

1 Michael K. Friedland (Bar No. 157,217)
michael.friedland@knobbe.com
2 Lauren Keller Katzenellenbogen (Bar No. 223,370)
Lauren.katzenellenbogen@knobbe.com
3 KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, Fourteenth Floor
4 Irvine, CA 92614
Phone: (949) 760-0404
5 Facsimile: (949) 760-9502

6 Kimberly A. Kennedy (Bar No. 305,499)
kimberly.kennedy@knobbe.com
7 KNOBBE, MARTENS, OLSON & BEAR, LLP
333 Bush Street, 21st Floor
8 San Francisco, CA 94104
Phone: (415) 954-4114
9 Facsimile: (415) 651-4111

10 Adam B. Powell (Bar No. 272,725)
adam.powell@knobbe.com
11 KNOBBE, MARTENS, OLSON & BEAR, LLP
12790 El Camino Real
12 San Diego, CA 92130
Phone: (858) 707-4000
13 Facsimile: (858) 707-4001

14 Attorneys for Defendant/Counterclaimant
15 TESLA, INC.

16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18	_____)	Civil Action No. 3:18-cv-7460-JD
19	NIKOLA CORPORATION, a Delaware corporation,)	
20	Plaintiff./Counter Defendant)	Hon. James Donato
21	v.)	TESLA, INC.'S ANSWER TO THIRD
22	TESLA, INC., a Delaware corporation,)	AMENDED COMPLAINT AND
23	Defendant/Counterclaimant.)	COUNTERCLAIMS
24	_____)	DEMAND FOR JURY TRIAL

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1 Defendant Tesla, Inc. (“Tesla”) hereby answers the Third Amended Complaint of Plaintiff
2 Nikola Corporation (“Nikola”).

3 **I. RESPONSE TO NIKOLA’S INTRODUCTION**¹

4 1. Tesla lacks sufficient knowledge or information to admit or deny the allegations
5 in paragraph 1, and therefore denies those allegations.

6 2. Tesla lacks sufficient knowledge or information to admit or deny the allegations
7 in paragraph 2, and therefore denies those allegations.

8 3. Tesla lacks sufficient knowledge or information to admit or deny the allegations
9 in paragraph 3, and therefore denies those allegations.

10 4. Tesla lacks sufficient knowledge or information to admit or deny the allegations
11 in paragraph 4, and therefore denies those allegations.

12 5. Tesla admits that as of May 9, 2016, Tesla had not publicly announced that it was
13 considering building a class 8 semi-truck. Tesla denies any remaining allegations in paragraph 5.

14 6. Denied.

15 7. Tesla lacks sufficient knowledge or information to admit or deny the allegations
16 in paragraph 7, and therefore denies those allegations.

17 8. Denied.

18 9. Tesla admits that it filed a 10-Q that included reporting for the three-month period
19 ending June 30, 2016. The document speaks for itself. Tesla denies any remaining allegations in
20 paragraph 9.

21 10. Tesla admits that on July 20, 2016, Elon Musk, Tesla’s CEO, posted on Tesla’s
22 blog that “heavy-duty trucks” were “in the early stages of development at Tesla and should be
23 ready for unveiling next year.” Tesla lacks sufficient knowledge or information to admit or deny
24 the remaining allegations in paragraph 10, and therefore denies those allegations.

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27 ¹ For the Court’s convenience, Tesla has incorporated the section titles that appear in the
28 Complaint. Tesla does not necessarily agree with the characterizations of such section titles and
does not waive any right to object to those characterizations.

1 11. Tesla lacks sufficient knowledge or information to admit or deny the allegations
2 in paragraph 11, and therefore denies those allegations.

3 12. Tesla lacks sufficient knowledge or information to admit or deny the allegations
4 in paragraph 12, and therefore denies those allegations.

5 13. Tesla admits that as of April 28, 2017, it did not have any issued design patents
6 based on its Tesla Semi.² Tesla admits that as of April 28, 2017, it had not publicly announced
7 that it was seeking any design patents based on its Tesla Semi. Tesla lacks sufficient knowledge
8 or information to admit or deny the remaining allegations in paragraph 13, and therefore denies
9 those allegations.

10 14. Tesla admits that on April 28, 2017, during a TED conference in Vancouver, Elon
11 Musk shared an image showing a darkened silhouette of the Tesla Semi from the front with the
12 headlights on. Tesla denies any remaining allegations in paragraph 14.

