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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No.

Plaintiff,

CLASS ACTION COMPLAINT

v.

TESLA INC., and ELON MUSK,

Defendants.

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

11 I. NATURE OF THE ACTION

12 1. This is a federal securities class action on behalf of a class consisting of all persons
13 other than Defendants who purchased or sold securities of Tesla between August 7, 2018 and August
14 10, 2018, both dates inclusive (the "Class Period") and suffered damages as a result of the statements
15 and omissions alleged herein. Plaintiff seeks to recover compensable damages caused by
16 Defendants' violations of the federal securities laws and to pursue remedies under Sections 10(b) and
17 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated
18 thereunder.

19 2. Tesla, Inc. designs, manufactures, and sells high-performance electric vehicles and
20 electric vehicle powertrain components. The Company owns its sales and service network and sells
21 electric powertrain components to other automobile manufacturers. It primarily offers sedans and
22 sport utility vehicles.

23 3. Founded in 2003, the Company was formerly known as "Tesla Motors, Inc." and
24 changed its name to Tesla, Inc. in February 2017. Tesla is headquartered in Palo, Alto, California,
25 and its stock trades on the NASDAQ Global Select market under the ticker symbol "TSLA."

26 4. Throughout the Class Period, Defendants materially misled investors as to the
27 following material facts: (i) contrary to Tesla CEO Elon R. Musk's statements that funding had been
28 "secured" to take Tesla private at \$420 per share, no such funding had been secured; (ii) contrary to

1 Musk’s statement that investor support to take Tesla private “is confirmed”, there was no such
2 confirmation. As a result, the public statements by Defendants herein were materially false and
3 misleading at all relevant times.

4 5. On August 7, 2018, Defendant Elon R. Musk stated on Twitter: (1) “Am considering
5 taking Tesla private at \$420”; (2) “Funding secured”; (3) “Shareholders could either to sell at 420 or
6 hold shares & go private”; and, (4) “Investor support is confirmed.”

7 6. This news drove the price of Tesla shares up as much as \$45.47, or up as much as
8 about 13%, during intraday trading before closing at \$379.57 on August 7, 2018.

9 7. Since then, both the U.S. Securities and Exchange Commission and Tesla’s board of
10 directors are reportedly investigating the truth of Musk’s tweets, and whether in fact funding had
11 been secured. Major investors and banks have unanimously stated that they are aware of no such
12 funding. In the face of these investigations and demand for support for the false statements set forth
13 above, Defendants have remained silent, evidencing the lack of support for the false statements and
14 driving the price of Tesla securities down to near pre-tweet levels, with its common stock closing
15 down at \$355.49 on August 10, 2018.

16 8. As a result of Defendants’ wrongful acts and omissions, and the precipitous increase
17 in the market value of the Company’s common shares, Plaintiff and other Class members who
18 purchased or sold securities of Tesla have suffered significant losses and damages.

19 **II. JURISDICTION AND VENUE**

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

23 10. This Court has jurisdiction over the subject matter of this action under 28 U.S.C.
24 §1331 and §27 of the Exchange Act.

25 11. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act (15
26 U.S.C. §78aa) and 28 U.S.C. §1391(b). Tesla’s principal executive offices are located within this
27 Judicial District.

1 12. In connection with the acts, conduct and other wrongs alleged in this Complaint,
2 Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,
3 including but not limited to, the United States mail, interstate telephone communications and the
4 facilities of the national securities exchange.

5 **III. PARTIES**

6 13. Plaintiff, William Chamberlain, as set forth in the accompanying Certification,
7 purchased shares of Tesla stock in the Class Period and was damaged upon certain the revelation of
8 the alleged corrective disclosure.

9 14. Defendant Tesla is incorporated in Delaware, and the Company’s principal executive
10 offices are located at 3500 Deer Creek Road, Palo Alto, California 94070. Tesla’s common stock
11 trades on the NASDAQ under the ticker symbol “TSLA.”

12 15. Defendant Elon R. Musk (“Musk”) co-founded and has served at all relevant times as
13 the Company’s Chief Executive Officer (“CEO”) and Chairman.

