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Attorneys for Plaintiff, Robert Fish and the  
Putative Class.

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

ROBERT FISH, individual, and on  
behalf of all others similarly situated,

Plaintiff,

v.

TESLA, INC., a Delaware corporation,

Defendant.

Case No. 8:21-cv-00060

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

1           1.     Plaintiff Robert Fish (“Plaintiff”) by and through its attorneys of  
2 record, allege, on knowledge as to his own actions, and otherwise upon  
3 information and belief as follows:

4                                   **JURISDICTION AND VENUE**

5           2.     This Court has subject matter jurisdiction pursuant to 28 U.S.C. §  
6 1331 because the claims of Plaintiff and the Putative Class involve violations of  
7 federal laws, including the Magnuson-Moss Warranty Act, 15 U.S.C. § 2310 et  
8 seq., and the Computer Fraud and Abuse Act (“CFAA”) 18 U.S.C. § 1030 et seq.  
9 This Court also has supplemental jurisdiction over the state law claims pursuant to  
10 28 U.S.C. § 1367(a) because all claims alleged herein arise from the same core of  
11 operative facts.

12          3.     This Court also has subject matter jurisdiction over this action  
13 pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(a)(1), (d)(1), (d)(2),  
14 and (d)(3) because the proposed classes consist of 100 or more members; the  
15 amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and  
16 minimal diversity exists. To date, Defendant Tesla has sold more than 1 million  
17 vehicles equipped with electric battery packs, including Models S, X, 3, and Y  
18 (“Class Vehicles”).

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



1 California.

## 2 **FACTUAL BACKGROUND**

### 3 **Subject Vehicle**

4 11. Plaintiff purchased the Subject Vehicle directly from Defendant  
5 Tesla in Orange County, CA in 2014.

6 12. When Plaintiff purchased the Subject Vehicle and for several years  
7 following, Plaintiff regularly got over 200 miles of range from an 80% drain of  
8 the battery (90% to 10%), which was approximately equivalent to the maximum  
9 stated range of 265 miles (100% to 0%).

10 13. Prior to and after purchasing his vehicle, Plaintiff understood the  
11 basic concepts surrounding battery-powered electric vehicles, including the  
12 comprehension that lithium-ion batteries such as the ones that are used to power  
13 Tesla vehicles will lose some capacity over time. Plaintiff understood this as  
14 consistent with the wording in Tesla's Battery and Drive Unit Limited Warranty  
15 which stated: "The Battery, like all lithium-ion batteries, will experience gradual  
16 energy or power loss with time and use."

17 14. Plaintiff notes that Tesla strongly recommends owners of Class  
18 Vehicles limit charge and discharge of battery packs between 20% and 80%  
19 capacity, and to limit Supercharging sessions to prevent battery damage. Plaintiff  
20 regularly operates the Subject Vehicle within the 20% to 80% battery capacity  
21 range, and to the best of his knowledge has never used a Tesla Supercharger.

22 15. In August 2020, with less than 60,000 miles on the odometer of the  
23 Subject Vehicle, Plaintiff noticed a significant loss in actual range traveled from a  
24 near fully charged battery. Where previously Plaintiff received the range stated  
25 above, as displayed on the Subject Vehicle's dashboard, he now only received a  
26 maximum of 150 miles of actual traveled range from a 99% charged battery. This  
27 is despite the car still displaying 245 miles of available range at 99% charge. In  
28 other words, Plaintiff received only about 60% of traveled range, as compared to

the estimated range for a new battery.

16. In August 2020, Plaintiff contacted a Tesla service technician to inquire about the substantial loss of range and effective battery capacity of the Subject Vehicle's battery pack. The service technician instructed Plaintiff to determine battery capacity by focusing on his vehicle's displayed percent battery state of charge, instead of range.

17. Plaintiff then logged energy usage during drives with the Subject Vehicle throughout August 2020. As the charge dropped from 99% to 61%, the dashboard recorded battery usage of 16.4 kWh. This demonstrated that the battery capacity was only 43.16 kWh ( $16.4 \text{ kWh} / .38 = 43.16 \text{ kWh}$ ).

18. Assuming an 85-kWh battery has a usable capacity of 85 kWh, the battery of the Subject Vehicle was obtaining only 51% of its stated capacity.

19. On information and belief, Tesla might argue that an 85-kWh battery has only 81 kWh of usable capacity, or even perhaps only 77.5 kWh of usable capacity. Aside from the potential fraud in failing to tell the buying and investing public about those numbers, the battery capacity of the Subject Vehicle is still only about 53% or 56% of represented capacity.

20. The following chart summarizes estimated battery capacity from multiple checkpoints during the August 2020 test.

Battery %	kWh Used	% Battery Used	Battery capacity kWh	% of 85 kWh Capacity	% of 81 kWh Capacity	% of 77.5 kWh Capacity
99	0	0.00				
72	13.8	0.27	51.11	60%	63%	66%
61	16.4	0.38	43.16	51%	53%	56%
53	18.1	0.46	39.35	46%	49%	51%
44	21.5	0.55	39.09	46%	48%	50%
18	38.3	0.81	47.28	56%	58%	61%
11	42.4	0.88	48.18	57%	59%	62%

21. These observations show the battery capacity of the Subject Vehicle is consistently less than 70% of the represented battery capacity.

22. On information and belief, Tesla represented to Plaintiff and to owners of Class Vehicles, that the ideal battery capacity range to operate the vehicles is between 20% and 80% capacity. However, even considering operation of the Subject Vehicle within this supposedly optimum operating range, the battery capacity of the Subject Vehicle is less than 70% of the of the represented battery capacity. See chart below.

Battery %	kWh used	% battery used	battery capacity kWh	% of 85 kWh capacity	% of 81 kWh capacity	% of 77.5 kWh capacity
85-18	31.5	0.67	47.1	55.41%	58.15%	60.77%
56-48	4	0.08	50	58.82%	61.73%	64.52%

23. Nor could low temperatures be responsible for the low batter capacity of the Subject Vehicle. Ambient temperatures for data shown in the charts above were always at least 75° Fahrenheit.

24. Accordingly, on information and belief, the Subject Vehicle met the criteria for replacing defective battery packs under warranty, and Tesla should have honored the warranty and replaced the battery of the Subject Vehicle for free.

