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10 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

11 IN RE TESLA, INC. SECURITIES
12 LITIGATION

Case No. 18-cv-04865-EMC

Hon. Edward M. Chen

13 **CLASS ACTION**

14 **CONSOLIDATED COMPLAINT FOR
15 VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

16 Demand for Jury Trial
17

18 Lead Plaintiff Glen Littleton (“Plaintiff”), by and through undersigned counsel, allege the
19 following upon information and belief, except as to those allegations concerning Plaintiff, which
20 are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other
21 things, the investigation made by and through Plaintiff’s attorneys, which includes without
22 limitation: (a) review and analysis of regulatory filings made by Tesla, Inc. (“Tesla”) with the
23 United States Securities and Exchange Commission (“SEC”); (b) review and analysis of press
24 releases and media reports issued and disseminated by Tesla; (c) review and analysis of pleadings
25 and other papers filed in the civil proceedings brought by the SEC against Tesla and Defendant
26 Elon R. Musk (“Musk”) in the United States District Court for the Southern District of New York,
27 including the complaints filed and judgments entered therein; and (d) review of other publicly
28 available information concerning Tesla.

1 Plaintiff believes that substantial evidentiary support will exist for the allegations set forth
2 herein after a reasonable opportunity for discovery.

3 **I. NATURE OF THE CLAIM**

4 1. Plaintiff, on behalf of a class of shareholders who purchased or sold Tesla securities
5 from August 7, 2018 to August 17, 2018 (the “Class Period”) and were damaged thereby, brings
6 this federal class action lawsuit against Defendants Tesla, Musk, and Tesla’s Board of Directors
7 (defined below). As alleged herein, Musk and Tesla violated Section 10(b) of the Securities
8 Exchange Act of 1934, 15 U.S.C. §78j, and SEC Rule 10b-5, 17 C.F.R. 240.10b-5. Tesla’s Board
9 of Directors violated Section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §78t. These
10 violations caused Plaintiff and the class billions of dollars of damages for which Defendants should
11 be held accountable.

12 2. Musk co-founded Tesla and, at all relevant times, served as the company’s Chief
13 Executive Officer and Chairman. On August 7, 2018, at 12:48 p.m. ET, Musk tweeted the following
14 message to over 22 million people: “Am considering taking Tesla private at \$420. Funding
15 secured.” Musk continued to tweet and make statements about the potential transaction including
16 tweeting about three hours later: “Investor support is confirmed. Only reason why this is not certain
17 is that it’s contingent on a shareholder vote.” These statements and a later email published on
18 August 13, 2018, created the impression to the public that it was virtually certain that Musk could
19 take Tesla private at \$420 per share, that funding for this multi-billion dollar transaction had been
20 secured, and the only remaining contingency was a shareholder vote.

21 3. In fact, Musk had not even discussed, much less confirmed, key deal terms,
22 including price, with any potential investor. There was no funding secured to take Tesla private at
23 \$420 per share or any other price. Musk had discussed taking Tesla private with Saudi Arabia’s
24 sovereign wealth fund (named the “Public Investment Fund”), but those discussions were extremely
25 preliminary. They consisted of only exploring how the fund could be involved and did not result in
26 any firm decision on whether the fund would increase its existing 5% stake in Tesla.

27 4. The statements were also false because Musk himself understood there was “a lot of
28 uncertainty” surrounding the proposal and there were many contingencies that needed to be satisfied

1 before any transaction could be approved by Tesla stockholders. Musk had not reached any
2 agreement as to the price per share, had not determined how the going-private transaction would be
3 structured, had not determined whether and to what extent current shareholders would be in favor
4 of the transaction or if Tesla’s Board of Directors would even be in favor of having a shareholder
5 vote, had not formally retained any advisors, and had not determined whether any regulatory
6 approvals would need to be obtained for the transaction. Musk had also not reached any agreement
7 concerning a significant contingency raised by the Public Investment Fund—building a Tesla
8 production facility in the Middle East.

9 5. Musk knew of the uncertain and contingent nature of any going-private transaction
10 for Tesla as well as the lack of any secured funding at \$420 per share or at any other price. Yet
11 Musk published his tweets and other statements anyway, disrupting the markets in Tesla securities
12 such as stock and stock options, and causing billions of dollars of damage to Tesla investors. Indeed,
13 Musk has since admitted in the fraud case brought against him by the SEC that his statements about
14 the going-private transaction “were premised on a long series of baseless assumptions and were
15 contrary to facts that [he] knew.”

16 6. On August 17, 2018, *The New York Times* published an article based on a lengthy
17 interview with Musk that reported that the Public Investment Fund had not committed to provide
18 any cash, so funding was not “secured.” *The New York Times* article further disclosed that no one
19 had seen or reviewed Musk’s August 7, 2018 tweet before he posted it indicating that no going-
20 private transaction was imminent. That day, Tesla’s shares declined by almost 9%, erasing over \$5
21 billion of Tesla’s market capitalization. For investors that initially believed Musk’s statements and
22 purchased shares at artificially inflated prices in hopes that Tesla would ultimately pay \$420 per
23 share, they sustained millions of dollars in losses.

24 7. Investors who were “short” Tesla stock (meaning that they were betting the stock
25 price would decline) were also damaged. Tesla had over 170 million shares outstanding at or around
26 August 7, 2018. The “short interest” at that point in time was 33.8 million, meaning that almost
27 20% of Tesla’s shareholders were betting that Tesla’s stock would decline in value. Musk’s tweet,
28 which caused the price of Tesla’s shares to increase 11% over the course of the day, resulted in a

1 mark-to-market loss of \$1.1 billion for these short investors, many of whom had to purchase Tesla
2 shares at inflated prices to cover their positions.

3 8. Option traders also suffered significant losses. Purchasers and sellers of call and put
4 contracts, which are agreements that provide investors with either the right or the obligation to buy
5 or sell shares at specific prices within particular periods of time, opened and closed positions at
6 artificial prices due to the artificial inflation in Tesla's stock price and the increased implied
7 volatility in Tesla's stock, resulting in damages to those investors.

8 9. By misleading investors regarding the proposed going-private transaction and its
9 funding, Musk, either intentionally or with deliberate recklessness, harmed virtually every single
10 other person and/or entity trading Tesla securities during the Class Period.

11 10. Members of Tesla's Board of Directors also bear responsibility for the losses
12 suffered by Tesla investors as a result of Musk and Tesla's misrepresentations. The Board of
13 Directors had responsibility for ensuring Tesla's public disclosures were truthful and accurate. In
14 November 2013, Tesla identified Musk's Twitter account as an official channel of communication
15 for the company. Once that occurred, Tesla's Board of Directors were duty-bound to oversee the
16 accuracy of statements made by Musk on his Twitter account. While Tesla's board members issued
17 press releases regarding the proposed going-private transaction and managed to persuade Musk
18 from tweeting about the transaction for some of the Class Period, they did not use this control to
19 ensure that the disinformation published by Musk was corrected until after the Class had already
20 suffered billions of dollars in losses.

21 **II. JURISDICTION AND VENUE**

22 11. The claims asserted herein arise under and pursuant to: Sections 10(b) of the
23 Securities Exchange Act of 1934, 15 U.S.C. §78j, and SEC Rule 10b-5 promulgated thereunder by
24 the SEC (17 C.F.R. §240.10b-5); and Section 20(a) of the Securities Exchange Act of 1934, 15
25 U.S.C. §78t.

26 12. This Court has jurisdiction over the subject matter of this action pursuant to
27 28 U.S.C. §1331 and Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. §78aa.

28

1 13. Venue is proper in this District pursuant to Section 27 of the Securities Exchange
2 Act of 1934, 15 U.S.C. §78aa and 28 U.S.C. §1391(b) because certain of the acts alleged herein,
3 including the preparation and dissemination of material false and/or misleading information,
4 occurred in this District. Further, Tesla’s principal executive offices are located within this District.

5 14. In connection with the acts, conduct and other wrongs alleged in this Complaint,
6 Defendants, directly and/or indirectly, used the means and instrumentalities of interstate commerce,
7 including but not limited to, the United States mail, interstate telephone communications and the
8 facilities of the national securities exchange.

9 **III. PARTIES**

10 15. Lead Plaintiff Glen Littleton purchased and sold Tesla common stock and options
11 during the Class Period and was damaged thereby. Littleton’s certification evidencing his
12 transactions in Tesla’s securities during the Class Period, previously filed with the Court in
13 connection with his motion for appointment as lead plaintiff, is incorporated herein by reference
14 (ECF No. 42-1).

15 16. Defendant Tesla is a Delaware corporation with its principal executive offices
16 located at 3500 Deer Creek Road, Palo Alto, California 94304. Tesla designs, develops,
17 manufactures, and sells electric vehicles and energy generation and storage systems. The
18 company’s stock is listed on the NASDAQ Global Select market (“NASDAQ”) under the ticker
19 symbol “TSLA.” Other Tesla securities include stock options which are traded and quoted on
20 exchanges including: BOX Exchange LLC; Cboe BZX Options Exchange, Inc; Cboe C2 Options
21 Exchange, Incorporated; Cboe EDGX Options Exchange, Inc.; Cboe Options Exchange,
22 Incorporated; Miami International Securities Exchange, LLC; MIAX PEARL, LLC; Nasdaq BX,
23 Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market
24 LLC; NYSE American LLC; and NYSE Arca, Inc.

25 17. Defendant Musk co-founded Tesla in July 2003. In early February 2004, Musk
26 became Tesla’s majority shareholder and joined the Board of Directors as its Chairman. By October
27 2008, Musk became both the Chief Executive Officer and spokesman of Tesla and has served in
28

1 that capacity since 2008. Musk was forced to step down as Chairman of Tesla’s Board in October
2 2018 in accordance with his settlement with the SEC concerning the statements at issue herein.

3 18. Musk created a profile on the social media platform Twitter under the handle
4 “@elonmusk” (twitter.com/elonmusk) in June 2009. Since that time, Musk often used Twitter to
5 communicate about Tesla’s business.

6 19. In November 2013, Tesla formally notified investors that it would use Musk’s
7 Twitter account as a formal means of communication to convey “additional information” about the
8 company to investors. In a current report on Form 8-K dated November 5, 2013, Tesla stated, in
9 pertinent part, as follows: “Tesla investors and others should note that we announce material
10 information to the public about our company, products and services and other issues through a
11 variety of means, including Tesla’s website, press releases, SEC filings, blogs and social media, in
12 order to achieve broad, non-exclusionary distribution of information to the public. . . . For additional
13 information, please follow Elon Musk’s and Tesla’s Twitter accounts: twitter.com/elonmusk and
14 twitter.com/TeslaMotors.”

15 20. Defendant Brad W. Buss (“Buss”) has served as a director of Tesla’s Board since
16 2009. As a member of the Board, Buss acted as a controlling person of Tesla.

17 21. Defendant Robyn Denholm (“Denholm”) has served as a director of Tesla’s Board
18 since 2014 and was appointed to chair the Board on November 7, 2018. As a member of the Board,
19 Denholm acted as a controlling person of Tesla.

20 22. Defendant Ira Ehrenpreis (“Ehrenpreis”) has served as a director of Tesla’s Board
21 since 2007. As a member of the Board, Ehrenpreis acted as a controlling person of Tesla.

22 23. Defendant Antonio J. Gracias (“Gracias”) has served as a director of Tesla’s Board
23 since 2007 and has served as Tesla’s Lead Independent Director since 2010. As a member of the
24 Board, Gracias acted as a controlling person of Tesla.

25 24. Defendant James Murdoch (“Murdoch”) has served as a director of Tesla’s Board
26 since 2017. As a member of the Board, Murdoch acted as a controlling person of Tesla.

27 25. Defendant Kimbal Musk has served as a director of Tesla’s Board since 2004. As a
28 member of the Board, Kimbal Musk acted as a controlling person of Tesla.

1 26. Defendant Linda Johnson Rice (“Rice”) has served as a director of Tesla’s Board
2 since 2017. As a member of the Board, Rice acted as a controlling person of Tesla.

3 27. Defendants Buss, Denholm, Ehrenpreis, Gracias, Murdoch, Kimbal, and Rice are
4 collectively referred to as the “Board.”

5 **IV. CLASS ACTION ALLEGATIONS**

6 28. Plaintiff brings this action on behalf of all individuals and entities who purchased or
7 sold Tesla stock, options, and other securities during the Class Period and were damaged thereby,
8 excluding Tesla, Musk, the Board, and each Defendant’s immediate family members, legal
9 representatives, heirs, successors or assigns, and any entity in which Tesla, Musk, or the Board have
10 or had a controlling interest (the “Class”).

11 29. The Class members are so numerous that joinder of all members is impracticable.
12 Throughout the Class Period, Tesla’s securities were actively traded on the NASDAQ. While the
13 exact number of Class members is unknown to Plaintiff at this time and can be ascertained only
14 through appropriate discovery, Plaintiff believes that there are thousands if not hundreds of
15 thousands of Class members. Record owners and other Class members may be identified from
16 records maintained by Tesla or its transfer agent and may be notified of the pendency of this action
17 by mail, using the form of notice similar to that customarily used in securities class actions.

18 30. At all relevant times herein, there were over 170 million shares of Tesla’s common
19 stock outstanding and hundreds of millions of dollars of other securities traded. Upon information
20 and belief, these shares and option contracts were held by thousands of individuals located
21 geographically throughout the country and the world. Joinder would be highly impracticable.

22 31. Plaintiff’s claims are typical of the claims of the Class members as all Class
23 members were similarly affected by the Defendants’ wrongful conduct in violation of the federal
24 securities laws complained of herein. Plaintiff bought and sold common stock and option contracts
25 during the Class Period. The manner in which Plaintiff sustained damages in connection with each
26 security that he held was similar, if not identical, to other Class members who purchased or sold
27 Tesla securities.

28 32. Plaintiff has and will continue to fairly and adequately protect the interests of the

1 Class members.

2 33. Plaintiff has retained counsel competent and experienced in class and securities
3 litigation.

