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Counsel for Plaintiff Andrew E. Left

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ANDREW E. LEFT, Individually and on)	Case No.
Behalf of All Others Similarly Situated,)	<u>CLASS ACTION</u>
Plaintiff,)	COMPLAINT FOR VIOLATION OF THE
vs.)	FEDERAL SECURITIES LAWS
TESLA, INC., AND ELON R. MUSK,)	<u>DEMAND FOR JURY TRIAL</u>
Defendants.)	

1 **INTRODUCTION**

2 Plaintiff Andrew E. Left (“Left” or “Plaintiff”), individually and on behalf of all others
3 similarly situated, alleges the following based on personal knowledge as to Plaintiff and
4 Plaintiff’s own acts, and upon information and belief as to all other matters based upon the
5 investigation conducted by and through Plaintiff’s attorneys, which included, among other
6 things, a review of press releases and other public statements issued by and regarding Tesla, Inc.
7 (“Tesla” or the “Company”), Tesla’s filings with the U.S. Securities and Exchange Commission
8 (“SEC”), and media and analyst reports about the Company. Plaintiff believes that substantial
9 additional evidentiary support will exist for the allegations set forth herein after a reasonable
10 opportunity for discovery.

11 **SUMMARY OF THE ACTION**

12 1. This is a securities class action on behalf of all persons other than Defendants (as
13 defined herein) who purchased, sold, or otherwise transacted in Tesla securities between August
14 7, 2018 and August 17, 2018, both dates inclusive (the “Class Period”). The action is brought
15 against Tesla and its Chairman and Chief Executive Officer (“CEO”) Elon R. Musk (“Musk” and
16 together with Tesla, “Defendants”) for violations of the Securities Exchange Act of 1934 (the
17 “Exchange Act”) and SEC Rule 10b-5 promulgated thereunder.

18 2. Tesla Inc. designs, manufactures, and sells high-performance electric vehicles and
19 electric vehicle powertrain components. The Company owns its sales and service network and
20 sells electric powertrain components to other automobile manufacturers.

21 3. Defendant Musk has a long-standing public feud with short-sellers and often uses
22 his personal Twitter account to taunt and confront skeptics of his company. For example, on
23 May 4, 2018, he tweeted that the “short burn of the century [was] comin[g] soon” and that the
24 “sheer magnitude of the short carnage will be unreal. If you’re short, I suggest tiptoeing quietly
25 to the exit[.]” He also tweeted on June 17, 2018 that Tesla short-sellers had “about three weeks
26 before their short position explodes.”

27 4. By way of background, shorting or short-selling is the sale of a security that is not
28 owned by the seller or that the seller has borrowed. The practice is motivated by the belief that a

1 security's price will likely decline, enabling it to be purchased back at a lower price at a profit.
2 By shorting a stock, short-sellers integrate their own experience and interpretation of public
3 information into the market price of that stock, and have on numerous occasions, successfully
4 anticipated stock declines. For example, on August 6, 2018, during a debate video-streamed on
5 *Cheddar*, Mark Spiegel, managing member of Stanphyl Capital and well-known Tesla short-
6 seller, questioned the feasibility of a hypothetical Tesla buyout at a \$70 billion enterprise value,
7 stating the stock was "grotesquely overvalued."

8 5. As described herein, Defendants artificially manipulated the price of Tesla
9 securities to damage the Company's short-sellers, and in the process, damaged all purchasers of
10 Tesla securities by issuing materially false and misleading information. Defendants' fraudulent
11 scheme started on August 7, 2018, when Defendant Musk, via his verified personal Twitter
12 account, issued the following tweet: "Am considering taking Tesla private at \$420. Funding
13 secured." Later that day, Defendant Musk issued another tweet, stating: "Investor support is
14 confirmed. Only reason why this is not certain is that it's contingent on a shareholder vote."

15 6. Following these tweets, Tesla's stock price surged, reaching an intraday high of
16 \$387.46 per share, before closing at \$379.57 per share August 7, 2018, a nearly 11 percent jump
17 from the previous closing price. Trading volume spiked to 30 million shares (compared to an
18 average of 8 million), representing over \$11 billion of purchases in the open market. In response
19 to the tweets, many Tesla short-sellers were forced to cover their positions at artificially high
20 prices, losing approximately \$1.3 billion in a single day, according to media reports.

21 7. The truth about Defendants' fraudulent scheme, and in particular the lack of
22 funding to take Tesla private, began to emerge on August 8, 2018, when certain members of
23 Tesla's Board of Directors issued a statement revealing that the board was still evaluating the
24 prospects of taking Tesla private, and confirmed that such a deal was subject to board approval.
25 On the same day, *The Wall Street Journal* published an article entitled "SEC Probes Tesla CEO
26 Musk's Tweets," reporting that U.S. regulators were inquiring into whether "Elon Musk was
27 truthful when he tweeted that he had secured funding" for the proposed buyout of Tesla.
28 According to the report, SEC officials wanted to know if Musk had a "factual basis" for posting

1 “that the going-private transaction was all but certain, with only a shareholder vote needed to
2 pull it off.”

3 8. On news of the SEC probe and board discussions, Tesla’s stock price fell \$9.23
4 per share, or 2.43 percent, to close at \$370.34 on August 8, 2018.

