and any rights and obligations of Appellant hereunder may be freely assigned and transferred by Appellant, in whole or part, to any third party.

CR0020.

Hou, and the other key employees of Appellant who ultimately followed him to Bot Auto, were thus aware that all technologies and products developed while they were employed by Appellant constituted Proprietary Information of Appellant. CR0021. For the reasons set forth below, it is now crystal clear that Hou, and the other key employees, have now transferred the key trade secret Proprietary Information discussed above—the TuSimple Sensor Suite Technology Trade Secrets, the TuSimple Autonomous Decision-Making Technology Trade Secrets, and (centrally for purposes of this appeal) the TuSimple Automatic Safety Suite Technology Trade Secrets—to Bot Auto, and that Bot Auto is now utilizing that proprietary trade secret information to solicit investment and take competing products and systems to market. CR0021.

At some point in 2024, Bot Auto delivered to potential investors a ‘teaser’ document, succinctly stating to those potential investors its value proposition. CR0021. In particular, in that solicitation document Appellee represented that it would achieve “driver-out” operations within approximately one year after the commencement of its operations, and would achieve “full operations” of an initial commercial fleet within two to three years—rather than the seven years required by every competitor in the sector before it. CR0021. Appellee proudly stated that it would achieve these results upon the investment of a fraction of the capital required by other competitors, and critically, stated that it could do so because, only months after its formation, Hou and its “team” already had “experience and knowledge about the exact and shortest path to commercialization” and “the latest technologies.” CR0021.

In August of 2024, Appellant began to discern the full depth and breadth of Bot Auto’s misappropriation and misuse of Appellant’s trade secret information and technologies. CR0021. This transpired, in part, because of Hou’s own words, as stated to Chinese media. CR0021.

On August 5, 2024, however, the mainland Chinese technology trade publication Jia Zi Guang Nian published an interview with Hou. CR0022. That interview amounts to an outright admission, by Hou, of the gravamen of Appellant’s claims here. CR0022.

In that interview, Hou admitted that Bot Auto is effectively his own closely-held and controlled successor company to Appellant. CR0022. As the interviewer correctly stated, “After leaving [Appellant], Hou Xiaodi once again started a L4-level driverless truck startup and established a new company, Bot Auto, in the United States.” CR0022. And as Hou himself stated, “[t]rucks are closer to commercialization, which is why I want to continue working on unmanned trucks after leaving [Appellant].” CR0022. Furthermore, Hou explicitly indicated that going forward he would be focused on developing technology to deal with the edge cases that had been largely mastered by the years of work and investment devoted to that challenge by Appellant. CR0022. Hou drew a contrast between the work of his new venture Bot Auto and that of Tesla’s Full Self-Driving (“FSD”) effort: “Tesla’s business is to sell cars, and FSD is the added value of selling cars. CR0022. If you want to consider how to sell more cars, you can’t go deep into a limited area like L4 and solve all corner cases in this area.” CR0022.

Hou furthermore clarified that he had no intention of developing Bot Auto’s edge case know-how independently using simulated training data—and thus, necessarily, would require millions of miles of real-world road trip data to achieve the same degree of know-how that Appellant developed:

For example, the story told by Waabi (an autonomous driving company founded in 2021) is that simulation is the best in the world, everything is just like the real world, and there is no problem that simulation cannot

solve. But I don't believe this story, because the last 1% of the problems in simulation [*i.e.*, the edge cases] are the most difficult.

[....]

The most extreme argument I have heard is that the distance of autonomous driving can be conquered, which is a corner case of tens of millions of kilometers and a large amount of computing power. This is a typical case of living in one's own fantasy world.

CR0023-0023.

Hou furthermore acknowledged the criticality of the redundant systems developed at Appellant: “Hou Xiaodi still proudly tells ‘Jia Zi Guang Nian’ today that Appellant is the world's first company to test fully driverless heavy trucks on open roads, and has achieved the first half of the driverless game—creating a system with safety redundancy.” CR0023. As Hou then stated in detail:

The core of autonomous driving L4 is how to complete a stable system, especially using unstable modules to complete a stable system. For example, if the camera fails to detect an object in one frame, this will definitely happen. How to ensure that our system does not crash is the key.

The dumb way is to reduce the failure rate from once every 100,000 kilometers to once every 1 million kilometers, so that the system is stable. The smart way is to innovate at the architecture level, so that when one module fails, there are other modules to back it up. We have several more layers of back-up solutions, so that we can handle failures at any time in the system.

This “smart way to innovate at the architecture level” is, itself, Appellant's trade secret design. CR0023.

Remarkably, Hou admitted that he has little appetite for the hard work of actually *building* a successful company—and was far more focused on swiftly and simply reaching his goal: “I don’t enjoy the process of entrepreneurship, I only look at the end. In the end, this business can be accomplished, and the light of hope emitted by this ultimate vision is attractive to me.” CR0023.

And finally, Hou effectively admitted that Bot Auto “adopted” and is now using advanced technology that it could not possibly have independently developed, in the few months of its operations and upon an infinitesimal fraction of the investment and effort devoted by Appellant, without the benefit of Appellant’s trade secret information:

People always ask me, are you end-to-end? To maintain academic rigor, we are really more than end-to-end. **But what they actually want to ask is, have you adopted more advanced technology? Of course we have.**

[....]

Although Bot Auto has world-leading technology, we do not claim to be a technology company, but a pragmatic operation company. We use the world's most advanced technology to operate well.

As Hou here openly admitted, Bot Auto is not a technology company, but does indeed have world-leading technology—Appellant’s technology. CR0023-0024.

Bot Auto raised investment capital in support of its deployment of Appellant’s technology and know-how. CR0024. Specifically, Bot Auto publicly stated that it

raised some \$10.5 million in investments thus far, and on Friday, September 27, 2024, Bot Auto publicly announced that it had raised \$20 million in funding. CR0024.

More troublingly, for purposes of Appellant's ongoing business and its efforts to protect and deploy its technology and know-how, Bot Auto sought and received investment capital from multiple sources overseas, including sources from the People's Republic of China. CR0024. Specifically, Hou participated in "road shows"—that is, investment solicitation efforts—in cooperation with M31 Capital, a prominent investment fund operating in Beijing and Shanghai, China. CR0024. In those efforts, Hou traveled with M31 personnel to, at least, London, United Kingdom and to Riyadh, Saudi Arabia; Doha, Qatar; and Abu Dhabi, United Arab Emirates. CR0024. In connection with the London delegation—and despite Bot Auto's headquarters facility and operations in this District—M31 Capital described Hou as one of "30 top Chinese entrepreneurs," and in connection with the delegation to the Middle East, as a member of "an elite delegation of senior Chinese CEOs and executives." CR0024.

Certain of the investors identified in Bot Auto's September 27, 2024 announcement of its most recent capital raise, including Cherubic Ventures, Linear Capital, and M31 Capital, maintain their principal places of business overseas in locales including the Cayman Islands and the People's Republic of China. CR0025.

Appellant expended considerable resources and effort, in cooperation with appropriate agencies of the United States Government and pursuant to a detailed National Security Agreement with the Departments of Defense and the Treasury, to ensure that its advanced technologies will remain securely within the United States. CR0025. Access to those technologies is governed by an Access Control List, which limits access to US employees who have passed checks, and is on a need-only basis. CR0025. Foreign employees and contacts are not allowed access. CR0025. Furthermore, on the platforms where Appellant maintains its trade secrets, including source code, there are over 2,100 separate access-controlled data repositories, each with its own vetted administrator; Hou and Wang, as technical executives, had access to all of these repositories. CR0025.

Bot Auto's, and Hou's, efforts to misappropriate Appellant's trade secret technologies and information are animated in substantial part by their intention to circumvent these controls, and enable the deployment of those technologies and information overseas, and for the benefit of non-U.S. persons. CR0025. In fact, Hou himself, as CEO of Bot Auto, falsely represented to at least one potential investor that Appellant's recent restructuring resulted from Appellant's need to comply with its arrangements with the United States Government to ensure protection of the technologies in question, and truthfully represented to that potential investor that Bot Auto will not regard itself as being similarly constrained. CR0025. This raises the

acute risk that Appellant’s proprietary technology, know-how, and information will be transferred, by Bot Auto, to unknown parties overseas, and thus Appellant’s business will be damaged in ways that will barely be subject to discernment, much less to ready calculation, and that will be irreparable. CR0025-0026.

In its promotion of its business to potential investors, Bot Auto admitted that it is operating in direct competition with Appellant. CR0026. In fact, Bot Auto’s statement of its market offering is a copy of Appellant’s value proposition. CR0026. Bot Auto’s investment proposal documents state that it “offers middle-mile autonomous Transportation-as-a-Service (TaaS), on highways and surface streets, hub to hub”—the very same market offering described by Appellant in its previous IPO filing, and in many other investor presentations, during Hou’s tenure with Appellant. CR0026. It is important to emphasize that, for all the reasons set forth herein (and many more), *it is flatly impossible* for Bot Auto to achieve “driver-out” operations in **one year** (as opposed to seven years or more), and full commercialization of autonomous trucking services in two to three years, **without the theft and misuse of Appellant’s critical trade secrets**, developed as they were over the course of years and upon the investment of hundreds of millions of dollars. CR0026.

Yet further investigation revealed that many key former employees of Appellant have now entered the employment of Bot Auto, including but not limited

to Appellant's former Director of Corporate Strategy; Chief of Staff; Business Research and Senior Program Manager; Senior Software Engineer; Senior Mechanical Engineer; and Senior Accounting Manager. CR0026. Upon information and belief, additional key employees have also entered the employment of Appellee, including but not limited to Appellant's Director of Planning and Prediction; Senior Staff Software Engineer; Senior Manager for Lateral Control; and two Senior Technical Program Managers. CR0026.

Upon yet further investigation, Appellant learned that Bot Auto had in fact established an operational facility in the Houston area. CR0026. This was consistent with information received in the course of the aforementioned employee solicitation investigation, which indicated that Hou had informed the solicited employees that he was moving to Texas. CR0026-0027. Upon information and belief, including but not limited to the timeline of events as embodied in the review of Appellant employees' uses of personal laptops and the investigation of Hou's solicitations of Appellant employees, Hou and Bot Auto undertook much of the conduct constituting the misappropriations of Appellant's trade secrets in Harris County. CR0027.