25. Plaintiff reported the above results to Tesla technicians to make a warranty claim to replace the defective battery pack in the Subject Vehicle. However, despite Plaintiff's detailed observations that clearly demonstrated a defective battery, the Tesla technician allegedly performed a remote "battery health check" and determined there were no issues with the battery. Other than stating the battery was fine, the Tesla technician did not report any details of the mysterious "health check," what was being measured to determine "health," how the check was performed, or what metric and criteria was used to determine there

1 were no issues with the battery in the Subject Vehicle. The Tesla technician  
2 denied Plaintiff's claim for a warranty replacement of the battery pack. Plaintiff  
3 clearly told the Tesla technician this was unacceptable and demanded replacement  
4 of the Subject Vehicle battery pack under warranty but was provided with no  
5 alternative resolution other than to file the present suit.

6 26. On information and belief, Tesla has a standard practice of using  
7 fraudulent and deceptive "battery health checks" as a basis to deny warranty  
8 claims to replace defective batteries.

9 27. Also, on information and belief, Tesla has attempted to hide failing  
10 battery capacity, which *necessarily* occurs from age and use of Lithium Ion  
11 technology batteries, behind software updates. Accordingly, the Plaintiff and  
12 other putative Class Members have largely avoided demanding battery  
13 replacements under warranty because they were fooled into thinking that the  
14 losses they were experiencing in battery capacity were due to software updates  
15 instead of failing batteries.

16 28. Following Tesla's refusal to replace the Subject Vehicle's battery  
17 under warranty, Plaintiff continued to monitor actual battery capacity and miles  
18 traveled for the Subject Vehicle. As recently as December 2020, Plaintiff  
19 consistently experienced traveling an actual 128.2 miles over a 90% to 1% battery  
20 draw down. This results in an actual mile range of 144 miles for 100% battery  
21 charge, or 54.4% of the 265-mile original range.

22 29. Upon information and belief, and close examination of the data  
23 available for Plaintiff's vehicle, and the warranty replacement criteria as disclosed  
24 by Tesla, Tesla violates state and federal warranty statutes and engages in  
25 fraudulent and deceptive behavior by denying replacement for defective batteries.  
26 Tesla also knew, or should have known, that the Subject Vehicle has a defective  
27 battery that should be replaced under warranty, and that hundreds of thousands of  
28 other putative Class Vehicles have batteries that should be replaced under



1 warranty, or will need to be replaced under warranty.

2 30. On information and belief, in addition to Tesla failing to properly  
3 honor the warranty for the Subject Vehicle, Tesla has also manipulated the  
4 software to display inflated estimated driving ranges. For example, the Subject  
5 Vehicle displayed a 245-mile estimated range at a 99% charge, with the range  
6 estimate based on almost 60,000 miles of historical driving. And yet the actual  
7 miles traveled from 99% charge to 11% charge was only 135.1 miles, which  
8 means that even driving the Subject vehicle to a displayed charge of 0% would  
9 have yielded only 154 miles.

10 31. Tesla's efforts to artificially inflate the estimated range is a fraud on  
11 Class Members to obscure the fact that battery packs in Class Vehicles are  
12 defective or have otherwise significantly reduced effective charge capacity. This  
13 fraud is an attempt by Tesla to avoid honoring legitimate warranty obligations for  
14 defective battery packs.

15 32. On information and belief, similar losses in battery capacity, and  
16 similarly inflated estimated driving ranges, have or will occur for essentially all of  
17 the Tesla vehicles sold to date. And essentially all such vehicles should be  
18 deemed to be eligible as Class Vehicles.

19 33. On information and belief, all or substantially all of Tesla's vehicles  
20 sold with Lithium Ion batteries, as well as those sold in the future, are subject to  
21 having the same sort of problems with reduced battery capacity as the Subject  
22 Vehicle.

23 34. On information and belief, Tesla cannot be trusted to properly  
24 instruct all potential Class Members of the reduced battery capacity in their  
25 Lithium Ion powered vehicles. Accordingly, it seems reasonable to require Tesla  
26 to cooperate with Plaintiff and Plaintiff's attorneys to provide instructions to all  
27 current and future owners of Tesla Lithium Ion powered vehicles for self-testing  
28 of their batteries. Batteries of vehicles within the warranty period should be given



a free battery replacement if the owners find the batteries to require replacement according to the following table, when discharged from 99% to 10%, or such other parameters as determined by the Court or jury.

Battery Size	Total Capacity kWh	Usable Capacity kWh	70% Usable Capacity
Original 60	61	58.5	40.95
Original 70	71.2	68.8	48.16
75/75D	75	72.6	50.82
85/P85/85D/P85D	81.5	77.5	54.25
90D/P90D	85.8	81.8	57.26

35. On information and belief, a reasonable fee for Plaintiff and Plaintiff's attorneys to assist in this regard is \$100 per vehicle.

### **There Are Widespread and Common Complaints of Tesla's Defective Battery Issues**

36. In 2019 many Tesla customers noticed and began to complain about range loss and battery issues. For example, one discussion titled "Sudden Loss of Range With 2019.16.x Software" on the popular Tesla Motors Club online forum website has garnered nearly 3,000 replies from hundreds of members worldwide and has been viewed over 136,000 times.

37. Numerous members of that forum made the same complaint of significant reduction in range or effective battery capacity of their cars.

38. One member commented: "So about two months ago I was stuck on 2019.4 because my MCU was dying and unable to connect to Wi-Fi to update and eventually died from the e-MMC issue. My replacement MCU came with 2019.24 installed and after driving my car for less than 50 miles I dropped from 221 rated miles at 90% to 199 rated miles at 90%."

39. Another member commented: "When I complained to Tesla about immediately losing 10% range they also gave me a chart claiming there was

1 nothing wrong I was just imaging it. Over time, and challenges, Tesla admitted  
2 there is a loss. Last week I was told by Tesla service manager that "Tesla made a  
3 conscious decision to reduce charging capacity to 90% to avoid fires and Tesla  
4 regards that as a reasonable compromise." I feel this makes the car unsellable  
5 since Tesla hasn't fully explained why my specific battery pack I need to disclose  
6 it to a buyer. And I am not confident that the issue is resolved. It also confirms  
7 that my (our) battery pack is defective since Tesla thought it dangerous enough to  
8 secretly download a "fix". The reduced range is accompanied by longer charge  
9 time. Even if I accept the defective battery pack condition and drive the car I now  
10 am faced with increased time to actually get any range."

11 40. Others commented: "Well, my 254 miles has been cut to 238 miles at  
12 full charge (This is especially bad for those of us that tow... We need the longer  
13 range and can't afford to have it shortened). Tesla better be upfront and explain  
14 why I have to sacrifice 14 miles."

