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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHAHRAM SODEIFI, Individually)	Civil Action No.:
and on behalf of all others similarly)	
situated,)	
)	
Plaintiff,)	CLASS ACTION COMPLAINT FOR
v.)	VIOLATION OF THE FEDERAL AND
)	SECURITIES LAWS
TESLA, INC., a Delaware)	
corporation, and ELON R. MUSK, an)	
individual,)	
)	
Defendants.)	

Plaintiff Shahram Sodeifi ("Plaintiff") individually and on behalf of all other persons similarly situated, brings this class action against Defendant Tesla, Inc. ("Tesla" or the "Company") and Defendant Elon R. Musk ("Musk") (collectively "DEFENDANTS") based upon knowledge, relevant documents and information and belief, alleging as follows:

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NATURE OF THIS ACTION

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2 1. This is a federal securities class action on behalf of a class consisting of
3 all persons, other than DEFENDANTS, who purchased or sold securities of Tesla
4 between August 7, 2018 and August 10, 2018 (the “Class Period”) and suffered
5 financial damages as a result of the statements and omissions alleged herein. Plaintiff
6 seeks to recover compensable damages caused by DEFENDANTS’ violation of the
7 federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the
8 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated
9 thereunder.

10 2. Tesla, Inc., formerly known as Tesla Motors, Inc. was founded in 2003. It
11 is headquartered in Palo Alto, California and it specializes in electric vehicles, lithium-
12 ion battery energy storage and solar panel manufacturing. Its stock trades on the
13 NASDAQ Global Select Market under the symbol “TSLA.”

14 3. On August 7, 2018, Defendant Musk stated the following on his personal
15 Twitter:(1) “Am considering taking Tesla private at \$420. Funding secured;” (2)
16 “Shareholders could either to sell at 420 or hold shares & go private;” (3) “Investor
17 support is confirmed.”

18 4. Additionally, on August 7, 2018, Defendant Tesla stated on its Twitter
19 account: “Taking Tesla Private.”

20 5. As a result of these statements made on Twitter, the common stock rose
21 \$37.58, almost 11% higher than the previous closing price of \$341.99 on August 6,
22 2018, to close at \$379.57 per share on August 7, 2018.

23 6. On August 8, 2018, members of Tesla’s Board of Directors issued a
24 statement revealing that the board was still evaluating the prospects of taking Tesla
25 private, and confirmed that such a deal was subject to board approval. Further, the
26 Securities Exchange Commission (“SEC”) began investigating the truth of Musk’s
27 statements about the prospects of taking Tesla private.

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1 22. On August 8, 2018 members of Tesla’s board of directors issued a
2 statement that the board was still evaluating the prospect of taking Tesla private and
3 that such a decision was still subject to board approval.

4 23. Shortly after the statements by the board of directors, the Tesla common
5 stock fell \$9.23 per share from the previous day’s closing price.

6 24. That same day, *The Wall Street Journal* reported that the SEC had asked
7 Tesla about Musk’s announcement from August 7, 2018, and that Musk “could be in
8 trouble if regulators develop evidence that he made a statement aimed at goosing his
9 company’s stock price.”

10 25. *Barron’s* also reported on August 7, 2018 that “[t]he surge in Tesla's
11 shares after Musk's tweet about going private has had huge, salutary effect on its key
12 convertible bonds and its financing position. By pushing the common stock's price
13 above the \$360 level, his tweet has put a \$900 million convert issue above its
14 conversion price, which would effectively let the electric-auto maker pay off that
15 obligation in stock instead of cash.”

16 26. On August 9, 2018, *Reuters* reported that Tesla’s board of directors was
17 investigating whether funding was in fact “secured.” As a result, the price of Tesla’s
18 common stock dropped \$17.89 per share from the previous day’s closing price.

19 27. On August 13, 2018, Musk posted a statement on Tesla’s blog
20 confirming that funding for a deal to take Tesla was not yet secured. However, it was
21 proceeding on a deal with Saudi Arabia’s sovereign wealth fund for funding, which
22 was “subject to financial and other due diligence and their internal review process for
23 obtaining approvals.”

24 28. That same day, Musk tweeted at 6:02 p.m., “I’m excited to work with
25 Silver Lake and Goldman Sachs as Financial Advisors, plus Wachtell, Lipton, Rosen
26 & Katz, and Munger, Tolles, & Olson as legal advisors, on the proposal to take Tesla
27 Private.”