Recent investigation revealed that Bot Auto is now openly conducting product development operations using Appellant's trade secret technology. CR0027. Specifically, investigation revealed that, upon the public roads in the Houston metropolitan area, Appellee is testing a sensor suite and perception housing

arrangement that is visibly functionally identical to the sensor suite and perception housing developed by Appellant, utilizing the same arrangement and alignment of sensors and thus necessarily a functionally identical set of software and artificial intelligence systems, and collecting data with that trade secret technology. CR0027.

Furthermore, Hou’s statements to media and to investors—that Bot Auto will achieve “driver-out” operations within one year and upon the investment of a tiny fraction of the capital required by Appellant and its competitors—could not be even colorably true, unless Bot Auto is also utilizing the edge case know-how generated in the course of Appellant’s product development during Hou’s tenure with Appellant. CR0027. As stated above and as set forth in further detail in the Lu Declaration, that know-how is the product of millions of miles of testing and data collection, utilizing nearly 100 development vehicles, over the course of seven years and upon the investment of hundreds of millions of dollars. CR0027. Bot Auto has operated its business for less than one year, and upon information and belief, has to date raised approximately only \$20 million in liquid funds and operates, not 100 test vehicles, but two. CR0027.

Finally, Hou’s statements could not be true, and Bot Auto could not be conducting the development operations it has been conducting with the two test vehicles it has been operating on Houston-area roads, were it not also utilizing Appellant’s proprietary designs of redundant power and steering systems. CR0028.

Additionally, the key former Company employee in charge of the development of such systems—the former Executive Vice President for Technology Lei Wang—was a central subject of the investigation of key employees' uses of personal computers containing Appellant Proprietary Information, and of the aforementioned solicitation investigation. CR0028. Upon the information received in the course of those investigations, Lei Wang was in fact one of the then-current employees of Appellant who colluded with Hou to effect the wholesale transfer of these key technologies to Bot Auto. CR0028.

For all the foregoing reasons, it is thus now clear beyond reasonable dispute that Bot Auto misappropriated critical trade secret information, know-how and technologies of Appellant. CR0028. By the public admissions and activities of Bot Auto's own founder and CEO, Xiaodi Hou, it is clear that Appellee is developing competing products and systems utilizing that trade secret information; soliciting investment from Chinese and other overseas investors in support of further such activities; and preparing imminently to take competing products and systems to market. CR0028.

For all the foregoing reasons, and upon further information and belief, Bot Auto conspired with Hou, Wang and other persons to effect the misappropriation and misuse of Appellant's trade secret information and technology set forth herein, beginning no later than late 2022. CR0028. In the alternative, those persons have

aided and abetted Bot Auto's misconduct, or otherwise engaged in actionable concerted action to that end. CR0028.

For all the foregoing reasons, Appellant now faces the risk of business-critical damages, many if not most of which will not be compensable by pecuniary remedies. CR0029.

SUMMARY OF THE ARGUMENT

The trial court erred in denying Appellant’s Application for Temporary and Permanent Injunction because Appellant presented more than the minimally required “some evidence” of the probable right of recovery, and of probable, imminent, and irreparable harm, that Appellant was required to show in order for the Court to grant the temporary injunction. More specifically, Appellant presented clear and convincing evidence – indeed, overwhelming, direct evidence – of misappropriation of specific trade secrets pertaining to its Autonomous Decision-Making Technology and its Automatic Safety Systems Technology, and upon that showing imminent and irreparable harm was properly to be presumed as a matter of Texas law. Pursuant to Texas Civil Practice & Remedies Code § 51.014(a)(4), Appellant thus files this appeal following the trial court’s denial of Appellant’s application.

The development and realization of each of the Sensor Suite Technology, Autonomous Decision-Making Technology, and TuSimple Safety Technology, were the result of—and were only made possible by—years of work, hundreds of thousands of hours of research and development, hundreds of millions of dollars, and millions of miles of testing.

Each of these technologies and capabilities includes trade secrets of Appellant. Each conveys a crucial competitive advantage to Appellant, as well as

substantial potential public benefits. Because of the crucial competitive advantages of these technologies, the details and specific implementation of each of these technologies were and have been kept highly confidential by Appellant. Each of these technologies and capabilities has now been misappropriated, and now is being surreptitiously misused, by Bot Auto.

Appellant learned of the misappropriation of its trade secrets and their misuse by Bot Auto recently. Bot Auto has already deployed testing vehicles that visibly incorporate TuSimple's Sensor suite and housing, and has made specific statements to potential investors regarding its capabilities and intentions that demonstrate beyond reasonable dispute that it has also misappropriated Appellant's know-how regarding road conditions and edge cases, and Appellant's redundant safety systems technologies. This misappropriation presents a business-critical threat to Appellant, which markets its technologies to autonomous trucking concerns in the United States and worldwide, and which faces the loss of inestimable value as a result of Bot Auto's actions. Moreover, Bot Auto has been raising investment capital from sources overseas, raising the acute risk that Appellant's technologies will be dissipated beyond any hope of recovery or recompense

Appellant initially filed suit and sought a temporary injunction against Bot Auto for violations of the Texas Uniform Trade Secrets Act, but, despite Appellant having satisfied the requirements for entering a temporary injunction, the trial court

erroneously denied TuSimple's application and dissolved the temporary restraining order it previously entered. CR1091-1093. However, the aforementioned assertions and the evidence of record are sufficient to (1) establish proof of each element required to show Bot Auto misappropriated Appellant's trade secrets, and in particular, the Automatic Safety Technology, in violation of TUTSA, (2) show some evidence of a probable right of relief sought, and (3) show probable, imminent, and irreparable harm to Appellant in the interim of the underlying lawsuit. Thus, respectfully, the trial court abused its discretion, and the Court of Appeals should reverse the trial court's decision and remand with instructions to enter the requested temporary injunction against Bot Auto.

STANDARD OF REVIEW

In Texas, the standard of review for an appellate court when reviewing a trial court's denial of a temporary injunction is whether the trial court abused its discretion. *Navarro Auto-Park, Inc. v. San Antonio*, 580 S.W.2d 339, 340 (Tex. 1979); *Wylie Indep. Sch. Dist. v. TMC Founds., Inc.*, 770 S.W.2d 19, 21 (Tex. App.—Dallas 1989). The question here is “whether there has been a clear abuse of discretion by the trial court in determining whether the [appellant] is entitled to a preservation of the status quo pending trial on the merits.” *Brooks v. Expo Chem. Co.*, 576 S.W.2d 369, 370 (Tex. 1979). A clear abuse of discretion occurs when the trial court's decision is arbitrary and capricious, amounting to clear error. *Argo Grp. US, Inc. v. Levinson*, 468 S.W.3d 698, 700 (Tex. App.—San Antonio 2015, no pet.). “[T]he merits of the underlying case are not presented for appellate review in an appeal from an order granting or denying a temporary injunction.” *Brooks v. Expo Chem. Co.*, 576 S.W.2d at 370.

ARGUMENT

I. ARGUMENTS & AUTHORITIES

Pursuant to Rules 680 – 693 of the TEXAS RULES OF CIVIL PROCEDURE, TEXAS CIVIL PRACTICE AND REMEDIES CODE Section 65.011, and principles of equity, injunctive relief is necessary to preserve the status quo pending a final judgment or other disposition of an action and to restrain one party from committing further violations of another’s rights that would tend to render a judgment ineffectual, resulting in no adequate remedy at law for the aggrieved party. “Injunctive relief is recognized as a proper remedy to protect confidential information and trade secrets.”

Rugen v. Interactive Bus. Sys., 864 S.W.2d 548, 551 (Tex. App.—Dallas 1993, no writ) (citing *Hyde Corp v. Huffines*, 158 Tex. 566, 314 S.W.2d 763, *cert. denied*, 358 U.S. 898 (1958)). Moreover, an injunction may be the only effective relief an employer has where its former employees possess its confidential information and are in a position to use it to compete with their employer. *Id.* (citing *Weed Eater, Inc. v. Dowling*, 562 S.W.2d 898, 902 (Tex. Civ. App.—Houston [1st Dist.] 1978, writ ref’d n.r.e.)). Temporary injunctive relief is proper if the moving party shows proof of: (1) a cause of action against the defendant, (2) a probable right of relief sought, and (3) a probable, imminent, and irreparable harm in the interim. *Good Shepherd Hosp., Inc. v. Select Specialty Hosp. - Longview, Inc.*, 563 S.W.3d 923, 927 (Tex.

App.—Texarkana 2018, no pet.) (citing *Hartwell v. Lone Star, PCA*, 528 S.W.3d 750, 759 (Tex. App.—Texarkana 2017, pet. dism'd)).

However, the moving party need not prove that it will ultimately prevail at trial to demonstrate a probable right to relief. *See Keystone Life Ins. Co. v. Mktg. Mgmt., Inc.*, 687 S.W.2d 89, 92 (Tex. App.—Dallas 1985, no writ). The party need only show *some evidence* to support each element of its claim. *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex. App.—Fort Worth 2005, no pet.).

A violation of TUTSA consists of a misappropriation of trade secrets. TUTSA defines “misappropriation” in six discrete forms:

- (A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
- (B) disclosure or use of a trade secret of another without express or implied consent by a person who:
 - (i) used improper means to acquire knowledge of the trade secret;
 - (ii) at the time of disclosure or use, knew or had reason to know that the person's knowledge of the trade secret was:
 - (a) derived from or through a person who used improper means to acquire the trade secret;
 - (b) acquired under circumstances giving rise to a duty to maintain the secrecy of or limit the use of the trade secret; or

(c) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of or limit the use of the trade secret; or

(iii) before a material change of the position of the person, knew or had reason to know that the trade secret was a trade secret and that knowledge of the trade secret had been acquired by accident or mistake.

Tex. Civ. Prac. & Rem. Code § 134A.002(3).

TUTSA defines a “trade secret” as:

all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- (A) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Tex. Civ. Prac. & Rem. Code § 134A.002(6).