15 41. Still others commented: "Are they now at risk of having a car fire in  
16 their garage while they sleep? If it's not about the fires, then why do this cap at  
17 all? Prevent future degradation? (sic) Well they just degraded them now instead of  
18 the future, what's the point in that? I can't see how you can say this is about  
19 expectation. The manufacturer physically capped battery capacity of vehicles they  
20 do not own without an explanation. How can you possibly view this as being ok?"

21 42. Another member commented: "My observation has been that  
22 unstated battery losses are at about 20%. For example, your car states you have  
23 200 miles available to drive. But in reality, you can probably get about 160 Miles  
24 (give or take). Thus the true stated mileage of your Tesla vehicle is about 20%  
25 less than what's being advertised... You think you're going to get 235 miles of  
26 use, but only get about 190 Miles. This is from normal driving, street and  
27 highway. \*\* Recent Example: 210 Miles Available; 118.5 Miles driven since last  
28 charge; 35.4 KWH since last charge; 298 WH/Miles since last charge; Battery

1 Left Over indicator Reads: 54 Miles. A phantom loss of 37.50 Miles or 17.85%”

2 43. Other comments include: “I’m not using any apps or gadgets... All I  
3 know is that at full charge, my vehicle says 240 miles available... At the end of  
4 my trip, my vehicle may say 50 miles available and 142 Miles Driven. Thus 48  
5 Miles disappeared...”

6 44. Further comments include: “Personal current battery capacity  
7 (driven) =  $43.5\text{kWh}/(90\% \text{ SoC} - 11\% \text{ SoC}) = 55.06\text{kWh}$  This would equate to a  
8 roughly 24.15% battery degradation in 2 years/17.5k miles, which is atrocious.”

9 45. Another member stated: “By the way, my 2016 90D has a real full  
10 charge range of 190-200 miles. And the displayed full charge range is 270 miles.  
11 So, full charge range displayed may not be indicative of real range or real battery  
12 capacity.”

13 46. On information and belief, Tesla has a common practice of denying  
14 warranty replacements for defective battery packs in Class Vehicles, or otherwise  
15 substantially limits available battery capacity of Class Vehicles via software  
16 updates to hide known safety issues.

17  
18 **Tesla Manipulates Range Calculations To Hide Defective Battery**  
19 **Packs and Escape Warranty Obligations**

20 47. Upon information and belief, and by and through the further  
21 investigation of Plaintiff and counsel for Plaintiff, these complaints are valid.

22 48. Upon information and belief, Tesla uses formulas to determine the  
23 rated mileage ranges for its various vehicles. In general, Tesla divides a total  
24 amount of usable battery capacity (kWh) by a fixed constant factor (watt-  
25 hours/mile) to determine the total number of rated miles.

26 49. Upon information and belief, Tesla has lowered the numbers for the  
27 fixed constant factors (watt-hours/mile), which has the practical effect of giving  
28 the false impression that more miles are available, or that batteries have a falsely

1 inflated capacity. On information and belief, Tesla used the lowered fixed  
2 constant factors at least in part to hide decreased battery capacity. Customers like  
3 Plaintiff and the putative Class Members relied upon the estimated number of  
4 miles and effective battery capacity that Tesla fraudulently represented to them.  
5 However, what they did not know after purchasing the Class Vehicles is/was that  
6 Tesla manipulates the fixed constant factors (watt-hours/mile) at least in part to  
7 avoid valid battery replacements under warranty.

8         50. Some Class Vehicles are advertised with a number after the model  
9 letter, which indicates the supposed battery capacity of the vehicle. For example,  
10 the Tesla Model S 85 is advertised as an “85 battery” denoting a battery capacity  
11 of 85 kWh. However, even though Tesla doesn't admit it, there is evidence in the  
12 public domain that Model S 85 vehicles include a battery pack with a maximum  
13 capacity of only 81 kWh, of which only 77.5 kWh are available for powering the  
14 vehicles.

15         51. Upon information and belief, Tesla has fraudulently and/or  
16 deceptively lowered the fixed constant factors (watt-hours/mile) to avoid its duty  
17 and legal obligation to replace defective battery packs under warranty.

18         52. Upon information and belief, Tesla has attempted to further escape  
19 from its legal obligations by using confusing terms, relying on terms such as  
20 “Rated Miles” or “Rated Range,” when the actual term that Tesla should be using  
21 is Battery Capacity calculated by the kilowatt-hour (kWh). Tesla does not display  
22 the amount of battery capacity kWh on any user information display available on  
23 the vehicle. Owners are only given access to the displayed percentage and rated  
24 range as displayed on the vehicle display.

25         53. On information and belief, Plaintiff's vehicle and Class Vehicles  
26 display their Rated Range based on the battery management system reporting the  
27 nominal remaining kWh minus the battery brick buffer (believed to be 4 kWh)  
28 divided by the reduced fixed constant factor (watt-hours/mile).

1           54. Upon information and belief, battery packs in Class Vehicles have a  
2 substantially reduced battery capacity, either because of defective battery packs  
3 that cannot reach the rated battery capacity or by software manipulation of the  
4 battery management system to limit maximum battery capacity, or at least they  
5 will have substantially reduced battery capacity before the end of the warranty  
6 period, and absent judicial intervention Tesla will refuse to replace the batteries  
7 under warranty.

8           55. Upon information and belief, Tesla was aware that its customers and  
9 owners fully expected to be able to charge their Class Vehicles to the maximum  
10 battery capacities as advertised and paid for. However, Tesla realized the mistakes  
11 it had made by fraudulently advertising and selling to Plaintiff and the putative  
12 Class Members cars that could not be safely charged to the maximum battery  
13 capacity, and has used denial and obfuscation to prevent owners from pursuing  
14 their right to free battery replacements under warranty.

15           56. Upon information and belief, Tesla's failure to inform its customers,  
16 and comment on the defective battery packs, is simple: Tesla did not want to  
17 admit it sold defective products to its customers, products that could not achieve  
18 or operate as sold and intended for use by Plaintiff and the putative Class  
19 Members. Instead of coming clean with the public, Plaintiff, and the putative  
20 Class Members by informing them about the defective batteries, Tesla decided to  
21 withhold this information and use denial, and obfuscation through software  
22 updates and throttling of the batteries, to avoid liability.

23           57. Plaintiff's use of the Subject Vehicle is substantially and significantly  
24 affected by Tesla's fraudulent concealment and manipulation of software, to the  
25 point that Plaintiff is forced to pay out-of-pocket costs to replace a battery pack  
26 that should have been replaced under warranty, but for Tesla's deceptive acts and  
27 unfair business practices.