4 34. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

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

8 (a) whether the federal securities laws were violated by Defendants' respective
9 acts as alleged herein;

10 (b) whether Defendants acted knowingly or with deliberate recklessness in
11 issuing false and misleading statements concerning a proposed going-private
12 transaction and its financing;

13 (c) whether the price of Tesla's securities during the Class Period were affected
14 by Defendants' conduct complained of herein; and

15 (d) whether the Class members have sustained damages and, if so, what is the
16 proper measure of damages.

17 36. A class action is superior to all other available methods for the fair and efficient
18 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
19 damages suffered by individual Class members may be relatively small, the expense and burden of
20 individual litigation make it impossible for Class members to individually redress the wrongs done
21 to them.

22 37. There will be no difficulty in the management of this action as a class action.

23 **V. BACKGROUND ALLEGATIONS**

24 38. Tesla designs, develops, manufactures, and sells electric vehicles. These vehicles
25 consist primarily of three models: the Model S luxury sedan, the Model X sport utility vehicle, and
26 the Model 3 mass market sedan.

27

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1 39. Both the Model S and Model X had experienced production difficulties after being
2 introduced in 2012 and 2015, respectively. As the Model 3 vehicle was to be produced in greater
3 numbers, analysts and investors closely followed Tesla’s production plans for it.

4 40. On October 2, 2017, Tesla issued a press release stating that “Model 3 production
5 was less than anticipated due to production bottlenecks.” Despite promising to deliver 1,600 Model
6 3 vehicles in the third quarter of fiscal 2017, it had produced only 220 of the vehicles. Musk had
7 previously promised on February 22, 2017 that Tesla would be producing 5,000 Model 3 vehicles
8 per week by the end of 2017.

9 41. On November 1, 2017, in an “Update Letter” posted to its website, Tesla revealed
10 that its manufacturing problems during the third quarter of fiscal 2017 had resulted in heavy
11 spending in an effort to increase production. The spending resulted in wider-than-expected losses—
12 \$2.92 per share compared to the analyst consensus of \$2.29 per share—and a sharp decline in the
13 price of Tesla’s common stock from \$331.53 per share to \$321.08 per share.

14 42. Notwithstanding its production problems, Tesla told shareholders in the November
15 1, 2017 “Update Letter” that it expected to achieve a production rate of 5,000 Model 3 vehicles per
16 week late in the first quarter of 2018.

17 43. On January 3, 2018, the *Los Angeles Times* reported that Tesla’s problems with
18 battery production at its “Gigafactory” in Sparks, Nevada (where Tesla produces lithium-ion
19 batteries and electric vehicles), were worse than it had acknowledged and likely to cause further
20 delays and quality issues for the new Model 3 vehicles. The continued production problems led
21 Tesla to revise its previously stated production targets in a press release dated January 3, 2018.
22 From 5,000 Model 3 vehicles per week by the end of the first quarter of 2018, Tesla told investors
23 that it was aiming for 2,500 Model 3 vehicles per week by the end of March, ramping up to 5,000
24 Model 3 vehicles per week by June.

25 44. On January 25, 2018, investors received additional information about Tesla’s Model
26 3 production problems when CNBC reported that Tesla’s Model 3 vehicle production was being
27 hampered in part due to the fact that the company was still making its Model 3 vehicle batteries
28

1 partly by hand and having to “borrow” scores of employees from Panasonic, which is a partner in
2 the Gigafactory and supplies lithium-ion battery cells, to help with this manual assembly.

3 45. Numerous short investors had targeted Tesla by this point in time. For example,
4 CNBC reported in its January 25, 2018 article that Stanphyl Capital’s Mark B. Spiegel had taken a
5 “significant short position in the company.” Spiegel told CNBC, in pertinent part, that: “While I’ve
6 no doubt that Tesla will eventually work out its Model 3 vehicle production problems, the base
7 model will cost Tesla at least mid-\$40,000s to build. The company will never deliver more than a
8 token few for less than the current \$49,000 lowest-cost offering. Sales will hugely disappoint
9 relative to expectations of over 400,000 a year. And even at those higher prices Tesla will never
10 come anywhere close to its promised [profitability].”

11 46. As of January 31, 2018, the short interest in Tesla stock was approximately 30
12 million shares, or about 18% of Tesla’s outstanding shares.

13 47. On April 3, 2018, Tesla revealed in a press release that instead of producing 2,500
14 Model 3 vehicles per week, it was only producing just over 2,000. According to the *Wall Street*
15 *Journal* in an article published on April 3, 2018, Musk had developed a reputation for setting
16 “ambitious deadlines that he fail[ed] to meet on time.”

17 48. As of April 3, 2018, Tesla’s short interest had grown to almost 32 million shares, or
18 19% of the company’s outstanding shares.

19 49. On April 11, 2018, according to an article published by CNBC titled *Tesla is the*
20 *biggest short in the US stock market*, the dollar amount of shares shorted on Tesla was \$10.7 billion,
21 or more than 25% of Tesla’s available stock. Big banks, such as Goldman Sachs, were encouraging
22 its clients to sell their Tesla stock on the premise that the company would not be able to meet its
23 Model 3 vehicle production targets.

24 50. Musk publicly displayed his animosity towards short sellers of Tesla stock. On May
25 2, 2018, while participating in a conference call to discuss Tesla’s earnings for the first quarter of
26 2018, Musk abruptly dismissed questions from analysts. In response to a question from Sanford
27 Bernstein senior analyst Toni Sacconaghi about Tesla’s capital requirements, Musk responded by
28 saying “Boring, bonehead questions are not cool, Next?” In response to a question from RBC

1 Capital Markets Joseph Spak about Model 3 vehicle reservations, Musk said, “These questions are
2 so dry. They’re killing me.”

3 51. On May 4, 2018, Musk defended his hostile behavior towards Sacconaghi and Spak,
4 tweeting that they were just “two sell-side analysts who were trying to justify their Tesla short
5 thesis.”

6 52. Later on May 4, 2018, Musk tweeted “Oh and uh short burn of the century comin
7 soon. Flamethrowers should arrive just in time.” Shortly afterwards on May 4, 2018, Musk stated,
8 “Looks like sooner than expected. The sheer magnitude of short carnage will be unreal. If you’re
9 short, I suggest tiptoeing quietly to the exit”

10 53. On May 7, 2018, Musk bought about \$9.85 million worth of Tesla shares in the pre-
11 market in a manner designed have the greatest impact on Tesla’s stock price and force a burst of
12 short-covering. On May 7, 2018, Tesla’s stock price increased from \$297.50 to \$302.77.

13 54. Musk did this again on June 12, 2018 when he bought about \$24.9 million worth of
14 Tesla stock to maintain Tesla’s stock price despite announcing that Tesla was cutting 46,000
15 employees, about 9% of its workforce.

16 55. On June 17, 2018, Musk tweeted that “[the shorts] have about three weeks before
17 their short position explodes.”

18 56. On July 2, 2018 and July 3, 2018, *The New York Times* and *Bloomberg* reported that
19 Tesla finally met its production target of 5,000 Model 3 vehicles per week during the last seven
20 days of June 2018.

21 57. Despite Tesla’s increased Model 3 vehicle production figures, its stock price fell
22 from \$342.95 on June 29, 2018 to \$310.86 on July 3, 2018. Tesla’s short interest, however, also
23 fell by 11% from 39 million shares to 34.6 million shares.

24 58. On July 22, 2018, the *Wall Street Journal* published a story focused on Tesla’s
25 request to suppliers to refund a portion of its past payments. According to this report, Tesla
26 requested its suppliers to refund “a meaningful amount of its payments since 2016” to allow it to
27 continue its operations and continue “the long-term growth between” Tesla and its suppliers.

28

1 Tesla's requests for refunds from its suppliers raised further questions about its cash position, which
2 had dwindled due to Model 3 vehicle production issues.

3 59. Following the July 22, 2018 *Wall Street Journal* article, Tesla's stock price declined
4 from \$313.58 per share to \$303.20 per share.

5 60. On July 24, 2018, in response to a growing short interest following the *Wall Street*
6 *Journal* article, Musk contacted the employer of an author of an article published on *SeekingAlpha*
7 and threatened to sue or complain publicly about the articles. The author, who managed a private
8 family investment portfolio of approximately \$1 billion, had published four articles titled "Just Say
9 'No' To Tesla's Misleading Margin Metric," "As Tesla Breaks Faith With Its Believers, It's Time
10 To Go Short," "Even With Model 3 Success, Tesla Is Structurally Bankrupt," and "Tesla Investors
11 Swallow The Blue Pill." Musk threatened that if the author continued to write, he would engage
12 counsel and sue. As a result of Musk's threats, the author immediately stopped writing at
13 *SeekingAlpha* and deactivated his Twitter account.

14 61. On July 30, 2018, U.S. News & World Report reported that Steve Eisman, the
15 investor who famously predicted the collapse of the U.S. housing market in 2007 and 2008 and was
16 featured in Michael Lewis's book *The Big Short*, was predicting a similar demise for Tesla. In an
17 interview with Bloomberg, Eisman expressed the opinion that Musk had a hard time executing,
18 despite being a "very, very smart man."

19 62. By July 31, 2018, Tesla's short interest was back to 35 million shares, or 20% of the
20 company's outstanding stock.

21 63. On July 31, 2018, Musk and Sam Teller, who was employed by Tesla as Director,
22 Office of the CEO, attended a meeting with representatives of the Public Investment Fund at the
23 "Tesla Factory" in Fremont, California, for approximately 30 to 45 minutes. Deepak Ahuja,
24 Tesla's Chief Financial Officer, joined the meeting about halfway through. On several occasions
25 since January 2017, the Public Investment Fund had expressed interest in exploring with Musk a
26 going-private transaction involving Tesla, but no proposed transaction had resulted from those
27 discussions. During the July 31, 2018 meeting, a representative of the Public Investment Fund
28

1 mentioned that the fund would still be interested in exploring a going-private transaction if Tesla
2 was prepared to build a production facility in the Middle East.

3 64. No additional details or terms were discussed, including fundamental terms such as:
4 the dollar amount to be invested; the ownership percentage for the fund if Tesla was to go private;
5 any acquisition premium to be offered to current Tesla shareholders; any potential restrictions on
6 foreign ownership of a significant stake in Tesla; the fund's available liquid capital to contribute to
7 a going-private transaction; whether the fund was experienced in going-private transactions;
8 regulatory obstacles associated with a going-private transaction; or what, if any, approval from
9 Tesla's Board was needed to take Tesla private.

10 65. When the July 31, 2018 meeting concluded, no legal documents had been signed,
11 no term sheets had been executed, no advisors had been engaged, and no decision had been made
12 with regard to the Middle East production facility.

13 66. On August 1, 2018, Tesla reported its financial results for the second quarter of 2018
14 in an investor "Update Letter" and during an investor conference call. Tesla's results exceeded
15 analyst revenue expectations.

16 67. In the "Update Letter" published on August 1, 2018, Tesla also affirmed production
17 targets of 6,000 Model 3 vehicles per week by the end of August.

18 68. Tesla's quarterly results led to a 16% surge in the company's stock price from
19 \$300.84 to \$349.54.

20 69. On August 2, 2018, after the market closed, Musk sent an email to Tesla's Board,
21 Chief Financial Officer, and General Counsel. The subject line of the email stated "Offer to Take
22 Tesla Private at \$420." In the email, Musk explained that he wanted to take Tesla private in order
23 to, among other reasons, avoid the "constant defamatory attacks by the short-selling community"
24 against Tesla. Musk also asked that the "matter be put to a shareholder vote at the earliest
25 opportunity" and advised that the "offer expires in 30 days." At this point in time, Musk thought
26 there was "a lot of uncertainty" regarding a potential going-private transaction and believed that the
27 likelihood of consummating a transaction was about 50%.

28

1 70. According to Musk, the \$420 per-share price for the going-private transaction was
2 based on a 20% premium to the closing price of Tesla’s stock on August 2, 2018, which was
3 \$349.54 per share. Musk believed that 20% was a “standard premium” in going-private
4 transactions. Although the precise calculation equaled \$419.49, Musk rounded the price up to \$420
5 per share because he thought his girlfriend at the time, Claire Elise Boucher (also known as
6 “Grimes”), would find it funny due to the significance of the number to marijuana users.

7 71. Since Musk’s meeting with the Public Investment Fund on July 31, 2018, Tesla’s
8 stock price had increased over 17% due to the positive earnings results announced by the company
9 on August 1, 2018. If Musk were to have applied the 20% premium to Tesla’s stock price as of July
10 31, 2018 (closing price of \$298.14 per share), the per-share price for the going-private transaction
11 would have been approximately \$358 per share. Accordingly, if the going-private transaction
12 occurred at \$420 per share, investors in the transaction would be paying a “premium on a spike,”
13 which Musk realized could make the going-private transaction not feasible. Notwithstanding, Musk
14 did not discuss the \$420 per-share price with the Public Investment Fund or any other funding
15 source for a going-private transaction prior to sending his email to Tesla’s Board on August 2, 2018.

16 72. On August 3, 2018, in response to Musk’s email, the Board held a telephonic
17 meeting at which time Musk informed the board that the Public Investment Fund was interested in
18 funding a going-private transaction and that the fund was interested in having Tesla build a
19 production facility in the Middle East. Concerning building a production facility in the Middle East,
20 at least one Tesla Board member described such a condition as a “non-starter.” Musk also told the
21 Board that he wanted Tesla’s existing investors to stay with the company. At least one Board
22 member told Musk that it would be “really difficult for small investors” to remain shareholders if
23 Tesla went private. Musk also asked the Board for permission to contact existing shareholders to
24 assess their interest in participating in a going-private transaction. The Board authorized Musk to
25 contact certain investors and report back.