5 9. On August 9, 2018, *Bloomberg* published an article entitled “The SEC Is
6 Intensifying Its Probe of Tesla,” reporting that SEC regulators were “intensifying its scrutiny of
7 Tesla Inc.’s public statements in the wake of Elon Musk’s provocative tweet Tuesday about
8 taking the electric-car company private.”

9 10. That same day, *Reuters* published an article entitled “Exclusive - Tesla’s board
10 seeking more information on Musk’s financing plan – sources,” reporting that the Company’s
11 board of directors had “not yet received a detailed financing plan from CEO Elon Musk” or
12 “specific information on who will provide the funding.”

13 11. As a result of these additional disclosures, further indicating that Defendants
14 lacked the funding necessary to take the Company private, Tesla’s stock price fell an additional
15 \$17.89 per share, or 4.83 percent, to close at \$352.45 per share on August 9, 2018.

16 12. On August 13, 2018, Defendant Musk tweeted: “I’m excited to work with Silver
17 Lake and Goldman Sachs as financial advisors, plus Wachtell, Lipton, Rosen & Katz and
18 Munger, Tolles & Olson as legal advisors, on the proposal to take Tesla private.”

19 13. On August 14, 2018, *Bloomberg* published an article entitled “Goldman’s Missing
20 Mandate Adds to Clues Musk Tweeted Out of Turn,” reporting that neither Goldman Sachs or
21 Silver Lake were yet working with Musk pursuant to a signed agreement or in an official
22 capacity when Musk said on Twitter late Monday, August 13, 2018, both firms were working
23 with him as financial advisers.
24

25 14. Following these revelations, Tesla’s stock price fell \$8.77 per share, or 2.46
26 percent, to close at \$347.64 per share on August 14, 2018.

27 15. On August 16, 2018, after the market close, *The New York Times* published an in-
28 depth interview with Musk entitled “Elon Musk Details ‘Excruciating’ Personal Toll of Tesla

1 Turmoil,” which revealed the stress Musk had been under, his use of Ambien, and the manner in
2 which the August 7, 2018 tweet had been conceived.

3 16. On this news, Tesla’s stock price fell \$29.95 per share or 8.92 percent, to close at
4 \$305.50 per share on August 17, 2018.

5 17. As described in detail below, Defendant Musk artificially manipulated the price of
6 Tesla securities with objectively false tweets in order to “burn” the Company’s short-sellers. In
7 the succeeding days, the truth regarding the supposedly “secure” financing needed to effectuate
8 the going-private transaction began to emerge, exposing the fraudulent scheme, and in the
9 process, injuring Class Period investors as the price of Tesla securities deteriorated rapidly.

10 18. As a result of Defendants’ wrongful acts and misleading statements, and the
11 precipitous artificial inflation in the market value of the Company’s securities and subsequent
12 decline, Plaintiff and other Class members have suffered significant losses and damages.

13 **JURISDICTION AND VENUE**

14 19. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange
15 Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC, 17
16 C.F.R. § 240.10b-5.

17 20. This Court has jurisdiction over the subject matter of this action pursuant to 28
18 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

19 21. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15
20 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Substantial acts in furtherance of the alleged fraud or the
21 effects of the fraud have occurred in this Judicial District. Tesla’s principal executive offices are
22 located within this District.

23 22. In connection with the acts alleged in this complaint, Defendants, directly or
24 indirectly, used the means and instrumentalities of interstate commerce, including, but not
25 limited to, the mails, interstate telephone communications, and the facilities of the national
26 securities markets.

PARTIES

1
2 23. Plaintiff Andrew E. Left purchased Tesla securities during the Class Period, as set
3 forth in the certification attached hereto, and was damaged as the result of Defendants'
4 wrongdoing as alleged in this complaint. Mr. Left is the author and executive editor of Citron
5 Research, an online investment newsletter that publishes reports seeking to expose companies
6 that are overvalued or engaged in fraud. Citron Research has been publishing columns for over
7 17 years, making it one of the longest-running online stock commentary websites. With over
8 150 reports, Citron has amassed a track record identifying fraud and terminal business models.

9 24. Defendant Tesla is a Delaware corporation with its principal executive offices
10 located at 3500 Deer Creek Road, Palo Alto, California 94304. The Company's stock is listed on
11 the NASDAQ Global Select market ("NASDAQ") under the ticker symbol "TSLA."

12 25. Defendant Elon R. Musk co-founded and is the CEO of Tesla and Chairman of
13 the Company's Board of Directors.

14 26. Defendant Musk, because of his position within the Company, possessed the
15 power and authority to control the contents of Tesla's reports to the SEC, press releases, and
16 presentations to securities analysts, money portfolio managers and institutional investors, i.e., the
17 market. Defendant Musk was provided with copies of the Company's reports and press releases
18 alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and
19 opportunity to prevent their issuance or cause them to be corrected. Because of his position and
20 access to material non-public information available to them, Defendant Musk knew that the
21 adverse facts specified herein had not been disclosed to, and were being concealed from, the
22 public, and that the positive representations which were being made were then materially false
23 and/or misleading. Defendant Musk is liable for the false statements pleaded herein, as those
24 statements were each "group-published" information, the result of the actions of Defendant
25 Musk.

