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17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**

19 _____)
 20 ROBERT RAHIMI, Individually and on Behalf)
 21 of All Other Persons Similarly Situated,)

21 Plaintiff,)

22 v.)

24 TESLA MOTORS, INC., ELON MUSK, and)
 25 DEEPAK AHUJA,)

26 Defendants.)
 27)
 28 _____)

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Robert Rahimi (“Plaintiff”), individually and on behalf of all other persons similarly
2 situated, by his undersigned attorneys, for his complaint against Defendants, alleges the following
3 based upon personal knowledge as to himself and his own acts, and information and belief as to all
4 other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which
5 included, among other things, a review of the Defendants’ public documents, conference calls and
6 announcements made by Defendants; United States Securities and Exchange Commission (“SEC”)
7 filings, wire and press releases published by and regarding Tesla Motors, Inc. (“Tesla” or the
8 “Company”); analysts’ reports and advisories about the Company; press coverage regarding the
9 Company and information readily obtainable on the Internet. Plaintiff believes that substantial
10 evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for
11 discovery.
12
13

14 **NATURE OF THE ACTION**

15 1. This is a federal securities class action on behalf of a class consisting of all persons other
16 than Defendants who purchased Tesla securities between May 10, 2013 and November 6, 2013,
17 inclusive (the “Class Period”), seeking to recover damages caused by Defendants’ violations of the
18 federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities
19 Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 against the Company and certain of its top
20 officials.
21

22 2. Tesla designs, develops, manufactures, and sells electric vehicles and electric vehicle
23 powertrain components. The company also provides services for the development and sale of electric
24 powertrain systems and components, to other automotive manufacturers. It markets and sells its
25 vehicles through Tesla stores, as well as via the Internet. As of March 31, 2013, the company operated
26 a network of 32 stores in North America, Europe, and Asia. Tesla was founded in 2003 and is
27
28

1 headquartered in Palo Alto, California. Tesla claims to use proprietary technology and state-of-the-art
2 manufacturing processes to create one of the safest vehicles on the road today.

3 3. Tesla currently offers two vehicles for sale to customers, the Model S which has been in
4 production since 2012, and the Model X, which will be delivered to customers beginning 2014.
5 Regarding the Model S, Tesla proclaims on the homepage of its website that the Model S is, “THE
6 SAFEST CAR IN AMERICA,” and has widely touted both its government safety test results as well as
7 the additional testing independently performed by Tesla itself to ensure that all parts of the Model S
8 registered a 5 star safety score, even if they had previously scored lower in government tests. Tesla has
9 also issued consistently positive statements about its ability to execute on Model S production and
10 Model X introduction goals critically necessary for the Company’s profitability in the face of declining
11 revenues from other sources.
12

13
14 4. It therefore came as a shock to investors when a Model S’s battery pack caught fire and
15 burst into flames on a road in Washington state on October 2, 2013. A video of the Model S smoldering
16 on the roadside was widely circulated, followed by press reports of the difficulties encountered by
17 firefighters in battling the persistent blaze, which destroyed the car. While Tesla initially denied that
18 the car’s lithium-ion battery pack had ignited the fire, it later reversed course and admitted that the
19 battery pack was indeed the source of the blaze after being punctured by road debris encountered during
20 normal driving conditions.
21

22 5. The same day, Tesla had been downgraded by analyst Ben Kallo of Robert W. Baird &
23 Company, who pointed to significant execution risks for Tesla. In the wake of the Model S fire,
24 additional reports were issued indicating that Tesla would need to divert substantial amounts of capital,
25 otherwise needed for Model S production and Model X introduction, to research, development, and
26 potential redesign and that Tesla faced the daunting prospect of a recall in the event of another fire
27 incident.
28

1 6. On the negative news, Tesla stock declined \$12.05 per share - or more than 6% - to close
2 at \$180.95 per share on October 2, 2013, only to shed another \$7.64 per share (or 4.2%) to close at
3 \$173.31 per share on October 3, 2013, on exceptionally high trading volume for both trading days.

4 7. Thereafter, Defendants engaged in a purposeful campaign to downplay the safety
5 incident and buoy Tesla's stock price. It benefitted from the inability of federal regulators to send
6 investigators to the scene of the car fire, due to a federal government shutdown. Regulators were reliant
7 upon Tesla to supply information about the crash, and as a result, opted not to initiate a formal
8 investigation.

9
10 8. When a second Model S fire occurred in Mexico, Tesla blamed it on the car's rate of
11 speed and its crash through a barrier and into a tree. Once again, Tesla's stock price fell, this time
12 dropping \$7.32 (4.3%) on heavy volume to close at \$162.86 on October 28, 2013. Once again, federal
13 regulators did not investigate the fire, as their jurisdiction does not extend outside the country.

14
15 9. Yet again, Defendants sought to reassure the markets as to the safety of the Model S and
16 to buoy the Company's stock price. It closed at \$176.81 on November 5, 2013.

17 10. However, Tesla's stock price was hammered by two days of successive negative news
18 reports in early November 2013. On November 5, 2013, after hours, the Company announced its Q3
19 2013 results, which failed to meet analyst expectations on key metrics, including a disappointing rate of
20 vehicle deliveries. On November 7, 2013, Tesla confirmed a third Model S fire, this one bearing a
21 remarkable resemblance to the first inferno – caused by impact with road debris during normal driving
22 conditions. Once again, for the third time, the Model S was engulfed in flames and destroyed.

23
24 11. As a result of this news, on November 6, 2013, the Company's share price opened at
25 \$154.81 - \$22.00 (12.44%) lower than its prior day's closing price. It continued to decline on
26 November 6 and 7, 2013, closing at \$139.77 on November 7, 2013. The decline was so precipitous that
27 on November 6, 2013, it triggered NASDAQ's "circuit breaker" that slows short-selling.
28

1 12. Throughout the Class Period, Defendants made false and/or misleading statements, as
2 well as failed to disclose material adverse facts about the Company's business, operations, and
3 prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose
4 material information, including among other matters: (1) Tesla's statements about the Model S's
5 highest safety rating and its lack of prior fire incidents were materially misleading, due to undisclosed
6 puncture and fire risks in its lithium ion battery pack; (2) the Model S, the Company's only production
7 vehicle for sale, suffered from material defects which caused the battery pack to ignite and erupt in
8 flames under certain driving conditions; (3) Tesla's future sales, its Model X introduction, and its stock
9 price were extremely vulnerable to the inherent risk posed by the Model S's design flaws in its
10 undercarriage and battery pack; (4) Tesla was unable to maintain a level of automobile deliveries
11 sufficient to satisfy analyst concerns and compensate for other declining revenue streams; and, (5) as a
12 result of the foregoing, Tesla's public statements were materially false and misleading at all relevant
13 times.
14

15
16 13. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in
17 the market value of Tesla stock, Plaintiff and other Class members have suffered significant losses and
18 damages. Today, the stock is down \$55.50 (28.7%) from its Class Period high of \$193.37 on
19 September 30, 2013, translating into a loss of over \$6.5 billion in market capitalization in six weeks.
20

21 **JURISDICTION AND VENUE**

22 14. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the
23 Exchange Act (15 U.S.C. §78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R.
24 §240.10b-5).
25

26 15. This Court has jurisdiction over the subject matter of this action pursuant to §27 of the
27 Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1331.
28

1 which was signed by Defendants Musk and Ahuja and which was filed with the SEC as Exhibit 99.1 to
2 a Form 8-K signed by Defendant Ahuja. In the Q3 2013 Earnings Letter, Tesla stated:

3 Q2 revenues were \$551 million on a non-GAAP basis and \$405 million on a GAAP
4 basis. While deliveries increased by 5% from Q1, overall revenues were flat due to an
5 expected drop in ZEV credit revenue. ZEV credit Tesla Supercharger revenue fell to \$51
6 million this quarter from \$68 million last quarter.