26 73. On August 6, 2018, Musk discussed the going-private transaction with a private
27 equity fund partner with experience in going-private transactions. During the call, Musk stated that
28 the number of shareholders in a private Tesla would need to be below 300, yet at the time there

1 were over 800 institutional investors in Tesla. The private equity fund partner told Musk that the
2 structure he was contemplating for the private company was “unprecedented” in his experience.

3 74. On August 7, 2018, while driving to the airport, Musk posted the following tweet at
4 12:48 p.m. ET: “Am considering taking Tesla private at \$420. Funding secured.”

5 75. At 1:00 p.m. ET, Martin Viecha, Tesla’s Senior Director of Investor Relations, sent
6 a text message to Musk asking, “Was this text legit?”

7 76. At 1:13 p.m. ET, a Tesla investor texted Teller asking, “What’s Elon’s tweet about?
8 Can’t make any sense of it. Would be incredibly disappointing for shareholders that have stuck it
9 out for so long.” Several minutes later, a reporter also texted Teller saying, “Quite a tweet! (Is it a
10 joke?).”

11 77. At 1:15 p.m. ET, Musk responded to another Twitter user’s question, “At what
12 price?” by repeating “420.”

13 78. At 1:40 p.m. ET, Musk tweeted, “I don’t have a controlling vote now & wouldn’t
14 expect any shareholder to have one if we go private. I won’t be selling in either scenario.”

15 79. At 2:00 p.m. ET, Musk tweeted, “My hope is *all* current investors remain with
16 Tesla even if we’re private. Would create special purpose fund enabling anyone to stay with Tesla.
17 Already do this with Fidelity’s SpaceX [a privately held company for which Musk serves as CEO]
18 investment.” In response to this tweet another Twitter user asked, “Could we still invest once
19 private?” Musk responded, “Yes, but liquidity events would be limited to every 6 months or so (like
20 SpaceX).”

21 80. At 2:07 p.m. ET, Musk responded to a Twitter user who wrote, “Or if you do take
22 Tesla private, please have a provision for retail investors who have held Tesla shares prior to Dec
23 31, 2016 that those shares will be converted into private shares in the new private company. . . .”
24 by tweeting, “Absolutely. Am super appreciative of Tesla shareholders. Will ensure their prosperity
25 in any scenario.”

26 81. At 2:08 p.m. ET, NASDAQ halted trading in Tesla stock due to the increased
27 volatility. Trading remained halted for just over one and a half hours until 3:45 p.m. ET.
28

1 82. At 2:13 p.m. ET, Musk tweeted, “Shareholders could either to [sic] at 420 or hold
2 shares & go private.”

3 83. At 2:23 p.m. ET, a reporter emailed Musk with the subject line reading: “Are you
4 just messing around?” In the email, the reporter said, “Reaching out to see what’s going on with
5 your tweets about taking the company private? Is this just a 420 joke gone awry? Are you serious?
6 It seems like you are dancing into some pretty tricky legal territory by messing about with the
7 markets this way. Is there an actual explanation coming?” At 3:07 p.m. ET, Musk responded to a
8 Twitter user’s comment about a “forced buyout” by tweeting, “Def. no forced sales. Hope all
9 shareholders remain. Will be way smoother & less disruptive as a private company. Ends negative
10 propaganda from shorts.”

11 84. At 3:16 p.m. ET, Musk sent an email to Tesla employees. The content of that email,
12 entitled “Taking Tesla Private,” was published to a publicly available Tesla blog at 3:32 p.m. ET.
13 In the email and blog post, Musk explained his reasons for wanting to take Tesla private, including
14 asserting that TSLA was “the most shorted stock in the history of the stock market” and stating that
15 “being public means there are large numbers of people who have incentive to attack the company.”
16 The complete email and blog post follows:

17 ***Taking Tesla Private***

18 August 7, 2018

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

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

23 First, a final decision has not yet been made, but the reason for doing this is
24 all about creating the environment for Tesla to operate best. As a public company,
25 we are subject to wild swings in our stock price that can be a major distraction for
26 everyone working at Tesla, all of whom are shareholders. Being public also subjects
27 us to the quarterly earnings cycle that puts enormous pressure on Tesla to make
28 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.

1 I fundamentally believe that we are at our best when everyone is focused on
2 executing, when we can remain focused on our long-term mission, and when there
3 are not perverse incentives for people to try to harm what we're all trying to achieve.

4 This is especially true for a company like Tesla that has a long-term,
5 forward-looking mission. SpaceX is a perfect example: it is far more operationally
6 efficient, and that is largely due to the fact that it is privately held. This is not to say
7 that it will make sense for Tesla to be private over the long-term. In the future, once
8 Tesla enters a phase of slower, more predictable growth, it will likely make sense
9 to return to the public markets.

10 Here's what I envision being private would mean for all shareholders,
11 including all of our employees.

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

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

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

28 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.

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

This proposal to go private would ultimately be finalized through a vote of
our shareholders. If the process ends the way I expect it will, a private Tesla would

1 ultimately be an enormous opportunity for all of us. Either way, the future is very
2 bright and we'll keep fighting to achieve our mission.

3 Thanks,
4 Elon

5 85. At 3:36 p.m. ET, Musk tweeted: "Investor support is confirmed. Only reason why
6 this is not certain is that it's contingent on a shareholder vote."

7 86. At the close of trading on August 7, 2018, Tesla's stock closed at \$379.59, an
8 increase of 10% from its opening price of \$343.84.

9 87. At 5:09 p.m. ET, a research analyst emailed Viecha asking, "In the tweet, [Musk]
10 said financing is secured but in the letter he doesn't address this. Can you clarify?" Viecha
11 responded approximately ten minutes later stating, "I can only say that the first Tweet clearly stated
12 that 'financing is secured'. Yes, there is a firm offer."

13 88. At 5:23 p.m. ET, another research analyst emailed Viecha and another investor
14 relations team member asking, "Had some questions/clarifications on today's news and blog post.
15 Can either of you speak?" Viecha responded a few minutes later stating, "[A]part from what has
16 been tweeted and what was written in a blog post, we can't add anything else. I only want to stress
17 that Elon's first tweet, which mentioned 'financing secured' is correct."

18 89. At 7:20 p.m. ET, Viecha received another email from yet another research analyst.
19 Viecha responded by asking if the analyst had read Tesla's "official blog post on this topic." The
20 analyst said, "I did. Nothing on funding though?" Viecha replied, "The very first tweet simply
21 mentioned 'Funding secured' which means there is a firm offer. Elon did not disclose details of
22 who the buyer is." The analyst replied, "Firm offer means there is a commitment letter or is this a
23 verbal agreement?" Viecha responded, "I actually don't know, but I would assume that given we
24 went full-on public with this, the offer is as firm as it gets."

25 90. Investors and analysts relied on and reacted to the August 7, 2018 representations.
26 For example, RBC Capital Markets posted an analyst report on August 7, 2018 reporting Musk's
27 tweets. RBC stated in pertinent part:
28

1 **Tesla going private?** Earlier today, CEO Elon Musk started tweeting about
2 “considering taking Tesla private at \$420/share. Funding secured.” This was later
3 followed up with a letter to employees detailing the rationale. The structure would
4 apparently be to create a special purpose fund enabling current shareholders to
5 remain shareholders or cash out at \$420. This would be subject to a shareholder
6 vote. While we are not assessing probability today, we believe there is substance to
7 the news and note that prior “controversial” shareholder votes (like Solar City) have
8 always voted with Elon.

9 ...

10 **New outside equity?** Elon’s tone and messaging regarding a potential transaction
11 lead us to believe that there could be significant outside funding lined up. Learning
12 who this is will be important (and relevant for shareholders deciding whether they
13 should stay involved should the deal consummate). We note an unconfirmed FT
14 article from today indicates that Saudi Arabia’s sovereign fund took a 3-5% stake
15 on the public markets, it was also noted they approached Tesla about new shares.
16 In our view, sovereign funds (broadly), cash rich tech companies, Chinese sources
17 and large VCs could all be potential candidates to provide funding.

18 91. Morningstar Equity Research was similarly positive about Musk’s statements.

19 Morningstar published an analyst note on August 7, 2018, titled “Musk Tweets Tesla May Go
20 Private at \$420 a Share but Stockholders May Not Have to Sell at That Price.” Morningstar’s report
21 stated:

22 Tesla CEO Elon Musk tweeted around midday on Aug. 7 the following: “Am
23 considering taking Tesla private at \$420. Funding Secured.” A buyout price of \$420
24 per share would be for about \$71.6 billion based on the July 27 outstanding share
25 count of 170.6 million in the latest 10-Q filing, though it's unclear if Musk's roughly
26 22% ownership stake would be part of the deal or just converted into equity of a
27 new private company. If a deal is announced and we think its execution is more
28 likely than not, we will raise our fair value estimate to the deal price, but for now
we are leaving our fair value estimate of \$179 in place.

We find it odd that Musk would disclose that he is considering doing a deal and
specifying a price rather than not saying anything until Tesla actually announces it
is going private. It is possible that he wants to hurt short sellers of Tesla now. He
has been very vocal against them recently, including posting a satire video on
Twitter on Aug. 5. We think it is also possible that he wants to get a price higher
than \$420, else we would expect him to simply announce he is considering going
private with funding secured and leave the \$420 number out of the tweet. We
speculate that the funding comes mostly from tech investors, such as possibly
SoftBank or Tencent (the latter bought 5% of Tesla in 2017), sovereign wealth
funds, and wealthy Silicon Valley investors.

We understand why Musk would want to go private. Rolling Stone in November
quoted him saying, “I wish we could be private with Tesla. It actually makes us less

1 efficient to be a public company.” Tesla is still in its early stages of growth, and we
2 think Musk would prefer to grow the company without having to check in with
3 Wall Street every quarter. He probably instead wants investors who are there for
4 the long run. An Aug. 7 Musk tweet said he would create a special-purpose fund
5 allowing any Tesla investor to remain an owner or to sell at \$420.

6 92. The reports from RBC Capital Markets and Morningstar Equity Research validated
7 the market’s reliance on Musk’s tweet. While Musk had previously expressed interest in taking
8 Tesla private, never before had he publicly stated that funding had been secured or that the
9 transaction was certain with the only contingency being the outcome of a shareholder vote.

10 93. On August 8, 2018, before the market opened, Tesla issued a short press release
11 relating to Musk’s statements from the previous day. The statement, which was disseminated on
12 *Globe Newswire* and posted to Tesla’s website, stated:

13 Statement from the following members of Tesla’s Board of Directors: Brad Buss,
14 Robyn Denholm, Ira Ehrenpreis, Antonio Gracias, Linda Johnson Rice, and James
15 Murdoch

16 PALO ALTO, Calif., Aug. 08, 2018 (GLOBE NEWSWIRE) -- Last week, Elon
17 opened a discussion with the board about taking the company private. This
18 included discussion as to how being private could better serve Tesla’s long-term
19 interests, and also addressed the funding for this to occur. The board has met
20 several times over the last week and is taking the appropriate next steps to evaluate
21 this.

22 94. At close of trading on August 8, 2018, Tesla’s stock price closed at \$370.34 per
23 share, a decline of 2.5% from its prior close of \$379.59 on August 7, 2018.

24 95. On August 8, 2018, Jeffries published a research report relating to Musk’s tweets
25 titled, “Tesla, Inc. (TSLA) Doing the ‘Right Stuff’, but Who Might be Tesla’s Next Large
26 Shareholder?” Jeffries stated in pertinent part:

27 **Key Takeaway**

28 **In a nod to the Space X structure, Elon Musk suggested taking Tesla private. Distraction or not, the move feels right even if Musk is downplaying how supportive public markets have been. With Tesla unable to take on more debt, we wonder who may fund the potential deal and end up as a new large shareholder. We raise estimates to reflect a better outlook post Q2. Our DCF fair value points to \$300 and our new \$360 PT bridges the gap to the \$420 potential bid.**

Going private feels like the right thing to do - True to his unconventional and questionable communication style, Elon Musk tweeted “Considering taking Tesla

1 private at \$420. Funding secured”. No further details or confirmation. The rationale
 2 for being private is well known (see email to employees on website). There is no
 3 intention to merge with SpaceX. \$420/share would value Tesla at \$71bn, 2.3x
 4 2019E revenue. Subject to a shareholder vote and to conditions offered in terms of
 5 liquidity, exit and potential remuneration the overall cash cost could be more
 6 modest considering c.20% insiders and c.30% long term holders. As Tesla can
 7 hardly take on more debt, providers of funds could become new large shareholders.
 8 Also, despite repeated complaints, Tesla has hugely benefited from supportive
 9 public markets and from abnormally low cost of capital which may not be sustained
 10 privately.

11 96. J.P. Morgan also published a report on August 8, 2018, titled, “Raise PT to Reflect
 12 Possible Go-Private Offer, But Remain Underweight on Chance Shares Could Again Trade on
 13 Fundamentals.” J.P. Morgan stated:

14 On Tuesday during the market, Tesla CEO Elon Musk announced via Twitter that
 15 he is considering pursuing a path (no final decision has been made) which would
 16 take the company private at a price of \$420 per share. This was followed up by
 17 further statements that “funding has been secured” and “investor support
 18 confirmed”. *As surprising to us as these developments are, and as lacking as the
 19 statements are in any details regarding who is expected to provide the required
 20 amount of financing and on what terms, they are nevertheless declarative
 21 statements from the CEO of a public company which we feel should be considered
 22 seriously. Either funding is secured or it is not secured, and Tesla’s CEO says
 23 funding is secured. Therefore, we are incorporating into our valuation the real
 24 possibility the equity will be taken out at \$420 per share.* Separate from the Twitter
 25 statements, the company also made public a letter Mr. Musk had written to Tesla
 26 employees in which he states, “If the process ends the way I expect it will, a private
 27 Tesla would ultimately be an enormous opportunity for all of us.” To us, this
 28 suggests more than mere consideration — Mr. Musk expects Tesla will go private.
 We are not as certain, and so assign only a 50% probability to such a scenario in
 our updated valuation. We continue to believe Tesla’s valuation based on
 fundamentals alone (i.e., a 50/50 blend of DCF and 2020-based multiples analysis
 — itself consisting of a blend of P/E, EV/EBITDA, and Price-to-Sales) is worth no
 more than \$195 (our previous price target). But introducing a new 50% weighting
 of \$420 suggests a large upward revision to our price target is warranted, and we
 newly value Tesla at \$308 per share (i.e., 50/50 blend of \$195 and \$420).