26 27. Tesla and Musk are collectively referred to herein as "Defendants."
27
28

1 **SUBSTANTIVE ALLEGATIONS**

2 **Background**

3 28. Tesla Inc. designs, develops, manufactures and sells high-performance fully
4 electric vehicles, and energy generation and storage systems.

5 29. By way of background, shorting or short-selling is the sale of a security that is not
6 owned by the seller or that the seller has borrowed. The practice is motivated by the belief that a
7 security's price will likely decline, enabling it to be purchased back at a lower price at a profit.

8 30. Short-sellers, like plaintiff Left, play an important role in the financial market, as
9 by shorting a stock, they integrate their own experience and interpretation of public information
10 into the market price of that stock. Short-sellers also provide liquidity to markets and prevent
11 stocks from being bid up to inflated high levels on hype or over-optimism. In order to stop
12 short-sellers from trading in their stock, companies sometimes engage in a practice known in the
13 industry as "squeezing the shorts." To that end, a company may attempt to manipulate or inflate
14 its stock's market price to such an extent that the short-sellers can no longer afford to maintain
15 their position – that is, they are "squeezed out" and forced to purchase stock to cover their
16 position.

17 31. Defendant Musk has a long-standing public feud with short-sellers and has
18 threatened them in the recent past. For example, on May 4, 2018, he tweeted that the "short burn
19 of the century [was] comin[g] soon" and that the "sheer magnitude of the short carnage will be
20 unreal. If you're short, I suggest tiptoeing quietly to the exit[.]" He then tweeted on June 17,
21 2018 that Tesla short-sellers had "about three weeks before their short position explodes." As
22 described herein, Defendants' statements were an ill-conceived attempt to artificially manipulate
23 the price of Tesla securities in order to "burn" and "squeeze out" the Company's short-sellers.

24 **Materially False and Misleading Statements Issued During the Class Period**

25 32. On August 7, 2018, Defendant Musk posted the following tweet at 12:48 p.m.
26 eastern time: "Am considering taking Tesla private at \$420. Funding secured."

27 33. At 2:13 p.m. eastern time, Musk tweeted "Shareholders could either to sell 420 or
28 hold shares & go private."

1 34. At 3:36 p.m. eastern time, he added: “Investor support is confirmed. Only reason
2 why this is not certain is that it’s contingent on a shareholder vote.”

3 35. That same day, the Company posted on its corporate blog an e-mail from
4 Defendant Musk to Tesla employees reiterating his intent to take the Company private at \$420
5 per share. The email stated in part:

6 **Taking Tesla Private**

7 August 7, 2018

8 *The following email was sent to Tesla employees today:*

9 Earlier today, I announced that I’m considering taking Tesla private at a price of
10 \$420/share. I wanted to let you know my rationale for this, and why I think this is
the best path forward.

11 First, a final decision has not yet been made, but the reason for doing this is all
12 about creating the environment for Tesla to operate best. As a public company,
13 we are subject to wild swings in our stock price that can be a major distraction for
14 everyone working at Tesla, all of whom are shareholders. Being public also
15 subjects us to the quarterly earnings cycle that puts enormous pressure on Tesla to
make decisions that may be right for a given quarter, but not necessarily right for
the long-term. Finally, as the most shorted stock in the history of the stock
market, being public means that there are large numbers of people who have the
incentive to attack the company.

16 ***

17 First, I would like to structure this so that all shareholders have a choice. Either
18 they can stay investors in a private Tesla or they can be bought out at \$420 per
19 share, which is a 20% premium over the stock price following our Q2 earnings
20 call (which had already increased by 16%). My hope is for all shareholders to
remain, but if they prefer to be bought out, then this would enable that to happen
at a nice premium.

21 Second, my intention is for all Tesla employees to remain shareholders of the
22 company, just as is the case at SpaceX. If we were to go private, employees would
23 still be able to periodically sell their shares and exercise their options. This would
24 enable you to still share in the growing value of the company that you have all
worked so hard to build over time.

25 Third, the intention is not to merge SpaceX and Tesla. They would continue to
26 have separate ownership and governance structures. However, the structure
27 envisioned for Tesla is similar in many ways to the SpaceX structure: external
28 shareholders and employee shareholders have an opportunity to sell or buy
approximately every six months.

Finally, this has nothing to do with accumulating control for myself. I own about
20% of the company now, and I don’t envision that being substantially different
after any deal is completed.

1 Basically, I'm trying to accomplish an outcome where Tesla can operate at its
2 best, free from as much distraction and short-term thinking as possible, and where
3 there is as little change for all of our investors, including all of our employees, as
4 possible.

5 This proposal to go private would ultimately be finalized through a vote of our
6 shareholders. If the process ends the way I expect it will, a private Tesla would
7 ultimately be an enormous opportunity for all of us. Either way, the future is very
8 bright and we'll keep fighting to achieve our mission.

9 Thanks,

10 Elon

11 36. Following these statements, Tesla's stock price surged, reaching an intraday high
12 of \$387.46 per share, before closing at \$379.57 per share August 7, 2018, a nearly 11 percent
13 jump from the previous closing price.