14 **IV. SUBSTANTIVE ALLEGATIONS**

15 **A. Background**

16 16. Tesla Inc. designs, manufactures, and sells high-performance electric vehicles and
17 electric vehicle powertrain components. The Company owns its sales and service network and sells
18 electric powertrain components to other automobile manufacturers. It primarily offers sedans and
19 sport utility vehicles.

20 17. The Company manufactures its vehicle products primarily at its facilities in Fremont,
21 California, Lathrop, California, Tilburg, Netherlands and its Gigafactory 1 outside of Reno, Nevada.

22 18. Defendant Musk has a long-running public battle with Tesla bearish investors who
23 have been critical of Tesla’s finances and/or contend its sales targets are unreasonable.

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

25 19. The Class Period begins on August 7, 2018, when Musk tweeted several messages
26 using his Twitter account, which has 22.3 million followers and was picked up immediately by
27 Bloomberg and other news outlets and repeated.

28 20. Musk tweeted, among other messages:

- 1 (a) Musk’s 9:48 a.m. tweet: “Am considering taking Tesla private at \$420.
2 Funding secured[.]”;
- 3 (b) Musk’s 12:13 p.m. tweet: “Shareholders could either to [*sic*] sell at 420 or
4 hold shares & go private”; and,
- 5 (c) Musk’s 1:36 p.m. tweet: “Investor support is confirmed.”

6 21. In addition to these public statements, Musk continued to publicly tweet to- and with-
7 investors about his purported plan to take Tesla private at \$420.00 per share.

8 22. Defendants’ conduct artificially drove the price of Tesla shares up as much as \$45.47
9 from their August 6, 2018 closing price (\$341.99), or as much as 13%, before closing at \$379.57 on
10 August 7, 2018.

11 23. Defendants’ statements were materially false and misleading when made because, in
12 part, as discussed more fully below, even Tesla’s board of directors has no evidence that funding has
13 been secured for what has been reported could be the largest corporate buyout in history and require
14 securing tens of billions of dollars for a company whose debt ratings currently occupy junk status.

15 24. Defendants’ statements were materially false and misleading when made because, no
16 funding or investor support had been secured. Indeed, the Company’s own Board of Directors was
17 apparently unaware of what funding Musk was referring to. Almost as soon as Musk issued his
18 statement, analysts including former SEC Chairman Harvey Pitt questioned his actions. Pitt noted
19 that “Elon Musk could face civil and criminal penalties if it's found that he didn't secure financing at
20 the time of his tweet about taking Tesla private, former SEC chair Harvey Pitt says.”

21 25. No later than August 8, 2018, news outlets began reporting the SEC commenced an
22 investigation of Defendants’ public statements.

23 26. By way of example only, on August 8, 2018 *The Wall Street Journal* reported in part:
24 “U.S. regulators are asking Tesla Inc. whether Chief Executive Elon Musk was truthful when he
25 tweeted that he had secured funding for what would be the largest-ever corporate buyout, people
26 familiar with the matter said.”

27 27. *Bloomberg* reported on August 9, 2018:

28 The U.S. Securities and Exchange Commission is intensifying its
scrutiny of Tesla Inc.’s public statements in the wake of Elon Musk’s

1 provocative tweet Tuesday about taking the electric-car company
2 private, according to two people familiar with the matter.

3 * * *

4 Now, attorneys from that office are also examining whether Musk's
5 tweet about having funding secured to buy out the company was meant
6 to be factual, according to one of the people.

7 * * *

8 The scrutiny adds to pressure on Musk, who has a history of setting sales
9 targets that bulls consider to be aggressive and bears contend are
10 unrealistic. The question for regulators is whether any of his public
11 statements or the company's run afoul of federal securities laws.
12 Generally, the SEC considers statements by executives to be material
13 information that have to be true.

14 28. On August 9, 2018, *Reuters* reported Tesla's Board of Directors is reportedly
15 investigating whether Musk's so-called funding is "secured." The *Reuters* article states in part:

16 Tesla Inc.'s (TSLA.O) board of directors is seeking more information
17 from CEO Elan Musk about how his plan to take the U.S. electric car
18 maker private for \$72 billion will be financed, according to people
19 familiar with the matter.