- **We continue to rate TSLA shares Underweight:** We remain Underweight-rated, including given the comparatively little +11% upside remaining vs. Tuesday’s close to the purported \$420 take-out price in comparison to the much larger -49% downside to the \$195 we feel Tesla should trade at based upon an analysis of fundamentals alone. Our price target could move up or down based upon further developments affecting the likelihood the transaction will or will not go through.

- **Details of the proposed transaction are very few at this time:** Tesla provided no details regarding the needed funding, except to say that it has been secured. Mr. Musk stated current shareholders could continue to participate in the private company, suggesting the actual amount of needed cash could be far less than the firm’s current equity valuation or enterprise value (equivalent to only the amount of shares tendered times \$420 per share). Mr. Musk plants to continue to own ~20%.

(Emphasis added in italics and bold)

97. On August 8, 2018, Evercore published an analyst report titled, “A Private Life is a Happy Life.” The report stated in pertinent part:

A Private Life is a Happy Life

“Am considering taking Tesla private at \$420. Funding secured.”

“Investor support is confirmed. Only reason why this is not certain is that it’s contingent on a shareholder vote.”

- **What happened?** The above are two of a series of tweets by Tesla CEO Elon Musk yesterday, where the company announced that it is considering going private. In an e-mail to employees, posted on the Tesla website, Musk outlined his reasons. Among them, Musk pointed out that as a public company Tesla is “subject to wild swings in our stock price that can be a major distraction”, subject “to the quarterly earnings cycle that puts enormous pressure on Tesla to make decisions... not necessarily right for the long-term” and opens Tesla to short sellers “who have the incentive to attack the company”. He also wrote that his other company SpaceX, which is private and Musk does not want to take public, “is far more operationally efficient, and that is largely due to the fact that it is privately held”. We believe Musk’s intent is serious and genuine.
- **What is proposed?** Clearly, CEO Musk would like to take the company private. Again, in the e-mail to employees, he stated that he would like a structure where existing shareholders “can stay investors in a private Tesla or... can be bought out at \$420 a share”, his intention that “all Tesla employees... remain shareholders of the company” so that they can “share in the growing value of the company” and that there is no plan “to merge SpaceX and Tesla”. Musk added that “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”.
- **Could this happen?** It is important to note that, as of today, no details have been provided with regards to what “Funding secured” means, who is providing that funding and what any potential funding structure might look like. Our view is that “Funding secured” should be interpreted as a strong verbal commitment, with funds available and parties willing to execute quickly. However, it could be less than this. It may also be that initial legal documents, term sheets, letters of intent have been signed. While several

1 press reports suggest an “LBO”, given Tesla’s EBITDA and cash
2 generation today, we don’t see material leverage as likely. Instead, we see
3 a possible scenario where 50 to 60% of existing shareholders (including
4 Musk’s 20% holding) continue, with their holdings rolled into a new private
5 structure. This would leave Tesla needing to raise equity capital of \$31
6 to \$39Bn to buy out those existing public shareholders who tender; 40 to 50%
7 of a \$78Bn market value (\$420 x 185Mn shares outstanding). We assume
8 that the debt is rolled. We see the most likely route through which the \$31
9 to \$39Bn is funded being a combination of, 1/ a strategic investor acquiring
10 a 15% to 20% stake, 2/ two to three private investment firms/ sovereign
11 wealth funds acquiring up to 10% stakes and 3/ certain larger members of
12 the existing shareholder base or some form of fund for smaller accredited
13 investors making up the delta.

- 14 • **Is going private the right move?** The notion of going private is not new
15 for Elon Musk. In an interview with Rolling Stone (Nov ’17) Musk stated
16 “I wish we could be private with Tesla... it actually makes us less efficient
17 to be a public company”. Musk’s frustration with the capital markets,
18 notably short sellers and the analyst community, has been evident in recent
19 quarters. If a CEO, and the largest individual shareholder, of a company
20 takes issue with public markets, then going private would seem to make
21 sense. Traditionally, public markets have been there to provide a source of
22 funding (note, we also believe they bring scrutiny and accountability which
23 in many cases does lead to better practice). However, if a company does not
24 need that funding or is able to source future funding privately, then there is
25 no obvious reason for it to remain public. As Musk points out, being public
26 does have disadvantages and can lead to short-termism. Depending on
27 where the private funding may come from, going private may also provide
28 Tesla with 1/ deeper pockets to grow internationally at a faster rate and 2/
security through the next US/capital markets recession where public
funding would dry up.
- **Stock Implications** The majority of the move towards \$420 is now done,
with the share price sitting within 11%. As a result, unless there is evidence
to suggest that the funding is not secured and a transaction cannot be
completed, we believe there is little to be done with the stock at these levels.
More broadly, if Tesla has attracted a strategic investor who is willing to
not only help take the company private but also to provide material funding
going forward, it should enable the company to execute and move faster as
it seeks to complete its mission to move the world to a solar electric future.
In the context of the industry, this only increases the need for transition at
traditional OEMs who must carry out exhaustive powertrain restructuring if
they choose to compete with a potentially faster and more nimble Tesla.

98. On August 8, 2018, after the market closed, the *Wall Street Journal* reported that the
SEC had commenced an investigation into whether Musk had “a factual basis for tweeting Tuesday

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

3 99. At close of trading on August 9, 2018, Tesla’s stock price closed at \$352.45 per
4 share, a decline of 5% from its prior close of \$370.34 per share on August 8, 2018.

5 100. On August 10, 2018, Musk tweeted: “Short shorts coming soon to Tesla
6 merch[andise].”

7 101. Also on August 10, 2018, Wayne Kaufman of Phoenix Financial Services stated on
8 CNBC that there was a real possibility for Tesla to go private and that Musk “hates running public
9 companies.”

10 102. On August 12, 2018, *Bloomberg* published a report on Tesla’s progress towards
11 going private. The report stated, in pertinent part, that the Public Investment Fund that Musk had
12 met with on July 31, 2018, which “recently built a stake just shy of 5 percent, is exploring how it
13 can be involved,” but “hasn’t made any firm decisions on whether to increase its stake, or by how
14 much”

15 103. On August 13, 2018, Musk posted on Tesla’s blog during morning market hours.
16 The blog post is titled “Update on Taking Tesla Private and states:

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

22 **What has happened so far?**

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

After an initial meeting of the board’s outside directors to discuss my proposal (I
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.

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

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

9 The only way I could have meaningful discussions with our largest shareholders
10 was to be completely forthcoming with them about my desire to take the company
11 private. However, it wouldn't be right to share information about going private
12 with just our largest investors without sharing the same information with all
13 investors at the same time. As a result, it was clear to me that the right thing to do
14 was announce my intentions publicly. To be clear, when I made the public
15 announcement, just as with this blog post and all other discussions I have had on
16 this topic, I am speaking for myself as a potential bidder for Tesla.

17 **Why did I say "funding secured"?**

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

25 Recently, after the Saudi fund bought almost 5% of Tesla stock through the public
26 markets, they reached out to ask for another meeting. That meeting took place on
27 July 31st. During the meeting, the Managing Director of the fund expressed regret
28 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.

I left the July 31st meeting with no question that a deal with the Saudi sovereign
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.

Following the August 7th announcement, I have continued to communicate with
the Managing Director of the Saudi fund. He has expressed support for proceeding
subject to financial and other due diligence and their internal review 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.

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

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

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

18 **What are the next steps?**

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

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

104. On August 13, 2018, at 9:02 p.m. ET, Musk tweeted: "I'm excited to work with
Silver Lake and Goldman Sachs as financial advisors, plus Wachtell, Lipton, Rosen & Katz and
Munger, Tolles & Olson as legal advisors, on the proposal to take Tesla private."

105. Morningstar issued an Analyst Note on August 13, 2018, titled "Tesla Buyout Looks
likely to Us, but Timing and Structure Uncertain." Morningstar states in pertinent part:

Tesla CEO Elon Musk issued a blog post Aug. 13 that states he is still gauging
shareholder interest in Tesla going private at \$420 a share, but our impression of
his words is that he thinks it can happen, and we agree. Tesla's board still must
receive a formal proposal and then will have to evaluate it, so we think a deal will

1 not happen this week but will eventually be announced. Musk also said the Saudi
2 Arabian sovereign wealth fund has taken almost a 5% stake in Tesla, and he met
3 with it recently about going private. All shareholders would have the choice of
4 having their stock bought out at \$420 a share or remaining invested in a private
5 Tesla. We speculate that retail investors may have their equity moved to a publicly
6 traded special-purpose vehicle while accredited investors would only be able to buy
7 or sell shares every six months

8 We are maintaining our fair value estimate. We have changed our thinking since
9 our Aug. 7 note and will not be raising our fair value estimate to the deal price. We
10 normally would increase our valuation to a probability-weighted average of the
11 offered price and our intrinsic value. However, Tesla's possible buyout is abnormal
12 in that equityholders have the option to remain equityholders in a private Tesla, or
13 at least own a special-purpose vehicle that would in turn own private Tesla, so we
14 view this deal as similar to a tender offer. We see Tesla's equity ownership merely
15 transferring to a different vehicle rather than going away as in a traditional buyout,
16 so we do not see a deal changing our opinion of the intrinsic value of Tesla's
17 publicly traded stock.

18 We think \$420 is way too high a value, given our \$179 fair value estimate. To
19 generate a \$420 per share valuation in our discounted cash flow model, we would
20 need to almost triple our current projection for 2027 midcycle EBIT margin from
21 9% to nearly 23%. If someone wants to overpay, however, we can't say it's a bad
22 deal for shareholders.

23 . . .

24 Musk in an Aug. 7 tweet said, "Investor support is confirmed. Only reason why this
25 is not certain is that it's contingent on a shareholder vote." We think this statement
26 means Musk believes he has enough votes to go private. Musk also said in the Aug.
27 13 blog post that he estimates about two thirds of shareholders would go private
28 and therefore not sell at \$420. It sounds to us that he is not done talking to
shareholders to gauge interest, but his estimate of about 66% of shareholders not
tendering is not far off from our own assumption of 60%. We expect a deal, if
announced, would be approved, and we estimate about 40% of shareholders will
sell their shares at \$420 or whatever a deal price ends up being, mostly due to their
own mandates on not being able to hold private stock or caps on illiquid securities.
This assumption puts the shareholder buyout price at \$28.7 billion, by our
calculation. We think most shareholders believe in Musk and want to remain
invested with him. The six largest shareholders (Musk, Fidelity, Baillie Gifford, T.
Rowe Price, TenCent, and the Saudi Arabia sovereign wealth fund) own about 53%
of the stock by our estimates. We'd expect all these owners to not sell any of their
stock because we think they believe Tesla can be far bigger than it is today. We do
expect some forced selling from entities that cannot own private companies, such
as index funds or some exchange-traded funds, but we think most Tesla retail and
institutional shareholders are very loyal and patient with Musk and will want to
remain invested. We think if the deal fails to happen, it would be due to regulatory
issues mentioned earlier rather than lack of available capital. Musk said the Saudi
sovereign wealth fund has been meeting with him since early 2017, trying to get

1 him to take Tesla private, and at a July 31 meeting this year expressed regret to
2 Musk that he has not taken it up on its offer. We assume the Saudis would put up
3 sizable capital to help fund the deal and that is why Musk's first Aug. 7 tweet on a
4 buyout said, "funding secured."

5 106. On August 14, 2018, before the market opened, Tesla issued a statement indicating
6 that Tesla's Board had formed a special committee in connection with the going-private transaction.

7 The statement read as follows:

8 Tesla, Inc. (the "Company") announced today that its Board of Directors has
9 formed a special committee comprised of three independent directors to act on
10 behalf of the Company in connection with Elon Musk's previously announced
11 consideration of a transaction to take the Company private (the "Going Private
12 Transaction"). The special committee has not yet received a formal proposal from
13 Mr. Musk regarding any Going Private Transaction nor has it reached any
14 conclusion as to the advisability or feasibility of such a transaction.

15 The special committee is composed of Brad Buss, Robyn Denholm and Linda
16 Johnson Rice. The special committee has retained Latham & Watkins LLP as its
17 legal counsel and intends to retain an independent financial advisor to assist in its
18 review of a formal proposal once received. The Company has separately retained
19 Wilson Sonsini Goodrich & Rosati as its legal counsel in this matter.

20 The special committee has the full power and authority of the Board of Directors
21 to take any and all actions on behalf of the Board of Directors as it deems necessary
22 to evaluate and negotiate a potential Going Private Transaction and alternatives to
23 any transaction proposed by Mr. Musk. The special committee's grant of authority
24 provides that no Going Private Transaction will be consummated without the
25 approval of the special committee. The special committee expects to provide a
26 further update concerning the process associated with Mr. Musk's proposal as
27 soon as practicable.

28 No assurances can be given regarding the likelihood, terms and details of any
proposal or potential Going Private Transaction, that any proposal made by Mr.
Musk regarding a potential Going Private Transaction will be accepted by the
special committee, that definitive documentation relating to any such Going
Private Transaction will be executed or that such a transaction will be completed.

107. On August 14, 2018, around 12:53 p.m. ET, Bloomberg reported that neither
Goldman Sachs nor Silver Lake were yet working with Musk pursuant to a signed agreement or in
an official capacity. Later on August 14, 2018, the *New York Times* reported that Goldman "was in
talks with Tesla about a possible role, but had not finalized anything. Silver Lake, meanwhile, is
interested in investing in any going-private deal, but it isn't acting in a paid advisory capacity."