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29. On August 14, 2018, *Bloomberg* reported that neither Goldman Sachs nor Silver Lake were working with Musk in official capacity. As a result of this news, the Tesla common stock dropped \$8.77 per share from a previous closing price of \$356.41.

30. On August 15, 2018 the *Wall Street Journal* reported that the SEC had formally subpoenaed Tesla and was seeking information from each of the Company's directors.

31. As a result of DEFENDANTS disclosures and false misrepresentations, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

32. Plaintiff brings this action individually and as a class action on behalf of the following Class: All persons who purchased or sold Tesla securities during the Class Period (the "Class") and were damaged by DEFENDANTS' statements and/or omissions as alleged herein.

33. Excluded from the Class are DEFENDANTS herein, the officers and directors of Tesla, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns any entity in which DEFENDANTS have or had a controlling interest.

34. This action is brought and may be properly maintained as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3). This action satisfies the numerosity, typicality, adequacy, predominance, and superiority requirements of those provisions.

35. The Class is so numerous that the individual joinder of all of its members is impracticable. The exact number and identities of members of the Class is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery. Record owners and other members of the Class may be identified from records maintained by Tesla or its transfer agent and may be notified of the pendency of this

1 action by mail, using the form of notice similar to that customarily used in securities
2 class actions.

3 36. Plaintiff's claims are typical of the claims of the members of the Class as
4 all members of the Class are similarly affected by DEFENDANTS' wrongful conduct
5 in violation of federal securities law that is complained of herein.

6 37. Plaintiff will fairly and adequately represent and protect the interest of
7 the Class. Plaintiff has retained competent and experienced counsel in class and
8 securities litigation. Plaintiff and his counsel are committed to vigorously prosecuting
9 this action on behalf of the Class. Further, Plaintiff has no interests antagonistic to or
10 in conflict with those of the Class.

11 38. Common questions of law and fact exist as to all members of the Class,
12 which predominate over any questions affecting only individual members of the Class.
13 These common legal and factual questions, which do not vary from Class member to
14 Class member, and which may be determined without reference to the individual
15 circumstances of any Class member include, but are not limited, the following:

- 16
- 17 a. whether DEFENDANTS' actions violated federal securities laws, as
18 alleged herein;
 - 19 b. whether DEFENDANTS' misrepresented material facts about the
20 financial condition, business, operations, and management of Tesla to
21 the investing public;
 - 22 c. whether DEFENDANTS' acted knowingly or recklessly when issuing
23 the misleading financial statements;
 - 24 d. whether Musk's statements cause Tesla to issue false or misleading
25 statements during the Class Period;
 - 26 e. whether the common stock prices of Tesla securities during the Class
27 Period were artificially inflated and depressed because of
28 DEFENDANTS' statements, as alleged herein; and
 - f. whether the members of the Class sustained damages as a result of
DEFENDANTS' acts;

39. A Class Action is superior to other available means for the fair and
efficient adjudication of the claims of the Class. Each individual Class member may

1 lack the resources to undergo the burden and expense associated with individually
 2 prosecuting the expensive and extensive litigation necessary to establish
 3 DEFENDANTS' liability and obtain adequate compensation for the injuries sustained.
 4 Individualized litigation increases the expense and delay for all parties and multiplies
 5 the burden on the judicial system in handling legal and factual issues present in this
 6 case. Class treatment of the issues present in this case will ensure that each claimant
 7 receives a fair and consistent adjudication.

8 40. Plaintiff will rely, in part, upon the presumption of reliance established
 9 by the fraud-on-the-market doctrine in that:

- 10 • Defendants made public misrepresentations or failed to disclose material
 11 facts during the Class Period;
- 12 • The omissions and misrepresentations were material;
- 13 • Tesla securities are traded in efficient markets;
- 14 • the Compan's securities were liquid and traded with moderate to heavy
 15 volume during the Class Period;
- 16 • the Company's securities traded on the NASDAQ and other exchanges,
 17 and the Company was covered by multiple analysts;
- 18 • the misrepresentations and omissions alleged would tend to induce a
 19 reasonable investor to misjudge the value of the Company's securities;
 20 and
- 21 • Plaintiff and members of the Class purchased and/or sold Tesla securities
 22 between the time the Defendants failed to disclose or misrepresented
 23 material facts and the time the true facts were disclosed, without
 24 knowledge of theommitted or misrepresented facts.

