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Attorneys for Plaintiff: DANIEL AARON HOROWITZ

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

DANIEL AARON HOROWITZ,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

TESLA MOTORS, INC., a Delaware
Corporation,

Defendant.

Case No.

CLASS ACTION COMPLAINT

- 1. BREACH OF CONTRACT;**
- 2. VIOLATION OF THE UNFAIR COMPETITION LAW (California Business & Professions Code §17200);**
- 3. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**
- 4. VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT (California Civil Code §1760, et seq.) (Injunctive Relief)**

DEMAND FOR JURY TRIAL

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1 **CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

2 Plaintiff DANIEL AARON HOROWITZ brings this Class Action Complaint and Demand
3 for Jury Trial and alleges as follows against Defendant TESLA MOTORS, INC., a Delaware
4 Corporation. Plaintiff, for this Complaint, alleges as follows upon personal knowledge as to
5 himself and his own acts and experiences, and as to all other matters upon information and belief,
6 including investigation conducted by his counsel.

7
8 **DEMAND FOR JURY TRIAL**

9 1. Plaintiff on behalf of himself and other similarly situated, hereby demands trial by
10 jury in this action pursuant to Rule 38 of the Federal Rules of Civil Procedure.

11
12 **THE PARTIES**

13 2. Plaintiff DANIEL AARON HOROWITZ (hereinafter "[Mr.] Horowitz" or
14 "Plaintiff") is an individual residing in Lafayette, County of Contra Costa, and State of California.

15 3. Defendant TESLA MOTORS, INC. (hereinafter "Tesla" or "Defendant") is and at
16 all relevant times was, a Delaware Corporation registered to do business in the State of California
17 with its registered office in the City of Fremont, County of Alameda, and State of California.

18 4. Additionally, TESLA engages in the marketing, supplying, distribution and retail
19 sales of automobiles to the public at large through both its website a broad network of sales
20 facilities across the United States.

21
22 **JURISDICTION AND VENUE**

23 5. This Court has subject matter jurisdiction of this action pursuant to the Class Action
24 Fairness Act of 2005 ("CAFA"), codified in pertinent part at 28 U.S.C. §1332(d)(2), which
25 provides for original jurisdiction in the federal courts over any class action in which a member of
26 the plaintiff class is a citizen of a State different from the State citizenship of any defendant, and
27 the amount in controversy exceeds the sum of \$5,000,000.00 exclusive of interests and costs. Here,
28 there is an aggregate amount in controversy exceeding \$5,000,000.00 exclusive of interest and

1 costs and there is minimal diversity between Plaintiff and Defendant. Additionally, this Court also
2 has supplemental jurisdiction over the set forth state law claims pursuant to 28 U.S.C. §1367.

3 6. This Court has personal jurisdiction over Tesla because Tesla conducts substantial
4 business in this judicial district, thereby purposely and intentionally availing itself of the benefits
5 and protections of this district when placing motor vehicles into the stream of commerce within
6 California and the United States. Personal jurisdiction over Tesla is foreseeable, fair, and proper.

7 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391. Tesla transacts
8 substantial business in this district with regularity and it is subject to personal jurisdiction in this
9 district. Additionally, Tesla advertises and markets its products in this district, and has received
10 substantial revenue and profits from its sales and leasing of motor vehicles in this district. Thus, a
11 substantial part of the events and/or omissions giving rise to the present claims occurred in within
12 this district. Therefore, venue is proper.

13 8. All acts of corporate employees as alleged were authorized or ratified by an officer,
14 director, or managing agent of the corporate employer.

15
16 **COMMON FACTUAL ALLEGATIONS**

17 9. Tesla is manufacturer and direct to consumer retail seller of electric vehicles
18 throughout the country. Tesla is "vertically integrated"; meaning it, unlike traditional
19 manufacturers of motor vehicles does not sell through separate entities (dealerships) but rather acts
20 as its own distributor and retail sales arm. It has only 4 base model vehicles; the S, 3, X and Y.
21 Each has various options or configurations of features such as interior colors, trim and so forth.

22 10. Tesla, by virtue of being "vertically integrated" knows exactly how many vehicles
23 are being ordered by consumers and the exact composition of each individual vehicle as ordered
24 by each consumer. Thus, Tesla can plan its manufacturing, the features of each individual vehicle
25 and when and if certain features or "options" will be available to each individual who orders their
26 car. In this way Tesla will always know and be capable to inform consumers when any particular
27 feature, option or characteristic of one of its 4 base models (The S, 3, X and Y) will either be
28 discontinued or not available.

