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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

CLASS ACTION

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

Demand for Jury Trial

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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.

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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

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