7 Thus, while having grown Q2 2013 revenues generated by car sales by 5%, Tesla was unable to grow
8 overall revenues, due to shrinking ZEV revenues.

9 28. As such, investors rely upon the Company for a candid and truthful assessment of its
10 ability to execute its non-ZEV revenue growth strategy, which involved increased sales of its Model S
11 through ramped up production and introduction and sales of its next generation Model X. Any inability
12 to deliver on those points would adversely impact the Company's prospects and stock price.

13 29. On May 10, 2013, Tesla filed a quarterly report with the SEC for the period ended
14 March 31, 2013 on a Form 10-Q signed by Defendants Musk and Ahuja (the "Q1 2013 10-Q"). The Q1
15 2013 10-Q also contained signed certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") by
16 Defendants Musk and Ahuja, stating that the financial information contained in it was accurate and
17 disclosed any material changes to Tesla's internal control over financial reporting. The Q1 2013 10-Q
18 reported quarterly automobile sales of \$555 million and net income from operations of \$11.2 million.
19

20 30. In the Q1 2013 10-Q, Tesla stated regarding the Model S:

21
22 In 2012, we completed the development of Model S, established our manufacturing
23 capabilities at the Tesla Factory, launched Model S and ramped up our production rate.
24 By the end of 2012, we had successfully increased production volume to over 400
25 vehicles per week and we have continued to consistently produce at or above this rate
26 during the first quarter of 2013. *We expect that this production level will allow us to
27 achieve our goal of 21,000 Model S deliveries worldwide in 2013 and thereby
28 significantly increase automotive sales*, as compared to 2012.

29 In our efforts to make Model S available to a wider range of customers, we commenced
30 delivery of cars equipped with the lower priced, 60 kWh battery pack during the first
31 quarter of 2013. At the same time, due to lower than expected demand for Model S with
32 the 40 kWh battery pack, we announced that the 40 kWh battery pack would not be
33 produced. Since some customers had already configured their vehicles with the 40 kWh

1 battery pack, we offered to deliver a vehicle with a 60 kWh battery pack that would be
2 limited to 40 kWh by on-board firmware.

3 We have delivered over 7,500 Model S vehicles solely to customers in North America.
4 *We plan to start European deliveries of the Model S this summer and Asian deliveries
5 later in 2013.*

6 * * *

7 *In 2013, we plan to spend approximately \$200 million in capital expenditures as we
8 conclude the majority of our investment in the Tesla Factory and Model S tooling.*

9 31. In the Q1 2013 10-Q, Tesla stated regarding the Model X:

10 In February 2012, we revealed an early prototype of the Model X crossover as the first
11 vehicle we intend to develop by leveraging the Model S platform. *We currently plan to
12 start production of Model X in late 2014. Our ability to develop and introduce the
13 Model X in this timeframe is based partially on our expectations of leveraging the
14 Model S platform.*

15 32. On August 7, 2013, Tesla distributed the Q2 2013 Investor Letter, signed by Defendants
16 Musk and Ahuja, which stated, “we expect production to increase from Q2” and “we plan to deliver
17 slightly over 5,000 Model S vehicles in Q3, and remain on plan to deliver 21,000 vehicles worldwide
18 for 2013.”

19 33. In the Q2 2013 Investor Letter, Tesla stated regarding the Model S:

20 Significant cost improvements were achieved as a result of execution of our roadmap
21 including redesigning many elements of Model S for greater ease of manufacturing,
22 economies of scale and supply chain improvements. *Importantly, we were able to make
23 nuanced improvements to the car at the same time, as reducing cost does not count if
24 it makes a product worse.*

25 34. In the Q2 2013 Investor Letter, Tesla stated regarding the Model X:

26 R&D expenses are expected to increase significantly in Q3 as we *accelerate product
27 development efforts on Model X*, Model S right hand drive, and localization of Model S
28 for international markets.

35. On August 9, 2013, Tesla filed a quarterly report with the SEC for the period ended June
30, 2013 on a Form 10-Q signed by Defendants Musk and Ahuja (the “Q2 2013 10-Q”). The Q2 2013
10-Q also contained signed SOX certifications by Defendants Musk and Ahuja stating that the financial

1 information contained in it was accurate and disclosed any material changes to Tesla's internal control
2 over financial reporting. The Q2 2013 10-Q reported automobile sales of \$401 million, resulting in a
3 net loss of \$30 million.

4 36. In the Q1 2013 10-Q, Tesla stated regarding the Model S:

5 We have recently increased our production rate from 400 vehicles per week at the
6 beginning of the second quarter to an average of 500 vehicles per week. ***We expect that***
7 ***this production level will allow us to achieve our goal of 21,000 Model S deliveries***
8 ***worldwide in 2013 and thereby significantly increase automotive sales.***

9 * * *

10 In our efforts to make Model S available to a wider range of customers, we commenced
11 delivery of cars equipped with the lower priced, 60 kWh battery pack during the first
12 quarter of 2013. At the same time, due to lower than expected demand for Model S with
13 the 40 kWh battery pack, we announced that the 40 kWh battery pack would not be
14 produced. Since some customers had already configured their vehicles with the 40 kWh
15 battery pack, we offered to deliver a vehicle with a 60 kWh battery pack that would be
16 limited to 40 kWh by on-board firmware. During the second quarter of 2013, we
17 delivered such vehicles to customers which had a slightly unfavorable impact on our
18 gross margin. We have substantially completed the deliveries of these vehicles.

19 37. In the Q1 2013 10-Q, Tesla stated regarding the Model X:

20 In February 2012, we revealed an early prototype of the Model X crossover as the first
21 vehicle we intend to develop by leveraging the Model S platform. ***We currently plan to***
22 ***start production of Model X in late 2014. Our ability to develop and introduce the***
23 ***Model X in this timeframe and cost efficiently is dependent upon our expectations of***
24 ***leveraging the Model S platform.***

25 * * *

26 Our research and development expenses are expected to increase significantly in the
27 third quarter as we accelerate product development efforts on Model X, Model S right
28 hand drive, and localization of Model S for international markets.

* * *

We expect that our current sources of liquidity, including cash, cash equivalents,
together with our current projections of cash flow from operating activities, will continue
to provide us with adequate liquidity based on our current plans. These capital sources
will enable us to fund our ongoing operations, continue research and development
projects, including those for our planned Model X crossover and future products,
establish and expand our stores, service centers and Supercharger network and to make
the investments in tooling and manufacturing capital required to introduce Model X.