1 108. At close of trading on August 14, 2018, Tesla’s stock price closed at \$347.64 per
2 share, a decline of 2.5% from its prior close of \$356.41 on August 13, 2018.

3 109. On August 15, 2018, the *Wall Street Journal*, *Business Insider*, and *Fox Business*
4 reported that the SEC had issued formal subpoenas concerning Musk’s going-private tweets.

5 110. At close of trading on August 15, 2018, Tesla’s stock price closed at \$338.69 per
6 share, a decline of 2.6% from its prior close of \$347.64 on August 14, 2018.

7 111. On August 16, 2018, the *Wall Street Journal* reported that the “SEC [was]
8 investigating whether Mr. Musk intentionally misled investors when he tweeted about the proposal
9 in a bid to hurt short-sellers by driving up Tesla’s stock price,” citing a person familiar with the
10 matter. The article further stated that “regulators [were] pressing Tesla’s directors to reveal how
11 much information Mr. Musk shared with them before he tweeted about it last week.”

12 112. On August 16, 2018, after the market closed, *The New York Times* published online
13 an article based on an in-depth interview with Musk. In addition to reporting on his health issues,
14 Musk acknowledged in the article that he had chosen the proposed price of \$420 per share because
15 of “better karma” and that no-one had seen or reviewed his August 7, 2018 tweet “Am considering
16 taking Tesla private at \$420. Funding secured.” before he posted it. The article also noted that the
17 funding for the proposed going-private transaction “was far from secure” and the Public Investment
18 Fund “had not committed to provide any cash.”

19 113. *The New York Times* article appeared in print on August 17, 2018.

20 114. At close of trading on August 17, 2018, Tesla’s stock price closed at \$305.50 per
21 share, a decline of 9% from its prior close of \$335.45 on August 16, 2018.

22 115. On August 24, 2018, at 11:15 p.m. ET, a blog post titled “Staying Public” was
23 published on Tesla’s website. The post announced that Musk had abandoned the process of
24 attempting to take Tesla private, stating as follows:

25 Earlier this month, I announced that I was considering taking Tesla private. As
26 part of the process, it was important to understand whether our current investors
27 believed this would be a good strategic move and whether they would want to
28 participate in a private Tesla.

1 Our investors are extremely important to me. Almost all have stuck with us from
2 the time we went public in 2010 when we had no cars in production and only a
3 vision of what we wanted to be. They believe strongly in our mission to advance
4 sustainable energy and care deeply about our success.

5 I worked with Silver Lake, Goldman Sachs and Morgan Stanley, who have world-
6 class expertise in these matters, to consider the many factors that would come into
7 play in taking Tesla private, and to process all the incoming interest that we
8 received from investors to fund a go-private transaction. I also spent considerable
9 time listening to current shareholders, large and small, to understand what they
10 think would be in the best long-term interests of Tesla.

11 Based on all the discussions that have taken place over the last couple of weeks
12 and a thorough consideration of what is best for the company, a few things are
13 clear to me:

- 14 • Given the feedback I've received, it's apparent that most of Tesla's
15 existing shareholders believe we are better off as a public company.
16 Additionally, a number of institutional shareholders have explained that
17 they have internal compliance issues that limit how much they can invest
18 in a private company. ***There is also no proven path for most retail
19 investors to own shares if we were private.*** Although the majority of
20 shareholders I spoke to said they would remain with Tesla if we went
21 private, the sentiment, in a nutshell, was "please don't do this."
- 22 • I knew the process of going private would be challenging, but it's clear that
23 it would be even more time-consuming and distracting than initially
24 anticipated. This is a problem because we absolutely must stay focused on
25 ramping Model 3 and becoming profitable. We will not achieve our
26 mission of advancing sustainable energy unless we are also financially
27 sustainable.
- 28 • That said, my belief that there is more than enough funding to take Tesla
private was reinforced during this process.

29 After considering all of these factors, ***I met with Tesla's Board of Directors
30 yesterday and let them know that I believe the better path is for Tesla to remain
31 public.*** The Board indicated that they agree.

32 Moving forward, we will continue to focus on what matters most: building
33 products that people love and that make a difference to the shared future of life on
34 Earth. We've shown that we can make great sustainable energy products, and we
35 now need to show that we can be sustainably profitable. With all the progress
36 we've made on Model 3, we're positioned to do this, and that's what the team and
37 I are going to be putting all of our efforts toward.

38 Thank you to all of our investors, customers and employees for the support you've
given our company. I'm incredibly excited to continue leading Tesla as a public
company. It is a privilege.

(Emphasis added).

1 116. On September 27, 2018, the SEC filed a complaint against Musk alleging violations
2 of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. Two days later, on
3 September 29, 2018, the SEC filed a complaint against Tesla alleging violations of Rule 13a-15
4 under the Securities Exchange Act of 1934. Both Musk and Tesla later consented to judgments
5 being entered against them. The judgments ordered Musk to resign as Tesla's Chairman, ordered
6 Tesla to appoint additional independent directors, and required Tesla and Musk to each pay a \$20
7 million penalty (\$40 million total). The United States District Court for the Southern District of
8 New York approved the settlements and the accompanying judgments and consents on October 16,
9 2018.

10 **VI. COUNT I: VIOLATION OF SECTION 10(b) AND RULE 10b-5 AGAINST TESLA**
11 **AND MUSK**

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

14 118. During the Class Period, Tesla and Musk carried out a plan, scheme and course of
15 conduct which was intended to and, throughout the Class Period, did: (1) deceive the investing
16 public, including Plaintiff and other Class members, as alleged herein; and (2) cause Plaintiff and
17 other Class members to purchase or sell Tesla securities at artificial prices. In furtherance of this
18 unlawful scheme, plan and course of conduct, each of Tesla and Musk took the actions set forth
19 herein.

20 119. Tesla and Musk: (a) employed devices, schemes, and artifices to defraud; (b) made
21 untrue statements of material fact and/or omitted to state material facts necessary to make the
22 statements not misleading; and (c) engaged in acts, practices, and a course of business that operated
23 as a fraud and deceit upon the purchasers and sellers of Tesla's securities in an effort to artificially
24 affect the price of Tesla securities in violation of Section 10(b) of the Securities Exchange Act and
25 Rule 10b-5 promulgated thereunder.

26 **A. False and Materially Misleading Statements**

27 120. On August 7, 2018, Musk publicly stated via Twitter: "Am considering taking Tesla
28 private at \$420. Funding secured."

1 21. The above statement in paragraph 120 was false and materially misleading because
2 funding for a go-private transaction had in fact not been “secured”. Further, although the tweet
3 communicated to investors that a going-private transaction was imminent, Musk and Tesla had yet
4 to take or even consider many of the necessary steps required to actually effect such a transaction.
5 Specifically,

- 6 (a) There was no agreement to fund a going-private transaction involving Tesla;
- 7 (b) Musk had not discussed the potential price of \$420 with the Public
8 Investment Fund or any other potential investor;
- 9 (c) Musk had not had any further substantive conversations with the Public
10 Investment Fund since his meeting on July 31, 2018;
- 11 (d) Musk had not discussed interest in participating in the transaction with any
12 potential strategic investors;
- 13 (e) Musk had not provided Tesla’s Board with a specific proposal to take the
14 company private, only a tentative offer with “a lot of uncertainty” that Musk
15 believed only had a 50% likelihood of success;
- 16 (f) Musk had not contacted existing Tesla shareholders to assess their interest
17 in participating in the transaction;
- 18 (g) Musk had not formally retained any legal or financial advisors to assist with
19 the transaction;
- 20 (h) Musk had not determined whether retail investors would be able to remain
21 shareholders but had been advised that it would be unlikely and
22 “unprecedented”;
- 23 (i) Musk had not determined whether there were restrictions on illiquid holdings
24 by Tesla’s institutional investors;
- 25 (j) Musk had not determined what regulatory approvals would be necessary for
26 the transaction; and
- 27 (k) Musk had no formal agreement, commitment, or plan for Tesla to go private
28 at \$420 per share or at any other price.

1 122. On August 7, 2018, Musk responded to another Twitter user’s question, “At what
2 price?” by repeating “420.”

3 123. The above statement in paragraph 122 was false and materially misleading because
4 the tweet communicated to investors that a going-private transaction at \$420 per share was
5 imminent, when Musk and Tesla had yet to take or even consider many of the necessary steps
6 required to actually effect such a transaction. Specifically,

- 7 (a) Musk had not discussed the potential price of \$420 with the Public
8 Investment Fund or any other potential investor;
- 9 (b) Musk had not had any further substantive conversations with the Public
10 Investment Fund since his meeting on July 31, 2018;
- 11 (c) Musk had not discussed interest in participating in the transaction with any
12 potential strategic investors;
- 13 (d) Musk had not provided Tesla’s Board with a specific proposal to take the
14 company private, only a tentative offer with “a lot of uncertainty” that Musk
15 believed only had a 50% likelihood of success;
- 16 (e) Musk had not contacted existing Tesla shareholders to assess their interest
17 in participating in the transaction;
- 18 (f) Musk had not formally retained any legal or financial advisors to assist with
19 the transaction;
- 20 (g) Musk had not determined whether retail investors would be able to remain
21 shareholders but had been advised that it would be unlikely and
22 “unprecedented”;
- 23 (h) Musk had not determined whether there were restrictions on illiquid holdings
24 by Tesla’s institutional investors;
- 25 (i) Musk had not determined what regulatory approvals would be necessary for
26 the transaction; and
- 27 (j) Musk had no formal agreement, commitment, or plan for Tesla to go private
28 at \$420 per share or at any other price.

1 124. On August 7, 2018, a Twitter user asked Musk: “Could we still invest once private?”
2 Musk responded, “Yes, but liquidity events would be limited to every 6 months or so (like
3 SpaceX).”

4 125. The above statement in paragraph 124 was false and materially misleading because
5 the tweet communicated to investors that a going-private transaction was imminent, when Musk
6 and Tesla had yet to take or even consider many of the necessary steps required to actually effect
7 such a transaction. Specifically,

- 8 (a) Musk had not provided Tesla’s Board with a specific proposal to take the
9 company private, only a tentative offer with “a lot of uncertainty” that Musk
10 believed only had a 50% likelihood of success;
- 11 (b) Musk had not contacted existing Tesla shareholders to assess their interest
12 in participating in the transaction;
- 13 (c) Musk had not formally retained any legal or financial advisors to assist with
14 the transaction;
- 15 (d) Musk had not determined whether retail investors would be able to remain
16 shareholders but had been advised that it would be unlikely and
17 “unprecedented”;
- 18 (e) Musk had not determined whether there were restrictions on illiquid holdings
19 by Tesla’s institutional investors;
- 20 (f) Musk had not determined what regulatory approvals would be necessary for
21 the transaction; and
- 22 (g) Musk had no formal agreement, commitment, or plan for Tesla to go private
23 at \$420 per share or at any other price.

24 126. On August 7, 2018, Musk tweeted, “Shareholders could either to [sic] at 420 or hold
25 shares & go private.”

26 127. The above statement in paragraph 126 was false and materially misleading because
27 the tweet communicated to investors that a going-private transaction at \$420 per share was
28

1 imminent, when Musk and Tesla had yet to take or even consider many of the necessary steps
2 required to actually effect such a transaction. Specifically,

- 3 (a) Musk had not discussed the potential price of \$420 with the Public
4 Investment Fund or any other potential investor;
- 5 (b) Musk had not had any further substantive conversations with the Public
6 Investment Fund since his meeting on July 31, 2018;
- 7 (c) Musk had not discussed interest in participating in the transaction with any
8 potential strategic investors;
- 9 (d) Musk had not provided Tesla's Board with a specific proposal to take the
10 company private, only a tentative offer with "a lot of uncertainty" that Musk
11 believed only had a 50% likelihood of success;
- 12 (e) Musk had not contacted existing Tesla shareholders to assess their interest
13 in participating in the transaction;
- 14 (f) Musk had not formally retained any legal or financial advisors to assist with
15 the transaction;
- 16 (g) Musk had not determined whether retail investors would be able to remain
17 shareholders but had been advised that it would be unlikely and
18 "unprecedented";
- 19 (h) Musk had not determined whether there were restrictions on illiquid holdings
20 by Tesla's institutional investors;
- 21 (i) Musk had not determined what regulatory approvals would be necessary for
22 the transaction; and
- 23 (j) Musk had no formal agreement, commitment, or plan for Tesla to go private
24 at \$420 per share or at any other price.

25 128. On August 7, 2018, at 3:16 p.m. ET, Musk sent an email to Tesla employees that
26 was published to Tesla's publically available blog at 3:32 p.m. ET. Musk stated in his email: "First,
27 I would like to structure this so that all shareholders have a choice. Either they can stay investors
28 in a private Tesla or they can be bought out at \$420 per share"

1 129. The above statement in paragraph 128 was false and materially misleading because
2 Musk and Tesla had no agreement or plan for taking Tesla private, and know it was unlikely that
3 most shareholders of the public entity could remain shareholders in a private company. Specifically,
4 this statement was misleading because:

- 5 (a) Musk had not discussed the potential price of \$420 with the Public
6 Investment Fund or any other potential investor;
- 7 (b) Musk had not had any further substantive conversations with the Public
8 Investment Fund since his meeting on July 31, 2018;
- 9 (c) Musk had not discussed interest in participating in the transaction with any
10 potential strategic investors;
- 11 (d) Musk had not provided Tesla’s Board with a specific proposal to take the
12 company private, only a tentative offer with “a lot of uncertainty” that Musk
13 believed only had a 50% likelihood of success;
- 14 (e) Musk had not contacted existing Tesla shareholders to assess their interest
15 in participating in the transaction;
- 16 (f) Musk had not formally retained any legal or financial advisors to assist with
17 the transaction;
- 18 (g) Musk had not determined whether retail investors would be able to remain
19 shareholders;
- 20 (h) Musk had not determined whether there were restrictions on illiquid holdings
21 by Tesla’s institutional investors;
- 22 (i) Musk had not determined what regulatory approvals would be necessary for
23 the transaction; and
- 24 (j) Musk had no formal agreement, commitment, or plan for Tesla to go private
25 at \$420 per share or at any other price.