14 **Subsequent Developments Confirm There Was No Funding**

15 37. On August 8, 2018, *The Wall Street Journal* published an article entitled "SEC
16 Probes Tesla CEO Musk's Tweets," reporting that U.S. regulators were inquiring whether "Elon
17 Musk was truthful when he tweeted that he had secured funding" for the proposed buyout of
18 Tesla. Additionally, SEC officials wanted to know if Musk had a "factual basis" for posting
19 "that the going-private transaction was all but certain, with only a shareholder vote needed to
20 pull it off."

21 38. On news of the SEC probe, Tesla's stock price fell \$9.23 per share, or 2.43
22 percent, to close at \$370.34 on August 8, 2018.

23 39. On August 9, 2018, *Bloomberg* published an article entitled "The SEC Is
24 Intensifying Its Probe of Tesla," reporting that SEC regulators were "intensifying its scrutiny of
25 Tesla Inc.'s public statements in the wake of Elon Musk's provocative tweet Tuesday about
26 taking the electric-car company private."

27 40. That same day, *Reuters* published an article entitled "Exclusive - Tesla's board
28 seeking more information on Musk's financing plan – sources," reporting that the Company's
board of directors had "not yet received a detailed financing plan from Musk and specific
information on who will provide the funding."

1 41. As a result of these additional disclosures, further indicating that Defendants
2 lacked the funding necessary to take the Company private, Tesla's stock price fell an additional
3 \$17.89 per share, or 4.83 percent, to close at \$352.45 per share on August 9, 2018.

4 42. On August 13, 2018, Defendant Musk tweeted: "I'm excited to work with Silver
5 Lake and Goldman Sachs as financial advisors, plus Wachtell, Lipton, Rosen & Katz and
6 Munger, Tolles & Olson as legal advisors, on the proposal to take Tesla private."

7 43. On that day, the Company posted on its corporate blog an "Update on Taking
8 Tesla Private," which stated:

9 Update on Taking Tesla Private

10 Elon Musk August 13, 2018

11 As I announced last Tuesday, I'm considering taking Tesla private because I
12 believe it could be good for our shareholders, enable Tesla to operate at its best,
13 and advance our mission of accelerating the transition to sustainable energy. As I
continue to consider this, I want to answer some of the questions that have been
asked since last Tuesday.

14 **What has happened so far?**

15 On August 2nd, I notified the Tesla board that, in my personal capacity, I wanted
16 to take Tesla private at \$420 per share. This was a 20% premium over the ~\$350
17 then current share price (which already reflected a ~16% increase in the price
18 since just prior to announcing Q2 earnings on August 1st). My proposal was
based on using a structure where any existing shareholder who wished to remain
as a shareholder in a private Tesla could do so, with the \$420 per share buyout
used only for shareholders that preferred that option.

19 After an initial meeting of the board's outside directors to discuss my proposal (I
20 did not participate, nor did Kimbal), a full board meeting was held. During that
meeting, I told the board about the funding discussions that had taken place (more
on that below) and I explained why this could be in Tesla's long-term interest.

21 At the end of that meeting, it was agreed that as a next step, I would reach out to
22 some of Tesla's largest shareholders. Our largest investors have been extremely
23 supportive of Tesla over the years, and understanding whether they had the ability
24 and desire to remain as shareholders in a private Tesla is of critical importance to
me. They are the ones who believed in Tesla when no one else did and they are
the ones who most believe in our future. I told the board that I would report back
after I had these discussions.

25 **Why did I make a public announcement?**

26 The only way I could have meaningful discussions with our largest shareholders
27 was to be completely forthcoming with them about my desire to take the company
28 private. However, it wouldn't be right to share information about going private
with just our largest investors without sharing the same information with all
investors at the same time. As a result, it was clear to me that the right thing to do

1 was announce my intentions publicly. To be clear, when I made the public
2 announcement, just as with this blog post and all other discussions I have had on
this topic, I am speaking for myself as a potential bidder for Tesla.

3 **Why did I say “funding secured”?**

4 Going back almost two years, the Saudi Arabian sovereign wealth fund has
5 approached me multiple times about taking Tesla private. They first met with me
6 at the beginning of 2017 to express this interest because of the important need to
7 diversify away from oil. They then held several additional meetings with me over
the next year to reiterate this interest and to try to move forward with a going
private transaction. Obviously, the Saudi sovereign fund has more than enough
capital needed to execute on such a transaction.

8 Recently, after the Saudi fund bought almost 5% of Tesla stock through the public
9 markets, they reached out to ask for another meeting. That meeting took place on
10 July 31st. During the meeting, the Managing Director of the fund expressed regret
11 that I had not moved forward previously on a going private transaction with them,
and he strongly expressed his support for funding a going private transaction for
Tesla at this time. I understood from him that no other decision makers were
needed and that they were eager to proceed.

12 I left the July 31st meeting with no question that a deal with the Saudi sovereign
13 fund could be closed, and that it was just a matter of getting the process moving.
This is why I referred to “funding secured” in the August 7th announcement.

14 Following the August 7th announcement, I have continued to communicate with
15 the Managing Director of the Saudi fund. He has expressed support for
proceeding subject to financial and other due diligence and their internal review
16 process for obtaining approvals. He has also asked for additional details on how
the company would be taken private, including any required percentages and any
regulatory requirements.