1 38. Throughout the Class Period, Defendants made false and/or misleading statements, as
2 well as failed to disclose material adverse facts about Tesla's business, operations, products, and
3 prospects. The statements from the Q1 2013 10-Q, the Q2 2013 Investor Letter, and the Q2 2013 10-Q
4 set forth above were false and/or misleading statements and/or failed to disclose material information,
5 including the following: (1) that Tesla's planned growth of Model S sales and planned introduction of
6 the Model X were susceptible to execution risks; (2) that Tesla's planned growth of Model S sales and
7 planned introduction of the Model X were vulnerable to the costs and expenses that would arise in the
8 event of a major safety incident in the Model S; (3) that the Model S was at risk of a major safety
9 incident during normal driving conditions, due to design flaws in its undercarriage and lithium-ion
10 battery pack; (4) that the occurrence of a safety incident related to this design flaw would jeopardize
11 that Tesla's planned growth of Model S sales and/or planned introduction of the Model X; and (5) that
12 Tesla is unable to generate sufficient automobile deliveries to satisfy analyst expectations and to
13 compensate for declining ZEV-related revenues.
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15

16 **False and Misleading Statements Regarding Safety of Tesla's Cars**

17 39. On August 19, 2013 the Company issued a press release, in which it touted the Model S
18 as having achieved the "Best Safety Rating Of Any Car Ever Tested." The press release boasted that
19 the Model S had achieved a "new combined record of 5.4 stars" in National Highway Traffic Safety
20 Administration ("NHTSA") testing.
21

22 40. Specifically, after touting the Model S's scores in a variety of tests conducted by the
23 NHTSA, the press release expressly represented that the Company had redundantly tested the Model S
24 to determine its weakest points and to improve them *all* so that no part of the vehicle would score under
25 5 stars in a safety rating. To wit:
26

27 The above results do not tell the full story. It is possible to game the regulatory testing
28 score to some degree by strengthening a car at the exact locations used by the regulatory
testing machines. After verifying through internal testing that the Model S would
achieve a NHTSA 5-star rating, *Tesla then analyzed the Model S to determine the*

1 *weakest points in the car and retested at those locations until the car achieved 5 stars*
2 *no matter how the test equipment was configured.*

3 41. In other words, Tesla claimed to have gone over the Model S with a fine tooth comb to
4 identify its “weakest points” and did not stop testing until they had *all* achieved a perfect 5 star score.
5 This statement did not exclude from this assertion the Model S’s undercarriage, its battery pack, or the
6 parts of the car encasing and protecting the battery pack. Nor did it warn that, despite such analysis and
7 testing, the Model S’s battery pack was susceptible to puncture, explosion, and fire if road debris was
8 struck during normal driving conditions.

9 42. The press release also made specific representations as to the safety and reliability of the
10 Model S’s battery pack, stating:

11 The Model S lithium-ion battery did not catch fire at any time before, during, or after
12 NHTSA testing. It is worth mentioning that no production Tesla lithium-ion battery has
13 ever caught fire in the Model S or Roadster, despite several high speed impacts.

14 None of these statements cautioned investors that the Model S was at risk of a battery pack puncture
15 during normal driving conditions that could ignite a fire that would destroy the vehicle.

16 43. In a series of interviews in September, Defendant Musk continued to tout the safety of
17 the Model S. For instance:

18 a. In a September 4, 2013 interview, Defendant Musk said that the Model S’s safety rating
19 is very important to him, because his family and friends drive the car and “I really couldn’t live with
20 myself if there is something I could have done to save them and I didn’t do it.”

21 b. In a September 7, 2013 interview, Defendant Musk said that, at Tesla, “safety has to be
22 top of the line.”

23 44. In none of his interviews did Defendant Musk qualify his statements by warning that the
24 Model S was vulnerable to a battery pack puncture during normal driving conditions that could ignite a
25 fire that would destroy the vehicle.
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1 45. In a September 14, 2013 “Tesla Motors Investor Presentation,” Tesla again touted the
2 Model S as being the “Safest Car Ever Tested by NHTSA,” with a “5 Star Across the Board NHTSA
3 Safety Rating.” The presentation did not warn that the Model S was vulnerable to a battery pack
4 puncture during normal driving conditions that could ignite a fire that would destroy the vehicle.

5 46. Throughout, and to this day, Tesla has displayed on the front page of its corporate
6 website the description “The Safest Car In America” and touting a “5 Star Rating In All Categories.”

7 47. Despite promising to consumers and investors the highest level of safety for its vehicles,
8 Tesla’s Model S had a highly dangerous design defect, an undercarriage or exterior weakness that
9 would permit road debris to puncture the car’s battery pack during normal driving conditions, igniting
10 the battery and engulfing the car in a difficult-to-extinguish blaze that would ultimately destroy the car
11 altogether. Despite this serious defect, Defendants allowed the Model S to be sold to consumers and
12 marketed to the public as the safest car ever tested, after not only standard testing by NHTSA but also
13 supplemental testing by Tesla to ensure that any part of the car that had scored less than perfectly on the
14 NHTSA test later registered a perfect score.

15 48. Throughout the Class Period, Defendants made false and/or misleading statements, as
16 well as failed to disclose material adverse facts about Tesla’s business, operations, products, and
17 prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose
18 material information, including the following: (1) Defendants’ public statements about the Model S’s
19 highest safety rating and its lack of prior fire incidents were materially false and misleading, due to
20 undisclosed puncture and fire risks in its undercarriage and lithium-ion battery pack; (2) Defendants’
21 statements about Tesla having retested every weakness in the Model S until they all registered a perfect
22 score were materially false and misleading, due to undisclosed puncture and fire risks in its
23 undercarriage and battery pack; (3) the Model S, the Company’s only production vehicle for sale,
24 suffered from material defects which caused the undercarriage and battery pack to be punctured, to
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1 ignite, and to erupt in flames under normal driving conditions, thereby destroying the car; (4) Tesla's
2 future sales, its Model X introduction, and its stock price were extremely vulnerable to the inherent risk
3 posed by the Model S's design flaws in its faulty undercarriage and battery packs; and, (5) as a result of
4 the foregoing, Defendants' statements were materially false and misleading at all relevant times.

5 **THE TRUTH BEGINS TO EMERGE**

6 49. After informing investors for months regarding the high level of safety for the Model S
7 through a variety of channels - including interviews by CEO Musk and the Company's financial
8 statements, corporate presentations, and press releases - the investing public was shocked to learn that a
9 Model S battery pack had burst into flames, and forced its driver to abandon the vehicle on the side of a
10 major highway in Washington State on October 2, 2013. News reports carried to investors the story of
11 the battery fire, and a shocking video and photos of a Model S smoldering on the shoulder of a major
12 highway was widely circulated.
13

14 50. Not surprisingly, the Model S that burst into flames was totally destroyed, after
15 firefighters encountered significant difficulty extinguishing the blaze. Indeed, firefighters had to
16 employ a jack to turn the burning Model S onto its side, then cut a hole into the undercarriage to apply
17 water directly into the burning battery. After the car reignited, they had to employ chemical fire
18 extinguishers.
19

20 51. At first, Tesla admitted that the burning car was a Model S, but initially denied that the
21 fire had originated in the battery pack. After the press reported firefighters' trouble extinguishing the
22 blaze, which accelerated when doused with water and reignited after initial extinguishment, Tesla later
23 admitted that the fire arose in the car's battery pack. Tesla has stated that road debris struck during
24 routine driving conditions penetrated the undercarriage and battery pack, thereby causing the fire.
25

26 52. This dangerous situation was a partial corrective event for Defendants' fraud regarding
27 the Model S's safety record and the safety of its undercarriage and lithium-ion battery pack.
28

1 53. The same day, October 2, 2013, analyst Ben Kallo of Robert W. Baird & Company,
2 downgraded Tesla to “Neutral” from “Outperform,” citing a variety of “execution risk” concerns.
3 Pointing to a potential shift in investor sentiment, Mr. Kallo questioned the Company’s ability to
4 deliver on its production and sales strategy, stating:

5 Tesla has several significant milestones over the next 18 months including continued
6 production ramp and the introduction of the Model X. We believe solid execution on
7 both of these fronts is already priced into the stock, and any hiccups in execution present
8 stock price risk in the near to intermediate term.