26 130. On August 7, 2018, at 3:36 p.m. ET, Musk publicly stated via Twitter: “Investor
27 support is confirmed. Only reason why this is not certain is that it’s contingent on a shareholder
28 vote.”

1 131. The above statement in paragraph 130 was false and materially misleading because
2 Musk and Tesla had yet to take, or even consider, many of the steps necessary to effect a going-
3 private transaction. Of particular significance was the fact that Musk and Tesla had not even
4 “secured” funding to take the company private at \$420 per share or at any other price. Whether or
5 not Tesla could go-private depended on a number of other issues in addition to a “shareholder vote,”
6 including whether Tesla’s Board would approve the transaction and whether the company would
7 agree to deal terms associated with funding the transaction. For example, the Public Investment
8 Fund had indicated that its investment was possibly contingent upon Tesla building a production
9 facility in the Middle East. On this particular point, at least one Tesla Board member described such
10 a condition as a “non-starter.” Specifically, this statement was misleading because:

- 11 (a) There was no agreement to fund a going-private transaction involving Tesla;
- 12 (b) Musk had not discussed the potential price of \$420 with the Public
13 Investment Fund or any other potential investor;
- 14 (c) Musk had not had any further substantive conversations with the Public
15 Investment Fund since his meeting on July 31, 2018;
- 16 (d) Musk had not discussed interest in participating in the transaction with any
17 potential strategic investors;
- 18 (e) Musk had not provided Tesla’s Board with a specific proposal to take the
19 company private, only a tentative offer with “a lot of uncertainty” that Musk
20 believed only had a 50% likelihood of success;
- 21 (f) Musk had not contacted existing Tesla shareholders to assess their interest
22 in participating in the transaction;
- 23 (g) Musk had not formally retained any legal or financial advisors to assist with
24 the transaction;
- 25 (h) Musk had not determined whether retail investors would be able to remain
26 shareholders;
- 27 (i) Musk had not determined whether there were restrictions on illiquid holdings
28 by Tesla’s institutional investors;

1 (j) Musk had not determined what regulatory approvals would be necessary for
2 the transaction; and

3 (k) Musk had no formal agreement, commitment, or plan for Tesla to go private
4 at \$420 per share or at any other price.

5 132. Collectively, Musk's August 7, 2018 statements gave Tesla investors and the market
6 the impression that if Musk chose to take Tesla private at \$420 per share, the only outstanding
7 requirement to be satisfied was a shareholder vote. For the reasons set forth above, this was false
8 and misleading.

9 133. Musk's August 7, 2018 statements, collectively, also gave Tesla investors and the
10 market the impression that certain terms of the going-private transaction had been agreed when, in
11 fact, they had not even been explored, and in some cases, proved to be impossible. For the reasons
12 set forth above, this was false and misleading.

13 134. On August 13, 2018, Tesla published a post written by Musk on its website
14 concerning Musk's "funding secured" tweet and plans for taking Tesla private. In the blog post,
15 Musk stated that "My proposal was based on using a structure where any existing shareholder who
16 wished to remain as a shareholder in a private Tesla could do so, with the \$420 per share buyout
17 used only for shareholders that preferred that option."

18 135. The above statement in paragraph 134 was false and materially misleading because
19 Musk and Tesla had yet to take, or even consider, many of the steps necessary to effect a going-
20 private transaction with structure described by Musk. Specifically, this statement was misleading
21 because:

- 22 (a) There was no agreement to fund a going-private transaction involving Tesla;
23 (b) Musk had not discussed the potential price of \$420 with the Public
24 Investment Fund or any other potential investor;
25 (c) Musk had not discussed interest in participating in the transaction with any
26 potential strategic investors;

27
28

- 1 (d) Musk had not provided Tesla’s Board with a specific proposal to take the
- 2 company private, only a tentative offer with “a lot of uncertainty” that Musk
- 3 believed only had a 50% likelihood of success;
- 4 (e) Musk had not contacted existing Tesla shareholders to assess their interest
- 5 in participating in the transaction;
- 6 (f) Musk had not formally retained any legal or financial advisors to assist with
- 7 the transaction;
- 8 (g) Musk had not determined whether retail investors would be able to remain
- 9 shareholders;
- 10 (h) Musk had not determined whether there were restrictions on illiquid holdings
- 11 by Tesla’s institutional investors;
- 12 (i) Musk had not determined what regulatory approvals would be necessary for
- 13 the transaction; and
- 14 (j) Musk had no formal agreement, commitment, or plan for Tesla to go private
- 15 at \$420 per share or at any other price.

16 136. In his August 13, 2018 blog post published by Tesla, Musk also wrote:

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

18 Going back almost two years, the Saudi Arabian sovereign wealth fund has
19 approached me multiple times about taking Tesla private. They first met with me
20 at the beginning of 2017 to express this interest because of the important need to
21 diversify away from oil. They then held several additional meetings with me over
22 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.

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

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

4 137. The above statements in paragraph 136 were false and materially misleading.
5 Musk’s professed belief that there was “no question that a deal with the Saudi sovereign fund could
6 be closed” was false and materially misleading because Musk knew there was “a lot of uncertainty”
7 about the potential funding from the Public Investment Fund with a likelihood of success of just
8 50%. During the July 31, 2018 meeting with the Public Investment Fund, Musk also knew that that
9 funding might be contingent upon whether Tesla would build a production facility in the Middle
10 East which at least one Tesla Board member referred to as a “non-starter.” Consequently, although
11 Musk claimed to have “no question” that funding could be “secured,” issues in fact existed that
12 could prevent Tesla and Musk from obtaining the capital necessary to complete the transaction.

13 138. Tesla’s and Musk’s blog post also continued to omit and/or conceal that an
14 agreement had not yet been secured from any potential source of funding to fund a going-private
15 transaction at a price of \$420 per share or that it was unlikely that current shareholders of the public
16 company could remain shareholders once it went private.

17 139. On August 13, 2018, at 9:02 p.m. ET, Musk publicly stated via Twitter: “I’m excited
18 to work with Silver Lake and Goldman Sachs as financial advisors, plus Wachtell, Lipton, Rosen
19 & Katz and Munger, Tolles & Olson as legal advisors, on the proposal to take Tesla private.”

20 140. The above statement in paragraph 139 was false and materially misleading because
21 Musk and Tesla had not signed an agreement to formally engage or retain Silver Lake and Goldman
22 Sachs to assist with the going-private transaction by August 13, 2018.

23 **B. Musk and Tesla Acted with Scienter**

24 1. Musk knew that his statements were false and misleading.

25 141. The misrepresentations alleged herein were made by Musk while he was in
26 possession of material, non-public information that contradicted his public statements and/or
27 rendered them materially false and misleading.

28 142. Musk knew that funding for a going-private transaction had not been “secured” at
the time of his initial tweet on August 7, 2018 and was never secured during the Class Period. Based

1 on Musk’s integral role in the discussions with the Public Investment Fund, Musk knew that he: (1)
2 had not agreed upon any terms for a going-private transaction with the fund or any other funding
3 source; (2) had no further substantive communications with representatives of the fund beyond their
4 30 to 45 minute meeting on July 31, 2018 until August 10, 2018; (3) had never discussed a going-
5 private transaction at a share price of \$420 with any potential funding source; (4) had not contacted
6 any additional potential strategic investors to assess their interest in participating in a going-private
7 transaction; and (5) that Tesla building a production facility in the Middle East as a prerequisite to
8 the funding of any deal was a “non-starter.”

9 143. Musk knew on August 7, 2018 and at all relevant times during the Class Period that
10 he had not provided Tesla’s Board with a specific proposal to take the company private, only a
11 tentative offer with “a lot of uncertainty” that Musk believed only had a 50% likelihood of success

12 144. Musk also knew that on August 7, 2018 and at all relevant times during the Class
13 Period he had not contacted existing Tesla shareholders to assess their interest in remaining invested
14 in Tesla as a private company.

15 145. Musk also knew that neither he nor Tesla retained any financial advisors regarding
16 the going-private transaction until August 15, 2018 when Tesla retained Goldman Sachs in that
17 capacity.

18 146. Musk knew on August 7, 2018 he had not formally retained any legal advisors to
19 assist with a going-private transaction.

20 147. Musk knew that on August 7, 2018 and at all relevant times during the Class Period
21 he had not determined whether retail investors could remain invested in Tesla as a private company.
22 Prior to Musk’s August 7, 2018 statements, Musk had conversations with both a private equity
23 manager and Tesla’s Board concerning Musk’s hopes for the structure of a private Tesla. Musk was
24 told by the private equity manager and at least one director that the structure was “unprecedented”
25 and that it would be “really difficult for small investors” to remain shareholders in a private Tesla.
26 Musk admitted to the SEC that his proposal to allow retail investors to remain investors in Tesla as
27 a private company was “a fundamental misunderstanding that I just did not know – I thought there
28

1 would be some way to retain small investors, but there isn't." Therefore, Musk knew his
2 representations to investors that they could remain shareholders were materially misleading.

3 148. Musk knew that on August 7, 2018 and at all relevant times during the Class Period,
4 he had not determined whether there were restrictions on illiquid holdings by Tesla's institutional
5 investors.

6 149. Musk knew that on August 7, 2018 and at all relevant times during the Class Period,
7 he had not determined what regulatory approvals would be required or whether they could be
8 satisfied.

9 150. Musk also knew there had been no agreement to take Tesla private at \$420 per share.
10 Instead, Musk unilaterally decided on this amount simply by adding a 20% premium to Tesla's
11 current stock price and rounding up to \$420. This was intended as a joke for Musk's girlfriend
12 which Musk admitted to the SEC "is not a great reason to pick a price." Musk knew he had not
13 discussed this price with the Public Investment Fund or any other potential funding source.

14 151. Musk's intent is further supported by the fact that he continued to make false
15 statements about Tesla going private even after he was warned about potential legal problems
16 stemming from market manipulation. On August 7, 2018, at 2:23 p.m. ET, a reporter warned Musk
17 via email that he was "dancing into some pretty tricky legal territory by messing about with the
18 markets this way." Notwithstanding, Musk continued to mislead the public about Tesla going
19 private.

20 2. Musk had a motive to commit fraud: his campaign against short sellers.

21 152. Musk's conduct was motivated by his animosity towards Tesla's short sellers.

22 153. Prior to Musk's August 7, 2018 tweets, on May 4, 2018, Musk told investors "oh
23 and uh short burn of the century comin soon. Flamethrowers should arrive just in time." Shortly
24 after, Musk stated, "Looks like sooner than expected. The sheer magnitude of short carnage will be
25 unreal. If you're short, I suggest tiptoeing quietly to the exit"

26 154. Just three days later, on May 7, 2018, Musk bought about \$9.85 million worth of
27 Tesla shares in the pre-market in a manner designed have the greatest impact on Tesla's stock price
28 and force a burst of short-covering.

1 155. Musk did this again on June 12, 2018 when he bought about \$24.9 million worth of
2 Tesla stock to maintain Tesla’s stock price despite announcing that Tesla was cutting 46,000
3 employees, about 9% of its workforce.

4 156. In his August 2, 2018 email to the Board, Musk stated that he wanted to take Tesla
5 private in order to, among other reasons, avoid the “constant defamatory attacks by the short-selling
6 community” against Tesla.

7 157. Musk’s false and materially misleading statements on August 7, 2018 were part of
8 his efforts to harm short sellers of Tesla stock.

9 158. On August 7, 2018, following his initial tweet, Musk stated that Tesla “[will] be way
10 smoother & less disruptive as a private company. Ends negative propaganda from shorts.” This
11 mention of short sellers just after Musk’s initial tweet shows that Musk made his false statements
12 with short sellers in mind.

13 159. In Musk’s August 7, 2018 email to the company, Musk stated again that he wanted
14 to take Tesla private because Tesla was “the most shorted stock in the history of the stock market”
15 and stated that “being public means there are large numbers of people who have incentive to attack
16 the company.”

17 160. Musk even mocked short sellers after his August 7, 2018 tweets. For example, on
18 August 10, 2018, Musk tweeted that “Short shorts [were] coming soon to Tesla merch[andise].”
19 This was Musk’s way of mocking short sellers for their losses due from Musk’s false and materially
20 misleading tweets.

21 161. The following chart illustrates Tesla’s growing short interest relative to the
22 company’s stock price during the period from January 2018 through December 2018. The chart
23 also demonstrates the effect Musk’s “funding secured” tweet had on Tesla’s short interest:
24
25
26
27
28



162. Further evidence that Musk’s misrepresentations were made to “burn” short sellers is Musk’s tweet following his settlement with the SEC admitting allegations of fraud based on those same misrepresentations. On October 4, 2018, just five days following Musk’s settlement with the SEC, Musk tweeted, “Just want to that [sic] the Shortseller Enrichment Commission is doing incredible work. And the name change is so on point!” This again shows that Musk associated his misrepresentations with short sellers and that his statements were a deliberate attempt to “burn” short sellers and cause them financial harm.

163. In addition to Musk’s disputes with short sellers of Tesla stock, Musk and Tesla were motivated to artificially inflate Tesla’s stock because of a provision in Tesla’s convertible bonds. Tesla has a \$920 million 0.25% convertible issue due February 27, 2019. These bonds are convertible into common stock at a price of \$359.8676 per share. Therefore, if the stock trades below that price, the holder would be better off taking cash. That would put pressure on Tesla which is cash deficient. However, by inflating Tesla’s stock, Tesla would be able to redeem the debt in stock, obviating the need to come up with over \$900 million in cash.