25 41. Based on the foregoing, Plaintiff and the members of the Class are
 26 entitled to a presumption of reliance upon the integrity of the market.

27 42. Alternatively, Plaintiff and the members of the Class are entitled to the
 28 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of
 the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants
 omitted material information in their Class Period statements in violation of a duty ot
 disclose such information, as detailed herein.

NO SAFE HARBOR

43. The statutory safe harbor provided for certain forward-looking statements does not apply to any of the false statements alleged in this Complaint. None of the statements alleged herein are “forward-looking” statements, and no such statement was identified as a “forward-looking statement” when made. Rather, all the false and misleading statements alleged herein relate to facts and conditions existing at the time the statements were made. Moreover, cautionary statements, if any, did not identify important factors that could cause actual results to differ materially from those in any forward-looking statements.

44. In the alternative, to the extent that the statutory safe harbor does not apply to any statement pleaded herein which is deemed to be forward-looking, the DEFENDANTS are liable for such forward-looking statements because at the time each such statement was made, the speaker actually knew and/or recklessly disregarded the fact that such forward-looking statements were materially false or misleading and/or omitted facts necessary to make statements previously made not materially false and misleading, and/or that such statement was authorized and/or approved by a director and/or executive officer at Tesla who actually knew or recklessly disregard the fact that each such statement was false and/or misleading when made.

COUNT I

**Violation of Section 10(B) Of The Exchange Act and Rule 10b-5 for Artificial
Inflation and Depression of Tesla Securities
(Against All Defendants)**

45. Plaintiff incorporates by reference each and every allegation contained throughout this Complaint as though fully set forth herein.

46. During the Class Period, DEFENDANTS carried out a plan, scheme, and course of conduct which was intended to and, through the Class Period, did: (1) deceive the investing public, including Plaintiff and other Class members, as alleged

1 herein; and (2) caused Plaintiff and other members of the Class to purchase Tesla's
2 common stock at artificially inflated or depressed prices. In furtherance of this
3 unlawful scheme, plan, and course of conduct, DEFENDANTS, and each of them,
4 took the actions set forth herein.

5 47. During the Class Period, DEFENDANTS employed devices, schemes,
6 and artifices to defraud; made untrue statements of material fact/and or omitted to
7 state material facts necessary to make the statements not misleading; and engaged in
8 acts, practices, and a course of business that operated as a fraud and deceit upon the
9 purchasers of the Company's common stock in an effort to maintain artificially high
10 market price of Tesla's common stock in violation of Section 10(b) of the Exchange
11 Act and Rule 10b-5 thereunder.

12 48. DEFENDANTS, individually and in concert, directly and indirectly, by
13 the use, means or instrumentalities of interstate commerce and/or the mails, engaged
14 and participated in a continuous course of conduct to conceal adverse material
15 information about having funding secured to take Tesla private at \$420.00 per shares
16 and having investor support confirmed.

17 49. DEFENDANTS employed devices, schemes, and other artifices to
18 defraud while in possession of material adverse non-public information and engaged
19 in acts, practices, and a course of conduct as alleged herein in an effort to falsely
20 persuade purchasers and sellers of Tesla securities that funding is "secured" and
21 "[i]nvestor support is confirmed."

22 50. DEFENDANTS had actual knowledge of the misrepresentations and
23 omission of material facts set forth herein, or acted with reckless disregard for the
24 truth in that they failed to ascertain and to disclose such facts, even though such facts
25 were available to them. DEFENDANTS material misrepresentations and/or omissions
26 were done knowingly or reckless and for the purpose and effect of concealing Tesla's
27 operating condition and future business prospects from the investing public and
28 supporting the artificially inflated price of its common stock.

51. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Tesla's common stock was artificially inflated during the Class Period. Plaintiff and other members of the Class acquired common stock during the Class Period at artificially high prices and were damaged as a result.

52. By virtue of the foregoing, DEFENDANTS have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

53. As a direct and proximate result of DEFENDANTS' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's artificially inflated stock during the Class Period.

COUNT II

Violation of Section 10(B) Of The Exchange Act and Rule 10b-5 for Artificial Inflation and Depression of Tesla Securities (Against All Defendants)

54. Plaintiff incorporates by reference each and every allegation contained throughout this Complaint as though fully set forth herein.

