

**CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOSHUA SANTIAGO, individually and)
on behalf of similarly situated)
individuals,)

Plaintiff,)

v.)

TESLA, INC., a Delaware corporation,)

Defendant.)

No. 2023CH02523

Hon.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Joshua Santiago, brings this Class Action Complaint on behalf of himself and other consumers who purchased a Tesla vehicle, manufactured and warranted by Defendant Tesla, Inc. (“Tesla”), that suffer from a serious defect in the vehicles’ manufacturing, design and/or assembly, which has caused the vehicles to experience false forward collision alerts, impeding the normal operation of the vehicles and posing a safety risk not only to their drivers, but other drivers on America’s roads. Plaintiff, on behalf of himself and a class of similarly situated individuals, seeks damages and all other available relief for Defendant’s wrongful conduct. Plaintiff alleges as follows based on personal knowledge as to his own experiences, and as to all other matters, upon information and belief, including an investigation conducted by his attorneys.

NATURE OF THE ACTION

1. This case concerns Defendant’s manufacturing and sale of Tesla vehicles (“Class Vehicles”) containing a dangerous operational defect: a forward collision monitoring system that often falsely alerts, emitting a noise that is loud and distracting, and can cause the vehicle to

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automatically brake when there is no danger of a collision (the “Collision Warning Defect”). The defect thus results in unsafe driving events.

2. Consumers nationwide have complained of the Collision Warning Defect and the associated safety risks, but Defendant has failed to implement a recall, remedy the Collision Warning Defect, provide adequate repairs, or take appropriate action to protect Tesla drivers, other drivers, and pedestrians from the danger.

3. As a result of Defendant’s wrongful conduct as described herein, owners of the Class Vehicles have suffered damages, including, *inter alia*, (1) overpayment for their vehicles, (2) out-of-pocket expenses as a result of their increased insurance premiums for those owners enrolled in Tesla Insurance, and/or (3) diminished value of their vehicles.

4. In order to redress these injuries, Plaintiff brings this suit on his own behalf and on behalf of similarly situated individuals, asserting violations of the federal Magnuson-Moss Warranty Act, breach of implied warranty of merchantability, and violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 *et seq.* (the “ICFA”), and to obtain damages, injunctive relief, restitution, equitable relief, and all other available relief, including and an award of reasonable attorneys’ fees and costs.

PARTIES

5. Plaintiff Joshua Santiago is a natural person and a resident of Illinois.

6. Defendant Tesla, Inc. is a Texas corporation with its principal place of business in Austin, Texas.

JURISDICTION AND VENUE

7. This Court may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States,

because Plaintiff's claims arise out of Defendant's unlawful in-state actions. Further, Defendant is doing business within this state such that it has sufficient minimum contacts with Illinois and/or has purposely availed itself of Illinois markets to make it reasonable under the Illinois Constitution and U.S. Constitution for this Court to exercise jurisdiction over the Defendant.

8. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, because Defendant is doing business in Cook County and thus resides there under § 2-102, and because a substantial part of the events giving rise to Plaintiff's claims occurred in Cook County.

COMMON FACTUAL ALLEGATIONS

9. Defendant is one of the largest electric automobile producers in the United States. Defendant describes its Tesla vehicles as "some of the safest cars on the road." Defendant's advertisements emphasize its "safety" and how it's "built for safety."¹

10. Defendant releases new Tesla models each year and regularly updates its older models with "over-the-air" software updates for all drivers. However, none of Defendant's updates have resolved the Collision Warning Defect – an unnecessary false forward collision alert that is loud, distracting, can lead to "phantom braking," and costs Tesla vehicles real money (the "Collision Warning Defect") – and has produced significant problems for owners when the owners attempt a basic fundamental of safe driving: avoiding unnecessary distractions.


11. Specifically, due to the Collision Warning Defect, Tesla vehicle owners encounter an unexpected, loud and obtrusive forward collision warning that suddenly activates when there is no actual danger or collision risk, or in fact, any other car in sight.

12. Defendant knew or should have known about the warning issues and dangers posed by the Collision Warning Defect as it regularly updates its Tesla vehicles, or should have fixed the

¹ <https://www.tesla.com/model3>.

Collision Warning Defect after receiving a barrage of consumer complaints about the false warning and automatic braking issues. At the very least, Defendant should have disclosed the Collision Warning Defect to consumers before they bought a vehicle possessing the Defect.