17 Another critical point to emphasize is that before anyone is asked to decide on
18 going private, full details of the plan will be provided, including the proposed
nature and source of the funding to be used. However, it would be premature to
19 do so now. I continue to have discussions with the Saudi fund, and I also am
having discussions with a number of other investors, which is something that I
20 always planned to do since I would like for Tesla to continue to have a broad
investor base. It is appropriate to complete those discussions before presenting a
21 detailed proposal to an independent board committee.

22 It is also worth clarifying that most of the capital required for going private would
23 be funded by equity rather than debt, meaning that this would not be like a
standard leveraged buyout structure commonly used when companies are taken
24 private. I do not think it would be wise to burden Tesla with significantly
increased debt.

25 Therefore, reports that more than \$70B would be needed to take Tesla private
26 dramatically overstate the actual capital raise needed. The \$420 buyout price
would only be used for Tesla shareholders who do not remain with our company
27 if it is private. My best estimate right now is that approximately two-thirds of
shares owned by all current investors would roll over into a private Tesla.

28 **What are the next steps?**

1 As mentioned earlier, I made the announcement last Tuesday because I felt it was
2 the right and fair thing to do so that all investors had the same information at the
3 same time. I will now continue to talk with investors, and I have engaged advisors
4 to investigate a range of potential structures and options. Among other things, this
5 will allow me to obtain a more precise understanding of how many of Tesla's
6 existing public shareholders would remain shareholders if we became private.

7 If and when a final proposal is presented, an appropriate evaluation process will
8 be undertaken by a special committee of Tesla's board, which I understand is
9 already in the process of being set up, together with the legal counsel it has
10 selected. If the board process results in an approved plan, any required regulatory
11 approvals will need to be obtained and the plan will be presented to Tesla
12 shareholders for a vote.

13 44. On August 13, 2018, *The New York Times* published an article entitled "Tesla
14 Board Surprised by Elon Musk's Tweet on Taking Carmaker Private," reporting that some
15 members of Tesla's Board were "totally blindsided by Mr. Musk's decision to air his plan on
16 Twitter," which had not been "cleared" by the Board. Additionally, the Saudi fund referenced
17 earlier by Musk "had taken none of the steps" that a potential going-private transaction would
18 entail, *i.e.* preparing a term sheet or hiring a financial adviser to work on the deal. According to
19 the article, "in a conversation with an informal adviser about the mess he had gotten himself into,
20 Mr. Musk said he had taken to Twitter impulsively. He said he had done so because he was not
21 the kind of person who could hold things in, and was angry at the company's critics."

22 45. On August 14, 2018, *Bloomberg* published an article entitled "Goldman's Missing
23 Mandate Adds to Clues Musk Tweeted Out of Turn," reporting that neither Goldman Sachs or
24 Silver Lake were yet working with Musk pursuant to a signed agreement or in an official
25 capacity when Musk said on Twitter late Monday, August 13, 2018, both firms were working
26 with him as financial advisers.

27 46. Following these revelations, Tesla's stock price fell \$8.77 per share, or 2.46
28 percent, to close at \$347.64 per share on August 14, 2018.

47. On August 16, 2018, after the market close, *The New York Times* published an in-
depth interview with Musk entitled "Elon Musk Details 'Excruciating' Personal Toll of Tesla
Turmoil," which revealed the stress Musk had been under, his use of Ambien, and the manner in
which the August 7, 2018 had been conceived. The interview stated in part:

1 Elon Musk was at home in Los Angeles, struggling to maintain his composure.
2 “This past year has been the most difficult and painful year of my career,” he said.
3 “It was excruciating.”

4 ***

5 Asked if the exhaustion was taking a toll on his physical health, Mr. Musk
6 answered: “It’s not been great, actually. I’ve had friends come by who are really
7 concerned.”

8 The events set in motion by Mr. Musk’s tweet have ignited a federal investigation
9 and have angered some board members, according to people familiar with the
10 matter. Efforts are underway to find a No. 2 executive to help take some of the
11 pressure off Mr. Musk, people briefed on the search said. And some board
12 members have expressed concern not only about Mr. Musk’s workload but also
13 about his use of Ambien, two people familiar with the board said.

14 ***

15 In the interview, Mr. Musk provided a detailed timeline of the events leading up
16 to the Twitter postings on Aug. 7 in which he said he was considering taking the
17 company private at \$420 a share. He asserted that he had “funding secured” for
18 such a deal — a transaction likely to be worth well over \$10 billion.

19 That morning, Mr. Musk woke up at home with his girlfriend, the musician
20 known as Grimes, and had an early workout. Then he got in a Tesla Model S and
21 drove himself to the airport. En route, Mr. Musk typed his fateful message.

22 Mr. Musk has said he saw the tweet as an attempt at transparency. He
23 acknowledged Thursday that no one had seen or reviewed it before he posted it.

24 ***

25 What Mr. Musk meant by “funding secured” has become an important question.
26 Those two words helped propel Tesla’s shares higher.

27 But that funding, it turned out, was far from secure.

28 Mr. Musk has said he was referring to a potential investment by Saudi Arabia’s
government investment fund. Mr. Musk had extensive talks with representatives
of the \$250 billion fund about possibly financing a transaction to take Tesla
private — maybe even in a manner that would have resulted in the Saudis’
owning most of the company. One of those sessions took place on July 31 at the
Tesla factory in the Bay Area, according to a person familiar with the meeting.
But the Saudi fund had not committed to provide any cash, two people briefed on
the discussions said.