28           58. Upon information and belief, hundreds of thousands of other Tesla

1 vehicles of putative Class Members either are currently or will be harmed by  
2 Tesla's efforts to avoid replacing batteries under warranty.

3 59. Upon close examination of the data available on Plaintiff's vehicle,  
4 and the warranty replacement criteria as disclosed by Tesla, Plaintiff is informed  
5 and believes that Tesla also violates state and federal warranty statutes and  
6 engages in fraudulent and deceptive behavior by manipulating the software for its  
7 vehicles. Tesla knew, or should have known, that the software updates issued to  
8 Plaintiff and hundred of thousands of other putative Class Members' vehicles  
9 would cause significant range loss, whether or not the battery packs on those  
10 vehicles are defective.

11 60. For example, in August 2014 Tesla gave what was called the "Tesla  
12 Infinite Mile Warranty" to Class Vehicles. As Tesla represented and displayed on  
13 their website, the warranty included an 8-year, infinite mile warranty as to the  
14 battery pack and drive train of Tesla's vehicles. In addition, the warranty applied  
15 to all models produced in the future and applied retroactively to all prior models  
16 already produced at the time.

17 61. Tesla's practice of misrepresenting battery capacity and actual range  
18 is a deliberate and deceptive attempt to place Plaintiff's vehicle and the vehicles  
19 of other putative Class Members outside of the warranty replacement  
20 requirements.

21 62. If Plaintiff were to purchase a replacement battery from Tesla to  
22 restore the Subject Vehicle to its warranted functionality and usability, the price  
23 would be approximately \$20,0000. Tesla has acted fraudulently and attempts to  
24 shift the burden of these costs and label them as out-of-warranty. Absent judicial  
25 intervention, Plaintiff and other putative Class Members are left helpless as Tesla  
26 sits in the ultimate bargaining position with absolute reign over the warranty  
27 process, and ability to control the variables that are relied upon in determining  
28 warranty coverage.

**Tesla Owners Have No Choice but To Accept Software Updates**

63. To be eligible for warranty repair and coverage for Tesla’s vehicles, Tesla owners must update their vehicles regularly, and are unable to operate their vehicles without Tesla’s software.

64. Though Tesla owners may have the choice to postpone software updates, Class Members are left helpless due to Tesla’s demand and imposition of terms that require owners to comply with Tesla’s software updates. Moreover, if a Class Member takes a Class Vehicle into a Tesla service station, the technicians will update the software without permission from the owner.

65. Any attempts by Tesla to limit liability for its software updates is unconscionable and unenforceable, as Tesla’s software updates are necessary for consumers to continue the use of Class Vehicles while still maintaining the full realization and benefit of the consumers’ bargains.

66. Upon information and belief, Tesla imposed updates that significantly reduced the effective battery capacity of Class Vehicles to cover up defective battery packs and avoid warranty claims.

**Tesla’s Violations of the Computer Fraud and Abuse Act**

**(18 U.S.C. § 1030 *et seq.*)**

67. The Computer Fraud and Abuse Act (“CFAA”) 18 U.S.C. § 1030 *et seq.*, establishes a private cause of action against a person who “knowingly accessed a computer without authorization or exceeding authorized access,” and whose access results in damage or loss in excess of \$5,000. 18 U.S.C. § 1030(g) (referencing 18 U.S.C. § 1030(c)(4)(A)(i)(I)). Under the CFAA, a computer is defined as one, “which is used in or affecting interstate or foreign commerce or communication.” 18 U.S.C. § 1030(e)(2).

68. Class Vehicles are equipped with an onboard computer known as a media control unit, or “MCU”, which allows for internet, GPS and Wi-Fi



1 connected capabilities, and serves as the platform for receiving Tesla's software  
2 updates. The MCU an LCD display, processors, controllers, and memory.

3 69. Tesla's MCU's are "computers" under the CFAA by virtue of their  
4 data processing and communication functions and their operation in conjunction  
5 with Plaintiff and the putative Class Members' vehicles. They are used in and  
6 affect interstate and foreign commerce and communication by providing key  
7 information to Tesla vehicles, including software updates that may affect the  
8 safety and improve upon the reliability of the same.

9 70. Tesla knowingly and intentionally manipulated its software updates  
10 in order to limit the amount of battery capacity and charging speed of its vehicles  
11 and did so either without authorization and/or exceeding the authorization of its  
12 customers. Tesla failed to provide any information to its customers that such  
13 software updates would lead to a significant reduction in charging speed,  
14 performance, and severe loss of range for their vehicles.

15 71. Tesla further acted fraudulently and under the guise of "safety" as the  
16 reason for the software updates, to the detriment of its customers. Tesla's  
17 violations of the CFAA resulted in a loss of range and resultant loss in value for  
18 the Class Vehicles.

19 72. By issuing the range-reducing and battery capacity-limiting software  
20 updates to the vehicles owned by Plaintiff and the other putative Class Members,  
21 Tesla also violated California's Computer Crime Law, CAL. PEN. CODE § 502 *et*  
22 *seq.*, which prohibits similar behavior as provided by its federal counterpart.

23 73. Plaintiff and the putative Class Members owned their vehicles and  
24 possessed the right to use them without interference by Tesla. However, by  
25 limiting the range of their vehicles and reducing the charging speed and  
26 performance of their vehicles, Tesla has inflicted damages to Plaintiff and the  
27 putative Class Members in the form of substantially reducing the value of their  
28 cars.

1           74. Plaintiff and the putative Class Members have no choice but to abide  
2 by Tesla's commands and are forced to accept Tesla's software updates or risk  
3 losing the ability to receive warranty repair from Tesla. Plaintiff and the putative  
4 Class Members would not have paid as much as they did for their cars, or would  
5 have paid significantly less for their cars had they known that Tesla would  
6 introduce range and battery capacity-limiting software that would significantly  
7 and severely impact the value and function of their cars after purchase.

8  
9                           **Tesla is Notorious for Producing and Selling Vehicles**  
10                           **with Defective Battery Packs**

11           75. Class Vehicles have a history of including defective or faulty battery  
12 packs, as evidenced by the number of spontaneous fires caused by battery packs  
13 across multiple model years.

14           76. On information and belief, Defendant Tesla has been aware of these  
15 faults and defects in its battery packs since at least 2012.

16           77. Tesla's deployment of software "updates" has significantly affected  
17 the use and drastically limited the performance of the Class Vehicles. Tesla  
18 severely limits the maximum amount of battery capacity available in the Class  
19 Vehicles, and essentially took away significant value from these vehicles with one  
20 tap on the screen.