1 11. In order to purchase one of its vehicles, a consumer must visit Tesla's website to
2 begin their order of a desired vehicle.

3 12. On the website a customer will select the model (e.g., Model S, Model 3, Model X,
4 Model Y) and will select various options including items such as the base vehicle (typically
5 delineated by the size of the battery and range capability) exterior color, wheels, interior décor,
6 number of seats, Autopilot, Self-Driving Capability, and charging options.

7 13. Once the order is complete, and a customer has paid an order fee of one hundred
8 dollars (\$100.00), Tesla will send a Motor Vehicle Order Agreement ("MVOA") which states that
9 the order was "placed electronically with accepted terms" and contains a total price not including
10 taxes and governmental fees.

11 14. Consumers reasonably rely on the stated price in Tesla's online order form and that
12 the terms of the agreement, specifically the features ordered for the vehicle and the price, will not
13 change.

14 15. Despite promising to sell cars to consumers at certain prices Tesla has rather
15 engaged in the practice of unilaterally sending modified Motor Vehicle Order Agreement contracts
16 to customers, such as Plaintiff, who have already entered into a contract with Tesla for a model of
17 vehicle with certain features and options. These "modified" orders, which appear and are sent to
18 consumers fully executed, contain different terms, most notably increased prices for the same base
19 model vehicle (or a lesser base model) and increased process for the same features (such as auto
20 pilot). Tesla engaged in exactly this conduct with Plaintiff Horowitz and, further, informed
21 Plaintiff that the changes were necessary because the model he ordered was no longer available;
22 in essence Tesla stated as a fact that the vehicle the customer ordered was no longer available even
23 though Tesla knew, when Horowitz ordered the vehicle, what options were available. However,
24 the truth is that Tesla changed nothing other than the price, increasing it unilaterally and
25 fraudulently. And Tesla strong-armed consumers into changing their orders by simply telling them
26 the originally ordered vehicle would not be available or would not be produced. In essence, Tesla
27 determined a way to force consumers to alter their orders on the pretext of non-available options
28 and enforce a price increase on other features that remained the same (such as the base vehicle or

1 auto pilot). Tesla simply refused to actually manufacture the vehicle the consumer ordered, and
2 for which Tesla took the order, in order to increase the price on already ordered vehicles.

3 16. Plaintiff, and other similarly situated persons, do not sign, click, or execute in
4 anyway the modified contracts. Tesla merely enforces the new terms on its existing customers with
5 existing contracts.

6 17. Not only do the new contracts contain configurations not agreed to by the customer,
7 but they also contain a higher price.

8 18. Tesla gave only two options: pay the higher price for a different model or cancel
9 the contract.

10 19. Tesla knows and understands that it lacks any real competition and that its
11 customers lack any alternatives to complete their vehicle orders in hopes that consumers will give
12 in to the changed configurations and price increases.

13 20. Plaintiff and all classes set forth herein now seek to enforce their contracts with
14 Tesla for the originally agreed-upon configuration and price.

15
16 **ALLEGATIONS SPECIFIC TO PLAINTIFF**

17 21. Plaintiff brings this action individually for himself and on behalf of all persons who
18 entered into a contract for the purchase of a Tesla Vehicle where the Tesla unilaterally changed
19 their configurations and increased the purchase price after the execution of the contract.

20 22. On or around October 7, 2020, Plaintiff entered into a binding contract with
21 Defendant whereby Defendant provided a "Motor Vehicle Order Agreement" ("MVOA") (the
22 "October Agreement") with "electronically accepted terms" setting forth the price for the purchase
23 of a 2020 model year Tesla Model X (hereinafter "[the] vehicle"). Tesla assigned an order number
24 "RN113924080" to the contract. Said contract is attached hereto as Exhibit "A".

25 23. The delivery date was to be December 28, 2020, which coincided with the
26 expiration of Plaintiff's previous lease of a different Tesla vehicle.

27 24. The particular configuration of the vehicle on the October contract contained,
28 among other things, a selection of a "Model X Long Range Plus", Midnight Silver Metallic

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