9 54. Given Tesla’s need to overcome declining ZEV sale revenues, the revelation that an
10 analyst closely monitoring its stock questioned the Company’s ability to deliver on Model S sales,
11 production, and Model X introduction goals was jarring. This analyst report and downgrade was a
12 partial corrective event for Defendants’ fraud regarding Tesla’s production ramp up, its ability to
13 increase Model S sales, and its ability to timely introduce the Model X.

14 55. On the preceding news, Tesla’s stock plummeted. Tesla’s stock declined \$12.05 per
15 share - or more than 6% - to close at \$180.95 per share on October 2, 2013, on volume of 20,724,600
16 shares. The stock continued its decline the following day, shedding \$7.64 per share or 4.2% to close at
17 \$173.31 per share on October 3, 2013, on volume of 23,782,200 shares. The trading volume both days
18 was double the average over the preceding three months.

19 56. On October 3, 2013, the New York Times published an article entitled “Car Fire a Test
20 for High-Flying Tesla,” which quoted a battery consultant as saying that the case shielding around the
21 Model S’s lithium-ion battery might not have been strong enough to keep the impact with road debris
22 from causing a short circuit. The article also quoted Karl Brauer, an analyst with Kelley Blue Book, as
23 noting, “It’s a relatively innocuous occurrence to hit something in the road. But in this case there’s a
24 fire, and a fire that’s difficult to put out.”
25
26
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1 57. The MIT Technology Review also published an article on October 3, 2013 entitled
2 “What the Tesla Battery Fire Means for Electric Vehicles,” which highlighted the bad news for Tesla,
3 including the research and design challenges regarding the Model S’s lithium-ion battery. It stated:

4 [T]he fire illustrated once again how difficult lithium ion battery fires are to put out.
5 Firefighters thought they had it put out, but it reignited. There are a couple of schools of
6 thought among battery experts about why this happens. In a battery fire, the main thing
7 that’s burning is the liquid electrolyte, which burns best when it’s exposed to air. One
8 school of thought is that even in the absence of air there other oxidants within the battery
9 that can create and sustain a fire. It’s thought that the battery electrodes themselves can
10 release oxygen, fueling the fire from within. If this is the case, all firefighters can do is to
11 work to keep the fire from spreading and wait for the reactants to burn up.

12 Other research suggests that this isn’t the case. Instead, what might happen is that even
13 once the fire is put out, the cells stay very hot and keep releasing more electrolyte in the
14 form of vapor. Once firefighters turn off the water and oxygen can once more come into
15 contact the vapor, it can reignite.

16 It seems clear that we need to do more tests and learn the best ways to put out battery
17 fires, especially as battery-powered cars proliferate.

18 The second negative is that the accident raises questions about how well protected the
19 battery is. The Tesla battery spreads out over most of the floor of the car. Contrast that to
20 the battery on the Chevy Volt, which is tucked up inside the car, actually taking up space
21 within the passenger compartment to keep it out of harm’s way. Was the piece of metal
22 that the driver ran into huge, and likely to cause serious damage to any sort of car? Or
23 was it something you wouldn’t think twice about running over in a conventional car? Is
24 the Model S particularly vulnerable to road debris?

25 58. An October 6, 2013 Seeking Alpha article bore the title “Will Tesla Design New
26 Vehicles In Time To Prevent More Devastating Battery Fires?” and posited that Tesla faces potential
27 legal liabilities in the billions of dollars if the fire described above were to occur again in another Tesla
28 vehicle. The article cited the low-to-the-ground location of the battery and poor design of Tesla’s
vehicles as grounds for a federal government investigation. Predicting that Tesla will have to spend a
lot of its cash hiring designers and lawyers, it contained this grave assessment of the Company’s
prospects:

 In conclusion, we believe that Tesla may need to design a number of new vehicles, while
allowing customers to give back their old ones if this issue re-occurs a number of times.
Does Tesla have the ability to withstand a vehicle recall? It is unclear if they have any

1 strategy or new designs that would replace current inherently unsafe battery location.
2 This scenario will cause major losses for shareholders. Investors are certainly not pricing
3 this scenario in and the company has very little back-up plan when something like this
4 goes wrong unless they release new designs.

5 59. Faced with this array of cash-draining challenges, highlighted in the above-quoted
6 articles from October 3-6, 2013, Tesla's ability to execute on its ramp up, Model S production, and
7 Model X introduction plans was in grave danger. The Model X was in equal jeopardy to the Model S,
8 as its design is based on the Model S, as stated by Tesla in its public filings. These revelations
9 corroborated the corrective disclosure made by Robert W. Baird & Company analyst Ben Kallo on
10 October 2, 2013 based on the "execution risks" facing Tesla.

11 **DEFENDANTS' ADDITIONAL FALSE AND MISLEADING STATEMENTS**

12 60. To quell these concerns, and to perpetuate the fraud, Defendants embarked on a
13 misinformation campaign that included rendering additional false and misleading statements. In an
14 October 4, 2013 blog post on Tesla's corporate website, linked to Tesla's corporate Twitter account and
15 Defendant Musk's personal Twitter account the same day, Defendant Musk characterized the Model S
16 fire incident as follows (with emphasis added):
17

18
19 Earlier this week, a Model S traveling at highway speed struck a large metal object,
20 causing significant damage to the vehicle. A curved section that fell off a semi-trailer
21 was recovered from the roadway near where the accident occurred and, according to the
22 road crew that was on the scene, appears to be the culprit. ***The geometry of the object
23 caused a powerful lever action as it went under the car, punching upward and
impaling the Model S with a peak force on the order of 25 tons. Only a force of this
magnitude would be strong enough to punch a 3 inch diameter hole through the
quarter inch armor plate protecting the base of the vehicle.***

24 The Model S owner was nonetheless able to exit the highway as instructed by the
25 onboard alert system, bring the car to a stop and depart the vehicle without injury. A fire
26 caused by the impact began in the front battery module – the battery pack has a total of
27 16 modules – but was contained to the front section of the car by internal firewalls
28 within the pack. Vents built into the battery pack directed the flames down towards the
road and away from the vehicle. ...

1 It is important to note that the fire in the battery was contained to a small section near the
2 front by the internal firewalls built into the pack structure. At no point did fire enter the
3 passenger compartment.

4 61. In addition, Defendant Musk touted the Model S's safety as compared to traditional
5 gasoline-powered automobiles, stating (with emphasis added):

6 Had a conventional gasoline car encountered the same object on the highway, the result
7 could have been far worse. A typical gasoline car only has a thin metal sheet protecting
8 the underbody, leaving it vulnerable to destruction of the fuel supply lines or fuel tank,
9 which causes a pool of gasoline to form and often burn the entire car to the ground. In
10 contrast, the combustion energy of our battery pack is only about 10% of the energy
11 contained in a gasoline tank and is divided into 16 modules with firewalls in between.
12 As a consequence, the effective combustion potential is only about 1% that of the fuel in
13 a comparable gasoline sedan.

14 The nationwide driving statistics make this very clear: there are 150,000 car fires per
15 year according to the National Fire Protection Association, and Americans drive about 3
16 trillion miles per year according to the Department of Transportation. That equates to 1
17 vehicle fire for every 20 million miles driven, compared to 1 fire in over 100 million
18 miles for Tesla. ***This means you are 5 times more likely to experience a fire in a
19 conventional gasoline car than a Tesla!***

20 For consumers concerned about fire risk, there should be absolutely zero doubt that it is
21 safer to power a car with a battery than a large tank of highly flammable liquid.