20 The board's request for more details adds to the scrutiny that Musk's
21 proposal is facing from investors and regulators.

22 The U.S. Securities and Exchange Commission has already contacted
23 Tesla to ask about Musk's assertion on Twitter that funding for his
24 proposed deal was "secured", the Wall Street Journal first reported on
25 Wednesday.

26 29. As reported by *Fortune*, since that initial tweet, Musk has offered no evidence to back
27 up the statement. Nor has anyone stepped forward publicly—or privately—to say they're behind the
28 plan. People with or close to 15 financial institutions and technology firms who spoke with *Fortune*
29 on the condition of anonymity said they weren't aware of financing having been locked in before
30 Musk's posts. As a result of Defendants' of these disclosures, and Defendants' complete silence and
31 failure to confirm the veracity of their statements, Tesla's stock price has plummeted back down to
32 near the pre-tweet stock prices on August 7, 2018, closing at \$355.49 on August 10, 2018. As a
33 result, Plaintiff and other Class members have suffered significant losses and damages.

V. PLAINTIFF’S CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or sold Tesla securities during the Class Period (the “Class”)and were damaged by Defendants’ statements and/or omissions as alleged herein. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

31. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Tesla securities were actively traded on the NASDAQ and other exchanges. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Tesla or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

32. Plaintiff’s claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants’ wrongful conduct in violation of federal law that is complained of herein.

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

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

- whether the federal securities laws were violated by Defendants’ acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the

1 financial condition, business, operations, and management of
2 Tesla;

- 3 • whether Defendants caused Tesla to issue false and misleading
statements during the Class Period;
- 4 • whether Defendants acted knowingly or recklessly in issuing
5 false and misleading financial statements;
- 6 • whether the prices of Tesla securities during the Class Period
7 were artificially inflated or artificially depressed because of
8 Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and,
if so, what is the proper measure of damages.

9 35. A class action is superior to all other available methods for the fair and efficient
10 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
11 damages suffered by individual Class members may be relatively small, the expense and burden of
12 individual litigation make it impossible for members of the Class to individually redress the wrongs
13 done to them. There will be no difficulty in the management of this action as a class action.

14 36. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-
15 on-the-market doctrine in that:

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

1 37. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a
2 presumption of reliance upon the integrity of the market.

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

7 **VI. NO SAFE HARBOR**

8 39. The statutory safe harbor provided for forward-looking statements under certain
9 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.
10 Many of the specific statements pleaded herein were not identified as “forward-looking statements”
11 when made. To the extent there were any forward-looking statements, there were no meaningful
12 cautionary statements identifying important factors that could cause actual results to differ materially
13 from those in the purportedly forward-looking statements. Alternatively, to the extent that the
14 statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are
15 liable for those false forward-looking statements because at the time each of those forward-looking
16 statements were made, the particular speaker knew that the particular forward-looking statement was
17 false, and/or the forward-looking statement was authorized and/or approved by an executive officer
18 of Tesla who knew that those statements were false when made.

19 **COUNT I**

20 **VIOLATION OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5 FOR**
21 **MATERIAL FALSE STATEMENTS AND OMISSIONS AGAINST ALL DEFENDANTS**

22 40. Plaintiff repeats and realleges each and every allegation contained above as if fully set
23 forth herein.

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

26 42. During the Class Period, Defendants directly or indirectly, disseminated or approved
27 the false statements specified above, which they knew or deliberately disregarded were misleading in
28 that they contained misrepresentations and failed to disclose material facts necessary in order to

1 make the statements made, in light of the circumstances under which they were made, not
2 misleading.

3 43. Defendants carried out a plan, scheme and course of conduct which was intended to
4 and did (i) deceive Plaintiff and other investors, as alleged herein; and (ii) cause Plaintiff and other
5 investors to purchase or sell Tesla securities at artificially high or low prices, respectively.

6 44. In furtherance of their plan, scheme and course of conduct, Defendants, and each of
7 them, took the actions set forth herein.