13. Hundreds of complaints regarding the Collision Warning Defect that are substantially similar to the complaints below have been made to the National Highway Traffic Safety Administration (“NHTSA”) and to Defendant by owners of many Tesla models nationwide:

February 27, 2023 NHTSA ID NUMBER: 11509315 

Components: VEHICLE SPEED CONTROL, FORWARD COLLISION AVOIDANCE

NHTSA ID Number: 11509315

Incident Date February 26, 2023

Consumer Location SUNNYVALE, CA

Vehicle Identification Number 5YJ3E1EA7LF****

Summary of Complaint

| | | |
|-----------------|----|--|
| CRASH | No | I get "phantom braking" on average about every 2-3 hours of highway driving with cruise control enabled. All of a sudden without any road obstructions or vehicles ahead, the car will suddenly break hard even at highway speeds. Sometimes it happens when I approach an underpass or get to a section where the pavement is darker than before. |
| FIRE | No | |
| INJURIES | 0 | |
| DEATHS | 0 | |

1 Affected Product ▾

Request Research (Services fees apply)

May 24, 2022 NHTSA ID NUMBER: 11465978



Components: ELECTRICAL SYSTEM, FORWARD COLLISION AVOIDANCE

NHTSA ID Number: 11465978

Incident Date February 25, 2022

Consumer Location SAN DIEGO, CA

Vehicle Identification Number 5YJ3E1EB6LF****

Summary of Complaint

| | |
|--|--|
| <p>CRASH No</p> <p>FIRE No</p> <p>INJURIES 0</p> <p>DEATHS 0</p> | <p>The contact owns a 2020 Tesla Model 3. The contact stated while driving approximately 20 MPH, there was a loud sound coming from the vehicle. There was a warning message to take control of the vehicle displayed. The vehicle was not diagnosed or repaired. The manufacturer was not notified of the failure. The contact related the failure to NHTSA Campaign Number: 22V063000 (Electrical System, Forward Collision Avoidance). The approximate failure mileage was 9,800.</p> |
|--|--|

February 2, 2022 NHTSA ID NUMBER: 11449921



Components: FORWARD COLLISION AVOIDANCE

NHTSA ID Number: 11449921

Incident Date November 20, 2020

Consumer Location LOS ANGELES, CA

Vehicle Identification Number 5YJ3E1EBXLF****

Summary of Complaint

| | |
|--|---|
| <p>CRASH No</p> <p>FIRE No</p> <p>INJURIES 0</p> <p>DEATHS 0</p> | <p>I have experienced phantom breaking twice with my model 3. The first time was on the 101 freeway near Santa Clause Lane outside of Santa Barbara. There was no car in front of me or a hazard on the road but the vehicle made a sudden stop while I was traveling around 55MPH. The second occurrence happened on the 101 freeway near Santa Maria. Again, the vehicle made braked suddenly while traveling around 65MPH. The closest car in front of me was about 100 feet away. There was a car behind me but I was able to quickly hit the gas peddle to avoid an accident. I searched online at the time to see if anyone else had this issue but didn't have much luck. I'm thankful that I saw the Washington Post article.</p> |
|--|---|

February 2, 2022 NHTSA ID NUMBER: 11449946

**Components: FORWARD COLLISION AVOIDANCE**

NHTSA ID Number: 11449946

Incident Date February 1, 2022

Consumer Location DUBLIN, OH

Vehicle Identification Number 5YJ3E1EB0LF****

Summary of Complaint

| | | |
|-----------------|----|--|
| CRASH | No | Vehicle approached an upward slope which triggered a forward collision warning and (unsafe) emergency braking. |
| FIRE | No | |
| INJURIES | 0 | |
| DEATHS | 0 | |

