

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JPMORGAN CHASE BANK, NATIONAL	:	
ASSOCIATION, LONDON BRANCH,	:	
	:	Case No. _____
Plaintiff,	:	
	:	
- against -	:	COMPLAINT
	:	
TESLA, INC.,	:	
	:	
Defendant.	:	
	:	
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Plaintiff JPMorgan Chase Bank, National Association, London Branch (“JPMorgan”), by and through its undersigned attorneys, as and for its Complaint against Defendant Tesla, Inc. (“Tesla”), alleges, upon knowledge as to itself, and otherwise upon information and belief, as follows:

NATURE OF THE ACTION

1. This is a breach of contract action to recover over \$162 million dollars immediately due and payable by Tesla to JPMorgan. JPMorgan and Tesla entered into a series of warrant transactions, which required Tesla to deliver either shares of its stock or cash to JPMorgan if, at the time the warrants expired, Tesla’s share price was above the contractual “strike price.” The warrants did expire with Tesla’s share price above that strike price. JPMorgan demanded the due shares or cash, but Tesla has flagrantly ignored its clear contractual obligation to pay JPMorgan in full. JPMorgan brings this action to enforce its right to payment.
2. The warrants Tesla sold to JPMorgan included standard provisions intended to protect the parties against the economic effects on the warrants of announcements of significant

corporate transactions involving Tesla. An issuer's announcement that it is exploring a going-private transaction is exactly the type of announcement contemplated by these provisions. These contractual provisions required JPMorgan, as the agreed-upon "Calculation Agent" responsible for making certain calculations under the governing agreements, to adjust the terms of the warrant transactions to account for the economic effects of such an announcement. As is market standard, the agreements granted the Calculation Agent broad discretion to determine both how to measure these economic effects and what adjustments to make as a result, so long as JPMorgan did so in good faith and in a commercially reasonable manner.

3. On August 7, 2018, Tesla's CEO Elon Musk announced such a significant corporate transaction via Twitter, tweeting "***Am considering taking Tesla private at \$420. Funding secured.***" In the weeks that immediately followed the August 7 announcement, Tesla made additional statements and took various additional actions confirming it was considering a going-private transaction, including hiring advisors and forming a special committee of its board. Although the SEC later revealed—in a securities fraud complaint alleging that Mr. Musk's tweets were false and intended to mislead the market—that there had never been a firm offer to take Tesla private, that was not known at the time. Rather, Tesla's August 7 announcement caused immediate and significant economic effects as the market attempted to price in the likelihood of Tesla going private and making a tender offer at \$420. Those economic effects substantially decreased the value of the warrants. As required by the terms of the governing agreements, JPMorgan appropriately reduced the warrant strike price on August 15 to maintain the same fair market value as the warrants had before Tesla's announcement.

4. On August 24, 2018, Tesla suddenly reversed course and announced it was abandoning the going-private transaction. Tesla's second announcement increased the value of

the warrants, and thus required a second adjustment under the governing agreements—this time a strike price increase that reversed some, but not all, of the initial reduction. Other than a subsequent (mechanical) adjustment triggered by Tesla’s 5-to-1 stock split in 2020, the resulting strike price remained the same until the warrants expired in June and July 2021, when Tesla’s stock price was well above both the original and adjusted strike prices.

5. Even though JPMorgan’s adjustments were appropriate and contractually required, Tesla has refused to settle at the contractual strike price and pay in full what it owes to JPMorgan. Tesla is in flagrant breach of its contractual obligations. As a result, more than \$162 million is immediately due and payable to JPMorgan by Tesla.

PARTIES

6. JPMorgan Chase Bank, N.A., London Branch (defined above as JPMorgan) is a U.K. branch of JPMorgan Chase Bank, N.A., a national banking association organized under the laws of the United States with its head office in Columbus, Ohio. JPMorgan is a party to the Base Warrant Confirmation dated February 27, 2014 and the Additional Warrant Confirmation dated March 28, 2014 (the “Confirmations,” and each a “Confirmation”).

