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13 Attorneys for Plaintiff Kalman Isaacs,  
individually and on behalf of all others similarly  
14 situated

15  
16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

18  
19 KALMAN ISAACS, individually and on  
behalf of all others similarly situated,

20 Plaintiff,

21 vs.

22 ELON MUSK and TESLA, INC.,

23 Defendants.  
24

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Trial Date: None Set

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

#### 11 **NATURE OF THE ACTION AND RELEVANT BACKGROUND**

12 1. This is a federal securities class action on behalf of a class consisting of all persons  
13 other than Defendants (defined herein) who purchased securities of Tesla, Inc. ("Tesla") after  
14 12:48pm eastern standard time on August 7, 2018 through and including August 8, 2018 (the  
15 "Class Period"), seeking to recover damages caused by Defendants' violations of the federal  
16 securities laws and to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange  
17 Act"). As a result of Defendants' materially false and misleading statements, as well as their  
18 market manipulation, Tesla securities purchasers were injured to the tune of hundreds of millions  
19 of dollars.

20 2. Tesla designs, develops, manufactures and sells high-performance, fully electric  
21 vehicles and designs, manufactures, installs, and sells solar energy generation and energy storage  
22 products.

23 3. Defendant Musk is the Chief Executive Officer and Chairman of the Company, and  
24 owns or controls approximately 22% of the Company's shares. Defendant Musk often uses his  
25 Twitter account to issue statements on behalf of and regarding Tesla. These Twitter statements are  
26 referred to as "Tweets," and Defendant Musk has used them as a weapon against short sellers of  
27 Tesla shares. By way of background, in a short sale, an investor borrows shares and immediately  
28 sells them on the open market hoping that he or she can purchase the shares later at a lower price,

1 return them to the lender and pocket the difference. Short sellers profit when the company's  
2 shares go down and incur a loss when shares go up. According to an August 2, 2018, article in  
3 *The Wall Street Journal* entitled *For Tesla's Elon Musk, Twitter Is Sword Against Short Sellers*,  
4 "Mr. Musk has been engaged for some time in a digital cat and mouse fight with negative  
5 investors on his company's stock, and so far he is winning. His extraordinary use of Twitter to  
6 battle short sellers has often been followed by a jump in Tesla's stock price, hurting shorts in the  
7 process." Among other things, on June 17, 2018, (a Sunday), Musk tweeted that Tesla short-  
8 sellers had "about three weeks before their short position explodes." Tesla's stock rose 4% the  
9 first day of trading after Musk's weekend tweet.

10 4. As described herein, Defendants embarked on a scheme and course of conduct to  
11 artificially manipulate the price of Tesla stock to completely decimate the Company's short-sellers  
12 (and, on the way, injured all purchasers of Tesla securities). This started with a Musk Tweet at  
13 12:48 p.m. on August 7 stating: "Am considering taking Tesla private at \$420. Funding secured."

14 5. In the succeeding several hours, Defendant Musk issued additional Tweets  
15 regarding the supposedly secure going-private transaction (the "Going Private Transaction"). For  
16 example, at 1:40pm, Musk Tweeted "I don't have a controlling vote now & wouldn't expect any  
17 shareholder to have one if we go private. I won't be selling in either scenario."

18 6. At 2:00pm, Musk Tweeted "My hope is \*all\* current investors remain with Tesla  
19 even if we're private. Would create special purpose fund enabling anyone to stay with Tesla.  
20 Already do this with Fidelity's SpaceX investment." This Tweet was in response to @Gfilche  
21 who had Tweeted "Noooooo!!!! Still processing what this means, but would be sad to see all the  
22 investors who've been w/ \$TSLA miss out on the upside over the next few years. Although if this  
23 helps the mission and Elon thinks it's smart, I understand and fully support."

24 7. At 2:07pm, Defendant Musk Tweeted: "Absolutely. Am super appreciative of  
25 Tesla shareholders. Will ensure their prosperity in any scenario." This was in response to  
26 @heydave7, who had Tweeted "Or if you do take Tesla private, please have a provision for retail  
27 investors who have held Tesla shares prior to Dec 31, 2016 that those shares will be converted into  
28 private shares in the new private company. This would be only fair and the right thing to do."

1           8.       At 2:13pm, Musk Tweeted: “Shareholders could either to sell [sic] at 420 or hold  
2 shares & go private.”

3           9.       At 2:14pm, he reassured shareholders by Tweeting that there would be “no change”  
4 to his status as CEO if the proposed deal was successful.

5           10.      At 3:07pm, Defendant Musk Tweeted: “Def no forced sales. Hope all shareholders  
6 remain. Will be way smoother & less disruptive as a private company. Ends negative propaganda  
7 from shorts.” This was in response to a Tweet from @MindFieldMusic stating that “At 1st I was  
8 upset bc I thought this would be a forced buyout. But if average folk like myself are allowed to  
9 reside with the garden walls along with you, then . . . Yes please.”

10          11.      These series of tweets sparked a trading frenzy that drove Tesla shares to an  
11 intraday high of \$387.46 — \$45.47 above the previous day’s closing price. Trading volume  
12 spiked to 30 million shares (compared to an average of 8 million), representing over \$11 billion of  
13 purchases in the open market. Many Tesla short sellers covered their positions at artificially high  
14 prices in the wake of Musk’s tweets. In addition to the short-sellers, Defendants have injured all  
15 purchasers of Tesla securities during the Class Period who also purchased shares at artificially  
16 inflated prices.

17          12.      At approximately 3:30pm, Tesla released a statement via its corporate blog titled  
18 “Taking Tesla Private.” It contained an email from Musk sent to Tesla employees. That email  
19 stated:

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

23               First, a final decision has not yet been made, but the reason for doing this is all about  
24               creating the environment for Tesla to operate best. As a public company, we are  
25               subject to wild swings in our stock price that can be a major distraction for everyone  
26               working at Tesla, all of whom are shareholders. Being public also subjects us to the  
27               quarterly earnings cycle that puts enormous pressure on Tesla to make decisions that  
28               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, forward-looking  
5 mission. SpaceX is a perfect example: it is far more operationally efficient, and that  
6 is largely due to the fact that it is privately held. This is not to say that it will make  
7 sense for Tesla to be private over the long-term. In the future, once Tesla enters a  
8 phase of slower, more predictable growth, it will likely make sense to return to the  
9 public markets.

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

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

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

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

27 Finally, this has nothing to do with accumulating control for myself. I own about  
28 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  
ultimately be an enormous opportunity for all of us. Either way, the future is very  
bright and we'll keep fighting to achieve our mission.

Thanks, Elon

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