Mr. Musk’s tweet kicked off a chain reaction.

An hour and 20 minutes after the tweet, with Tesla’s shares up 7 percent, the
Nasdaq stock exchange halted trading, and Tesla published a letter to employees
from Mr. Musk explaining the rationale for possibly taking the company private.
When the shares resumed trading, they continued their climb, ending the day with
an 11 percent gain.

1 The next day, investigators in the San Francisco office of the Securities and
2 Exchange Commission asked Tesla for explanations. Ordinarily, such material
3 information about a public company's plans is laid out in detail after extensive
4 internal preparation and issued through official channels. Board members,
5 blindsided by the chief executive's market-moving statement, were angry that
6 they had not been briefed, two people familiar with the matter said. They
7 scrambled to cobble together a public statement trying to defuse a mounting
8 uproar over the seemingly haphazard communication.

9 ***

10 The S.E.C. investigation appears to be intensifying rapidly. Just days after the
11 agency's request for information, Tesla's board and Mr. Musk received S.E.C.
12 subpoenas, according to a person familiar with the matter. Board members and
13 Mr. Musk are preparing to meet with S.E.C. officials as soon as next week, the
14 person said.

15 ***

16 He blamed short-sellers — investors who bet that Tesla's shares will lose value
17 — for much of his stress. He said he was bracing for “at least a few months of
18 extreme torture from the short-sellers, who are desperately pushing a narrative
19 that will possibly result in Tesla's destruction.”

20 Referring to the short-sellers, he added: “They're not dumb guys, but they're not
21 supersmart. They're O.K. They're smartish.”

22 ***

23 To help sleep when he is not working, Mr. Musk said he sometimes takes
24 Ambien. “It is often a choice of no sleep or Ambien,” he said.

25 But this has worried some board members, who have noted that sometimes the
26 drug does not put Mr. Musk to sleep but instead contributes to late-night Twitter
27 sessions, according to a person familiar with the board's thinking. Some board
28 members are also aware that Mr. Musk has on occasion used recreational drugs,
according to people familiar with the matter.

48. On that same day, *The Wall Street Journal* reported that the “SEC is investigating
whether Mr. Musk intentionally misled investors when he tweeted about the proposal in a bid to
hurt short-sellers by driving up Tesla's stock price,” citing a person familiar with the matter. The
article further stated that “regulators are pressing Tesla's directors to reveal how much
information Mr. Musk shared with them before he tweeted about it last week.”

49. On this news, Tesla's stock price fell \$29.95 per share or 8.92 percent, to close at
\$305.50 per share on August 17, 2018.

1 **POST-CLASS PERIOD DISCLOSURES**

2 50. Later developments have further confirmed that funding was never secured as of
3 August 7, 2018, in direct contradiction to Defendant Musk's tweets. On August 24, 2018, *CNBC*
4 published an article entitled "Elon Musk hiring Morgan Stanley probably closed the book on
5 'funding secured,'" reporting that hiring the bank essentially ended any doubt as to whether
6 Musk had, in fact, secured funding for the deal. The article stated in relevant part:

7 Tesla CEO Elon Musk's hiring of Morgan Stanley this week is just a small step in
8 his ongoing quest to take Tesla private.

9 But it has a larger, more damning implication: he probably didn't have funding
secured, even in the most loose sense of the phrase.

10 Musk is on the verge of hiring Morgan Stanley because the bank excels in
11 rounding up financing from a wide array of sources, according to a person
familiar with the matter. Musk has already retained Goldman Sachs to advise his
12 attempt at taking the company private, first announced in an August 7 tweet.
Morgan Stanley will be brought in the same capacity -- to raise money for a
potential deal.

13 Musk wouldn't need to hire Morgan Stanley if he had secured funding at this
14 point. The board's special committee still hasn't retained an investment bank, and
there is no indication anything will happen quickly with regard to a privatization,
15 said two people familiar with the matter, who asked not to be named because the
discussions are private.

16 Musk said in that tweet he had "funding secured" to take Tesla private at \$420 a
17 share. He followed that tweet up with a public statement on August 13 saying
he'd met with the Saudi Arabian sovereign wealth fund several times, which
18 prompted him to tweet that he had secured financing. Musk is also using private
equity firm Silver Lake as an adviser, which the New York Times reported could
19 be interested in a private investment.

20 The Saudi Public Investment Fund hasn't made a public comment supporting
Musk's claim in the nearly two weeks that have followed his statement. It's still
21 unclear exactly how much money Musk will need to raise from outside investors -
- that will depend on how many existing shareholders roll over their investments
22 into a theoretically privatized company. Musk suggested two-thirds of investors
might do so, which would result in a need for about \$24 billion in outside capital
23 at \$420 per share.

24 Musk wrote in his August 13 blog post that the managing director of the Saudi
fund needed more detail before moving forward with an investment. "including
25 the proposed nature and source of the funding to be used." Musk acknowledged in
his post he planned to speak to other investors. Morgan Stanley and Goldman will
26 help him find them. They have not started this task, the people said.

27 The board will also have to vet that \$420 number, which may have to rise after
the special committee does its due diligence, including calling around to outside
28 parties that may be willing to pay more.