A. Pivotal Cases

1. *IAC, Ltd. v. Bell Helicopter Textron, Inc.*

IAC, Ltd. v. Bell Helicopter Textron, Inc. is a seminal trade secret / injunction case wherein the appellate court found that injunctive relief was proper. *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 196 (Tex. App.—Fort Worth 2005, no pet.) The facts of *Bell Helicopter* are remarkably similar to the case at bar. In *Bell Helicopter*, the defendant was a manufacturer of helicopter blades for Bell Helicopter. *Id.* at 196-197. As such, the defendant had access to Bell's proprietary information related to the blades; however, the defendant agreed to keep the proprietary information confidential and to only use the information for Bell's benefit. *Id.* Defendant then began working with a competitor and started to manufacture, market, and sell helicopter blades similar to Bell's blades. *Id.* Bell Helicopter then brought suit for trade secret misappropriation and injunctive relief. *Id.* The trial court and appellate court found that injunctive relief was proper. *Id.*

In reaching its holding, the appellate court noted that injunctive relief was appropriate because (1) Bell had taken measures to protect the blade data, (2) Bell had expended significant money on developing the blade data, (3) the blade data was highly valuable, and (4) the blade data is difficult to be duplicated by others. *Id.* at 198-199. To that end, the evidence before the court in support of the aforementioned was: (1) examples of the measures taken to protect the data, such as confidentiality

agreements, limited access to the data, badges and check in/out processes used, guards, and vault; (2) testimony regarding the thousands of hours used to develop the data; (3) testimony regarding how the data is worth millions of dollars; and (4) testimony regarding the extreme difficulty in duplicating the data. *Id.* Thus, the court found that the blade data was entitled to trade secret protection.

The court went on to evaluate whether there was evidence of trade secret misappropriation. *Id.* at 199-200. In finding there was possible misappropriation, the court relied on testimony that the defendant had access to proprietary blade data for a specific use (to make Bell Helicopter blades) and that such disclosure to the defendant was subject to a confidentiality agreement. *Id.* Further, the evidence showed that the defendant worked with a competitor of Bell Helicopter, had the blade data in its library, and the competitor had access to the data. *Id.* Further, the blades of the competitor were similar to Bell Helicopter's. *Id.* Thus, the court found there was a reasonable inference of trade secret misappropriation. *Id.*

Lastly – with respect to probable, imminent, and irreparable injury, and at the heart of this appeal – the court found that **harm may be presumed**, because evidence supported that the defendant was in possession of Bell Helicopter's trade secrets and was in a position to use them by working with a competitor. *Id.* at 200. The court went on to state that “[t]he threatened disclosure of trade secrets constitutes

irreparable injury as a matter of law.” *Id.* (emphasis added). Thus, the court found injunctive relief was proper.

2. *T-N-T Motorsports v. Hennessey Motorsports*

In *T-N-T Motorsports v. Hennessey Motorsports*, the appellate court found that an injunction was proper to enjoin employees from misappropriating the trade secrets of their prior employer. *T-N-T Motorsports v. Hennessey Motorsports*, 965 S.W.2d 18, 24 (Tex. App.—Houston [1st Dist.] 1998). In *T-N-T*, Hennessey hired two employees to help produce special parts for a Dodge Viper. *Id.* at 20-21. During their employment with Hennessey and with Hennessey’s knowledge, the two employees formed their own shop (T-N-T) and simultaneously worked with Hennessey and T-N-T. *Id.* The two employees produced the special parts at the T-N-T shop for the benefit of Hennessey, but also sold other parts directly to outside customers with Hennessey’s knowledge. *Id.* The two employees never signed a confidentiality agreement with Hennessy. *Id.* Nonetheless, the two employees acquired their special knowledge about the special parts through their time with Hennessey. *Id.* The two employees eventually left Hennessey and began working for T-N-T full time. *Id.* The two employees and T-N-T then began selling the special parts directly to outside customers and directly competing with Hennessey. *Id.* The court held that the special parts were entitled to trade secret protection and that Hennessey was entitled to an injunction. *Id.* at 24.

In reaching its holding, the court found that Hennessey told the employees that the information related to the special parts was proprietary, spent substantial money developing the parts, spent substantial time developing the parts, and spent substantial effort protecting the confidentiality of the parts. *Id.* at 22-24. The court also noted the efforts used to keep the information secret, such as limited individuals being given access to the protected information, passwords used, where the information was stored, and the remote location of Hennessey's shop. *Id.*

The court then went on to discuss the specific elements of injunctive relief. *Id.* at 23-24. The court found that all elements of injunctive relief were met because the two employees possessed confidential information and were in a position to use it. *Id.* In support thereof, the court cited evidence such as the employees' position of trust and access to confidential information while employed with Hennessey, one employee's position as director of operations with Hennessey, the specialized knowledge acquired by the employees while employed with Hennessey, and that Hennessey expended substantial time and money to develop the special parts. *Id.* The court then went on to reference testimony that Hennessey and T-N-T were in the same business of custom high performance automotive upgrades. *Id.* Thus, the court held that the two employees "possess[ed] [Hennessey's] confidential information and [were] in a position to use it to compete directly with [Hennessey]."
Id.

The court then discussed probable, imminent, and irreparable injury. The two employees argued that Hennessey's damages were compensable through money damages and, thus, prevented the availability of injunctive relief. *Id.* The appellate court, however, found that there was no legal remedy because “[i]njunctive relief is proper to prevent a party, which has appropriated another's trade secrets, from gaining an unfair market advantage” and that the “only effective relief available to [Hennessey] is to restrain [the employees'] use of its trade secrets and confidential information....” *Id.* In support thereof, the court cited testimony from Hennessey's principal that, if the information was used by the employees, Hennessey would lose its market advantage, sales would decrease by millions of dollars, and the company would lose immeasurable goodwill. *Id.* As a result, the court held that damages could not be easily calculated and, therefore, a legal remedy was inadequate. *Id.*

B. The Case at Bar: CreateAI Holdings, Inc. v. Bot Auto TX, Inc.

Here, as in *Bell Helicopter* and *T-N-T*, injunctive relief in favor of Appellant is warranted.

- 1. The trial court erred in denying Appellant's Application for Temporary Injunction because Appellant presented clear evidence that Bot Auto misappropriated its trade secrets and thus of a probable right of relief.**

Texas courts have held that, at a preliminary hearing for injunctive relief, the applicant is not required to prove it will prevail at final trial. *Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex. 1968). To be entitled to a temporary injunction, an

applicant must plead a cause of action, show a probable right to recover on that cause of action, and show a probable injury in the interim. *Sun Oil*, 424 S.W.2d at 218; *Manufacturers Hanover Trust Co. v. Kingston Inv. Corp.*, 819 S.W.2d 607, 610 (Tex. App.—Houston [1st Dist.] 1991, no writ). “A probable right of success on the merits is shown by alleging a cause of action and presenting evidence that tends to sustain it.” *T-N-T Motorsports v. Hennessey Motorsports*, 965 S.W.2d 18, 23-24 (Tex. App.—Houston [1st Dist.] 1998).

Moreover, Texas courts have steadfastly held that an employer’s attempts to keep information confidential, an employee’s involvement in developing, researching, or otherwise working on said confidential information—and the employee having access to the information—and the underlying data that establishes that information, which is not otherwise publicly known, was identical to the alleged competitor’s data is **sufficient to establish a reasonable inference that the data was obtained by breaching the confidential relationship between employer and employee.** *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 199-200 (Tex. App.—Fort Worth 2005, no pet.).

Prior to leaving Appellant’s employ, Hou was the founder, CEO and CTO, and a Director, of Appellant. Due to his position, Hou performed specific tasks that assisted in the creation, design, development, testing, and assembly of the interworking systems that comprise Appellant’s AVS technology. Hou worked in

the employ of, and in conjunction with, Appellant to strategize product development. Hou also has admitted that both Appellant and Bot Auto are in the business of creating AVS, and that Bot Auto has “adopted” and is now using advanced technology that it could not possibly have independently developed.

Thus, while Hou was employed by Appellant, he more than almost anyone gained valuable, proprietary, and trade secret information about Appellant’s AVS technology. Hou and his current collaborators were given access to vendors who could fabricate, modify, and supply parts for Appellant’s AVS technology, and knew which were the best and most reliable. Hou and others under the employ of Appellant developed know-how of how the placement of certain sensors could affect their efficacy and which systems worked best in conjunction with one another. Further, Hou was given access to data and to Appellant’s know-how regarding the curation and structuring of that data—derived from years of data gathering and analysis and millions of dollars of funding—that provides the foundation for Appellant’s AVS interworking systems.

Hou (and his current collaborators) possessed exceptionally deep and wide-ranging confidential, proprietary, and trade secret information of Appellant and, upon his departure, put himself and his current collaborators in a position to use it to compete directly with Appellant. Under these circumstances, Defendant has been

using this information to Appellant's detriment. The use of this information poses an inherent threat of the disclosure and use of Appellant's trade secrets.

Moreover, Appellant has shown, by overwhelming and unrebutted documentary and testimonial evidence, that its trade secret information pertaining to its Sensor Suite Technology, Autonomous Decision-Making Technology, and Automatic Safety Systems Technology, is in fact proprietary and valuable. *See, e.g.*, 8RREX124, 7RREX57, 7RREX63, 7RREX65, (demonstrating ongoing efforts to realize value of technologies in collaboration with prominent global investment bank); 5RR288:9-15 (testimony of Cheng Lu) ("We spent hundreds of millions of dollars, I mean, approximately \$1.4 billion to develop technology for self-driving...."); 6RR77:06-78:09; (recounting ongoing efforts to license small portions of proprietary trade secret information, for millions of dollars in licensing fees). Appellant has also shown, beyond any reasonable dispute, that it has undertaken very extensive measures to ensure the confidentiality of that highly valuable information (of which Hou and his collaborators were perfectly aware). *See, e.g.*, 7RREX66 (Employee Handbook); 7RREX15 (Employee Proprietary information and Inventions Agreement); 7RREX12 (National Security Agreement); 8RREX118 (NSA compliance report, bearing Hou's signature); 5RR205:9-208:15 (testimony of Cheng Lu) (describing policies and practices pertaining to confidentiality of proprietary information); 5RR117:8-24 (Hou admitting signing the EPIIA);

5RR236:05-237:01 (addressing the fact that Hou signed the compliance report and thus knew the entire panoply of policies and procedures to protect trade secret information and covered IP).