21           78. Customers rely on Tesla's representations and advertisements of their  
22 vehicles and are left at the mercy of Tesla when it comes to ownership of their  
23 vehicles. Plaintiff and other putative Class Members updated their cars as  
24 required by Tesla's warranty. Plaintiff and other putative Class Members were  
25 unaware of the fact that the software updates would effectively limit the maximum  
26 amount of battery capacity available in their cars, which translated into a decrease  
27 in the number of miles available, a decrease in performance and decrease in the  
28 charging speed of their cars. All of these limitations were unlawfully,

1 fraudulently, and deceptively delivered to their cars as part of Tesla's so-called  
2 software "updates" for "safety" of their vehicles.

3 79. In February 2014, a Tesla Model S spontaneously caught fire in  
4 Toronto, Canada. On information and belief, the fire was caused by the battery  
5 pack of the car.

6 80. In March 2017, a Tesla Model S spontaneously caught fire in  
7 Shanghai, China. On information and belief, the fire was caused by the battery  
8 pack of the car.

9 81. On June 16, 2018, the battery pack of a Tesla Model S spontaneously  
10 caught on fire in Los Angeles, CA while the owner was sitting in traffic.

11 82. On June 18, 2018, a Tesla Model S spontaneously caught fire in  
12 Oslo, Norway. On information and belief, the fire was caused by the battery pack  
13 of the car.

14 83. On December 18, 2018, a Tesla Model S spontaneously caught fire in  
15 Los Gatos, CA. After moving the car to a second location for inspection, the car  
16 again spontaneously erupted in flames. On information and belief, the fire was  
17 caused by the battery pack of the car.

18 84. On December 21, 2018, a Tesla Model S spontaneously caught fire in  
19 San Francisco, CA. After extinguishing the fire, the car again erupted in flames  
20 hours later. On information and belief, the fire was caused by the battery pack of  
21 the car.

22 85. On February 8, 2019, a Tesla Model S spontaneously caught fire in a  
23 private garage in Pittsburgh, PA. The car was transported to another location for  
24 inspection, and again spontaneously caught fire on April 17, 2019. On  
25 information and belief, the fires were caused by the battery pack of the car.

26 86. On February 24, 2019, a Tesla Model X spontaneously caught fire  
27 and was consumed in the middle of frozen Lake Champlain, VT. On information  
28 and belief, the fire was caused by the battery pack of the car.

1           87. On March 14, 2019, a Tesla Model S spontaneously caught fire while  
2 parked in Hong Kong. On information and belief, the fire was caused by the  
3 battery pack of the car.

4           88. On April 21, 2019, a Tesla Model S vehicle was caught on video  
5 bursting into flames while parked in a garage in Shanghai, China. On information  
6 and belief, the fire was caused by the battery pack of the car.

7           89. On May 4, 2019, a Tesla Model S spontaneously caught fire and  
8 began smoking in San Francisco, CA. On information and belief, the fire and  
9 smoke was caused by the battery pack of the car.

10          90. On May 13, 2019, a Tesla Model S spontaneously caught fire while  
11 parked in Hong Kong. On information and belief, the fire was caused by the  
12 battery pack of the car.

13          91. On June 1, 2019, a Tesla Model S spontaneously caught fire in  
14 Antwerp, Belgium. On information and belief, the fire was caused by the battery  
15 pack of the car.

16          92. On July 30, 2019, A Tesla Model S spontaneously caught fire in  
17 Ratingen, Germany. On information and belief, the fire was caused by the battery  
18 pack of the car.

19          93. On November 12, 2019, a Tesla Model X spontaneously caught fire  
20 in Chester, England. On information and belief, the fire was caused by the battery  
21 pack of the car.

22          94. On February 12, 2020, a Tesla Model 3 spontaneously caught fire in  
23 Cerritos, CA. On information and belief, the fire was caused by the battery pack  
24 of the car.

25          95. On May 22, 2020, a Tesla Model S spontaneously caught fire in  
26 Kaysville, UT. On information and belief, the fire was caused by the battery pack  
27 of the car.

28          96. On July 8, 2020, a Tesla Model S spontaneously caught fire in Coral

1 Gables, FL. On information and belief, the fire was caused by the battery pack of  
2 the car.

3 97. On or about November 25, 2020, a Tesla Model S spontaneously  
4 caught fire in Frisco, TX. On information and belief, the fire was caused by the  
5 battery pack of the car.

6 98. On or about December 21, a Tesla a Tesla Model 3 spontaneously  
7 caught fire in Lincoln, NE. On information and belief, the fire was caused by the  
8 battery pack of the car.

9 99. To date, Tesla has failed to provide its customers with any further  
10 information regarding the cause of these fires and has failed to inform customers  
11 as to which vehicles are potentially at risk of catching fire.

12 100. On May 15, 2019, just under one month after having investigated the  
13 Shanghai fire, Tesla issued a software update to all Model S and X cars and  
14 informed users that the updates were merely “out of an abundance of caution.”  
15 Tesla also provided that the over-the-air software update would change some  
16 settings in the cars’ battery management software (BMS) that were related to  
17 charging and thermal controls. On information and belief, the May 15, 2019  
18 software update was an attempt to cure problems related to defective battery  
19 packs.

20 101. Even after the May 15, 2019 software update, defective battery packs  
21 continued to cause fires in Class Vehicles as noted above.

### 22 23 **CLASS ACTION ALLEGATIONS**

24 102. Plaintiff brings this class action pursuant to FED. R. CIV. P. 23(a) and  
25 (b)(3) on behalf of a proposed Class defined as:

26 All persons who purchased or leased a Class Vehicle for end use and  
27 not for resale in the United States, the District of Columbia, Puerto  
28 Rico, and all other United States territories and protectorates.

1           103. Excluded from the Class are Tesla and any of its members, affiliates,  
2 parents, subsidiaries, officers, directors, employees, successors, or assigns; the  
3 judicial officers, and their immediate family members; and Court staff assigned to  
4 this case. Plaintiffs reserve the right to modify or amend definitions of the Class,  
5 and to add additional classes and sub-classes, as appropriate during the course of  
6 this litigation.

7           104. This action has been brought and may properly be maintained on  
8 behalf of the Class Members proposed herein under the criteria of Rule 23 of the  
9 Federal Rules of Civil Procedure. There is a well-defined community of interest  
10 in the litigation and the proposed class is ascertainable.

11           105. Certification of Plaintiff's claims for class-wide treatment is  
12 appropriate because Plaintiff can prove the elements of his claims on a class-wide  
13 basis using the same evidence as would be used to prove those elements in  
14 individual actions alleging the same claims.