164. In addition, Tesla has 1.25% convertible totaling \$1.38 billion that matures February 25, 2021. This issue also converts at the same price, and a common share price over \$360 also would obviate the need to pay off this convert in cash.

1 165. As Barron's reported on August 7, 2018, "The surge in Tesla's shares after CEO
2 Elon Musk's tweet about going private has had huge, salutary effect on its key convertible bonds
3 and its financing position." Barron's stated that "[b]y pushing [Tesla's] common stock's price
4 above the \$360 level, his tweet has put a \$900 million convert issue above its conversion price,
5 which would effectively let the electric-auto maker pay off that obligation in stock instead of cash."

6 3. Alternatively, Musk acted with deliberate recklessness.

7 166. Alternatively, Musk was deliberately reckless in publishing his tweets and other
8 statements regarding the potential going-private transaction. He published his statements knowing
9 that there were no formal agreements to secure funding or to document a proposal to go private at
10 \$420 per share that was ready to be voted on by stockholders. He did not discuss the content of his
11 August 7, 2018 tweets with anyone else prior to publishing them to his over 22 million Twitter
12 followers and anyone else with access to the Internet. He also did not inform NASDAQ that he
13 intended to make his initial public announcement, as NASDAQ rules required.

14 167. Musk's conduct represented an extreme departure from the standards of ordinary
15 care, and presented a danger of misleading purchasers or sellers of Tesla securities that was either
16 known to Musk or else was so obvious that Musk must have been aware of it.

17 4. Musk and Tesla settled quickly with the SEC.

18 168. On September 27, 2018, the SEC filed a Complaint against Musk alleging that he
19 violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 when making his
20 August 7, 2018 statements.

21 169. On September 28, 2018, Musk signed a Consent to entry of a judgment against him.
22 Under 17 C.F.R. § 202.5(e), the SEC will not permit to be created "an impression that a decree is
23 being entered or a sanction imposed, when the conduct alleged did not, in fact, occur." The SEC's
24 policy is "not to permit a defendant or respondent to consent to a judgment or order that imposes a
25 sanction while denying the allegations in the complaint" Pursuant to the Consent and Rule
26 202.5(e), Musk agreed that he "(i) will not take any action or make or permit to be made any public
27 statement denying, directly or indirectly, any allegation in the complaint or creating the impression
28 that the complaint is without factual basis; (ii) will not make or permit to be made any public

1 statement to the effect that [Musk] does not admit the allegations of the complaint, or that this
2 Consent contains no admission of the allegations, without also stating that [Musk] does not deny
3 the allegations.”

4 170. Among the facts alleged by the SEC that Musk admits, or does not deny, are that
5 Musk made multiple materially false statements on August 7, 2018 including the statements that:
6 (1) “Am considering taking Tesla private at \$420. Funding secured”; (2) “Investor support is
7 confirmed. Only reason why this is not certain is that it’s contingent on a shareholder vote; (3) “My
8 hope is *all* current investors remain with Tesla even if we’re private. Would create special
9 purpose fund enabling anyone to stay with Tesla. Already do this with Fidelity’s SpaceX [a
10 privately held company for which Musk serves as CEO] investment”; (4) his response to another
11 Twitter user asking, “Could we still invest once private?” by stating “Yes, but liquidity events
12 would be limited to every 6 months or so (like SpaceX)”; (5) his response to a Twitter user who
13 wrote, “Or if you do take Tesla private, please have a provision for retail investors who have held
14 Tesla shares prior to Dec 31, 2016 that those shares will be converted into private shares in the new
15 private company. . . .” by tweeting, “Absolutely. Am super appreciative of Tesla shareholders. Will
16 ensure their prosperity in any scenario”; (6) “Shareholders could either to [sic] at 420 or hold shares
17 & go private”; and (7) “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 share.”

19 171. Also among the facts alleged by the SEC that Musk admits or does not deny are that
20 the August 7, 2018 statements set forth in paragraph 170 “were premised on a long series of baseless
21 assumptions and were contrary to facts that Musk knew” so that Musk knew or was reckless in not
22 knowing that his August 7, 2018 statements were false and misleading.

23 172. On September 29, 2018, the SEC filed a Complaint against Tesla alleging that it
24 violated SEC Rule 13a-15 issued pursuant to the Securities Exchange Act by failing to maintain
25 adequate controls and procedures over its SEC filings.

26 173. On September 29, 2018, the SEC announced that it had reached a settlement with
27 both Defendants. In a press release titled “Elon Musk Settles SEC Fraud Charges; Tesla Charged
28

1 With and Resolves Securities Law Charge,” the SEC described the terms of the settlements as
2 follows:

3 Washington D.C., Sept. 29, 2018 —

4 The Securities and Exchange Commission announced today that Elon Musk, CEO
5 and Chairman of Silicon Valley-based Tesla Inc., has agreed to settle the securities
6 fraud charge brought by the SEC against him last week. The SEC also today
7 charged Tesla with failing to have required disclosure controls and procedures
8 relating to Musk’s tweets, a charge that Tesla has agreed to settle. The settlements,
9 which are subject to court approval, will result in comprehensive corporate
10 governance and other reforms at Tesla—including Musk’s removal as Chairman
11 of the Tesla board—and the payment by Musk and Tesla of financial penalties.

12 According to the SEC’s complaint against him, Musk tweeted on August 7, 2018
13 that he could take Tesla private at \$420 per share — a substantial premium to its
14 trading price at the time — that funding for the transaction had been secured, and
15 that the only remaining uncertainty was a shareholder vote. The SEC’s complaint
16 alleged that, in truth, Musk knew that the potential transaction was uncertain and
17 subject to numerous contingencies. Musk had not discussed specific deal terms,
18 including price, with any potential financing partners, and his statements about the
19 possible transaction lacked an adequate basis in fact. According to the SEC’s
20 complaint, Musk’s misleading tweets caused Tesla’s stock price to jump by over
21 six percent on August 7, and led to significant market disruption.

22 According to the SEC’s complaint against Tesla, despite notifying the market in
23 2013 that it intended to use Musk’s Twitter account as a means of announcing
24 material information about Tesla and encouraging investors to review Musk’s
25 tweets, Tesla had no disclosure controls or procedures in place to determine
26 whether Musk’s tweets contained information required to be disclosed in Tesla’s
27 SEC filings. Nor did it have sufficient processes in place to that Musk’s tweets
28 were accurate or complete.

Musk and Tesla have agreed to settle the charges against them without admitting
or denying the SEC’s allegations. Among other relief, the settlements require that:

- Musk will step down as Tesla’s Chairman and be replaced by an independent Chairman. Musk will be ineligible to be re-elected Chairman for three years;
- Tesla will appoint a total of two new independent directors to its board;
- Tesla will establish a new committee of independent directors and put in place additional controls and procedures to oversee Musk’s communications;
- Musk and Tesla will each pay a separate \$20 million penalty. The \$40 million in penalties will be distributed to harmed investors under a court-approved process.

1 “The total package of remedies and relief announced today are specifically
2 designed to address the misconduct at issue by strengthening Tesla’s corporate
3 governance and oversight in order to protect investors,” said Stephanie Avakian,
4 Co-Director of the SEC’s Enforcement Division.

5 “As a result of the settlement, Elon Musk will no longer be Chairman of Tesla,
6 Tesla’s board will adopt important reforms—including an obligation to oversee
7 Musk’s communications with investors—and both will pay financial penalties,”
8 added Steven Peikin, Co-Director of the SEC’s Enforcement Division. “The
9 resolution is intended to prevent further market disruption and harm to Tesla’s
10 shareholders.”

11 The SEC’s investigation was conducted by Walker Newell, Brent Smyth, and
12 Barrett Atwood and supervised by Steven Buchholz, Erin Schneider, and Jina Choi
13 in the San Francisco Regional Office and Cheryl Crumpton in the SEC’s Home
14 Office.

15 174. On October 16, 2018, the United States District Court for the Southern District of
16 New York entered a final judgment against Musk and Tesla. Under the terms of the judgment, Musk
17 admitted that the allegations in the SEC Complaint filed against him are true for certain legal
18 proceedings.

19 175. On November 8, 2018, Tesla announced that Robyn Denholm, a Tesla Board
20 member and technology executive, would become the new Chairman of Tesla.

21 176. On December 28, 2018, Tesla also announced that as a result of the settlement with
22 the SEC, that Larry Ellison, and Kathleen Wilson-Thompson would be joining Tesla’s Board.

23 177. The SEC’s quick and deliberate actions against Musk and Tesla adds to the inference
24 that Musk acted with scienter. Further, the fact that Musk was required to step down as Chairman
25 of Tesla as a direct result of his false and misleading statements further underscores Musk’s
26 scienter.

27 5. Musk’s scienter is imputed to Tesla.

28 178. Musk, as Chief Executive Officer and Chairman of the Board, was the face of and
spokesman for Tesla.

179. Tesla used social media and specifically Musk’s Twitter account to convey
corporate news.

1 180. When Musk tweeted information about Tesla on Twitter, he did so with apparent
2 authority on behalf of Tesla. This placed Musk in a position of trust and confidence and controlled
3 the level of oversight of his handling of the business.

4 181. Therefore, all statements made by Musk as well as his scienter are imputed to Tesla.

5 182. Musk's statements and scienter are also imputed to Tesla under the doctrine of
6 *respondeat superior* and principles of common law agency.

7 **C. Presumption of Reliance; Fraud-On-The-Market**

8 183. At all relevant times, the market for Tesla's securities was an efficient market for
9 the following reasons, among others:

- 10 (a) Tesla's securities met the requirements for listing, and were listed and actively
11 traded on the NASDAQ, a highly efficient market;
- 12 (b) During the Class Period, Tesla's securities were actively traded, demonstrating
13 a strong presumption of an efficient market;
- 14 (c) As a regulated issuer, Tesla filed with the SEC periodic public reports;
- 15 (d) Tesla regularly communicated with public investors via established market
16 communication mechanisms;
- 17 (e) Tesla was followed by securities analysts employed by major brokerage firms
18 who wrote reports that were distributed to the sales force and certain customers
19 of brokerage firms during the Class Period. Each of these reports was publicly
20 available and entered the public marketplace; and
- 21 (f) Unexpected material news about Tesla was rapidly reflected in and incorporated
22 into Tesla's stock and option prices during the Class Period.

23 184. The market for Tesla securities was open, well developed and efficient at all relevant
24 times. As a result of Musk's and Tesla's materially false and misleading statements, Tesla securities
25 traded at artificial prices during the Class Period. Plaintiff and other Class members purchased
26 and/or sold Tesla securities relying upon the integrity of the market prices of Tesla securities and
27 market information relating to Tesla, and were damaged as a result.

28

1 185. The current market prices of Tesla options, as well as all United States exchange-
2 listed equity options, are based in part on the current price of the underlying stock. As the underlying
3 stock price moves closer to or further away from an option's strike price, the value of that particular
4 option is affected because the likelihood of that option being exercised increases or decreases. As
5 a company's stock price reflects all public information concerning that company and the markets
6 utilize the current market price of a company's stock to calculate the prices for equity options, all
7 public information concerning a stock is incorporated into the price of a company's equity options
8 as well.

9 186. As a result of the foregoing, the market for Tesla's securities promptly digested current
10 information regarding Tesla from all publicly available sources and reflected such information in the
11 price. Under these circumstances, all purchasers and sellers of Tesla's securities during the Class Period
12 relied on Tesla and Musk's material misrepresentations and omissions when making their purchases or
13 sales of Tesla's securities at market prices.

14 187. At the time of Tesla and Musk's misrepresentations and omissions, Plaintiff and
15 other Class members were ignorant of their falsity, and believed them to be true. Had Plaintiff and
16 the other Class members and the marketplace known the truth regarding the proposed going-private
17 transaction and its funding, which were not disclosed by Tesla or Musk, Plaintiff and other Class
18 members would not have purchased or sold their Tesla securities, or, if they had purchased or sold
19 such securities during the Class Period, they would not have done so at the artificial prices that they
20 paid or received.

21 **D. Loss Causation and Economic Loss**

22 188. When Musk made the "funding secured" tweet on August 7, 2018, and continued to
23 make misrepresentations regarding the proposed going-private transaction as alleged herein, he
24 damaged virtually every individual and/or entity trading Tesla securities during the Class Period.

25 1. Common Stock

26 189. Musk's "funding secured" tweet on August 7, 2018 and subsequent
27 misrepresentations materially affected the market for Tesla securities. The price of Tesla's stock
28 increased following the initial "funding secured" tweet, and then rose and fell in response to further

1 misrepresentations by Musk, other corporate statements, and reports by analysts and news media.
 2 Tesla's stock price dropped substantially once it was confirmed that funding for the go-private
 3 transaction had in fact never been "secured" and the proposed \$420 price had never been agreed.
 4 The following chart illustrates the movement of Tesla's stock price during August 2018:



16 190. Musk's tweets on August 7, 2018 caused a massive increase in the price of Tesla's
 17 stock. From an opening price of \$343.84 per share, Tesla's stock rose to an intraday high of \$387.46
 18 and closed at \$379.57. Over 30 million shares were traded that day, or more than twice the daily
 19 average volume for Tesla stock over the previous 90 days.

20 191. On August 8, 2018, Tesla's stock price declined significantly. Contrary to what
 21 Musk had said on August 7, 2018, the press release from Tesla's Board did not state that funding
 22 for a going-private transaction had been "secured." From a closing price of \$379.57 the day earlier,
 23 Tesla's stock closed at \$370.34 per share on August 8, 2018. Volume for the stock was unusually
 24 heavy with over 24.5 million shares being traded.

25 192. On August 9, 2018, Tesla's stock price continued to decline. The previous day, after
 26 the market closed, the *Wall Street Journal* reported that the SEC was investigating Musk and Tesla
 27 over Musk's "funding secured" tweet. During the course of the day, Tesla's stock price declined by
 28

1 almost 5% to close at \$352.45. Again, volume was unusually high with over 17 million shares
2 traded.