22 62. Defendant Musk even went so far as to allocate blame for the fire on the standard
23 operating procedures employed by first responders, while downplaying the significant difficulties they
24 encountered in extinguishing the blaze, stating:

25 When the fire department arrived, they observed standard procedure, which was to gain
26 access to the source of the fire by puncturing holes in the top of the battery's protective
27 metal plate and applying water. For the Model S lithium-ion battery, it was correct to
28 apply water (vs. dry chemical extinguisher), ***but not to puncture the metal firewall, as
the newly created holes allowed the flames to then vent upwards into the front trunk
section of the Model S.*** Nonetheless, a combination of water followed by dry chemical
extinguisher ***quickly*** brought the fire to an end.

63. Defendant Musk also published an email exchange with the driver of the Model S that
burned. In it, Jerome Guillen, VP WW Sale and Service, stated in relevant part (with emphasis added):

1 We are following this case extremely closely and we have sent a team of experts to
2 review your vehicle. *All indications are that your Model S drove over large, oddly-*
3 *shaped metal object which impacted the leading edge of the vehicle's undercarriage*
4 *and rotated into the underside of the vehicle ("pole vault" effect). This is a highly*
5 *uncommon occurrence.*

6 Based on our review thus far, we believe that the Model S performed as designed by
7 limiting the resulting fire to the affected zones only. *Given the significant intensity of*
8 *the impact, which managed to pierce the 1/4 inch bottom plate (something that is*
9 *extremely hard to do), the Model S energy containment functions operated correctly.*
10 In particular, the top cover of the battery provided a strong barrier and there was no
11 apparent propagation of the fire into the cabin. This ensured cabin integrity and occupant
12 safety, which remains our most important goal.

13 64. Defendant Musk's remarks were able to buoy Tesla's stock price, assisted in part by the
14 fact that the NHTSA was unable to send an investigator to the accident scene, due to the government
15 shutdown in early October.

16 65. When the NHTSA announced on October 22, 2013 that it was looking into the Model S
17 fire, Defendants once again sought to quell investor concerns by perpetuating the fraud and issuing
18 additional false and misleading statements.

19 66. Defendant Musk gave an interview on Bloomberg TV on October 24, 2013, in which he
20 reiterated his prior explanations for the Model S fire and downplayed the incident. Among other things,
21 he stated that a large metal object pierced the six millimeter armor plate on the Model S and that it took
22 several minutes for a few modules in the battery pack to catch fire and burn. He touted the fact that
23 there were no injuries and that the car owner bought another Model S.

24 67. Once again, Defendant Musk's remarks served to buoy Tesla's stock price.

25 68. Later the same day, the NHTSA announced that, in reliance upon data provided by Tesla
26 and after consulting with Tesla, it had opted not to open a formal investigation of the Model S fire.
27 NHTSA had been unable to send its own investigators to the fire scene to gather evidence due to the
28 government shutdown.

1 72. This second fire served as a partial corrective disclosure. On this news, Tesla's stock
2 price dropped \$7.32 (4.3%) on heavy volume to close at \$162.86 on October 28, 2013.

3 73. In the wake of these reports, a Tesla spokeswoman said, "We were able to contact the
4 driver quickly and are pleased that he is safe." She touted the Model's safety and blamed the fire on the
5 vehicle's rate of speed and its crashing through a concrete barrier and into a tree. Once again, Tesla
6 was able to avoid an NHTSA investigation, this time due to the fact that the Model S fire occurred
7 outside of the United States, and therefore outside its jurisdiction.

8 74. Tesla's stock closed at \$176.81 on November 5, 2013.

9 75. November 5, 2013, after the market close, Tesla released its third quarter 2013 results in
10 an earnings letter to shareholders (the "Q3 2013 Earnings Letter") that was signed by Defendants Musk
11 and Ahuja and was filed with the SEC as Exhibit 99.1 to a Form 8-K signed by Defendant Ahuja.
12 Reported GAAP revenues of \$431 million were lower than analyst expectations of \$554.33 million, and
13 its loss of 32 cents per share (\$38.5 million) was worse than analyst expectations of 25 cents per share.
14 Moreover, while disclosing that its ZEV revenues had fallen over 80% – from \$51 million in Q2 2013
15 to just \$10 million in Q3 2013 – Tesla reported disappointing results in the form of 5,500 deliveries and
16 an increase in gross margins excluding ZEV credits from 14% to just 21%.

17 76. The market reacted swiftly and negatively, reflecting concern that Tesla cannot increase
18 its deliveries sufficiently to overcome the decline in its ZEV revenues. A sampling of analyst and
19 financial press coverage is illustrative:

20 a. Ben Kallo, of R.W. Baird, explained that investors wanted to see higher deliveries,
21 stating "[Investors] want to see the outlook for deliveries for 2013 raised. And we didn't get the
22 number [sic] that were out there, the whisper number."

23 b. The 5,500 deliveries disappointed analysts. The Financial Times reported that analysts
24 had predicted deliveries as high as 7,000, with a low end range of 5,500 – 5,700. CNBC reported that
25
26
27
28

1 analysts had predicted 5,700 – 5,750 deliveries. Analysts at Wedbush, Barclays, and Deutsche Bank
2 had predicted deliveries of 5,850, 5,820, and 5,850, respectively.

3 c. The Wall Street Cheat Sheet reported that Tesla’s outlook for Q4 2013 profits to be
4 “about consistent” with Q3 2013 was lower than analyst expectations.

5 d. Stifel analyst James Albertine said that even Tesla’s non-GAAP adjusted numbers fell
6 short of his expectations, and he questioned its strategy for broader market appeal. He warned clients in
7 a note, “Competition is also looming, so development time will come under pressure, which could drive
8 operational mis-steps.”
9

10 77. On this news, Tesla’s stock opened on November 6, 2013 at \$154.81, which was \$22.00
11 (or 12.44%) lower than its previous day’s closing price. In other words, another \$2 billion in Tesla’s
12 market capitalization evaporated in a matter of minutes.

13 Tesla’s stock continued its decline during November 6, 2013 on heavy volume, falling another \$3.65 to
14 close at \$151.16. Indeed, it fell far and fast enough to trigger the NASDAQ “circuit breaker” that slows
15 short-selling that could artificially accelerate a stock’s decline.
16

17 78. In the morning of November 7, 2013, Tesla confirmed that a third fire in its flagship
18 Model S had occurred, this time in Smyrna, Tennessee, the previous afternoon. This was Tesla’s third
19 Model S fire in just five weeks.
20

21 79. According to local authorities, during normal driving conditions, the Model S in
22 question hit a metal object in the roadway, though to be a tow hitch, which damaged the car’s
23 undercarriage and ignited a fire in the battery pack. Rutherford County Fire Chief Larry Farley said
24 that the blaze was so hot and intense that “it pretty much just melted [the vehicle] to the road.” Once
25 again, the fire damage totally destroyed the Model S.
26

27 80. Notably, the purported cause of this third Model S fire – road debris struck during
28 normal driving usage – is precisely the same cause articulated by Tesla for the first fire in Washington.