15           106. **Numerosity:** The Class consists of potentially hundreds if thousands  
16 of geographically disperse people, such that joinder would be impracticable.  
17 While Plaintiff believes that there are potentially hundreds of thousands of  
18 members of the putative Class, the precise number of Class Members is unknown  
19 to them but may be ascertained from Tesla's books and records. Class Members  
20 may be notified of the pendency of this action by recognized, court-approved  
21 notice dissemination methods, which may include U.S. Mail, electronic mail,  
22 Internet postings, and/or published notice.

23           107. **Typicality:** The claims of Plaintiff are typical of the claims of Class  
24 Members in that Plaintiff, like all Class Members, purchased Tesla vehicles, all of  
25 which Plaintiff is informed and believe have similar lithium ion batteries, are  
26 subject to substantially the same warranties, and therefore already have or will  
27 have in the future, the same reduced effective battery capacity, either by defect or  
28 software manipulation, or both.

1           **108. Predominance of Common Issues:** There are numerous questions of  
2 law and fact, including those related to Defendant's knowledge, conduct, and duty  
3 throughout the events described in this Complaint, common to Plaintiff and Class  
4 Members. These common legal and factual issues include:

- 5           a. Whether Tesla's alleged conduct violates applicable law;
- 6           b. Whether certification of the Class Members is appropriate under FED. R.  
7           Civ. P. 23;
- 8           c. Whether Tesla designed, advertised, marketed, distributed, leased, sold,  
9           or otherwise placed Class Vehicles into the stream of commerce in the  
10           United States;
- 11           d. Tesla's motives for devising, manipulating, and executing the software  
12           updates to its vehicles;
- 13           e. Whether Tesla engaged in deceptive business practices by altering the  
14           fixed constant variable it uses to calculate and market the total number  
15           of miles available for its vehicles after customers purchase the vehicles;
- 16           f. Whether Tesla violated and continues to violate the Computer Fraud and  
17           Abuse Act (18 U.S.C. § 1030 et seq.);
- 18           g. Whether Tesla manipulated its software update to include changes in the  
19           method of calculating energy consumption;
- 20           h. Whether Tesla knew about the negative effect software updates have on  
21           the Class Vehicles, including a decrease in the amount of maximum  
22           rated mileage range and a decrease in the amount of usable battery  
23           capacity;
- 24           i. Whether software updates or defects that lead to a decrease in the  
25           amount of usable battery capacity constitutes loss in value of the Class  
26           Vehicles;
- 27           j. Whether Tesla manipulated the software to avoid and deny warranty  
28           battery replacements to Plaintiff and the other putative Class Members;



- 1 k. Whether Tesla's conduct violates consumer protection statutes, false  
2 advertisement laws, and unfair business and trade practices laws;
- 3 l. Whether Tesla's unlawful, unfair, deceptive and fraudulent practices  
4 harmed Plaintiff and the putative Class Members;
- 5 m. Whether Plaintiff and other putative Class Members are entitled to  
6 equitable relief, including, but not limited to, restitution or injunctive  
7 relief;
- 8 n. Whether Plaintiff and other putative Class Members are entitled to  
9 damages and other monetary relief and, if so, in what amount;
- 10 o. Whether Plaintiff and the putative Class Members are entitled to an  
11 award of punitive and exemplary damages based on Tesla's conduct and  
12 violations as alleged herein and if so, in what amount;
- 13 p. Whether Tesla breached express warranties with respect to the Subject  
14 Vehicles; and
- 15 q. Whether Tesla breached implied warranties with respect to the Subject  
16 Vehicles.

17 109. **Adequate Representation:** Plaintiff will fairly and adequately  
18 represent and protect the interests of the Class Members. Plaintiff's interests do  
19 not conflict with the interests of the other members of the proposed classes they  
20 seek to represent. Plaintiff has retained counsel competent and experienced in  
21 complex litigation, and the technology and subject matter in regards to the  
22 underlying suit, and Plaintiff intends to prosecute this action vigorously and has  
23 the financial resources to do so.

24 110. **Superiority:** Plaintiff and Class Members have all suffered and will  
25 continue to suffer harm and damages because of Defendant's conduct. A class  
26 action is superior to other available methods for the fair and efficient adjudication  
27 of this controversy.

28 111. Absent a class action, most Class Members would likely find the cost

1 of litigating their claims prohibitively high and would therefore have no effective  
2 remedy at law.

### 4 **TOLLING OF STATUTE OF LIMITATIONS**

5 112. **Fraudulent Concealment:** On information and belief, Tesla has  
6 known of the issues relating to the batteries of its vehicles since at least 2012.  
7 Tesla obtained further knowledge of the defects contained in certain Class  
8 Vehicles as alleged above. Tesla, however, has concealed from or failed to notify  
9 Plaintiff, members of the putative Class, and the public, of the full and complete  
10 nature of the battery defects and reduced effective battery capacity of the Class  
11 Vehicles.

12 113. As described above, Tesla maintains nearly absolute exclusivity  
13 regarding its software updates and the batteries of their vehicles. Tesla represents  
14 that its “team of battery experts uses...data to thoroughly investigate incidents that  
15 occur and understand the root cause.” To this day, Tesla refuses to acknowledge  
16 that the batteries in its vehicles are defective or initiate a recall of the Class  
17 Vehicles.

18 114. Thus, any applicable statute of limitations has therefore been tolled  
19 by Tesla’s knowledge, active concealment, and denial of the facts alleged herein,  
20 for which Tesla continues to operate with the ongoing fraudulent behavior.

21 115. **Estoppel:** Tesla was, and is, under a continuous duty to disclose to  
22 Plaintiff and the putative Class Members the true character, quality, and nature of  
23 the Class Vehicles. Tesla actively concealed the true character, quality, and  
24 nature of the vehicles, and knowingly made misrepresentations about the quality,  
25 reliability, characteristics and performance of the vehicles. Plaintiff and members  
26 of the proposed classes reasonably relied upon Tesla’s knowing, and affirmative  
27 misrepresentations and/or active concealment of these facts. Based on the  
28 foregoing, Tesla is estopped from relying on any statute of limitations or asserting

1 the same in defense of this action.