Appellant has also amply shown, by independent documentary evidence and by the testimony of Mr. Lu and the testimony of Hou himself, that the Defendant has in fact misappropriated Appellant's highly valuable proprietary information. Even at this early stage the Defendant's own records have revealed specific, concrete instances in which Appellant's trade secret information has appeared, not only in Bot Auto's possession, but in Bot Auto's active and ongoing use. With regard to the Appellant's trade secrets, and *without any factual rebuttal, anywhere in the record*, Bot Auto's own documents have shown that Bot Auto does, in fact, have, and is, in fact, exploiting, the proprietary design and architecture of Appellant's Automatic Safety Systems Technology. Bot Auto's *own documents* revealed that it is using the same dual-CAN Bus design and architecture to achieve redundancy in its braking system that Appellant has used, and that that design and architecture are also proprietary and confidential to Appellant. *See* 8RREX135:053 (Appellant's braking system design diagram, showing dual-CAN Bus design and architecture); 6RR74:1-75:17 (testimony of Lu, specifying that this specific system design and architecture, utilizing dual CAN Bus components to achieve redundancy in braking system, constitute Appellant's trade secret information); 8RREX133:011 (Bot Auto braking

system requirements document, showing use of dual-CAN Bus design and architecture to achieve redundancy in braking system); 5RR115:3-116:3 (testimony of Hou, authenticating 8RREX133). Similarly, Bot Auto's *own documents* revealed that it is also using a specific redundant steering system design that is *identical* to that previously utilized by Appellant, as demonstrated by the identity of the key parameters used to validate that system as specified within Bot Auto's own steering system requirements document. *See* 8RREX136:011-8RREX136:015 (Appellant steering system document, specifying key parameters utilized to validate redundant steering system); 6RR65:16-68:19 (testimony of Lu, explaining how identity of validation parameters would demonstrate identity of steering system design); 8RREX132:003-8RREX132:004 (Bot Auto steering system requirements document, showing identical parameters for steering system); 5RR114:15-21 (testimony of Hou, authenticating 8RREX132).

In each of these instances, Bot Auto's *own documents of record, authenticated by Bot Auto's own principal*, show beyond meaningful dispute that Bot Auto now has in its possession, and is actively exploiting, multiple aspects of Appellant's trade secret information. In each of these instances, Bot Auto's *own files* have revealed direct and decisive evidence of the fact that Bot Auto has done precisely what Appellant says it has done. This direct, decisive, independent evidence of Bot Auto's misappropriation of these discrete and concrete instances of Appellant's trade secret

information, as revealed even at this early stage and even standing alone, virtually requires that the requested temporary injunction be entered.

Yet there is much, much more. The evidence of Bot Auto’s misappropriation of the Autonomous Decision-Making Technology, and specifically of misappropriation of Appellant’s semantic regime for the annotation of road trip data and Appellant’s annotation process design, is similarly overwhelming. 7RREX55:008-7RREX55:012 (TuSimple “edge case” annotation semantics curve); 7RREX73:020-7RREX73:026 (addressing Bot Auto’s approach to annotation of edge/corner cases); 6RR38:22-41:11, 6RR46:8-12 (Lu explaining that semantic regime/annotation process is proprietary); 7RREX55:008; 6RR38:22-6RR42:14, 6RR49:8-12 (green/red terminology was developed at Appellant). The entirely-competent circumstantial evidence of misappropriation of the Autonomous Decision-Making Technology is also decisive, and unrebutted: Hou’s collaborator and apparent tortious concerted actor Lei Wang, and many of the other key solicited employees, engaged in deliberate deceit *en route* from Appellant to Bot Auto. *See* 5RR241:15-5RR243:2 (Lu on laptop investigation); 6RR55:8-24 (Lu on Lei Wang being central subject of solicitation investigation). Hou, Wang, and other key solicited employees were working specifically on, and remain focused on, the autonomous decision-making technology at Appellant and its derivative technology at Bot Auto, *see* 6RR51:19-52:13). And there is no realistic prospect that Bot Auto

has independently developed an entirely new semantic scheme and annotation process, in its short life, without misappropriating those aspects of the Autonomous Decision-Making Technology, *see* 6RR52:23-55:06 (unrebutted testimony of Lu, specifying and explaining that such independent development would take years and very substantial investment).

This conclusion, specifically with regard to Bot Auto’s misappropriation of the Autonomous Decision-Making Technology, is finally mortared into place by Hou’s own outright falsehoods to the Court. *Inter alia*, Hou asserted that Bot Auto had developed, in its short lifespan, an entirely new annotation semantics regime and annotation process with no human involvement – but then admitted that there is human involvement, just like the regime and process developed by Appellant; Hou asserted that Appellant did not utilize transformer technology or Kubernetes, when the documentary record shows the opposite; and Hou fantastically asserted that there are “no similarities” between Bot Auto’s technology and business, and those of Appellant, when the record is replete with instances of such similarities. *See* 5RR132:11-133:25 (Hou admitting that some human annotation is in fact required) 5RR161:13-24 (Hou asserts that TuSimple was not using transformer technology); 5RR188:17-20 (Hou stating that TuSimple is not using Kubernetes); 5RR96:17-25 (no similarity between placement of sensors); 5RR109:19-110:16 (Hou on autonomous decision-making), 5RR260:12-261:10 (Lu re: business model

similarities), 6RR147:23-148:2 (Lu re: similar perception housing); 7RREX36, 8RREX135; 8RREX136; 7RREX63; 6RR56:16-58:21 (Lu testifies that Kubernetes has existed since 2014 and has been used by TuSimple since 2019); 7RREX65; 6RR58:23-61:14 (Lu testifies that transformer technology was and is in use by Appellant, with contemporaneous documentary corroboration). Indeed, Hou himself admitted, on the stand and under oath, that he as the founder, principal and CEO of Bot Auto is of the impression that “candor is a very subjective matter.” 5RR152:1-4 (“Do you believe that a failure of candor to the board would constitute some sort of wrongdoing? A: I do not because candor is a very subjective matter.”).

These many, specific, visible falsehoods, perpetrated by Bot Auto’s founder, principal and CEO, under oath, as to matters that are entirely within his personal knowledge, not only undermine Bot Auto’s threadbare defense, they also support the very same conclusion that is affirmatively compelled by the other evidence of record: To wit, that Bot Auto has indeed misappropriated multiple instances of trade secret information contained within the Autonomous Decision-Making Technology (just as the direct, documentary, “smoking gun” evidence establishes Bot Auto’s misappropriation of multiple other instances of TuSimple’s trade secret information).

And in addition to Hou’s deceased personal credibility, the circumstantial case, even in its most general contours, would suffice to support the entry of the

requested injunction, in this case and in most trade secret cases. As the record shows, Hou himself has a fairly astounding history of disregarding information security controls, *see* 5RR134:19-143:19 (Hou asserts he was cleared by wrongdoing, despite public record of earnings call reporting his termination); 5RR236:5-237:13 (Cheng Lu testifies as to grounds for Hou's firing); 5RR234:14-235:6 (information was shared by Hou without proper controls; should have been NDA/cooperation agreement in place). Bot Auto has poached over thirty key employees of Appellant, many of whom were involved in the scheme to cover their tracks, under Hou's personal direction, that was revealed by Appellant's solicitation investigation, and in the laptop incident that was orchestrated by Wang and by Hou as a smokescreen. 5RR247:19-252:16; 6RR55:8-24 (regarding laptop and solicitation investigations). The Defendant is in the very same business, operating the very same business model of transportation-as-a-service. 5RR256:22-257:14; 6RR13:22-16:13 (regarding same). The Defendant now purports to have leapt past previous stages of development, straight to cost reduction – which could not possibly have happened without misappropriation of Appellant's trade secret information. 5RR63:5-64:2, 5RR161:1-12, 6RR10:4-13:24 (regarding developmental process); 7RREX56 (investment teaser) (same). Bot Auto now asserts to potential investors that it will achieve in one year – a timeframe that Hou confirmed upon the stand – what took Appellant seven years to achieve, upon the investment – under Hou's leadership –

of over a billion dollars rather than tens of millions. 5RR161:1-12, 5RR288:8-15. And as set forth above, the independent documentary record, and Hou’s own testimony, show that his explanation for these remarkable claims – that Bot Auto now has access to technologies that Appellant did not – is a visible and deliberate lie. 5RR161:13-24 (Hou stating that Appellant not using transformer technology for anything running in the vehicle); 5RR188:17-20 (Hou stating that Kubernetes did not exist during Appellant’s tenure); 6RR58:3-21 (Lu stating Hou lied and that Appellant does use Kubernetes), 6RR61:15-62:18 (Lu explaining why Hou’s assertion that Bot Auto’s development is powered by revolutionary new technology is a clear falsehood).

Clearly, Appellant has shown more than just “some evidence” of a probable right to relief for Appellee’s misappropriation of its trade secrets in direct violation of TUTSA. As set forth in detail above and as revealed by the record, Appellant has in fact shown multiple instances of misappropriation by decisive, direct and circumstantial, and clear and convincing evidence. Thus, the only remaining question is that of irreparable harm, and as a matter of Texas law, that issue too is due to be resolved in Appellant’s favor.

C. The trial court erred in denying Appellant's Application for Temporary Injunction because Appellant's evidence establishes a presumption that it suffered irreparable injury.

A threat of probable, immediate harm is sufficiently established when a former employee is “in possession of [the former employer’s] confidential information and is in a position to use it.” *See Rugen*, 864 S.W.2d at 552. “When a defendant possesses trade secrets and is in a position to use them, harm to the trade secret owner *may be presumed.*” *Bell Helicopter Textron, Inc.*, 160 S.W.3d at 200 (emphasis added); *T-N-T Motorsports, Inc.*, 965 S.W.2d at 24 (holding that appellant possessed confidential information and was in a position to use it; thus, appellant was likely to use information to former employer’s detriment). **“The threatened disclosure of trade secrets constitutes irreparable injury as a matter of law.”** *Bell Helicopter Textron, Inc.*, 160 S.W.3d at 200 (emphasis added); *Williams v. Compressor Eng’g Corp.*, 704 S.W.2d 469, 471 (Tex. App.—Houston [14th Dist.] 1986, writ ref’d n.r.e.) (citing *FMC Corp. v. Varco Int’l, Inc.*, 677 F.2d 500, 503 (5th Cir. 1982)). Moreover, “[l]oss of goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction.” *Bell Helicopter Textron, Inc.*, 160 S.W.3d at 200; *Byrd Ranch, Inc. v. Interwest Sav. Assoc.*, 717 S.W.2d 452, 454-55 (Tex. App.—Fort Worth 1986, no writ); *Martin v. Linen Sys. for Hosp. Inc.*, 671 S.W.2d 706, 710 (Tex. App.—Houston [1st Dist.] 1984, no writ).