1 As reported by Yahoo! Automotive, this raises a “troubling comparison” for Tesla, which has only
2 19,000 Model S vehicles on the road. It quoted Clarence Ditlow, director of the Center for Auto Safety
3 as stating, “To have one instance of fire from road debris is a fluke. To have two road debris fires in a
4 vehicle population that small is highly unusual.” By contrast, a spokesman for Nissan, which has sold
5 nearly 70,000 Leaf electric vehicles, stated that, to date, “there have been no fires involving the Nissan
6 Leaf, either through extensive and extreme testing or in the real world.” A spokeswoman for General
7 Motor, whose Chevy Volt uses a gas-powered engine to recharge a lithium-ion battery pack, stated that,
8 “to GM’s knowledge the Volt has not experienced a fire on the road,” despite 50,000 vehicles sold.
9 Yahoo! Automotive reported that no other automobile maker has reported a fire connected to an electric
10 vehicle. The Model S carries up to three times the stored electrical energy as the Volt and up to five
11 times that of the Leaf.
12

13
14 81. Press coverage regarding the third Model S fire also discussed a complaint by shopping
15 website Edmunds.com, which said that its 2013 Model S – which has less than 11,000 road miles – was
16 “making an ominous noise under acceleration and deceleration. It originates from the rear of the car
17 and seems to be getting worse.” Tesla replaced the drive unit on the Edmunds.com car, but declined to
18 disclose what caused it. It also replaced the driver door mechanism for another problem. Afterward,
19 Edmunds.com’s vehicle testing manager, Mike Schmidt, said, “We’re not sure what to think about the
20 fact that both of these repairs were completed with just one overnight stay. Maybe the dealer is really
21 on the ball. Maybe the supply chain is short. Or maybe the parts are readily available because they’ve
22 seen these [problems] before.”
23

24 82. After opening on November 7, 2013 at \$144.08 due to the continued decline based upon
25 its earnings announcement the day prior, on news of this third Model S fire, Tesla’s stock declined
26 further, to close at \$139.77 on heavy volume, a decline of \$11.39 (7.53%) from its closing price on
27 November 6, 2013.
28

1 83. As a result of Defendants' wrongful acts and omissions, and the resultant declines in the
2 market value of Tesla stock, Plaintiff and other Class members have suffered significant losses and
3 damages. Today, the stock is down \$55.50 (28.7%) from its Class Period high of \$193.37 on
4 September 30, 2013, translating into a loss of over \$6.5 billion in market capitalization in six weeks.

5 84. The story continues to unfold. Mr. Ditlow, director of the Center for Auto Safety, was
6 quoted by Bloomberg as saying that the NHTSA "absolutely has to investigate" the third Tesla Model S
7 fire. He added, "It appears there's inadequate shielding on the bottom of these vehicles. Road debris is
8 a known hazard to the undercarriage of vehicles." He elaborated that a potential fix for the Model S "is
9 not rocket science. Probably the simplest task Tesla has is putting a strong steel shield on the bottom of
10 the car." The New York Times quoted him as saying, "They just need a better shield."

11 85. According to multiple media outlets, the NHTSA issued a statement in the wake of the
12 third Model S fire, indicating that "NHTSA will contact the local authorities who are looking into the
13 incident to determine if there are vehicle safety implications that merit agency action."
14
15

16 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

17 86. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure
18 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Tesla
19 securities during the Class Period (the "Class"); and were damaged thereby. Excluded from the Class
20 are Defendants herein, the officers and directors of the Company, at all relevant times, members of their
21 immediate families and their legal representatives, heirs, successors or assigns and any entity in which
22 Defendants have or had a controlling interest.
23

24 87. The members of the Class are so numerous that joinder of all members is impracticable.
25 Throughout the Class Period, Tesla securities were actively traded on the NASDAQ. While the exact
26 number of Class members is unknown to Plaintiff at this time and can be ascertained only through
27 appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the
28

1 proposed Class. Record owners and other members of the Class may be identified from records
2 maintained by Tesla or its transfer agent and may be notified of the pendency of this action by mail,
3 using the form of notice similar to that customarily used in securities class actions.

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

7
8 89. Plaintiff will fairly and adequately protect the interests of the members of the Class and
9 has retained counsel competent and experienced in class and securities litigation. Plaintiff has no
10 interests antagonistic to or in conflict with those of the Class.

11 90. Common questions of law and fact exist as to all members of the Class and predominate
12 over any questions solely affecting individual members of the Class. Among the questions of law and
13 fact common to the Class are:
14

- 15 • whether the federal securities laws were violated by Defendants' acts as
16 alleged herein;
- 17 • whether statements made by Defendants to the investing public during the
18 Class Period misrepresented material facts about the business, operations and
19 management of Tesla;
- 20 • whether the Individual Defendants caused Tesla to issue false and misleading
21 public statements during the Class Period;
- 22 • whether Defendants acted knowingly or recklessly in issuing false and
23 misleading public statements;
- 24 • whether the prices of Tesla securities during the Class Period were artificially
25 inflated because of the Defendants' conduct complained of herein; and
- 26 • whether the members of the Class have sustained damages and, if so, what is
27 the proper measure of damages.

28 91. A class action is superior to all other available methods for the fair and efficient
adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
damages suffered by individual Class members may be relatively small, the expense and burden of

1 individual litigation make it impossible for members of the Class to individually redress the wrongs
2 done to them. There will be no difficulty in the management of this action as a class action.

3 **FRAUD ON THE MARKET PRESUMPTION**

4 92. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-
5 the-market doctrine in that:

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

19 93. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a
20 presumption of reliance upon the integrity of the market.

21 **No Safe Harbor**

22 94. The statutory safe harbor provided for forward-looking statements under certain
23 circumstances does not apply to any of the false and misleading statements pleaded in this Complaint.
24 The specific statements pleaded herein were not identified as forward-looking statements when made.

25 95. To the extent there were any forward-looking statements, there were no meaningful
26 cautionary statements identifying important factors that could cause actual results to differ materially
27 from those in the purportedly forward-looking statements.
28

1 96. Alternatively, to the extent that the statutory safe harbor does apply to any forward-
2 looking statements pleaded herein, Defendants are nonetheless liable for making such statements
3 because, at the time each statement was made, the speaker knew the statement was false or misleading.

4 **Scienter**

5 97. At all relevant times, Defendants had actual knowledge of the misrepresentations and
6 omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they
7 failed to ascertain and to disclose such facts, even though such facts were available to them. Among
8 other things, Tesla has stated that it specifically retested the Model S and purported to do so until all
9 points on the vehicle, including the weakest, registered a perfect 5 star safety test score.

10
11 98. Defendants' material misrepresentations and/or omissions were done knowingly or
12 recklessly and for the purpose and effect of concealing the Model S's design flaws and/or Tesla's true
13 operations and financial condition from the investing public and supporting the artificially inflated price
14 of its securities.

15
16 99. As demonstrated by Defendants' false and misleading statements during the Class
17 Period, Defendants, if they did not have actual knowledge of the misrepresentations and omissions
18 alleged, were reckless in failing to obtain such knowledge by failing to take steps necessary to discover
19 whether those statements were false or misleading.

20
21 100. During the Class Period, Defendants had motive to commit securities fraud.
22 Specifically, during Q2 2013, Tesla raised over \$1 billion through the issuance of \$410.5 million of
23 common stock (4.5 million shares) and \$660 million of 1.50% convertible senior notes. Tesla used
24 roughly \$450 million of the offering proceeds to repay, early, the totality of its Department of Energy
25 loan principal and interest, plus an early repayment fee.

26
27 101. Moreover, Defendants' scienter is demonstrated by their statements in the wake of the
28 NHTSA's 5-star rating on the Model S. Tesla stated that it had "analyzed the Model S to determine the

1 weakest points in the car and retested at those locations until the car achieved 5 stars no matter how the
2 test equipment was configured.” Such supplemental testing had to have specifically included
3 evaluation of the Model S’s undercarriage and battery pack. In that case, either Defendants knew of the
4 weaknesses and design defects in the Model S’s undercarriage and battery pack when they spoke then
5 and thereafter about the car’s safety, or, worse, they recklessly failed to identify and evaluate such
6 weaknesses and defects due to the woeful inadequacy of their testing and evaluation program.
7

8 **COUNT I**

9 **(Against All Defendants For Violations of**
10 **Section 10(b) And Rule 10b-5 Promulgated Thereunder)**

11 102. Plaintiff repeats and realleges each and every allegation contained above as if fully set
12 forth herein.