2       **116. Delayed Discovery Doctrine:** The causes of action alleged herein  
 3 did not accrue until Plaintiff and members of the proposed classes discovered that  
 4 their vehicles had the defective or otherwise reduced effective capacity batteries.  
 5 Plaintiff and the other proposed Class Members had no realistic or reasonable  
 6 ability to determine that their vehicles' batteries were defective until after  
 7 experiencing the severe drop in rated mile range and loss in performance.  
 8 Plaintiff and the proposed Class Members would have had no reason to discover  
 9 their causes of action, given the fact that Tesla maintains near-complete  
 10 exclusivity regarding any battery information, Tesla's fraudulent  
 11 misrepresentations, active concealment, and deceit, all of which clearly show that  
 12 Tesla has actually engaged in unlawful business practice amongst other violations  
 13 alleged herein.

## 14 15 **COUNT I**

### 16 **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**

17 **(18 U.S.C. § 1030 *et seq.*)**

18       117. Plaintiffs incorporate by reference the allegations contained in the  
 19 paragraphs above as though fully set forth herein.

20       118. Plaintiff brings this count on his own behalf and on behalf of the  
 21 Class.

22       119. The federal Consumer Fraud and Abuse Act ("CFAA") establishes a  
 23 private cause of action against a person who "knowingly accessed a computer  
 24 without authorization or exceeding authorized access," and whose prohibited  
 25 access results in damage or loss in excess of \$5,000 in any 1-year period 18  
 26 U.S.C. § 1030(a)(4).

27       120. The CFAA also establishes liability against whomever: "knowingly  
 28 causes the transmission of a program, information, code or command, and as a

1 result of such conduct, intentionally causes damage without authorization to a  
2 protected computer” (§ 1030(a)(5)(A)); or “intentionally accesses a protected  
3 computer without authorization, and as a result of such conduct, causes damage  
4 and loss. (§1030(a)(5)(C)).

5 121. The term “computer” means “an electronic, magnetic, optical,  
6 electrochemical, or other high speed data processing device performing logical,  
7 arithmetic, or storage functions, and includes any data storage facility or  
8 communications facility directly related to or operating in conjunction with such  
9 device[.]” 18 U.S.C. § 1030(e)(1).

10 122. A “protected computer” is defined, in relevant part, as a computer  
11 “which is used in or affecting interstate or foreign commerce or communication.”  
12 18 U.S.C. § 1030(e)(2)(B).

13 123. “[E]xceeds authorized access” means “access[ing] a computer with  
14 authorization and to use such access to obtain or alter information in the computer  
15 that the accesser is not entitled to obtain or alter...” 18 U.S.C. § 1030(e)(6).

16 124. “Loss” means any reasonable cost to any victim, including the cost of  
17 responding to an offense, conducting a damage assessment, and restoring the data,  
18 program, system or information to its condition prior to the offense, and any  
19 revenue lost, cost incurred, or other consequential damages incurred because of  
20 interruption of service.” 18 U.S.C. § 1030(e)(11).

21 125. Damage means “any impairment to the integrity or availability of  
22 data, a program, a system, or information.” 18 U.S.C. § 1030(e)(8).

23 126. The term “loss” is defined as “any reasonable cost to any victim,  
24 including the cost of responding to an offense, conducting a damage assessment,  
25 and restoring the data, program, system, or information to its condition prior to the  
26 offense, and any revenue lost, cost incurred, or consequential damages incurred  
27 because of interruption of service. 18 U.S.C. § 1030(e)(11).

28 127. The term “person” means any individual, firm, corporation,

1 educational institution, financial institution, governmental entity, or legal or other  
2 entity.” 18 U.S.C. § 1030(e)(12).

3 128. The Class Vehicles are “computers” under the CFAA by virtue of  
4 Tesla’s vehicles containing a Media Control Unit (MCU) which provides data  
5 processing, GPS, communication functions, and other functions, and serves as the  
6 receiving end of Tesla’s over-the-air software updates.

7 129. The Class Vehicles are also “protected computers” under the CFAA  
8 because they are used in and affect interstate and foreign commerce and  
9 communication, including through contact and communication with remote  
10 servers, personal and business usages that affect interstate and foreign commerce,  
11 and because Tesla’s vehicles are powered and maintained by computers which  
12 ensure that Tesla vehicles can operate and drive in furtherance of the stream of  
13 interstate and foreign commerce.

14 130. Tesla caused Plaintiff and the putative Class Members to download  
15 and install software updates to their vehicles without informing them that the  
16 updates contained code that would diminish performance, lower the maximum  
17 amount of usable battery capacity, throttle or lower the rate of charging speed,  
18 lower the amount of voltage for battery cells, modify and manipulate the fixed  
19 constant variable used when advertising its cars to Plaintiff and the putative Class  
20 Members. Tesla did this to avoid its warranty obligations and conceal the  
21 defective nature of Class Vehicles and batteries. Plaintiff and the other putative  
22 Class Members did not give permission for Tesla to install the updates, as Tesla  
23 failed to provide material information to Plaintiff and the putative Class Members  
24 regarding the updates and the negative impact on Class Vehicle performance.

25 131. Tesla violated 18 U.S.C. § 1030(a) by knowingly causing the  
26 transmission of vehicle software updates to Plaintiff and the putative Class  
27 Members’ vehicles and accessing, collecting, and transmitting information to  
28 vehicles. The Class Vehicles are protected computers by way of the MCU. By

1 transmitting information and software updates to the vehicles, Tesla intentionally  
2 caused damage without authorization, or at the very least, exceeded the  
3 authorization to access Plaintiff and the other putative Class Members' vehicles  
4 by impairing the ability of the vehicles to operate as warranted, represented, and  
5 advertised by Tesla.

6 132. Tesla knowingly and intentionally exceed its authorized access to  
7 Plaintiff and the other putative Class Members' vehicles. Plaintiff and the other  
8 putative Class Members did not consent to Tesla's manipulations with their  
9 vehicle's battery management system, nor did Plaintiff and the other putative  
10 Class Members consent to Tesla limiting the maximum charge voltage and usable  
11 amount of battery capacity, both of which lead to significant loss of range and  
12 diminished performance of these vehicles.

13 133. By exceeding its authorized access, Tesla obtained and altered the  
14 information, function, and other unknown variables, and failed to inform Plaintiff  
15 and other owners of the Class Vehicles of the reduced battery capacity and  
16 diminished performance. Tesla did so with an intent to defraud Plaintiff and the  
17 other putative Class Members and furthered the fraudulent intent to avoid its  
18 duties and legal obligations to provide Plaintiff and the putative Class Members  
19 with battery replacements under warranty. The out-of-pocket cost of a battery  
20 replacement is approximately \$20,000 to \$25,000, and therefore Tesla's  
21 fraudulent intent and conduct as alleged herein constitutes a violation of 18 U.S.C.  
22 § 1030(a)(4). Tesla caused damages and loss to Plaintiff and the putative Class  
23 Members during a one-year period that exceeds \$5,000 in value in the aggregate.