1 Affected Product ▾ **Request Research** (Services fees apply)

January 29, 2023 NHTSA ID NUMBER: 11504325

**Components: FORWARD COLLISION AVOIDANCE**

NHTSA ID Number: 11504325

Incident Date January 29, 2023

Consumer Location SCOTTSDALE, AZ

Vehicle Identification Number 5YJ3E1EB3LF****

Summary of Complaint

| | | |
|-----------------|----|---|
| CRASH | No | On a recent trip, while using the adaptive cruise control on a divided, straight, flat four lane highway, the vehicle would randomly slam on the brakes for absolutely no reason, endangering us and other vehicles behind us, who were not expecting a random slam of the brakes. Driving conditions were ideal - sunny, excellent visibility and very low traffic. There were no oncoming or road-crossing vehicles and no vehicles in front of us on the divided highway to trigger the reaction. This happened 14 times over about 200 miles of driving on our return trip home and over 30 times on the trip out. On the outbound trip, I was using it on both the divided highway and sections where there was only one lane in each direction, so decided to just use the cruise control when there was a divided highway. This is a recent phenomenon, as cruise control has never done that before. The semi-autonomous mode does it all the time as well, so we stopped using it for fear of causing an accident. |
| FIRE | No | |
| INJURIES | 0 | |
| DEATHS | 0 | |

October 18, 2022 NHTSA ID NUMBER: 11489733



Components: FORWARD COLLISION AVOIDANCE

NHTSA ID Number: 11489733

Incident Date October 11, 2022

Consumer Location LOS ANGELES, CA

Vehicle Identification Number 5YJ3E1EB9LF****

Summary of Complaint

| | |
|-----------------|----|
| CRASH | No |
| FIRE | No |
| INJURIES | 0 |
| DEATHS | 0 |

I had 2 incidents of "phantom braking" in the vehicle this past week. I was just in cruise control, and the roads were in good condition, visibility and skies were clear, there were no cars in front or behind me, and we were cruising about 70 mph. In 2 cases, the car just slowed by itself for a few seconds and then I disengaged the cruise control. In 1 other cases, the car made an abrupt braking from 70 to about 40 mph. I disengaged and then did not use cruise control any longer. I've been told by Tesla service that the car's "radar" feature was replaced/disengaged in lieu of Tesla Vision, which apparently is in "beta" phase. In any event, this should not be happening, especially in just basic cruise control under ideal road conditions.

[1 Affected Product -](#)

Request Research (Services fees apply)

2020
TESLA MODEL Y
SUV AWD



16 RECALLS | INVESTIGATIONS **4**
COMPLAINTS **157**

★★★★★
OVERALL SAFETY RATING

February 15, 2023 NHTSA ID NUMBER: 11507398



Components: SERVICE BRAKES, FORWARD COLLISION AVOIDANCE

NHTSA ID Number: 11507398

Incident Date January 27, 2023

Consumer Location EL PASO, TX

Vehicle Identification Number 5YJYGDEE5LF****

Summary of Complaint


| | |
|-----------------|----|
| CRASH | No |
| FIRE | No |
| INJURIES | 0 |
| DEATHS | 0 |

Have had several issues with phantom braking. When in cruise control or auto drive there are times nothing is in the roadway but the vehicle will brake in middle of hwy. very dangerous

[1 Affected Product -](#)

Request Research (Services fees apply)

2022
TESLA MODEL Y 7-SEAT
SUV AWD


IMAGE NOT AVAILABLE

| | |
|---------|------------------|
| 11 | INVESTIGATIONS 4 |
| RECALLS | COMPLAINTS 446 |

★★★★★
OVERALL SAFETY RATING

March 11, 2023 NHTSA ID NUMBER: 11511325 ⊖

Components: FORWARD COLLISION AVOIDANCE

NHTSA ID Number: 11511325

Incident Date March 3, 2023

Consumer Location BOISE, ID

Vehicle Identification Number 7SAYGDEE6NF****


Summary of Complaint

| | | |
|----------|-----------|--|
| CRASH | No | Phantom braking with Autopilot (adaptive cruise) engaged. 8 hard braking incidents on 300 mile trip. 3 hard braking incidents on the return. Not all incidents can be explained by shadows, bridges or other vehicles. Braking occurred without warning on the interstate with near maximum brake being applied by the vehicle. It is very dangerous to pass a vehicle, have another car trailing you, and then have then have maximum braking with no warning or reason. The incident was reported to Tesla service, but Tesla provided no immediate solution. They stated that the software would improve over time. |
| FIRE | No | |
| INJURIES | 0 | |
| DEATHS | 0 | |

[1 Affected Product ▾](#)

Request Research (Services fees apply)