13 103. This Count is asserted against Defendants and is based upon Section 10(b) of the
14 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

15 104. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course
16 of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and
17 courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the
18 Class; made various untrue statements of material facts and omitted to state material facts necessary in
19 order to make the statements made, in light of the circumstances under which they were made, not
20 misleading; and employed devices, schemes and artifices to defraud in connection with the purchase
21 and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive
22 the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially
23 inflate and maintain the market price of Tesla securities; and (iii) cause Plaintiff and other members of
24 the Class to purchase Tesla securities and options at artificially inflated prices. In furtherance of this
25 unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth
26 herein.
27
28

1 105. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the
2 Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and
3 annual reports, SEC filings, press releases and other statements and documents described above,
4 including statements made to securities analysts and the media that were designed to influence the
5 market for Tesla securities. Such reports, filings, releases and statements were materially false and
6 misleading in that they failed to disclose material adverse information and misrepresented the truth
7 about Tesla's finances and business prospects.
8

9 106. By virtue of their positions at Tesla, Defendants had actual knowledge of the materially
10 false and misleading statements and material omissions alleged herein and intended thereby to deceive
11 Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with reckless
12 disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal
13 the materially false and misleading nature of the statements made, although such facts were readily
14 available to Defendants. Said acts and omissions of Defendants were committed willfully or with
15 reckless disregard for the truth. In addition, each Defendant knew or recklessly disregarded that
16 material facts were being misrepresented or omitted as described above.
17

18 107. Information showing that Defendants acted knowingly or with reckless disregard for the
19 truth is peculiarly within Defendants' knowledge and control. As the senior managers and/or directors
20 of Tesla, the Individual Defendants had knowledge of the details of Tesla's internal affairs.
21

22 108. The Individual Defendants are liable both directly and indirectly for the wrongs
23 complained of herein. Because of their positions of control and authority, the Individual Defendants
24 were able to and did, directly or indirectly, control the content of the statements of Tesla. As officers
25 and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate
26 timely, accurate, and truthful information with respect to Tesla's businesses, operations, future financial
27 condition and future prospects. As a result of the dissemination of the aforementioned false and
28

1 misleading reports, releases and public statements, the market price of Tesla securities was artificially
2 inflated throughout the Class Period. In ignorance of the adverse facts concerning Tesla's business and
3 financial condition which were concealed by Defendants, Plaintiff and the other members of the Class
4 purchased Tesla securities at artificially inflated prices and relied upon the price of the securities, the
5 integrity of the market for the securities and/or upon statements disseminated by Defendants, and were
6 damaged thereby.

7
8 109. During the Class Period, Tesla securities were traded on an active and efficient market.
9 Plaintiff and the other members of the Class, relying on the materially false and misleading statements
10 described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the
11 integrity of the market, purchased shares of Tesla securities at prices artificially inflated by Defendants'
12 wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not
13 have purchased said securities, or would not have purchased them at the inflated prices that were paid.
14 At the time of the purchases by Plaintiff and the Class, the true value of Tesla securities was
15 substantially lower than the prices paid by Plaintiff and the other members of the Class. The market
16 price of Tesla securities declined sharply upon public disclosure of the facts alleged herein to the injury
17 of Plaintiff and Class members.
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19
20 110. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly or
21 indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

22 111. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other
23 members of the Class suffered damages in connection with their respective purchases and sales of the
24 Company's securities during the Class Period, upon the disclosure that the Company had been
25 disseminating misrepresented financial statements to the investing public.
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COUNT II

**(Violations of Section 20(a) of the
Exchange Act Against The Individual Defendants)**

112. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

113. During the Class Period, the Individual Defendants participated in the operation and management of Tesla, and conducted and participated, directly and indirectly, in the conduct of Tesla's business affairs. Because of their senior positions, they knew the adverse non-public information regarding Tesla's operational and safety issues.

114. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Tesla's financial condition and results of operations, and to correct promptly any public statements issued by Tesla which had become materially false or misleading.

115. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Tesla disseminated in the marketplace during the Class Period concerning Tesla's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Tesla to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of Tesla within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Tesla securities.

116. Each of the Individual Defendants, therefore, acted as a controlling person of Tesla. By reason of their senior management positions and/or being directors of Tesla, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Tesla to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised

1 control over the general operations of Tesla and possessed the power to control the specific activities
2 which comprise the primary violations about which Plaintiff and the other members of the Class
3 complain.

4 117. By reason of the above conduct, the Individual Defendants are liable pursuant to Section
5 20(a) of the Exchange Act for the violations committed by Tesla.

6
7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

9 A. Determining that the instant action may be maintained as a class action under Rule 23 of
10 the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

11 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of
12 the acts and transactions alleged herein;

13 C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment
14 interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

15 D. Awarding such other and further relief as this Court may deem just and proper.
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DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated: November 8, 2013

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Attorneys for Plaintiff

Certification of Plaintiff
Pursuant to Federal Securities Laws

1. I, Robert Rahimi, make this declaration pursuant to Section 101 of the Private Securities Litigation Reform Act of 1995 as required by Section 21D (a) (2) of Title I of the Securities Exchange Act of 1934.

2. I have reviewed a Complaint against Tesla Motors, Inc. ("Tesla"), and authorize a filing of a comparable complaint on my behalf.

3. I did not purchase my Tesla securities at the direction of plaintiffs' counsel or in order to participate in any private action arising under Title I of the Securities Exchange Act of 1934.

4. I am willing to serve as a representative party on behalf of a class as set forth in the Complaint, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action.

5. To the best of my current knowledge, the attached sheet lists all of my purchases and sales in Tesla securities during the Class Period as specified in the Complaint.


6. During the three-year period preceding the date on which this certification is signed, I have not sought to serve as a representative party on behalf of a class under the federal securities laws, except as follows:

7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.

8. The matters stated in this declaration are true to the best of my current knowledge, information and belief.

I declare under penalty or perjury that the foregoing is true and correct.

Executed 11/7/13
(Date)


(Signature)

Robert Rahimi
(Type or Print Name)

Summary of Purchases and Sales

LIST OF PURCHASES AND SALES

DATE	PURCHASE OR SALE	NUMBER OF SHS/UTS	PRICE PER SH/UT
05/29/2013	PUR	180	\$110.5000
05/31/2013	SLD	10	\$102.7601
06/05/2013	SLD	30	\$92.0001
07/09/2013	SLD	140	\$123.5000
07/11/2013	PUR	138	\$125.8799
07/11/2013	PUR	142	\$122.7500
07/11/2013	PUR	142	\$123.0000
07/11/2013	SLD	142	\$123.2500
07/11/2013	SLD	142	\$123.0000
07/12/2013	PUR	368	\$128.3499
07/12/2013	PUR	367	\$128.5799
07/12/2013	PUR	368	\$127.5599
07/12/2013	SLD	368	\$128.3101
07/12/2013	SLD	367	\$128.8001
07/12/2013	SLD	368	\$127.7901
07/12/2013	SLD	138	\$125.2000
08/06/2013	PUR	253	\$142.1537
08/06/2013	SLD	253	\$142.0314
08/06/2013	SLD	523	\$142.2658
08/07/2013	PUR	500	\$137.8237
08/07/2013	PUR	500	\$137.9775
08/07/2013	PUR	500	\$140.6750
08/07/2013	SLD	400	\$134.2100
08/07/2013	SLD	500	\$138.4122
08/07/2013	SLD	500	\$135.9304
08/08/2013	PUR	173	\$157.1473
08/08/2013	PUR	173	\$156.9444
08/08/2013	PUR	173	\$157.2400
08/08/2013	PUR	173	\$157.1300
08/08/2013	PUR	176	\$154.6000
08/08/2013	PUR	176	\$154.0459
08/08/2013	PUR	177	\$153.2744
08/08/2013	PUR	173	\$155.7459
08/08/2013	PUR	173	\$156.4173
08/08/2013	SLD	173	\$154.6171
08/08/2013	SLD	173	\$157.5400
08/08/2013	SLD	173	\$157.6700
08/08/2013	SLD	173	\$157.3400