As explained in the sections above, Appellant has shown by overwhelming evidence that the Defendant-Appellee is not only “in possession of [the Appellant’s] confidential information and is in a position to use it,” but is in fact exploiting that trade secret information now. *See, e.g.*, 6RR154:12-157:6 and APP0019-APP0022 (establishing possession and use, by Bot Auto, of Appellant’s Automatic Safety System Trade Secrets); *supra* at pp. 44-46 (setting forth overwhelming evidence of misappropriation of Autonomous Decision-Making Technology Trade Secrets). All of this evidence is amply sufficient, under *Bell Helicopter* and *T-N-T Motorsports*, to establish the presumption that Appellant has suffered probable, imminent, and irreparable harm from the demonstrated misappropriation.

For these reasons, the trial court erred in denying Appellant’s Application for Temporary Injunction, because Appellant has shown overwhelming evidence of misappropriation of its Automatic Safety Systems and Autonomous Decision-Making Technology Trade Secrets, and thus to give rise, as a matter of Texas law, to the presumption of probable, imminent, and irreparable harm. Appellant thus respectfully submits that the Order of the Court below, denying that application, must be reversed, and the matter remanded to the trial court with instructions to enter the requested injunction prohibiting the further dissemination of that trade secret information.

CONCLUSION

Appellant thus respectfully submits that, upon this overwhelming evidentiary record, showing as it does direct and decisive evidence of Bot Auto's misappropriation of undisputedly valuable and confidential trade secret information, and an ocean of circumstantial evidence showing that misappropriation, only one result may rightly prevail: granting Appellant's Application for Temporary and Permanent Injunction.

As set forth above, Bot Auto is developing technology products incorporating and utilizing the foregoing trade secret information, and taking them to market for investment and monetization, now. At the same time – now – Appellant continues to market its products and systems to potential customers, including prominent international manufacturers and product developers, and investors. These opportunities may imminently be lost to the predatory and wrongful competing efforts of Bot Auto.

Appellant has suffered, and will continue to suffer in the future, direct and consequential actual damages, including lost profits, damage to goodwill, loss of the benefits associated with exclusive possession of its property, and additional costs that Appellant has incurred as a result of Bot Auto's unlawful conduct. Unless Bot Auto is enjoined from further disseminating Appellant's trade secret information, Appellant will continue to be immediately and irreparably harmed.

Appellant thus respectfully requests that this Court enter its ruling and mandate, reversing the Order of the Court below denying Appellant's application for temporary injunction, and remanding the matter to the trial court with instructions to enter the requested injunction prohibiting the further dissemination of that trade secret information, and granting such other and further relief as may be deemed just and proper.

Dated: March 3, 2025

Respectfully submitted,

By: /s/ Timothy J. McCarthy

Timothy J. McCarthy

State Bar No. 24123750

tmccarthy@dykema.com

Cliff P. Riley

State Bar No. 24094915

criley@dykema.com

Salvador J. Robles

State Bar No. 24121800

srobles@dykema.com

Aaron J. Kotulek

State Bar No. 24137483

akotulek@dykema.com

DYKEMA GOSSETT PLLC

1717 Main Street, Suite 4200

Dallas, Texas 75201

Telephone: (214) 462-6400

Facsimile: (214) 462-6401

Isaac Villarreal

State Bar No. 24054553

ivillareal@dykema.com

Amanda Gordon

State Bar No. 24103737

agordon@dykema.com

DYKEMA GOSSETT PLLC
5 Houston Center
1401 McKinney St., Suite 1625
Houston, Texas 77010
Telephone: (713) 904-6900
Facsimile: (214) 462-6401

*Attorneys for Appellant,
CREATEAI HOLDINGS, INC.*

CERTIFICATION OF COMPLIANCE

The undersigned certifies this brief complies with the type-face and length requirements of rule 9.4 of the Texas Rules of Appellate Procedure. Exclusive of the exempted portions stated in rule 9.4(i)(l), the brief contains 11,225 words, as calculated by Microsoft Word, the program used to prepare this document.

/s/ Salvador J. Robles

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record pursuant to the Texas Rules of Appellate Procedure on this 3rd day of March, 2025.

Joseph A. Fischer, III
Leisa Talbert Peschel
Tori C. Emery
JACKSON WALKER LLP
1401 McKinney, Suite 1900
Houston, TX 77010
tfisher@jw.com
lpeschel@jw.co
temery@jw.com

Richard Liu (*Pro Hac Vice*)
Innovative Legal Services, P.C.
355 S. Grand Avenue, Suite 2450
Los Angeles, CA 90071
Richard.liu@consultils.com

/s/ *Salvador J. Robles*

COURT OF APPEALS
FOR THE
FIFTEENTH DISTRICT OF TEXAS – AUSTIN

CREATEAI HOLDINGS INC.,

Appellant,

v.

BOT AUTO TX INC.,

Appellee.

On Appeal from the 11th Judicial District of the Business Court
of Harris County, Texas
Honorable Sofia Adrogue, President Judge

APPENDIX TO BRIEF OF APPELLANT
Oral Argument Requested

Timothy J. McCarthy

State Bar No. 24123750

tmccarthy@dykema.com

Cliff P. Riley

State Bar No. 24094915

criley@dykema.com

Salvador J. Robles

State Bar No. 24121800

srobles@dykema.com

Aaron J. Kotulek

State Bar No. 24137483

akotulek@dykema.com

DYKEMA GOSSETT PLLC

1717 Main Street, Suite 4200

Isaac Villarreal

State Bar No. 24054553

ivillareal@dykema.com

Amanda Gordon

State Bar No. 24103737

agordon@dykema.com

DYKEMA GOSSETT PLLC

5 Houston Center

1401 McKinney St., Suite 1625

Houston, Texas 77010

Telephone: (713) 904-6900

Facsimile: (214) 462-6401

Dallas, Texas 75201
Telephone: (214) 462-6400
Facsimile: (214) 462-6401

<u>Tab</u>	<u>Description</u>	<u>Pages:</u>
1	TEX. CIV. PRAC. & REM. CODE § 134A.001-134A.008	APP0001-APP0005
2	TEX. CIV. PRAC. & REM. CODE § 65.001, 65.002, 65.011-017, 65.021-023, 65.031, 65.041-045	APP0006-APP0013
3	TEX. R. CIV. P. 680-692	APP0014-APP0018
4	Excerpts from transcript of November 19, 2024 TI hearing; Reporters Record Volume 6; TI Hearing Day 2; 154:12-157:6 (closing argument re: redundant steering and braking system)	APP0019-APP0022

Dated: March 3, 2025

Respectfully submitted,

By: /s/ Timothy J. McCarthy

Timothy J. McCarthy
State Bar No. 24123750
tmccarthy@dykema.com

Cliff P. Riley
State Bar No. 24094915
criley@dykema.com

Salvador J. Robles
State Bar No. 24121800
srobles@dykema.com

Aaron J. Kotulek
State Bar No. 24137483
akotulek@dykema.com

DYKEMA GOSSETT PLLC
1717 Main Street, Suite 4200
Dallas, Texas 75201
Telephone: (214) 462-6400
Facsimile: (214) 462-6401

Isaac Villarreal
State Bar No. 24054553
ivillareal@dykema.com

Amanda Gordon
State Bar No. 24103737
agordon@dykema.com

DYKEMA GOSSETT PLLC
5 Houston Center
1401 McKinney St., Suite 1625
Houston, Texas 77010
Telephone: (713) 904-6900
Facsimile: (214) 462-6401

*Attorneys for Appellant,
CREATEAI HOLDINGS INC.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy this brief has been served on all counsel of record pursuant to the Texas Rules of Appellate Procedure on this 3rd day of March, 2025.

Joseph A. Fischer, III
Leisa Talbert Peschel
Tori C. Emergy
JACKSON WALKER LLP
1401 McKinney, Suite 1900
Houston, TX 77010
tfisher@jw.com
lpeschel@jw.co
temery@jw.com

Richard Liu (*Pro Hac Vice*)
Innovative Legal Services, P.C.
355 S. Grand Avenue, Suite 2450
Los Angeles, CA 90071
Richard.liu@consultils.com

/s/ *Salvador J. Robles*

Salvador J. Robles

TAB 1

CIVIL PRACTICE AND REMEDIES CODE

TITLE 6. MISCELLANEOUS PROVISIONS

CHAPTER 134A. TRADE SECRETS

Sec. 134A.001. SHORT TITLE. This chapter may be cited as the Texas Uniform Trade Secrets Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 10 ([S.B. 953](#)), Sec. 1, eff. September 1, 2013.

Sec. 134A.002. DEFINITIONS. In this chapter:

(1) "Claimant" means a party seeking to recover damages under this chapter, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff. In an action in which a party seeks recovery of damages under this chapter on behalf of another person, "claimant" includes both that other person and the party seeking recovery of damages.

(1-a) "Clear and convincing" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(2) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, to limit use, or to prohibit discovery of a trade secret, or espionage through electronic or other means.

(3) "Misappropriation" means:

(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that the person's knowledge of the trade secret was:

(a) derived from or through a person who used improper means to acquire the trade secret;

(b) acquired under circumstances giving rise to a duty to maintain the secrecy of or limit the use of the trade secret; or

(c) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of or limit the use of the trade secret; or

(iii) before a material change of the position of the person, knew or had reason to know that the trade secret was a trade secret and that knowledge of the trade secret had been acquired by accident or mistake.

(3-a) "Owner" means, with respect to a trade secret, the person or entity in whom or in which rightful, legal, or equitable title to, or the right to enforce rights in, the trade secret is reposed.

(4) "Proper means" means discovery by independent development, reverse engineering unless prohibited, or any other means that is not improper means.