7. Defendant Tesla, Inc. (defined above as Tesla) is a corporation organized under the laws of Delaware with its principal place of business in Palo Alto, California. Tesla is JPMorgan’s counterparty to the Confirmations.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because the parties are completely diverse and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. Venue is proper in this District because in Section 8(r) of the Confirmations, the parties “irrevocably submit to the exclusive jurisdiction of the federal and state courts located in the Borough of Manhattan, in the City of New York in any suit or proceeding arising out of or relating to the Agreement, this Confirmation or any transactions contemplated hereby.” Venue is also proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this District.

10. This Court has personal jurisdiction over Defendant pursuant to C.P.L.R. 302(a) and N.Y. General Obligations Law § 5-1402 because Defendant irrevocably consented to this Court’s jurisdiction under Section 8(r) of the Confirmations and waived the right to object to this Court’s jurisdiction.

11. Under Section 8(s) of the Confirmations, both parties “irrevocably waive[d] any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to the Agreement, this Confirmation or any transactions contemplated hereby.”

FACTUAL ALLEGATIONS

I. The Warrant Transactions

12. On February 27, 2014 and March 28, 2014, Tesla Motors, Inc. (since renamed Tesla, Inc.) sold to JPMorgan a series of stock warrants expiring in 2021 (the “2021 Warrants”), as part of a larger capital markets transaction.¹ The 2021 Warrants are subject to agreements in the form of the 2002 ISDA Master Agreement (the “Master Agreement”), which sets forth the general terms of the parties’ relationship. The specific terms of the 2021 Warrants are set forth in the Confirmations negotiated by Tesla and JPMorgan, which, in turn, incorporate by reference

¹ Concurrently with the sale of the 2021 Warrants, Tesla also issued certain convertible notes and purchased call options (known as a bond hedge) from JPMorgan. The bond hedge and warrant transactions, collectively, benefitted Tesla by mitigating the stock dilution resulting from Tesla’s issuance of the convertible notes and were structured to allow Tesla to make certain federal income tax deductions.

the terms of the 2006 ISDA Definitions (the “2006 Definitions”) and the 2002 ISDA Equity Derivative Definitions (the “2002 Equity Definitions,” and collectively with the Master Agreement, the Confirmations, and the 2006 Definitions, the “Agreements”).² Under Section 8(r) of the Confirmations, the Agreements are construed in accordance with New York law.

13. Each of the 2021 Warrants was a call option for Tesla’s common stock. In exchange for a premium paid up front by JPMorgan to Tesla, the Agreements gave JPMorgan the right to purchase, on the warrant’s designated expiration date, one share of Tesla common stock per underlying 2021 Warrant at a specified “strike price.” The Confirmations divided the 2021 Warrants into forty individual tranches, each consisting of a specified number of underlying 2021 Warrants with a specified expiration date (“Expiration Date”). The Expiration Dates ranged from June 1, 2021 to July 27, 2021. For any tranche, if the 2021 Warrants expired “in the money,” that is to say, if Tesla’s stock price on the applicable Expiration Date exceeded the warrants’ strike price, Tesla was required to settle on a net share basis by delivering a number of shares of common stock with a value equal to the product of X (the difference between Tesla’s stock price and the strike price) and Y (the number of underlying 2021 Warrants comprising such tranche).³ If the 2021 Warrants expired “out of the money,” that is to say, if Tesla’s stock price on the applicable Expiration Date was less than the strike price, no amounts would be due by either party.

14. The initial strike price for the 2021 Warrants was \$560.6388 (the “Original Strike Price”).

² In the event of any inconsistency between the 2006 Definitions and the 2002 Equity Definitions, the latter governs. In the event of any inconsistency between the Master Agreement and the Confirmations, the Confirmations govern. See Confirmations § 1.

³ Alternatively, Tesla had the option of choosing to settle by paying this amount in cash, which it did not elect.

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