3 193. On August 13, 2018, following Musk's blog post dated August 13, 2018, Tesla's
4 stock price rose during pre-market trading to open at \$361.13 per share compared to its adjusted
5 closing price from the day before of \$356.41 per share. Tesla's stock closed at \$356.41 per share
6 with over 10.4 million shares traded during the day.

7 194. On August 14, 2018, Tesla's stock price continued to drop in response to Tesla's
8 statement that the company had formed a special committee in connection with the going-private
9 transaction and reports that neither Musk nor Tesla had in fact retained the advisors that Musk had
10 mentioned the day before. Tesla's stock closed at \$347.64 per share.

11 195. On August 15, 2018, Tesla's stock price continued to decline. During the course of
12 the day, multiple news sources reported that the SEC had issued formal subpoenas to Musk and
13 Tesla. Tesla's stock closed at \$338.69 per share.

14 196. On August 17, 2018, Tesla's stock closed at \$305.50 per share, which represented a
15 decline of \$29.95 per share or almost 9% from the previous day. The decline was caused by *The*
16 *New York Times* report on Musk which was published online after-market hours on August 16,
17 2018 and in print on August 17, 2018. The report confirmed to investors that Musk's "funding
18 secured" tweet had in fact been false when made and that, in reality, there was no definitive
19 agreement to take Tesla private in place, or even close to being finalized.

20 197. Musk's and Tesla's false and misleading statements artificially inflated the price of
21 Tesla's common stock. By stating that he had "secured" funding to take Tesla private at \$420, Musk
22 led the public to believe that investors would receive \$420 per share when the transaction was
23 completed. As the truth concerning Musk's and Tesla's statements was revealed, the market started
24 to doubt whether Musk had truly secured funding and if the company was truly going private. This,
25 in turn, caused the price of Tesla's stock to decline as the artificial inflation began to dissipate.

26 198. Investors who purchased Tesla shares at inflated prices following Musk's August 7,
27 2018 tweet suffered losses as the fraud was revealed and Tesla's stock price declined.

28

1 200. Similarly, an investor who was betting against Tesla and was “short” its stock before
2 August 7, 2018 also sustained losses in connection with Musk’s and Tesla’s false and misleading
3 statements.

4 200. If an investor expects that the price of a company’s stock will decrease in the future,
5 an investor may open a short investment position in the company’s common stock. To short a
6 company’s stock, an investor will borrow a share of the company’s common stock from another
7 party and sell it at the then current market price. The investor is obligated to replace the borrowed
8 share in the future and may pay interest on the borrowed share to the lending party.

9 201. If the investor wishes to close his short stock position, the investor would “buy to
10 cover” by purchasing a share of the company’s common stock at the prevailing market price. If the
11 stock price has decreased since the investor sold short the borrowed share, the investor would profit
12 because he sold the share for a price greater than he paid to replace the borrowed share. If, however,
13 the stock price has increased, the investor would incur a loss as it would cost the investor more to
14 replace the share than it received when selling the borrowed share.

15 202. Many short investors were required to “cover” their short positions when Musk
16 tweeted that he had “secured” funding to take Tesla private at \$420 per share. Any short investor
17 that “covered” in the wake of Musk’s tweet suffered significant damages as a result of having to
18 purchase shares at artificially inflated prices.

19 2. Options

20 203. Option traders also sustained significant damages as a result of Musk’s and Tesla’s
21 false and misleading statements.

22 204. An option contract is a type of security that provides an investor a right or obligation
23 to buy or sell a specific security. For United States exchanged-listed options on publicly-traded
24 stock, one option contract equals the right to buy or sell 100 shares of the underlying stock. Listed
25 options are readily available on most listed securities. All exchange-listed equity options in the
26 United States will denote: (i) the type of security underlying the option contract (*i.e.*, Tesla common
27 stock); (ii) the price at which the underlying security may be bought or sold when the option is
28

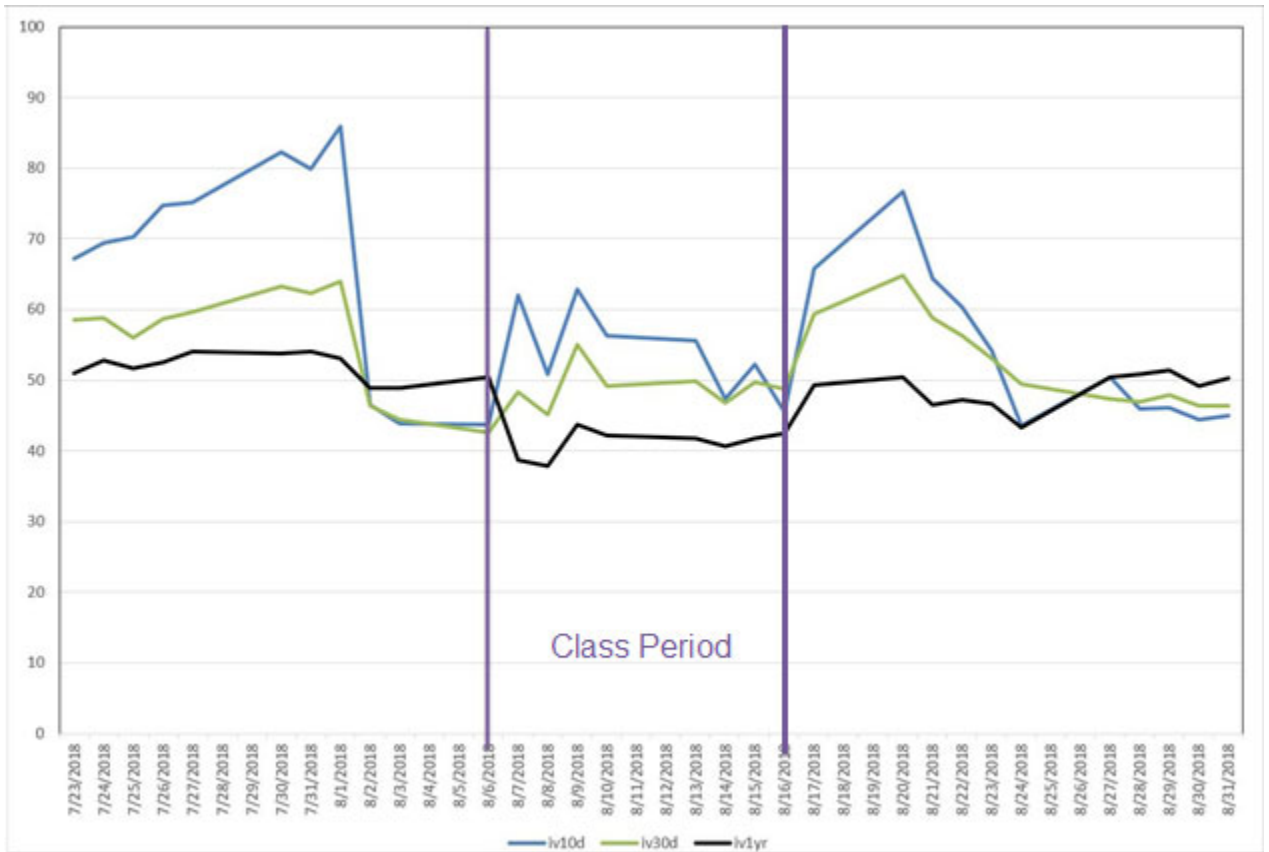
1 exercised (the “strike price”); and (iii) the date by which the option must be exercised (the
2 “expiration date”).

3 205. There are two basic types of equity options: call options and put options. Call options
4 give the holder the right, but not the obligation, to buy shares. The primary motivation of the call
5 buyer is to realize financial reward from an increase in price of the underlying security.
6 Accordingly, a call option holder can force the seller or the “writer” of a call option contract to sell
7 shares of the underlying stock at the strike price, even if the stock is trading at a greater price.

8 206. Put options, on the other hand, give the holder the right, but not the obligation, to
9 sell shares at the strike price. The motivation for the put holder is to make money when the stock
10 falls in value. Accordingly, a put option holder can force the writer of a put option contract to buy
11 shares of the underlying stock at the strike price, even if the stock is trading for a lesser price.

12 207. The value of a put or call option is dependent upon several factors, including: (i) the
13 price of the underlying stock; (ii) the strike price; (iii) the time to expiration; and (iv) the implied
14 volatility of the option.

15 208. In addition to artificially inflating the price of Tesla’s stock, Musk’s and Tesla’s
16 false and misleading statements also created extreme volatility in the market for Tesla’s securities
17 as the public tried to determine whether Tesla would in fact go private and, if so, at what price.
18 Implied volatility represents the expected volatility of a stock over the life of an option. When
19 implied volatility increases, the price of an option contract increases accordingly. The following
20 chart illustrates the changes in volatility during August 2018 with the implied volatility for options
21 expiring in the next 10 days (blue) exhibiting the most significant volatility compared to options
22 expiring in the next 30 days (green) and year (black):



209. The abrupt increase in price, volume, and volatility in the market for Tesla securities, which was caused by Musk’s and Tesla’s false and misleading statements, resulted in significant damages for investors who sold or purchased options during the Class Period, depending on the particular option contracts held.

* * *

210. As a result of their purchases and sales of Tesla securities during the Class Period, Plaintiff and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws. Musk’s and Tesla’s false and misleading statements caused Tesla’s stock, options, and other securities to trade at artificial levels throughout the Class Period. By misleading investors about the going-private transaction and, in particular, that funding had not in fact been “secured,” Musk and Tesla deceived investors. As the truth was revealed to investors, the prices of Tesla securities were affected significantly, causing economic loss to investors who had purchased or sold Tesla securities during the Class Period.

211. As described above, the changes in the price of Tesla’s stock, options, and other securities after the truth about the going-private transaction and its funding were disclosed were the

1 direct result of the nature and extent of Musk's and Tesla's fraudulent misrepresentations being
2 revealed to investors and the market. The timing and magnitude of the price changes in Tesla's
3 securities negate any inference that the losses suffered by Plaintiff and the other Class members
4 were caused by changed market conditions, macroeconomic or industry factors, or company-
5 specific facts unrelated to Musk's and Tesla's fraudulent conduct.

6 **E. Safe Harbor Does Not Apply**

7 212. The statutory safe harbor provided for forward-looking statements under certain
8 circumstances does not apply to any of the material misrepresentations and omissions alleged in this
9 Complaint. None of the misrepresentations or omissions by Tesla and Musk involved forward-looking
10 statements nor were they accompanied by meaningful cautionary statements identifying important
11 factors that could cause actual results to differ materially from those in any purportedly forward-looking
12 statements.

13 213. By virtue of the foregoing, Tesla and Musk have violated Section 10(b) of the
14 Securities Exchange Act of 1934, 15 U.S.C. § 78j and Rule 10b-5, 17 C.F.R. § 240.10b-5,
15 promulgated thereunder.

16 **VII. COUNT II: VIOLATION OF SECTION 20(a) AGAINST THE BOARD**

17 214. Plaintiff repeats and realleges each and every allegation contained above as if fully
18 set forth herein.

19 215. As members of Tesla's Board, Defendants Buss, Denholm, Ehrenpreis, Gracias,
20 Murdoch, Kimbal, and Rice acted as controlling persons of Tesla within the meaning of Section
21 20(a) of the Securities Exchange Act of 1934.

22 216. By virtue of their high-level positions, agency, ownership and contractual rights, and
23 participation in and/or awareness of Tesla's operations and/or intimate knowledge of the false
24 information and disseminated to the investing public, the Board had the power to influence and
25 control, and did influence and control, directly or indirectly, the decision-making of Tesla, including
26 the content and dissemination of the various statements that Plaintiff contends are false and
27 misleading. The Board was provided with or had unlimited access to Tesla's reports, press releases,
28 public filings and other statements alleged by Plaintiff to have been misleading prior to and/or

1 shortly after these statements were issued and had the ability to prevent the issuance of the
2 statements or to cause the statements to be corrected.

3 217. At all relevant times herein, the Board was responsible for overseeing management
4 to ensure that Tesla operated in an effective, efficient, and ethical manner. This included ensuring
5 that public communications to stockholders were accurate and not misleading.

6 218. Tesla identified Musk's Twitter account as an official channel of communication for
7 the company. Accordingly, the Board had authority over and/or controlled statements made by
8 Musk through his Twitter account. For example, Defendant Gracias, Tesla's lead independent
9 director, contacted Musk after August 7, 2018 and ordered him to refrain from tweeting about the
10 potential privatization transaction unless he previously discussed it with the Board. Musk did not
11 publish a tweet about the transaction from August 8, 2018 to August 24, 2018. Similarly, the Board
12 (except Kimbal) also issued a press release discussing the going-private transaction on August 8,
13 2018.

14 219. As set forth above, Musk and Tesla each violated Section 10(b) and Rule 10b-5 by
15 their acts and omissions as alleged in this Complaint and the Class was damaged thereby.

16 220. By virtue of their positions as controlling persons, the Board is liable pursuant to
17 Section 20(a) of the Securities Exchange Act of 1934.

18 **VIII. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for relief and judgment as follows:

- 20 (a) Determining that this action is a proper class action, certifying Plaintiff as class
21 representative under Federal Rule of Civil Procedure 23 and Plaintiff's counsel
22 as class counsel;
- 23 (b) Awarding compensatory damages in favor of Plaintiff and the other Class
24 members against all Defendants, jointly and severally, for all damages sustained
25 as a result of the Defendants' wrongdoing, in an amount to be proven at trial,
26 including interest thereon;
- 27 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred
28 in this action, including counsel fees and expert fees;

- 1 (d) Granting extraordinary equitable and/or injunctive relief as permitted by law;
2 and
3 (e) Such other and further relief as the Court may deem just and proper.

4 **IX. JURY TRIAL DEMANDED**

5 Plaintiff hereby demands a jury trial.

6 Dated: January 16, 2019

Respectfully submitted,

7 **LEVI & KORSINSKY, LLP**

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