2017
TESLA MODEL 3
4 DR RWD



| | |
|---------|------------------|
| 10 | INVESTIGATIONS 4 |
| RECALLS | COMPLAINTS 13 |

Not been rated
OVERALL SAFETY RATING

February 3, 2022 NHTSA ID NUMBER: 11450215 ⊖

Components: FORWARD COLLISION AVOIDANCE

NHTSA ID Number: 11450215

Incident Date January 20, 2022

Consumer Location BURLINGAME, KS

Vehicle Identification Number 5YJ3E1EA8HF****


Summary of Complaint

| | | |
|----------|-----------|--|
| CRASH | No | Many phantom braking incidents both on autopilot and in adaptive cruise control mode result in surprising (and frightening) sudden braking for no reason. In high traffic conditions, this could lead to a possible rear-end collision. The adaptive cruise control has become so unstable in the last few months we will not use it. As this is a mature feature that used to work nearly flawlessly this is very frustrating to go backwards with an update. |
| FIRE | No | |
| INJURIES | 0 | |
| DEATHS | 0 | |

[1 Affected Product ▾](#)


Request Research (Services fees apply)

2019
TESLA MODEL 3
4 DR AWD



15
RECALLS

INVESTIGATIONS 5
COMPLAINTS 322



OVERALL SAFETY RATING

February 16, 2023 NHTSA ID NUMBER: 11507728

Components: SERVICE BRAKES, FORWARD COLLISION AVOIDANCE

NHTSA ID Number: 11507728

Incident Date February 12, 2023

Consumer Location EAGLE, ID

Vehicle Identification Number 5YJ3E1EB8KF****

Summary of Complaint

| | | |
|----------|----|---|
| CRASH | No | <p>I have six recorded incidents over three different trips where I was traveling at highway speeds on I-84. While utilizing cruise control, weather was clear and roads were dry with no vehicles in front of, behind or to the side of me. The vehicle slammed on it's brakes unexpectedly and for no apparent reason. 5 out of the 6 times, it stopped so fast, nearly coming to a complete stop that it caused the vehicle to swerve almost out of control. Luckily there were no vehicles close behind me, otherwise I would have certainly been rear ended and possibly even killed at the speeds we were traveling. I have spoken to Tesla and they admit it is a known problem, but they don't have an immediate fix. The recommend not using cruise control in their vehicles. I think they should buy the vehicles back if you cannot use something as basic as cruise control. This problem is wide spread and extremely dangerous if not deadly under certain conditions. The date below is the 2nd to last time it happened. Last time was on 2/13/23. There were 4 similar incidents prior to 2/12/23</p> |
| FIRE | No | |
| INJURIES | 0 | |
| DEATHS | 0 | |

14. Instead, although Defendant has been consistently notified of the Collision Warning Defect since the release of its Tesla vehicles with auto-driving and cruise control features, it has continued to manufacture, market, and sell Tesla vehicles possessing the Collision Warning Defect.

15. A superficial internet search reveals numerous forums of hundreds of Tesla owners complaining about the Collision Warning Defect.

16. Defendant has not disclosed the Collision Warning Defect in any substantial form. There have been no recalls. Nor has Defendant updated its Tesla vehicles with any over-the-air software update to fix the Collision Warning Defect.

17. Owners have not been otherwise notified of the Collision Warning Defect and, in fact, cannot discover it until they attempt to drive the Tesla vehicle—but this only occurs after they have driven their new or used Tesla off the dealership lot, or after any Tesla delivery has been completed, and the vehicle has already lost substantial value.

18. In addition, during a Tesla earnings call back in October 2020, Elon Musk, Defendant's Chief Executive Office, said insurance someday could represent 30% to 40% of Tesla's auto business. He announced that Tesla is building "a major insurance company."² To that end, Tesla Insurance is currently offered in Illinois, Arizona, Colorado, Maryland, Minnesota, Nevada, Ohio, Oregon, Texas, Utah, and Virginia. Specifically, Defendant discloses on its website that it "Rewards Safe Driving" and that policyholders' insurance premiums will be based on real-time driving behavior.³

19. Unfortunately, Tesla drivers' premiums are inflated because of random forward collision warnings as a direct result of the False Forward Defect that Tesla vehicles undergo when there is no actual danger or any car in sight. Defendant unfairly charges its Tesla customers for higher monthly premium fees based on these "unsafe" driving events that never actually occurred.

20. As a result, Plaintiff and other members of the Class have suffered damages and concrete harm through payment of inflated premium fees to Defendant that they cannot now ever recover.