8 45. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue
9 statements of material fact and/or omitted to state material facts necessary to make the statements not
10 misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud
11 and deceit upon the buyers and sellers of Tesla securities in violation of Section 10(b) of the
12 Exchange Act and Rule 10b-5.

13 46. Defendants, individually and in concert, directly and indirectly, by the use, means or
14 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
15 continuous course of conduct to conceal their true intentions with respect to having funding
16 “secured” to support taking Tesla private at \$420.00 per share and “[i]nvestor support is confirmed.”

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

21 48. Defendants had actual knowledge of the misrepresentations and omissions of material
22 facts above.

23 49. Defendants made their material misrepresentations and/or omissions knowingly and
24 for the purpose of concealing their true intentions.

25 50. As a result of the dissemination of the materially false and misleading information
26 and failure to disclose material facts, the price of Tesla shares was artificially inflated thereby
27 damaging Plaintiff and the Class.
28

1 51. Defendants' misrepresentations and omissions caused Plaintiff's and the Classes
2 losses. In ignorance of the true facts, and relying directly or indirectly on the false and misleading
3 statements made by Defendants and described herein, or upon the integrity of the markets in which
4 Tesla's securities trade, and/or in the absence of material adverse information that was known to
5 Defendants, but not disclosed in public statements by Defendants during the Class Period. Plaintiff
6 and the Class purchased shares in the Class Period and at the time of Defendants' misrepresentations
7 and omissions, Plaintiff was ignorant of their falsity, and believed them to be true.

8 52. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange
9 Act and Rule 10b-5.

10 53. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
11 Class suffered substantial damages in connection with his respective their purchases or sales of Tesla
12 securities during the Class Period.

13 **COUNT II**

14 **VIOLATION OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5 FOR**
15 **MARKET MANIPULATION AGAINST ALL DEFENDANTS**

16 54. Plaintiff repeats and realleges each and every allegation set forth above as if set forth
17 in full herein.

18 55. Defendants, individually and in concert, directly and indirectly, by the use, means or
19 instrumentalities of interstate commerce and/or of the mails, engaged in manipulative acts that
20 resulted in a short squeeze that drove the price of Tesla shares to artificially high levels on and
21 between August 7, 2018 through at least August 10, 2018.

22 56. Defendants' market manipulation caused Plaintiff's losses.

23 57. At the time of Defendants' manipulation, Plaintiff was ignorant of Defendants'
24 manipulative acts.

25 58. Defendants had actual knowledge of the material facts alleged herein, and knowingly
26 intended to deceive Plaintiff for the purpose of manipulating the price of Tesla securities.

27 59. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act
28 and Rule 10b5-1.

1 60. As a direct and proximate result of Defendants’ wrongful conduct, Plaintiff and the
2 Class suffered damages in connection with their trades.

3 **COUNT III**

4 **VIOLATION OF SECTION 20(A) OF THE EXCHANGE ACT**
5 **AGAINST DEFENDANT MUSK**

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

8 62. During the Class Period, Musk participated in the operation and management of
9 Tesla, and conducted and participated, directly and indirectly, in the conduct of Tesla’s business
10 affairs. Because of his senior position, he knew the adverse non-public information regarding the
11 Company’s consideration of any going private transaction, the price (if any), whether funding was
12 secured and whether investor support is confirmed.

13 63. As an officer and director of a publicly owned company, Musk had a duty to
14 disseminate accurate and truthful information with respect to any major corporate transaction and to
15 correct promptly any public statements issued by Tesla or him which were- or became- materially
16 false or misleading.

17 64. Because of his position of control and authority as a senior officer, Musk was able to,
18 and did, control the contents of the various reports, press releases, public filings and tweets which he
19 and/or Tesla disseminated in the marketplace during the Class Period. Throughout the Class Period,
20 Musk exercised his power and authority to cause Tesla to engage in the wrongful acts complained of
21 herein. Musk therefore was a “controlling person” of Tesla within the meaning of Section 20(a) of
22 the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which
23 manipulated the market price of Tesla common shares and other securities.

24 65. By reason of the above conduct, the Musk is liable pursuant to Section 20(a) of the
25 Exchange Act for the violations committed by Tesla.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