(5) "Reverse engineering" means the process of studying, analyzing, or disassembling a product or device to discover its design, structure, construction, or source code provided that the product or device was acquired lawfully or from a person having the legal right to convey it.

(6) "Trade secret" means all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

(A) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

(7) "Willful and malicious misappropriation" means intentional misappropriation resulting from the conscious disregard of the rights of the owner of the trade secret.

Added by Acts 2013, 83rd Leg., R.S., Ch. 10 ([S.B. 953](#)), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 37 ([H.B. 1995](#)), Sec. 1, eff. September 1, 2017.

Sec. 134A.003. INJUNCTIVE RELIEF. (a) Actual or threatened misappropriation may be enjoined if the order does not prohibit a person from using general knowledge, skill, and experience that person acquired during employment.

(a-1) On application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include a material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 10 ([S.B. 953](#)), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 37 ([H.B. 1995](#)), Sec. 2, eff. September 1, 2017.

Sec. 134A.004. DAMAGES. (a) In addition to or in lieu of injunctive relief, a claimant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) If willful and malicious misappropriation is proven by clear and convincing evidence, the fact finder may award exemplary damages in an amount not exceeding twice any award made under Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 10 ([S.B. 953](#)), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 37 ([H.B. 1995](#)), Sec. 3, eff. September 1, 2017.

Sec. 134A.005. ATTORNEY'S FEES. The court may award reasonable attorney's fees to the prevailing party if:

- (1) a claim of misappropriation is made in bad faith;
- (2) a motion to terminate an injunction is made or resisted in bad faith; or
- (3) willful and malicious misappropriation exists.

Added by Acts 2013, 83rd Leg., R.S., Ch. 10 ([S.B. 953](#)), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 37 ([H.B. 1995](#)), Sec. 4, eff. September 1, 2017.

Sec. 134A.006. PRESERVATION OF SECRECY. (a) In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means. There is a presumption in favor of granting protective orders to preserve the secrecy of trade secrets. Protective orders may include provisions limiting access to confidential information to only the attorneys and their experts, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

(b) In an action under this chapter, a presumption exists that a party is allowed to participate and assist counsel in the presentation of the party's case. At any stage of the action, the court may exclude a party and the party's representative or limit a party's access to the alleged trade secret of another party if other countervailing interests overcome the presumption. In making this determination, the court must conduct a balancing test that considers:

- (1) the value of an owner's alleged trade secret;
- (2) the degree of competitive harm an owner would suffer from the dissemination of the owner's alleged trade secret to the other party;
- (3) whether the owner is alleging that the other party is already in possession of the alleged trade secret;
- (4) whether a party's representative acts as a competitive decision maker;
- (5) the degree to which a party's defense would be impaired by limiting that party's access to the alleged trade secret;
- (6) whether a party or a party's representative possesses specialized expertise that would not be available to a party's outside

expert; and

- (7) the stage of the action.

Added by Acts 2013, 83rd Leg., R.S., Ch. 10 (S.B. [953](#)), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 37 (H.B. [1995](#)), Sec. 5, eff. September 1, 2017.

Sec. 134A.007. EFFECT ON OTHER LAW. (a) Except as provided by Subsection (b), this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(b) This chapter does not affect:

(1) contractual remedies, whether or not based upon misappropriation of a trade secret;

(2) other civil remedies that are not based upon misappropriation of a trade secret; or

(3) criminal remedies, whether or not based upon misappropriation of a trade secret.

(c) To the extent that this chapter conflicts with the Texas Rules of Civil Procedure, this chapter controls. Notwithstanding Section [22.004](#), Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.

(d) This chapter does not affect the disclosure of public information by a governmental body under Chapter [552](#), Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 10 (S.B. [953](#)), Sec. 1, eff. September 1, 2013.

Sec. 134A.008. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Added by Acts 2013, 83rd Leg., R.S., Ch. 10 (S.B. [953](#)), Sec. 1, eff. September 1, 2013.

TAB 2

CIVIL PRACTICE AND REMEDIES CODE

TITLE 3. EXTRAORDINARY REMEDIES

CHAPTER 65. INJUNCTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 65.001. APPLICATION OF EQUITY PRINCIPLES. The principles governing courts of equity govern injunction proceedings if not in conflict with this chapter or other law.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 65.002. RESTRAINING ORDER OR INJUNCTION AFFECTING CUSTOMER OF FINANCIAL INSTITUTION. Service or delivery of a restraining order or injunction affecting property held by a financial institution in the name of or on behalf of a customer of the financial institution is governed by Section [59.008](#), Finance Code.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 7.006, eff. Sept. 1, 1999.

SUBCHAPTER B. AVAILABILITY OF REMEDY

Sec. 65.011. GROUNDS GENERALLY. A writ of injunction may be granted if:

(1) the applicant is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant;

(2) a party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation, in violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual;

(3) the applicant is entitled to a writ of injunction under the principles of equity and the statutes of this state relating to injunctions;

(4) a cloud would be placed on the title of real property being sold under an execution against a party having no interest in the real property subject to execution at the time of sale, irrespective of any remedy at law; or

(5) irreparable injury to real or personal property is threatened, irrespective of any remedy at law.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 3.17, eff. Sept. 1, 1987.

Sec. 65.012. OPERATION OF WELL OR MINE. (a) A court may issue an injunction or temporary restraining order prohibiting subsurface drilling or mining operations only if an adjacent landowner filing an application claims that a wrongful act caused injury to his surface or improvements or loss of or injury to his minerals and if the party against whom the injunction is sought is unable to respond in damages for the resulting injuries.

(b) To secure the payment of any injuries that may be sustained by the complainant as a result of subsurface drilling or mining operations, the party against whom an injunction is sought under this section shall enter into a good and sufficient bond in an amount fixed by the court hearing the application.

(c) The court may appoint a trustee or receiver instead of requiring a bond if the court considers it necessary to protect the interests involved in litigation concerning an injunction under this section. The trustee or receiver has the powers prescribed by the court and shall take charge of and hold the minerals produced from the drilling or mining operation or the proceeds from the disposition of those minerals, subject to the final disposition of the litigation.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 65.013. STAY OF JUDGMENT OR PROCEEDING. An injunction may not be granted to stay a judgment or proceeding at law except to stay as much of the recovery or cause of action as the complainant in his petition shows himself equitably entitled to be relieved against and as much as will cover the costs.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 65.014. LIMITATIONS ON STAY OF EXECUTION OF JUDGMENT. (a) Except as provided by Subsection (b), an injunction to stay execution of a valid judgment may not be granted more than one year after the date on which the judgment was rendered unless:

(1) the application for the injunction has been delayed because of fraud or false promises of the plaintiff in the judgment practiced or made at the time of or after rendition of the judgment; or

(2) an equitable matter or defense arises after the rendition of the judgment.

(b) If the applicant for an injunction to stay execution of a judgment was absent from the state when the judgment was rendered and was unable to apply for the writ within one year after the date of rendition, the injunction may be granted at any time within two years after that date.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 65.015. CLOSING OF STREETS. An injunction may not be granted to stay or prevent the governing body of an incorporated city from vacating, abandoning, or closing a street or alley except on the suit of a person:

(1) who is the owner or lessee of real property abutting the part of the street or alley vacated, abandoned, or closed; and

(2) whose damages have neither been ascertained and paid in a condemnation suit by the city nor released.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 65.016. VIOLATION OF REVENUE LAW. At the instance of the county or district attorney or the attorney general, a court by injunction may prevent, prohibit, or restrain the violation of any revenue law of this state.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 4.03(a), eff. Aug. 28, 1989.

Sec. 65.017. CIGARETTE SELLER, DISTRIBUTOR, OR MANUFACTURER. In addition to any other remedy provided by law, a person may bring an action in good faith for appropriate injunctive relief if the person sells, distributes, or manufactures cigarettes and sustains a direct economic or commercial injury as a result of a violation of:

- (1) Section [48.015](#), Penal Code; or
- (2) Section [154.0415](#), Tax Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.12, eff. April 1, 2009.

SUBCHAPTER C. JURISDICTION OF PROCEEDINGS; VENUE

Sec. 65.021. JURISDICTION OF PROCEEDING. (a) The judge of a district or county court in term or vacation shall hear and determine applications for writs of injunction.

(b) This section does not limit injunction jurisdiction granted by law to other courts.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 65.022. RETURN OF WRIT; HEARING BY NONRESIDENT JUDGE. (a) Except as provided by this section, a writ of injunction is returnable only to the court granting the writ.

(b) A district judge may grant a writ returnable to a court other than his own if the resident judge refuses to act or cannot hear and act on the application because of his absence, sickness, inability, inaccessibility, or disqualification. Those facts must be fully set out in the application or in an affidavit accompanying the application. A judge who refuses to act shall note that refusal and the reasons for refusal on the writ. A district judge may not grant the writ if the application has been acted on by another district judge.

(c) A district judge may grant a writ returnable to a court other than his own to stay execution or restrain foreclosure, sale under a deed of trust, trespass, removal of property, or an act injurious to or impairing riparian or easement rights if satisfactory proof is made to the nonresident judge that it is impracticable for the applicant to reach the resident judge and procure the action of the resident judge in time to put into effect the purposes of the application.

(d) A district judge may grant a writ returnable to a court other than his own if the resident judge cannot be reached by the ordinary and available means of travel and communication in sufficient time to put into effect the purpose of the writ sought. In seeking a writ under this subsection, the applicant or attorney for the applicant shall attach to the application an affidavit that fully states the facts of the inaccessibility and the efforts made to reach and communicate with the resident judge. The judge to whom application is made shall refuse to hear the application unless he determines that the applicant made fair and reasonable efforts to reach and communicate with the resident judge. The injunction may be dissolved on a showing that the applicant did not first make reasonable efforts to procure a hearing on the application before the resident judge.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 65.023. PLACE FOR TRIAL. (a) Except as provided by Subsection (b), a writ of injunction against a party who is a resident of this state shall be tried in a district or county court in the county in which the party is domiciled. If the writ is granted against more than one party, it may be tried in the proper court of the county in which either party is domiciled.