21. Nevertheless, as a result of Defendant's wrongful conduct as described, owners of Tesla Vehicles have suffered damages, including, *inter alia*, (1) overpayment for their vehicles, (2) out-of-pocket expenses as a result of increased insurance premiums for those that are enrolled into Tesla Insurance, and/or (3) diminished value of their vehicles.

FACTS SPECIFIC TO PLAINTIFF

22. Plaintiff Santiago bought a 2020 Tesla Model 3 in 2021.

² John Egan, *Tesla Prepares to Start Selling Auto Insurance in Florida*, FORBES (Oct. 27, 2022), <https://www.forbes.com/advisor/car-insurance/tesla-insurance/>.

³ Tesla.com/Insurance (last accessed March 14, 2023).

23. Immediately after purchasing his Tesla, Plaintiff Santiago began experiencing the effects of the Collision Warning Defect. Plaintiff Santiago has experienced the effects of the Collision Warning Defect throughout Illinois, including on Illinois roadways and parking lots.

24. Specifically, Plaintiff has experienced false forward collision signals as a direct result of the Collision Warning Defect while driving through parking lots and while turning at intersections, when no other vehicles or pedestrians were in the vicinity of his Tesla vehicle. Each time the false forward collision signal alarm would go off, it would create unnecessary panic for Plaintiff Santiago and an unnecessary safety risk because of the nature of the loud and obtrusive false collision warning alarm.

25. Had Plaintiff Santiago known before purchasing his Tesla that it contained the Collision Warning Defect, he would not have decided to purchase that particular vehicle or would have paid significantly less for it.

26. Plaintiff and his Model 3 are also enrolled in Tesla Insurance, including a usage-based safety discount program which determines the policyholder's premium based on certain driving metrics, including the frequency of safety alerts.

27. Like many other Model 3s, Plaintiff's Model 3 has on numerous occasions experienced false forward collision warnings when there was no collision risk, or indeed, any car or other item located in the vicinity of Plaintiff's vehicle.

28. As a result, Plaintiff's monthly insurance premium has increased since when he first enrolled in Tesla Insurance because his "Safety Score" (the score generated by Tesla based on driving habits) has decreased due to the Collision Warning Defect.

29. Defendant has failed to implement any steps to remedy the false forward collision warnings that Plaintiff has experienced in his vehicle.

CLASS ACTION ALLEGATIONS

30. Pursuant to 735 ILCS 5/2-801, Plaintiff brings this action on behalf of a Class and

Subclasses of similarly situated individuals defined as follows:

The Nationwide Class: All individuals in the United States who, within the applicable limitations period, purchased a Class Vehicle in the United States or its territories.

The Nationwide Tesla Insurance Subclass: All individuals who, within the applicable limitations period, purchased a Class Vehicle the United State or its territories and enrolled in the Tesla Insurance program.

The Illinois Subclass: All individuals in the United States who, within the applicable limitations period, purchased a Class Vehicle in the state of Illinois.

The Illinois Tesla Insurance Subclass: All individuals who, within the applicable limitations period, purchased a Class Vehicle in the state of Illinois and enrolled in the Tesla Insurance program.

31. Expressly excluded from the Class and Subclasses are any members of the judiciary assigned to preside over this matter; any officer, director, or employee of Defendant; and any immediate family members of such officers, directors, or employees.

32. There are thousands of members of the Class and Subclasses such that joinder of all members is impracticable. Although the exact number of members of the Class and Subclasses is presently unavailable to Plaintiff, the members of the Class and Subclasses can be easily identified through Defendant's records.

33. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class and Subclasses. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and Subclasses, and have the financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to those of the other members of the Class and Subclasses.

34. Plaintiff's claims are typical of the claims of the other members of the Class and Subclasses, in that the factual and legal bases of Defendant's liability to Plaintiff and to the other members of the Class and Subclasses are the same. Plaintiff and the other members of the Class and Subclasses have all suffered similar harms and damages as a result of Defendant's Collision Warning Defect.