1 51. On August 24, 2018, after the market close, the Company revealed through a post
2 on its corporate blog that the Company would remain public, adding that existing shareholders
3 believed the Company to be “better off as a public company.”

4 52. Following this revelation, *The Associated Press* reported the following day: “First
5 it was the shocking tweet that funding was secured and Tesla may go private, then a statement
6 that the money wasn’t locked down after all. Two weeks later it’s never mind, the whole deal is
7 off.... Chaos, though, comes with a price. Experts say it all could wind up with Tesla exposed to
8 a fine for misleading investors. And even though Musk has almost legendary status, the episode
9 could further erode his credibility with stakeholders who have endured multiple broken promises
10 and years of losses as a public company.”

11 **ADDITIONAL SCIENTER ALLEGATIONS**

12 53. During the Class Period, as alleged herein, Defendant Musk acted with scienter in
13 that Defendant Musk knew or was reckless as to whether the public documents and statements
14 issued or disseminated in the name of the Company during the Class Period were materially false
15 and misleading; knew or was reckless as to whether such statements or documents would be
16 issued or disseminated to the investing public; and knowingly and substantially participated or
17 acquiesced in the issuance or dissemination of such statements or documents as primary
18 violations of the federal securities laws.

19 54. Defendant Musk permitted Tesla to release these false and misleading statements
20 and failed to file the necessary corrective disclosures, which artificially inflated the value of the
21 Company’s securities.

22 55. As set forth herein, Defendant Musk, by virtue of his receipt of information
23 reflecting the true facts regarding Tesla, his control over, receipt, and/or modification of Tesla’s
24 allegedly materially misleading statements and omissions, and/or his position with the Company
25 that made him privy to confidential information concerning Tesla, participated in the fraudulent
26 scheme alleged herein.

27 56. Defendant Musk is liable as a participant in a fraudulent scheme and course of
28 conduct that operated as a fraud or deceit on persons or entities who purchased, sold, or

1 otherwise transacted in Tesla securities by disseminating materially false and misleading
2 statements and/or concealing material adverse facts. The scheme deceived the investing public
3 regarding Tesla's business, operations, and management and the intrinsic value of Tesla
4 securities and caused Plaintiff and members of the Class to purchase Tesla securities at
5 artificially inflated prices.

6 **LOSS CAUSATION/ECONOMIC LOSS**

7 57. During the Class Period, as detailed herein, Tesla and Defendant Musk made false
8 and misleading statements and engaged in a scheme to deceive the market and a course of
9 conduct that artificially inflated the prices of Tesla securities, and operated as a fraud or deceit
10 on Class Period purchasers of Tesla securities by misrepresenting the Company's business and
11 prospects. Later, when Defendants' prior misrepresentations and fraudulent conduct became
12 known to the market, the price of Tesla securities declined as the prior artificial inflation came
13 out of the price over time. As a result of their purchases of Tesla securities during the Class
14 Period, Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the
15 federal securities laws.

16 **APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET**

17 58. Plaintiff will rely upon the presumption of reliance established by the fraud-on-
18 the-market doctrine in that, among other things:

19 (a) Defendants made public misrepresentations or failed to disclose material
20 facts during the Class Period;

21 (b) the omissions and misrepresentations were material;

22 (c) the Company's stock traded in an efficient market;

23 (d) the misrepresentations alleged would tend to induce a reasonable investor
24 to misjudge the value of the Company's stock; and

25 (e) Plaintiff and other members of the Class purchased Tesla securities
26 between the time Defendants misrepresented or failed to disclose material facts and the time the
27 true facts were disclosed, without knowledge of the misrepresented or omitted facts.

28

1 59. At all relevant times, the markets for Tesla securities were efficient for the
2 following reasons, among others:

3 (a) as a regulated issuer, Tesla filed periodic public reports with the SEC;

4 (b) Tesla regularly communicated with public investors via established market
5 communication mechanisms, including through regular disseminations of press releases on the
6 major news wire services and through other wide-ranging public disclosures, such as
7 communications with the financial press, securities analysts, and other similar reporting services;

8 (c) Tesla was followed by several securities analysts employed by major
9 brokerage firm(s) who wrote reports that were distributed to the sales force and certain customers
10 of their respective brokerage firm(s) and that were publicly available and entered the public
11 marketplace; and

12 (d) Tesla securities were actively traded in an efficient market, namely the
13 NASDAQ, under the ticker symbol “TSLA.”

14 60. As a result of the foregoing, the market for Tesla securities promptly digested
15 current information regarding Tesla’s from publicly available sources and reflected such
16 information in Tesla’s stock price. Under these circumstances, all purchasers of Tesla securities
17 during the Class Period suffered similar injury through their purchase of Tesla securities at
18 artificially inflated prices and the presumption of reliance applies.

19 61. Further, to the extent that the Defendants concealed or improperly failed to
20 disclose material facts with regard to the Company, Plaintiff is entitled to a presumption of
21 reliance in accordance with *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 153
22 (1972).