13 15. Tesla admits that it received a letter from Nikola dated November 7, 2017 and that
14 paragraph 15 purports to describe certain contents of that letter, which speaks for itself. Tesla
15 admits that it did not respond to Nikola's letter dated November 7, 2017. Tesla denies any
16 remaining allegations in paragraph 15.

17 16. Tesla admits that on November 16, 2017, Tesla held an event in Hawthorne,
18 California and displayed two prototypes of the Tesla Semi. Tesla admits that the event was
19 attended by journalists, industry leaders, potential customers, and Tesla employees. Tesla admits
20 that the event was streamed online. Tesla admits that Tesla received reservations for its Tesla
21 Semi before November 16, 2017. Tesla admits that on November 17, 2017, Tesla's market
22 capitalization was around \$52.95 billion. Tesla lacks sufficient knowledge or information to
23 admit or deny the remaining allegations in paragraph 16, and therefore denies those allegations.

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27 ² In the Third Amended Complaint ("Complaint"), Nikola repeatedly uses the phrase "Tesla
28 Semi." Tesla understands that that the Complaint uses the phrase to refer only to the particular
version of a prototype design of Tesla Semi that is specifically identified in the Complaint. Tesla's
response to each paragraph that uses this phrase incorporates this understanding of the term.

1 17. Tesla lacks sufficient knowledge or information to admit or deny the allegations
2 in paragraph 17, and therefore denies those allegations.

3 18. Tesla admits that the PTO issued patents to Nikola. Tesla denies the remaining
4 allegations of paragraph 18.

5 19. Denied.

6 20. Tesla admits that it has made statements about the view drivers have from the
7 driver's seat of the Tesla Semi. Tesla denies all remaining allegations in paragraph 20.

8 21. Tesla admits that it has made statements regarding the aerodynamic design of the
9 Tesla Semi and that it has made statements that the Tesla Semi has a drag coefficient of around
10 0.36. Tesla lacks knowledge or information sufficient to form a belief as to the truth of the
11 allegations regarding the drag coefficient of the Nikola One, and therefore denies them. Tesla
12 denies all remaining allegations in paragraph 21.

13 22. Tesla admits that the Tesla Semi has a door and has made statements regarding a
14 user's ability to access the vehicle. Tesla lacks knowledge or information sufficient to form a
15 belief as to the truth of the allegations regarding the drag coefficient of the Nikola One, and
16 therefore denies them. Tesla denies all remaining allegations in paragraph 22.

17 23. Denied.

18 24. Tesla admits that the PTO issued a utility patent to Nikola. Tesla denies the
19 remaining allegations of paragraph 24.

20 25. Denied.

21 26. Denied.

22 27. Tesla lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations in this paragraph, and therefore denies them.

24 28. Denied.

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1 **II. RESPONSE TO ALLEGATIONS REGARDING**
2 **PARTIES, JURISDICTION, AND VENUE**

3 29. Tesla lacks sufficient knowledge or information to admit or deny the allegations
4 in paragraph 29, and therefore denies those allegations

5 30. Admitted.

6 31. Tesla admits that the Third Amended Complaint alleges infringement of United
7 States Patent Nos. D811,944 (the “D944 Patent”), D811,968 (the “D968 Patent”), D816,004
8 (the “D004 Patent”), and 10,077,084 (the “084 Patent”) arising under 35 U.S.C. § 1 *et seq.* and
9 alleges infringement of Nikola’s Nikola One trade dress arising under 15 U.S.C. § 1051 *et seq.*,
10 but denies that Nikola is entitled to any relief. Tesla denies any remaining allegations in
11 paragraph 31.

12 32. Admitted.

13 33. This paragraph contains legal conclusions to which no answer is required. To the
14 extent an answer is required, Tesla does not contest personal jurisdiction in the Northern District
15 of California for the purposes of this action only. Tesla specifically denies that it has offered for
16 sale any allegedly infringing product. Tesla denies the remaining allegations in paragraph 33.

17 34. This paragraph contains legal conclusions to which no answer is required. To the
18 extent an answer is required, Tesla does not contest venue in the Northern District of California
19 for the purposes of this action only. Tesla specifically denies that it has offered for sale any
20 allegedly infringing product. Tesla denies the remaining allegations in paragraph 34.

21 **III. FACTUAL BACKGROUND**

22 **A. Response to Allegations That Trevor Milton and Steve Jennes Designed**
23 **the Nikola One**

24 35. Tesla lacks sufficient knowledge or information to admit or deny the allegations
25 in paragraph 35, and therefore denies those allegations.

26 36. Tesla lacks sufficient knowledge or information to admit or deny the allegations
27 in paragraph 36, and therefore denies those allegations.

28 37. Denied.

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