35. There are many questions of law and fact common to the claims of Plaintiff and the other members of the Class and Subclasses, and those questions predominate over any questions that may affect individual members of the Class and Subclasses. Common questions for the Class and Subclasses include, but are not limited to:

- a) Whether the Class Vehicles and the technology, software and/or sensors they rely on are defectively designed or manufactured such that they are not suitable for their intended use;
- b) Whether Defendant misrepresented to Plaintiff and the Class and Subclasses members that the Class Vehicles perform safely;
- c) Whether the fact that the Class Vehicles suffer from the Collision Warning Defect would be considered material to a reasonable consumer;
- d) Whether, as a result of Defendant's concealment or failure to disclose material facts, Plaintiff and the members of the Class and Subclasses acted to their detriment by purchasing Class Vehicles manufactured by Defendant;
- e) Whether Defendant was aware of the Collision Warning Defect prior to selling the Class Vehicles;
- f) Whether the Collision Warning Defect constitutes an unreasonable safety risk;
- g) Whether Defendant breached implied warranties with respect to the Class Vehicles;

- h) Whether Defendant had a duty to disclose the defective nature of the Class Vehicles and the Collision Warning Defect to Plaintiff and the members of the Class and Subclasses;
- i) Whether Plaintiff and the members of the Class and Subclasses are entitled to equitable relief, including but not limited to a preliminary and/or permanent injunction;
- j) Whether Defendant violated the Illinois Consumer Fraud and Deceptive Business Practices Act when it sold to consumers Class Vehicles that suffered from the Collision Warning Defect;
- k) Whether Defendant's conduct constituted unfair or deceptive trade practices under States' consumer protection laws,;
- l) Whether Defendant has acted with deliberate indifference to the safety risks posed by the Collision Warning Defect;
- m) The proper measure and calculation of damages; and
- n) Whether Defendant should be enjoined from engaging in such conduct in the future.

36. Defendant has acted and/or failed to act on grounds generally applicable to the Plaintiff and the other members of the Class and Subclasses, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and Subclasses, and making injunctive or corresponding declaratory relief appropriate for the Class and Subclasses as a whole.

37. Absent a class action, most members of the Class and Subclasses would find the cost of litigating their claims to be prohibitive and would have no effective remedy. Unless the

Class and Subclasses are certified, Defendant will retain the monies it received from the members of the Classes and Subclasses as a result of its unfair conduct.

38. The class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

COUNT I
Breach of Implied Warranties under the Magnuson-Moss Warranty Act,
15 U.S.C. § 2301, *et seq.*
(on behalf of Plaintiff and the Class and Subclasses)

39. Plaintiff incorporates by reference all of the foregoing allegations as though fully set forth herein.

40. Plaintiff and the other Class members are “consumers” within the meaning of 15 U.S.C. § 2310(3).

41. Defendant is a “supplier” and “warrantor” within the meanings of sections 15 U.S.C. § 2301(4)–(5).

42. The Class Vehicles are “consumer products” within the meaning of 15 U.S.C. § 2301(1).

43. 15 U.S.C. §2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with any implied warranty.

44. Under 15 U.S.C. § 2310(e), Plaintiff and the Class are not required to provide Defendant notice of this class action and an opportunity to cure until the time the Court determines the representative capacity of Plaintiff under Rule 23.

45. Defendant represents that its Tesla Service Centers act on its behalf with regards to completing maintenance and warranty repairs and addressing any problems with the Class Vehicles. For instance, Defendant tells Class Vehicle purchasers that Tesla recommends that all

maintenance, service and repairs be done at a Tesla Service Center or Tesla authorized repair facility in order to avoid voiding warranty coverage or having warranty coverage denied. Defendant controls its Tesla Service Center or its authorized repair facilities' warranty repair protocols, as it provides the special training, materials, special tools, replacement parts, and requires that warranty repairs be performed at Defendant's direction.

46. Defendant also represents that any warranty may be voided if Class Vehicle owners do not follow Defendant's specific instructions and recommendations regarding the use and operation of the vehicle provided by not installing the vehicle's software updates after notification that there is an update available.

47. Therefore, with regards to their Class Vehicle purchases, Plaintiff and the other Class and Subclass members dealt with Defendant directly, because Defendant provided warranties to Plaintiff and the Class and Subclass members.

48. As a matter of law, each Class Vehicle comes with an implied warranty of merchantability whereby each vehicle is warranted by Defendant to be of merchantable quality such that it would pass without objection in the trade and is fit for the ordinary purposes for which it was to be used.

49. However, Defendant breached this implied warranty of merchantability, as the Class Vehicles are not fit for the ordinary purposes for which they are meant to be used, because their owners cannot reliably or safely drive their vehicles due to the Collision Warning Defect. As opposed to other consumer vehicle owners, Plaintiff and the Class members face random and unnecessarily loud warning signals due to the Collision Warning Defect, and face the risk of phantom braking and loss of control of their vehicles, when driving their Class Vehicles. As such,

the Collision Warning Defect and its associated dangers directly impairs the Class Vehicles' driveability and reliability and restrict safe vehicle operation.