(b) A writ of injunction granted to stay proceedings in a suit or execution on a judgment must be tried in the court in which the suit is pending or the judgment was rendered.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER D. INJUNCTION OBTAINED FOR PURPOSES OF DELAYING COLLECTION OF MONEY

Sec. 65.031. DISSOLUTION; AWARD OF DAMAGES. If on final hearing a court dissolves in whole or in part an injunction enjoining the collection of money and the injunction was obtained only for delay, the court may assess damages in an amount equal to 10 percent of the amount released by dissolution of the injunction, exclusive of costs.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER E. APPLICANTS BOND FOR TEMPORARY RESTRAINING ORDER OR TEMPORARY INJUNCTION

Sec. 65.041. BOND NOT REQUIRED FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER FOR CERTAIN INDIGENT APPLICANTS. A court may not require an applicant for a temporary restraining order to execute a bond to the adverse party before the order may issue if:

(1) the applicant submits an affidavit that meets the requirements of Section **65.043** to the court; and

(2) the court finds that the order is intended to restrain the adverse party from foreclosing on the applicant's residential homestead.

Added by Acts 1989, 71st Leg., ch. 391, Sec. 1, eff. Aug. 28, 1989.

Sec. 65.042. BOND NOT REQUIRED FOR ISSUANCE OF TEMPORARY INJUNCTION FOR CERTAIN INDIGENT APPLICANTS. (a) A court may not require an applicant

for a temporary injunction to execute a bond to the adverse party before the injunction may issue if:

(1) the applicant submits an affidavit that meets the requirements of Section [65.043](#) to the court; and

(2) the court finds that the injunction is intended to enjoin the adverse party from foreclosing on the applicant's residential homestead.

(b) If the affidavit submitted under Subsection (a)(1) is contested under Section [65.044](#), the court may not issue a temporary injunction unless the court finds that the applicant is financially unable to execute the bond.

Added by Acts 1989, 71st Leg., ch. 391, Sec. 1, eff. Aug. 28, 1989.

Sec. 65.043. AFFIDAVIT. (a) The affidavit must contain complete information relating to each and every person liable for the indebtedness secured by or with an ownership interest in the residential homestead concerning the following matters:

(1) identity;

(2) income, including income from employment, dividends, interest, and any other source other than from a government entitlement;

(3) spouse's income, if known to the applicant;

(4) description and estimated value of real and personal property, other than the applicant's homestead;

(5) cash and checking account;

(6) debts and monthly expenses;

(7) dependents; and

(8) any transfer to any person of money or other property with a value in excess of \$1,000 made within one year of the affidavit without fair consideration.

(b) The affidavit must state: "I am not financially able to post a bond to cover any judgment against me in this case. All financial information that I provided to the lender was true and complete and contained no false statements or material omissions at the time it was provided to the lender. Upon oath and under penalty of perjury, the statements made in this affidavit are true."

(c) In the event the applicant is married, both spouses must execute the affidavit.

(d) The affidavit must be verified.

Added by Acts 1989, 71st Leg., ch. 391, Sec. 1, eff. Aug. 28, 1989.

Sec. 65.044. CONTEST OF AFFIDAVIT. (a) A party may not contest an affidavit filed by an applicant for a temporary restraining order as provided by Section [65.041](#).

(b) A party may contest an affidavit filed by an applicant for a temporary injunction as provided by Section [65.042](#):

(1) after service of a temporary restraining order in the case; or

(2) if a temporary restraining order was not applied for or issued, after service of notice of the hearing on the application for the temporary injunction.

(c) A party contests an affidavit by filing a written motion and giving notice to all parties of the motion in accordance with Rule 21a of the Texas Rules of Civil Procedure.

(d) The court shall hear the contest at the hearing on the application for a temporary injunction and determine whether the applicant is financially able to execute a bond against the adverse party as required by the Texas Rules of Civil Procedure. In making its determination, the court may not consider:

(1) any income from a government entitlement that the applicant receives; or

(2) the value of the applicant's residential homestead.

(e) The court may order the applicant to post and file with the clerk a bond as required by the Texas Rules of Civil Procedure only if the court determines that the applicant is financially able to execute the bond.

(f) An attorney who represents an applicant and who provides legal services without charge to the applicant and without a contractual agreement for payment contingent on any event may file an affidavit with the court describing the financial nature of the representation.

Added by Acts 1989, 71st Leg., ch. 391, Sec. 1, eff. Aug. 28, 1989.

Sec. 65.045. CONFLICT WITH TEXAS RULES OF CIVIL PROCEDURE. (a) To the extent that this subchapter conflicts with the Texas Rules of Civil Procedure, this subchapter controls.

(b) Notwithstanding Section [22.004](#), Government Code, the supreme court may not amend or adopt rules in conflict with this subchapter.

(c) The district courts and statutory county courts in a county may not adopt local rules in conflict with this subchapter.

Added by Acts 1989, 71st Leg., ch. 391, Sec. 1, eff. Aug. 28, 1989.

TAB 3

- (b) the receiver or officer must not sell the judgment debtor's personal property or distribute its proceeds to the judgment creditor until the court determines the judgment debtor's exemption claim.
- (2) *Hearing Notice.* Each party is entitled to reasonable notice of the hearing.
- (3) *Burden of Proof.* At the hearing, the judgment debtor must prove the exemption claim and the value of the personal property exempt. The judgment debtor may satisfy this burden through a sworn statement if the sworn statement is not challenged. A "sworn" statement is one that is signed before a notary or made under penalty of perjury. A signed Protected Property Claim Form is a "sworn" statement.
- (4) *Time for Determining Exemption Claim.* The court must determine the judgment debtor's exemption claim within 10 days after the judgment debtor files the exemption claim. The court may extend the time for determining the exemption claim on good cause shown.
- (5) *Release of Property.* If the court determines that the judgment debtor's personal property is exempt, the court must order its release within three business days.

Notes and Comments

2022 Comment: Rule 679b is a new rule implementing section 22.0042 of the Texas Government Code, which calls for expedited procedures that allow a judgment debtor to assert an exemption to the seizure of personal property by a judgment creditor or receiver appointed under section 31.002 of the Civil Practice and Remedies Code. Rule 306a, various rules in Part V, Rule 663a, and Rule 664a are also amended to implement section 22.0042 of the Texas Government Code.

SECTION 5. INJUNCTIONS

RULE 680. TEMPORARY RESTRAINING ORDER

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after signing, not to exceed fourteen days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. No more than one extension may be granted unless subsequent extensions are unopposed. In case a temporary restraining order is granted without notice, the application for a temporary injunction shall be set

down for hearing at the earliest possible date and takes precedence of all matters except older matters of the same character; and when the application comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Every restraining order shall include an order setting a certain date for hearing on the temporary or permanent injunction sought.

RULE 681. TEMPORARY INJUNCTIONS: NOTICE

No temporary injunction shall be issued without notice to the adverse party.

RULE 682. SWORN PETITION

No writ of injunction shall be granted unless the applicant therefor shall present his petition to the judge verified by his affidavit and containing a plain and intelligible statement of the grounds for such relief.

RULE 683. FORM AND SCOPE OF INJUNCTION OR RESTRAINING ORDER

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Every order granting a temporary injunction shall include an order setting the cause for trial on the merits with respect to the ultimate relief sought. The appeal of a temporary injunction shall constitute no cause for delay of the trial.

RULE 684. APPLICANT'S BOND

In the order granting any temporary restraining order or temporary injunction, the court shall fix the amount of security to be given by the applicant. Before the issuance of the temporary restraining order or temporary injunction the applicant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by the clerk, in the sum fixed by the judge, conditioned that the applicant will abide the decision which may be

made in the cause, and that he will pay all sums of money and costs that may be adjudged against him if the restraining order or temporary injunction shall be dissolved in whole or in part.

Where the temporary restraining order or temporary injunction is against the State, a municipality, a State agency, or a subdivision of the State in its governmental capacity, and is such that the State, municipality, State agency, or subdivision of the State in its governmental capacity, has no pecuniary interest in the suit and no monetary damages can be shown, the bond shall be allowed in the sum fixed by the judge, and the liability of the applicant shall be for its face amount if the restraining order or temporary injunction shall be dissolved in whole or in part. The discretion of the trial court in fixing the amount of the bond shall be subject to review. Provided that under equitable circumstances and for good cause shown by affidavit or otherwise the court rendering judgment on the bond may allow recovery for less than its full face amount, the action of the court to be subject to review.

RULE 685. FILING AND DOCKETING

Upon the grant of a temporary restraining order or an order fixing a time for hearing upon an application for a temporary injunction, the party to whom the same is granted shall file his petition therefor, together with the order of the judge, with the clerk of the proper court; and, if such orders do not pertain to a pending suit in said court, the cause shall be entered on the docket of the court in its regular order in the name of the party applying for the writ as plaintiff and of the opposite party as defendant.

RULE 686. CITATION

Upon the filing of such petition and order not pertaining to a suit pending in the court, the clerk of such court shall issue a citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court; provided, however, that when a temporary restraining order is issued and is accompanied with a true copy of plaintiff's petition, it shall not be necessary for the citation in the original suit to be accompanied with a copy of plaintiff's petition, nor contain a statement of the nature of plaintiff's demand, but it shall be sufficient for said citation to refer to plaintiff's claim as set forth in a true copy of plaintiff's petition which accompanies the temporary restraining order; and provided further that the court may have a hearing upon an application for a temporary restraining order or temporary injunction at such time and upon such reasonable notice given in such manner as the court may direct.

RULE 687. REQUISITES OF WRIT

The writ of injunction shall be sufficient if it contains substantially the following requisites:

- (a) Its style shall be, "The State of Texas."
- (b) It shall be directed to the person or persons enjoined.

- (c) It must state the names of the parties to the proceedings, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.
- (d) It must command the person or persons to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.
- (e) If it is a temporary restraining order, it shall state the day and time set for hearing, which shall not exceed fourteen days from the date of the court's order granting such temporary restraining order; but if it is a temporary injunction, issued after notice, it shall be made returnable at or before ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of service thereof, as in the case of ordinary citations.
- (f) It shall be dated and signed by the clerk officially and attested with the seal of his office and the date of its issuance must be indorsed thereon.