LIST OF PURCHASES AND SALES

DATE	PURCHASE OR SALE	NUMBER OF SHS/UTS	PRICE PER SH/UT
08/08/2013	SLD	176	\$154.8056
08/08/2013	SLD	176	\$154.4500
08/08/2013	SLD	177	\$152.8169
08/08/2013	SLD	173	\$152.2884
08/08/2013	SLD	173	\$157.4900
08/08/2013	SLD	100	\$154.2440
08/09/2013	PUR	357	\$153.2994
08/09/2013	PUR	357	\$153.3544
08/09/2013	PUR	354	\$154.4559
08/09/2013	PUR	357	\$153.3809
08/09/2013	PUR	356	\$153.8001
08/09/2013	SLD	357	\$153.4800
08/09/2013	SLD	357	\$153.5000
08/09/2013	SLD	354	\$154.6500
08/09/2013	SLD	357	\$153.5500
08/09/2013	SLD	356	\$153.6000
08/13/2013	PUR	450	\$149.7878
08/13/2013	PUR	523	\$145.4200
08/13/2013	SLD	450	\$147.8469
08/19/2013	PUR	815	\$146.6997
08/19/2013	PUR	823	\$145.4900
08/19/2013	PUR	820	\$145.9307
08/19/2013	PUR	825	\$144.7177
08/19/2013	SLD	815	\$146.9000
08/19/2013	SLD	823	\$145.6900
08/19/2013	SLD	820	\$145.7500
08/19/2013	SLD	825	\$145.1655
08/20/2013	PUR	288	\$149.1899
08/20/2013	SLD	288	\$149.5038
08/21/2013	PUR	808	\$149.9970
08/21/2013	SLD	393	\$147.1000
08/22/2013	SLD	415	\$153.5500
08/23/2013	PUR	695	\$159.2500
08/23/2013	PUR	190	\$158.6342
08/23/2013	PUR	770	\$159.2500
08/23/2013	PUR	769	\$159.5000
08/23/2013	PUR	769	\$159.5000
08/23/2013	PUR	771	\$159.0000

LIST OF PURCHASES AND SALES

DATE	PURCHASE OR SALE	NUMBER OF SHS/UTS	PRICE PER SH/UT
08/23/2013	PUR	771	\$159.0000
08/23/2013	SLD	695	\$159.4000
08/23/2013	SLD	190	\$159.6300
08/23/2013	SLD	770	\$159.5000
08/23/2013	SLD	769	\$159.7500
08/23/2013	SLD	769	\$159.7500
08/23/2013	SLD	771	\$159.2500
08/23/2013	SLD	771	\$159.2500
08/26/2013	PUR	750	\$168.3857
08/26/2013	PUR	745	\$170.7500
08/26/2013	PUR	753	\$168.9000
08/26/2013	PUR	168	\$167.7500
08/26/2013	PUR	168	\$167.7500
08/26/2013	PUR	757	\$168.0000
08/26/2013	SLD	168	\$168.1000
08/26/2013	SLD	363	\$165.8009
08/26/2013	SLD	745	\$172.7500
08/26/2013	SLD	753	\$169.1000
08/26/2013	SLD	589	\$168.5000
08/26/2013	SLD	168	\$168.1000
08/26/2013	SLD	168	\$167.7500
08/30/2013	SLD	12	\$169.2100
09/16/2013	SLD	375	\$170.5000
09/17/2013	PUR	790	\$165.0000
09/17/2013	SLD	790	\$165.5000
09/18/2013	PUR	803	\$166.5000
09/18/2013	PUR	800	\$166.8500
09/18/2013	PUR	803	\$166.4050
09/18/2013	PUR	803	\$166.5000
09/18/2013	PUR	808	\$165.5000
09/18/2013	SLD	803	\$166.6500
09/18/2013	SLD	803	\$166.2500
09/18/2013	SLD	800	\$167.0000
09/18/2013	SLD	803	\$166.6000
09/18/2013	SLD	808	\$166.0000
09/19/2013	PUR	760	\$178.7500
09/19/2013	PUR	700	\$178.7500
09/19/2013	PUR	770	\$176.2853

LIST OF PURCHASES AND SALES

DATE	PURCHASE OR SALE	NUMBER OF SHS/UTS	PRICE PER SH/UT
09/19/2013	PUR	775	\$176.1000
09/19/2013	PUR	775	\$175.9000
09/19/2013	PUR	780	\$174.9000
09/19/2013	PUR	780	\$173.7500
09/19/2013	PUR	780	\$173.9000
09/19/2013	SLD	760	\$179.0000
09/19/2013	SLD	700	\$179.1000
09/19/2013	SLD	770	\$177.0000
09/19/2013	SLD	775	\$176.2500
09/19/2013	SLD	775	\$176.1000
09/19/2013	SLD	780	\$175.2000
09/19/2013	SLD	780	\$174.2500
09/19/2013	SLD	780	\$174.3500
09/20/2013	PUR	790	\$183.5000
09/20/2013	PUR	790	\$183.6000
09/20/2013	SLD	790	\$183.3000
09/20/2013	SLD	790	\$184.0000
09/23/2013	PUR	323	\$183.2000
09/23/2013	PUR	326	\$181.3000
09/23/2013	PUR	332	\$178.0500
09/23/2013	PUR	332	\$178.0000
09/23/2013	PUR	320	\$184.5000
09/23/2013	SLD	332	\$178.2000
09/23/2013	SLD	326	\$182.3000
09/23/2013	SLD	332	\$178.1500
09/23/2013	SLD	320	\$178.0000
09/24/2013	SLD	163	\$177.8700
09/24/2013	SLD	160	\$179.6000
10/02/2013	PUR	142	\$189.2120
10/14/2013	SLD	9	\$179.5800
10/31/2013	PUR	240	\$160.8500
10/31/2013	PUR	240	\$160.9000
10/31/2013	PUR	240	\$158.0000
10/31/2013	PUR	245	\$156.5000
10/31/2013	PUR	247	\$156.0000
10/31/2013	SLD	13	\$160.0300
10/31/2013	SLD	240	\$162.0000
10/31/2013	SLD	240	\$158.5000

TESLA MOTORS (TSLA)

Rahimi, Robert

LIST OF PURCHASES AND SALES

DATE	PURCHASE OR SALE	NUMBER OF SHS/UTS	PRICE PER SH/UT
10/31/2013	SLD	245	\$157.0000
10/31/2013	SLD	247	\$157.2607
11/05/2013	PUR	145	\$177.0000
11/05/2013	SLD	65	\$154.7700