50. The Class Vehicles would not pass without objection in the automotive trade, because the dangers of false and unnecessary distractions in the Class Vehicles, as described herein, force Class Vehicle owners to be startled and face the risk of automatic, phantom breaking, directly limiting the Class Vehicles' utility as personal vehicles. The Collision Warning Defect limits the usefulness and operation of the Class Vehicles because it impedes where and when the Class Vehicles can be driven in a safe manner. These circumstances also make them unfit for the ordinary purposes for which such vehicles are used.

51. Moreover, the Class Vehicles are not adequately labeled because their labeling failed to disclose that they forward collision monitoring systems that frequently falsely alert, failed to disclose the Collision Warning Defect and associated dangers, and did not advise Plaintiff or the Class and Subclass members of the same prior to experiencing the Collision Warning Defect firsthand.

52. Defendant has been provided notice of the Collision Warning Defect through numerous complaints online, including but not limited to hundreds of complaints to the NHTSA, and to Defendant itself, as well as its own internal engineering knowledge.

53. Defendant has had numerous opportunities to cure the Collision Warning Defect in all Class Vehicles, through its over-the-air software updates, but it has chosen not to remedy the issue.

54. Defendant's actions and omissions have deprived Plaintiff and the Class and Subclass members of the benefit of their bargain, have caused their Class Vehicles to be worth less than what Plaintiff and the other Class and Subclass members paid for, and, additionally, have

damaged those enrolled in Defendant's Tesla Insurance program due to higher monthly premium fees based on false forward collision alerts. The Defect causes the Class Vehicles to record "unsafe" driving events that never actually occurred.

55. As a direct and proximate result of Defendant's breach of its duties, the proposed Class and Subclass members received goods with substantially impaired value. Plaintiff and the Class and Subclass members have suffered damages including but not limited to the diminished value of their Class Vehicles and increased insurance premiums.

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for the following relief:

- A. Entry of an order certifying the Class and Subclasses as defined above, appointing Plaintiff as class representative, and appointing Plaintiff's counsel as class counsel;
- B. An award of actual and compensatory damages to Plaintiff and the other members of the Class and Subclasses for all damages sustained as a result of Defendant's wrongdoing, in an amount to be proven at trial, including prejudgment interest thereon;
- C. An award of punitive damages for Defendant's misconduct and deliberate indifference to safety risks;
- D. An award of reasonable attorneys' fees and costs;
- E. An Order enjoining Defendant from continuing to sell vehicles containing the Collision Warning Defect without disclosing the Class Vehicles' false forward collision warnings; and
- F. Such further and other relief as the Court deems reasonable and just.

COUNT II
Breach of Implied Warranty of Merchantability
(on behalf of Plaintiff and the proposed Class and Subclasses)

56. Plaintiff incorporates by reference all of the foregoing allegations as though fully set forth herein.

57. Defendant represents that its Tesla Service Centers act on its behalf with regards to completing maintenance and warranty repairs and addressing any problems with the Class Vehicles. For instance, Defendant tells Class Vehicle purchasers that Tesla recommends that all maintenance, service and repairs be done at a Tesla Service Center or Tesla authorized repair facility in order to avoid voiding warranty coverage or having warranty coverage denied. Defendant controls its Tesla Service Center or its authorized repair facilities' warranty repair protocols, as it provides the special training, materials, special tools, replacement parts, and requires that warranty repairs be performed at Defendant's direction.

58. Defendant also represents that any warranty may be voided if the Class Vehicle owners do not follow Defendant's specific instructions and recommendations regarding the use and operation of the vehicle provided by not installing the vehicle's software updates after notification that there is an update available.

59. Therefore, with regards to their Class Vehicle purchases, Plaintiff and the other Class and Subclass members dealt with Defendant directly, because Defendant provided warranties to Plaintiff and the Class and Subclass members.

60. The implied warranty of merchantability included with each sale or lease of a Class Vehicle means that Defendant warranted that each of the Class Vehicles was fit for the ordinary purposes for which the Class Vehicles would be used.