55. During the Class Period, DEFENDANTS deceived the investing public, including Plaintiff and the other Class members and caused Plaintiff and the other Class members to purchase Tesla's common stock at artificially inflated prices.

56. DEFENDANTS, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or the mails, engaged and participated in manipulative acts that drove the price of Tesla shares to artificially high levels during the Class Period.

57. DEFENDANTS had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth when they failed to ascertain and to disclose such facts, even though such facts were available to them. DEFENDANTS knew that investors had not been secured, but

1 sealed such information from the investing public for the purpose of manipulating the
2 price of Tesla securities.

3 58. As a result of the dissemination of the materially false and misleading
4 information and failure to disclose material facts, as set forth above, the market price
5 of Tesla's common stock was artificially inflated during the Class Period.

6 59. At the time of said misrepresentations and omissions, Plaintiff and other
7 members of the Class were ignorant of their falsity, and believe them to be true. Had
8 Plaintiff and the other members of the Class known the truth about Tesla's statements,
9 which were not disclosed by DEFENDANTS, Plaintiff and the other members of the
10 Class would not have purchased or otherwise acquired their Tesla common stock, or,
11 if they had acquired such common stock during the Class period, they would not have
12 done so at the artificially inflated prices that they paid. DEFENDANT'S market
13 manipulation caused Plaintiff's losses.

14 60. By virtue of the foregoing, DEFENDANTS have violated Section 10(b)
15 of the Exchange Act, and Rule 10b-5 promulgated thereunder.

16 61. As a direct and proximate result of DEFENDANTS' wrongful conduct,
17 Plaintiff and the Class suffered damages in connection with their trades of Tesla
18 securities during the Class Period.

19 **COUNT III**

20 **Violation of Section 20(a) of the Exchange Act**

21 **(Against Defendant Musk)**

22 62. Plaintiff incorporates by reference each and every allegation contained
23 throughout this Complaint as though fully set forth herein.

24 63. Musk acted as controlling person of Tesla within the meaning of Section
25 20(a) of the Exchange Act as alleged herein. By virtue of his high-level position,
26 agency, and ownership and contractual rights, participation in and/or awareness of the
27 Company's operations and/or intimate knowledge of the financial statements
28 published by the Company and disseminated to the investing public, Musk had the

1 power to influence and control, and did influence and control, directly, the decision-
 2 making of the Company, including the content and dissemination of the various
 3 statements that Plaintiff contends, are false and misleading. Musk had access to non-
 4 public information regarding the Company's consideration of any going private
 5 transactions, the price, and whether such funding was secured.

6 64. Musk as an officer and director of Tesla, is presumed to have the power
 7 to control or influence the particular transactions giving rise to the securities violations
 8 as alleged herein, and exercised the same.

9 65. As set forth above, Musk violated Section 10(b) and Rule 10b-5 by his
 10 acts and omissions as alleged in this Complaint.

11 66. By virtue of his position as controlling person, Musk is liable pursuant to
 12 Section 20(a) of the Exchange Act. As a direct and proximate result of Musk's
 13 wrongful conduct, Plaintiff and other members of the Class suffered damages in
 14 connection with their purchases of the Company's common stock during the Class
 15 Period.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, individually and on behalf of the members of the
 18 proposed class, prays for judgment against the DEFENDANTS as follows:

- 19 a. For an Order certifying the Class under Rule 23 of the Federal Rules of Civil
 20 Procedure and naming Plaintiff Sodeifi as the representative of the Class and
 21 Plaintiff's attorney as Class Counsel to represent the members of the class;
- 22 b. For an Order declaring that DEFENDANTS' conduct violates the statutes
 23 referenced herein;
- 24 c. Requiring that DEFENDANTS pay all costs, restitution, damages, including
 25 punitive damages, penalties, and disgorgement in an amount to be
 26 determined at trial to Plaintiff and the Class;
- 27 d. An order requiring Defendants to pay both pre- and post-judgment interest
 28 on any amounts awarded;

1 e. An award of costs and attorneys' fees; and

2 f. Such other or further relief that this Court determines to be appropriate.

3
4 **DEMAND FOR A JURY TRIAL**

5 Plaintiff hereby demands a jury trial on all of the claims herein.

6
7 Respectfully Submitted

8 Dated:8/29/2018

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10 By: _____

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12 MARC LAZO

13 Attorney for Plaintiffs
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