23 **NO SAFE HARBOR**

24 62. The statutory safe harbor provided for forward-looking statements under certain
25 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.
26 The statements alleged to be false and misleading herein all relate to then-existing facts and
27 conditions. In addition, to the extent certain of the statements alleged to be false may be
28 characterized as forward looking, they were not identified as “forward-looking statements” when

1 made and there were no meaningful cautionary statements identifying important factors that
2 could cause actual results to differ materially from those in the purportedly forward-looking
3 statements. In the alternative, to the extent that the statutory safe harbor is determined to apply
4 to any forward-looking statements pleaded herein, Defendants are liable for those false forward-
5 looking statements because at the time each of those forward-looking statements were made, the
6 speaker had actual knowledge that the forward-looking statement was materially false or
7 misleading, and/or the forward-looking statement was authorized or approved by an executive
8 officer of Tesla who knew that the statement was false when made.

9 **CLASS ACTION ALLEGATIONS**

10 63. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal
11 Rules of Civil Procedure on behalf of all persons who purchased, sold, or otherwise transacted in
12 Tesla securities between August 7, 2018 and August 17, 2018, both dates inclusive (the “Class
13 Period”). Excluded from the Class are Defendants, members of the immediate family of
14 Defendant Musk, any subsidiary or affiliate of Tesla, and the directors and officers of Tesla and
15 their families and affiliates at all relevant times.

16 64. The members of the Class are so numerous that joinder of all members is
17 impracticable. The disposition of their claims in a class action will provide substantial benefits
18 to the parties and the Court. As of July 27, 2018, there were 170,593,144 shares of the
19 registrant’s common stock outstanding.

20 65. There is a well-defined community of interest in the questions of law and fact
21 involved in this case. Questions of law and fact common to the members of the Class which
22 predominate over questions which may affect individual Class members include:

- 23 (a) Whether the Exchange Act was violated by Defendants;
24 (b) Whether Defendants omitted and/or misrepresented material facts;
25 (c) Whether Defendants’ statements omitted material facts necessary in order
26 to make the statements made, in light of the circumstances under which they were made, not
27 misleading;
28 (d) Whether Defendants knew or recklessly disregarded that their statements

1 were false and misleading;

2 (e) Whether the price of Tesla securities was artificially inflated; and

3 (f) The extent of damage sustained by Class members and the appropriate
4 measure of damages.

5 66. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class
6 sustained damages from Defendants' wrongful conduct.

7 67. Plaintiff will adequately protect the interests of the Class and has retained counsel
8 experienced in securities class action litigation. Plaintiff has no interests that conflict with those
9 of the Class.

10 68. A class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy.

12 **CLAIMS FOR RELIEF**

13 **COUNT I**

14 **For Violation of Section 10(b) of the Exchange Act
and Rule 10b-5 Against All Defendants**

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

17 70. During the Class Period, Defendants disseminated or approved the false
18 statements specified above, which they knew or recklessly disregarded were misleading in that
19 they contained misrepresentations and failed to disclose material facts necessary in order to make
20 the statements made, in light of the circumstances under which they were made, not misleading.

21 71. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 in that
22 they:

23 (a) Employed devices, schemes, and artifices to defraud;

24 (b) Made untrue statements of material facts or omitted to state material facts
25 necessary in order to make the statements made, in light of the circumstances under which they
26 were made, not misleading; or

27 (c) Engaged in acts, practices, and a course of business that operated as a
28 fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of

1 Tesla securities during the Class Period.

2 72. Plaintiff and the Class have suffered damages in that, in reliance on the integrity
3 of the market, they paid artificially inflated prices for Tesla securities. Plaintiff and the Class
4 would not have purchased Tesla securities at the prices they paid, or at all, if they had been
5 aware that the market prices had been artificially and falsely inflated by Defendants' misleading
6 statements.

7 73. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff
8 and the other members of the Class suffered damages in connection with their purchases of Tesla
9 securities during the Class Period.

10 **COUNT II**
11 **For Violation of Section 10(b) of the Exchange Act**
12 **and Rule 10b-5 For Market Manipulation Against All Defendants**

13 74. Plaintiff repeats and realleges each and every allegation set forth above as if set
14 forth in full herein.

15 75. Defendants, individually and in concert, directly and indirectly, by the use, means
16 or instrumentalities of interstate commerce and/or of the mails, engaged in manipulative acts that
17 resulted in a short squeeze that drove the price of Tesla shares to artificially high levels on
18 August 7, 2018.

19 76. Defendants' market manipulation caused Plaintiff's losses.

20 77. At the time of Defendants' manipulation, Plaintiff was ignorant of Defendants'
21 manipulative acts.

22 78. Defendants had actual knowledge of the material facts alleged herein, and
23 knowingly intended to deceive Plaintiff for the purpose of manipulating the price of Tesla
24 securities.

25 79. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange
26 Act and Rule 10b-5.
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COUNT III
For Violation of Section 20(a) of the Exchange Act
Against Defendant Musk

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

81. Defendant Musk acted as controlling persons of Tesla within the meaning of Section 20(a) of the Exchange Act. By virtue of his position and his power to control public statements about Tesla, Defendant Musk had the power and ability to control the actions of Tesla and its employees. By reason of such conduct, Defendant Musk is liable pursuant to Section 20(a) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23;
- B. Awarding Plaintiff and the members of the Class damages and interest;
- C. Awarding Plaintiff's reasonable costs, including attorneys' fees; and
- D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: September 6, 2018

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