RULE 688. CLERK TO ISSUE WRIT

When the petition, order of the judge and bond have been filed, the clerk shall issue the temporary restraining order or temporary injunction, as the case may be, in conformity with the terms of the order, and deliver the same to the sheriff or any constable of the county of the residence of the person enjoined, or to the applicant, as the latter shall direct. If several persons are enjoined, residing in different counties, the clerk shall issue such additional copies of the writ as shall be requested by the applicant. The clerk must retain a copy of the temporary restraining order or temporary injunction in the court's file.

RULE 689. SERVICE AND RETURN

The officer receiving a writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy thereof. The officer must complete and file a return in accordance with Rule 107.

RULE 690. THE ANSWER

The defendant to an injunction proceeding may answer as in other civil actions; but no injunction shall be dissolved before final hearing because of the denial of the material allegations of the plaintiff's petition, unless the answer denying the same is verified by the oath of the defendant.

RULE 691. BOND ON DISSOLUTION

Upon the dissolution of an injunction restraining the collection of money, by an interlocutory order of the court or judge, made in term time or vacation, if the petition be continued over for trial, the court or judge shall require of the defendant in such injunction proceedings a bond, with two or more good and sufficient sureties, to be approved by the clerk of the court, payable to the complainant in double the amount of the sum enjoined, and conditioned to refund to the complainant the amount of money, interest and costs which may be collected of him in the suit or proceeding enjoined if such injunction is made perpetual on final hearing. If such injunction is so perpetuated, the court, on motion of the complainant, may enter judgment against the principal and sureties in such bond for such amount as may be shown to have been collected from such defendant.

RULE 692. DISOBEDIENCE

Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt. In case of such disobedience, the complainant, his agent or attorney, may file in the court in which such injunction is pending or with the judge in vacation, his affidavit stating what person is guilty of such disobedience and describing the acts constituting the same; and thereupon the court or judge shall cause to be issued an attachment for such person, directed to the sheriff or any constable of any county, and requiring such officer to arrest the person therein named if found within his county and have him before the court or judge at the time and place named in such writ; or said court or judge may issue a show cause order, directing and requiring such person to appear on such date as may be designated and show cause why he should not be adjudged in contempt of court. On return of such attachment or show cause order, the judge shall proceed to hear proof; and if satisfied that such person has disobeyed the injunction, either directly or indirectly, may commit such person to jail without bail until he purges himself of such contempt, in such manner and form as the court or judge may direct.

RULE 693. PRINCIPLES OF EQUITY APPLICABLE

The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with these rules or the provisions of the statutes.

RULE 693a. BOND IN DIVORCE CASE

In a divorce case the court in its discretion may dispense with the necessity of a bond in connection with an ancillary injunction in behalf of one spouse against the other.

SECTION 6. MANDAMUS

RULE 694. NO MANDAMUS WITHOUT NOTICE

TAB 4

1 And the Court will recall that Mr. Lu
2 testified that the effort to develop the semantics
3 reflected at page 08, extremely labor intensive,
4 extremely capital intensive. We submit highly
5 unlikely to have been replicated by Bot Auto without
6 having had access to that trade secret information
7 from TuSimple. And in that regard, we note that
8 Dr. Hou and Lei Wang, the central figures in both the
9 laptop investigation and the solicitation
10 investigation and in this case, are now both at Bot
11 Auto.

12 And then, finally, Your Honor, with regard
13 to the redundant safety systems, we'll refer to the
14 Court to Exhibit 136. The Court will recall that this
15 is the TuSimple system requirements document for its
16 proprietary redundant steering system and, in fact,
17 its MVP program, that is to say it's latest generation
18 redundant steering system.

19 The Court will recall that beginning at
20 page 11 of this document, there are a series of system
21 requirements, parameters that Mr. Lu described as
22 powerful indicators of copying, of duplication of the
23 design and architecture of the redundant steering
24 system, if those same metrics and parameters were to
25 appear within the requirements of some other

1 autonomous trucking company.

2 In that regard, Your Honor, we refer the
3 Court now to Exhibit 132. 1-3-2.

4 And in particular, we refer the Court to
5 pages 003 and 004 of this document, where the same
6 requirements parameters appear: Torque, Steering
7 Wheel Position Accuracy, Command latency.

8 We refer the Court next to very next page
9 of that same exhibit. The Court will note that
10 similar parameters, Command latency, Accuracy, appear
11 with regard to the braking system. But with regard to
12 the alleged misappropriation of the design and
13 architecture information pertaining to TuSimple's
14 redundant braking system, we referral the Court,
15 respectfully, to Exhibit 57. That is 5-7. And in
16 particular to page 51, 0-5-1, of that exhibit.

17 The Court may recall that Mr. Lu testified
18 in the upper left-hand portion of this diagram,
19 between the blue rectangles and the next yellow
20 rectangles over on the right there, is a reference to
21 mCAN, main CAN bus, and rCAN, redundant CAN bus.

22 And Mr. Lu testified that that design and
23 that architecture, relying on dual CAN buses, those
24 forms of electrical control units, to achieve
25 redundancy within the system is a TuSimple

1 proprietary, trade secret design and architecture,
2 such that if that information were to appear in
3 another party's business, that would indicate
4 misappropriation of that design and architecture.

5 We refer the Court also specifically in
6 this regard to Exhibit 135. And to section 7.2 of
7 this document, which appears at page 053 -- so exhibit
8 number -- I'm sorry -- it's exhibit page stamped
9 135-053.

10 This, again, is the TuSimple brake system
11 requirements document. Which, again, specifies that
12 the brake system shall support the dual physical
13 communication channels of CAN1 and CAN2. So, again,
14 dual CAN buses achieve redundancy in the system.

15 And in this regard, Your Honor, we refer
16 the Court finally to Exhibit 133. And in particular,
17 to page 133-011. This document, which Mr. Hou
18 authenticated during his direct testimony, is the
19 braking solution design document of Bot Auto. At
20 page 011, the Court will see a schematic for the
21 design and architecture of a redundant braking system.
22 And the Court will see, again, in the upper left-hand
23 portion of the document, braking central ECU, compute
24 unit and CAN1 and CAN2. Again, relying on dual CAN
25 buses to achieve redundancy in the system.

1 Once again, Your Honor, with regard to the
2 braking system, and as before with regard to the
3 steering system, direct specific evidence that
4 TuSimple's trade secret design and architecture
5 information for these systems resides within the
6 possession of Bot Auto.

7 We'll now turn briefly to the law. There
8 has been some discussion, Your Honor, of a proposition
9 that there is no log of source code having been taken
10 out.

11 All right. So, look, Your Honor, we've
12 briefed the law to the Court. There are several
13 points where there is some dueling credibility at
14 issue. We would submit the Court has had multiple
15 opportunities to test these two apex witnesses'
16 credibility. We would refer the Court in particular
17 to one statement from Mr. Hou, that he believes that
18 candor is a very subjective matter. We believe that
19 it is not.

20 We believe that the evidence that has been
21 presented to the Court demonstrates, well beyond the
22 standard that applies to the plaintiff here at this
23 hearing and demonstrates that TuSimple's trade secret,
24 not in one instance, not in two instances, but in
25 three, four instances has now been directly shown to

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Kathy Lowery on behalf of Timothy McCarthy

Bar No. 24123750

KLowery@dykema.com

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Associated Case Party: Bot Auto TX Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Nicole Burkholder		nburkholder@jw.com	3/3/2025 10:43:19 PM	SENT
Leisa Peschel	24060414	lpeschel@jw.com	3/3/2025 10:43:19 PM	SENT
Leisa Peschel	24060414	lpeschel@jw.com	3/3/2025 10:43:19 PM	SENT
Alli Allman		aallman@jw.com	3/3/2025 10:43:19 PM	SENT
Victoria Emery	24126228	temery@jw.com	3/3/2025 10:43:19 PM	SENT
Joseph AFischer, III		tfischer@jw.com	3/3/2025 10:43:19 PM	SENT
Victoria Emery	24126228	temery@jw.com	3/3/2025 10:43:19 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Joseph Fischer	789292	tfischer@jw.com	3/3/2025 10:43:19 PM	SENT
Juana Saucedo		jsauceda@jw.com	3/3/2025 10:43:19 PM	SENT
Richard Liu		richard.liu@consultils.com	3/3/2025 10:43:19 PM	SENT

Associated Case Party: TuSimple Holdings, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Cliff PRiley		criley@dykema.com	3/3/2025 10:43:19 PM	SENT
Cliff PRiley		criley@dykema.com	3/3/2025 10:43:19 PM	SENT
Christopher Kratovil		ckratovil@dykema.com	3/3/2025 10:43:19 PM	SENT
Christopher Kratovil		ckratovil@dykema.com	3/3/2025 10:43:19 PM	SENT
Isaac Villarreal		ivillarreal@dykema.com	3/3/2025 10:43:19 PM	SENT

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Kathy Lowery on behalf of Timothy McCarthy

Bar No. 24123750

KLowery@dykema.com

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Associated Case Party: TuSimple Holdings, Inc.

Isaac Villarreal		ivillarreal@dykema.com	3/3/2025 10:43:19 PM	SENT
Kathy Lowery		klowery@dykema.com	3/3/2025 10:43:19 PM	SENT
Jennifer Schmitt		jschmitt@dykema.com	3/3/2025 10:43:19 PM	SENT
Sebastian Campos		scampos@dykema.com	3/3/2025 10:43:19 PM	SENT
Amanda Gordon		agordon@dykema.com	3/3/2025 10:43:19 PM	SENT
Lina Null		lnull@dykema.com	3/3/2025 10:43:19 PM	SENT
Lina Null		lnull@dykema.com	3/3/2025 10:43:19 PM	SENT
Amanda Gordon		agordon@dykema.com	3/3/2025 10:43:19 PM	SENT
Salvador Robles		SRobles@dykema.com	3/3/2025 10:43:19 PM	SENT
Jennifer Schmitt		jschmitt@dykema.com	3/3/2025 10:43:19 PM	SENT
Timothy J.McCarthy		TMcCarthy@dykema.com	3/3/2025 10:43:19 PM	SENT
Kathy Lowery		klowery@dykema.com	3/3/2025 10:43:19 PM	SENT
Isaac Villarreal		ivillarreal@dykema.com	3/3/2025 10:43:19 PM	SENT
Aaron Kotulek		akotulek@dykema.com	3/3/2025 10:43:19 PM	SENT