24 134. As alleged above and herein, Tesla knowingly caused the  
25 transmission of "a program, information, code, or command..." to a protected  
26 computer" and because of that conduct, intentionally caused damage to Plaintiff  
27 and the putative class. 18 U.S.C. § 1030(a)(5)(A).

28 135. Therefore, Plaintiff and the putative Class Members are entitled to

1 obtain compensatory damages or other equitable relief as provided under 18  
2 U.S.C. § 1030(g).

3 **COUNT II**

4 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**

5 **(15 U.S.C. §§ 2301, *et seq.*)**

6 136. Plaintiff incorporate by reference the allegations contained in the  
7 paragraphs above as though fully set forth herein.

8 137. Plaintiff brings this count on his own behalf and on behalf of the  
9 Class.

10 138. Plaintiff and Class Members are “consumers” within the meaning of  
11 15 U.S.C. § 2301(3).

12 139. Defendant is a “supplier” and “warrantor” within the meaning of 15  
13 U.S.C. § 2301(4)-(5).

14 140. The Class Vehicles are a “consumer product” within the meaning of  
15 15 U.S.C. § 2301(1).

16 141. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer  
17 who is damaged by the failure of a warrantor to comply with a written warranty.

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

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

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

28 145. Defendant breached the implied warranty of merchantability because



1 the battery defects and otherwise significant reduction in range and effective  
2 battery capacity renders the Class Vehicles unmerchantable.

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

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

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

18 149. Defendant has refused to provide an adequate warranty repair for the  
19 defective or otherwise reduced capacity batteries.

20 150. At the time of the sale, Defendant knew of the Class Vehicles'  
21 defective batteries but failed to rectify the situation and/or disclose the defect.

22 151. Defendant's warranties are written warranties within the meaning of  
23 15 U.S.C. § 2301(6).

24 152. The Class Vehicles' implied warranty of merchantability is covered  
25 by 15 U.S.C. § 2301(7).

26 153. The amount in controversy of Plaintiff's individual claim exceeds the  
27 sum of \$25. The amount in controversy in this action exceeds the sum of \$50,000,  
28 exclusive of costs and interest, computed on the basis of all claims to be

1 determined in this lawsuit.

2 154. Plaintiff, individually, and on behalf of the Class Members, seek all  
3 damages permitted by law.

4 **COUNT III**

5 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT**

6 (CAL. CIV. CODE § 1790 *et seq.*)

7 155. Plaintiff incorporates by reference the allegations contained in the  
8 paragraphs above as though fully set forth herein.

9 156. Plaintiff brings this count on his own behalf and on behalf of the  
10 Class.

11 157. Plaintiff is a buyer, as CAL. CIV. CODE § 1791(b) defines the term  
12 “buyer.”

13 158. The Class Vehicles are consumer goods, as CAL. CIV. CODE §  
14 1791(a) defines the term “consumer good.” The Class Vehicles are new motor  
15 vehicles as defined by CIVIL CODE § 1793.22 (e)(2).

16 159. Defendant is a “manufacturer” within the meaning OF CAL. CIV.  
17 CODE §1791(j)

18 160. Defendant was at all times relevant hereto the manufacturer,  
19 distributor, warrantor, lessor, retailer and/or seller of the Class Vehicles.  
20 Defendant knew or had reason to know of the specific use for which the Class  
21 Vehicles were sold for.

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

26 162. Tesla also provided an 8-year, unlimited mile battery warranty for the  
27 Class Vehicles. The Class Vehicles were provided these express and implied  
28 warranties by Tesla and are fully transferable to all subsequent legal owners.

1           163. Plaintiff's vehicle was a Class Vehicle that Plaintiff legally obtained  
2 with serious defects and nonconformities, including but not limited to a defective,  
3 malfunctioning, or otherwise abnormally degraded battery.

4           164. Plaintiff and the putative Class Members substantially performed all  
5 of their obligations under the warranty, by presenting the Class Vehicles to  
6 authorized Tesla repair technicians during the warranty coverage period and/or by  
7 accepting all of the over-the-air updates provided by Tesla.

8           165. Defendant is unable to conform the Class Vehicles to the express  
9 warranties despite being afforded a reasonable opportunity to do so by Plaintiffs.

10          166. The Class Vehicles are not fit for their ordinary purpose of providing  
11 fuel efficiency because the vehicles suffer significantly reduced range and  
12 effective battery capacity.

13          167. Defendant was given more than one opportunity to fix the defective  
14 or otherwise significantly reduced effective battery capacity of the Subject  
15 Vehicle, and failed to do so.

16          168. Tesla breached the express warranties by maliciously and  
17 fraudulently pushing its software updates to the Class Vehicles, which resulted in  
18 a decrease in performance, significantly lower range mileage, significantly lower  
19 effective battery capacity, and a slower speed of battery charging in the Class  
20 Vehicles. Tesla further breached the express warranties by refusing to repair, fix,  
21 replace, or remedy the defective batteries in the Class Vehicles.

22          169. As a direct and proximate cause of Defendant's breach of express and  
23 implied warranties, Plaintiffs and the Class Members sustained damages and other  
24 losses in an amount to be determined at trial.

25          170. Plaintiff and the other Class members are entitled to and seek  
26 damages and other legal and equitable relief, including, but not limited to, all  
27 incidental, consequential and general damages resulting from Tesla's failure to  
28 comply with its warranty obligations under Song-Beverly.

171. Plaintiff and the other Class members are entitled under Song-Beverly to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorneys' fees, reasonably incurred in connection with the commencement and prosecution of this action.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself, and all others similarly situated, pray for judgment against Defendant as follows:

1. An order certifying the proposed Class pursuant to FED. R. CIV. P. Rule 23(a) and (b)(1), (b)(2), (b)(3) and/or (c)(4), designating Plaintiff as named representative of the Class and designating the undersigned as Class Counsel;
2. Such equitable relief as the Court deems just and proper;
3. Damages in an amount to be proved at trial but in excess of this Court's minimum jurisdictional threshold;
4. Punitive and/or exemplary damages under applicable causes of action;
5. An award of attorneys' fees and costs as allowed by law;
6. An award of pre-judgment and post-judgment interest, as provided by law; and
7. For such other and further relief as the Court deems just and proper.

### **JURY TRIAL DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury on all claims so triable.

Dated: January 12, 2021

By: /s/ John van Loben Sels  
John D. van Loben Sels, Esq.

Attorney for Plaintiff and  
Proposed Class