61. However, Defendant breached this implied warranty of merchantability, as the Class Vehicles are not fit for the ordinary purposes for which they are meant to be used, because their owners cannot reliably or safely drive their vehicles due to the Collision Warning Defect. As opposed to other consumer vehicle owners, Plaintiff and the Class members face random, unnecessarily loud warning signals due to the Collision Warning Defect, and face the risk of phantom braking and loss of control of their vehicles, when driving their Class Vehicles. As such, the Collision Warning Defect and its associated dangers directly impairs the Class Vehicles' driveability and reliability and restrict safe vehicle operation.

62. The Class Vehicles would not pass without objection in the automotive trade, because the dangers of false and unnecessary distractions in the Class Vehicles, as described herein, force Class Vehicle owners to be startled and face the risk of automatic, phantom breaking, directly limiting the Class Vehicles' utility as personal vehicles. The Collision Warning Defect limits the usefulness and operation of the Class Vehicles because it impedes where and when the Class Vehicles can be driven in a safe manner. These circumstances also make them unfit for the ordinary purposes for which such vehicles are used.

63. Moreover, the Class Vehicles are not adequately labeled because their labeling failed to disclose that they contain forward collision monitoring systems that frequently falsely alert, failed to disclose the Collision Warning Defect and associated dangers, and did not advise Plaintiff or the Class and Subclass members of the same prior to experiencing the Collision Warning Defect firsthand.

64. Defendant has been provided notice of the Collision Warning Defect through numerous complaints online, including to the NHTSA, and to Defendant itself, as well as its own internal engineering knowledge and vehicle testing.

65. Defendant has had numerous opportunities to cure the Collision Warning Defect in all Class Vehicles, through its over-the-air software updates, but it has chosen not to remedy the issue.

66. Defendant's actions and omissions have deprived Plaintiff and the Class and Subclass members of the benefit of their bargain, have caused their Class Vehicles to be worth less than what Plaintiff and the other Class and Subclass members paid for, and, additionally, have damaged those enrolled in Defendant's Tesla Insurance program due to higher monthly premium fees based on false forward collision alerts. The Defect causes the Class Vehicles to record "unsafe" driving events that never actually occurred.

67. As a direct and proximate result of Defendant's breach of implied warranties, the Class and Subclass members received goods with substantially impaired value. Plaintiff and the members of the Class and Subclass have suffered damages including but not limited to the diminished value of their Class Vehicles and increased insurance premiums.

WHEREFORE, Plaintiff, on behalf of himself and the Class and Subclasses, prays for the following relief:

- A. Entry of an order certifying the Class and Subclasses as defined above, appointing Plaintiff as class representative, and appointing Plaintiff's counsel as class counsel;
- B. An award of actual and compensatory damages to Plaintiff and the other members of the Class and Subclasses for all damages sustained as a result of Defendant's wrongdoing, in an amount to be proven at trial, including prejudgment interest thereon;

- C. An award of punitive damages for Defendant’s misconduct and deliberate indifference to safety risks;
- D. An award of reasonable attorneys’ fees and costs;
- E. An Order enjoining Defendant from continuing to sell vehicles containing the Collision Warning Defect without disclosing the Class Vehicles’ false forward collision warnings; and
- F. Such further and other relief as the Court deems reasonable and just.

COUNT III

**Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act,
815 ILCS 505/2
(on behalf of Plaintiff and the Illinois Subclass and Illinois Tesla Insurance Subclass)**

68. Plaintiff realleges the foregoing allegations as if fully set forth herein.

69. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act provides in relevant part that:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

815 ILCS 505/2.

70. Plaintiff and the members of the Illinois Subclass and Illinois Tesla Insurance Subclass (“Illinois Subclasses”) are “consumers” within the meaning of Section 1(e) of the ICFA.

71. Defendant’s conduct as alleged herein occurred in the course of trade or commerce.

72. In manufacturing, selling, and designing the Class Vehicles, and in marketing, offering for sale, and selling the defective Class Vehicles, Defendant engaged in unfair or deceptive acts or practices prohibited by the ICFA, including, but not limited to:

- a. By representing in its marketing materials that the Class Vehicles contain specially-designed features designed for “safety” and are “built for safety,” but in reality the Collision Warning Defect causes Class Vehicle owners unnecessary and dangerous distractions through false collision warnings and the risk of unanticipated braking;
- b. By failing to disclose to, and concealing from, Plaintiff and the members of the Illinois Subclasses that the Class Vehicles contain the Collision Warning Defect, while at the same time representing that the Class Vehicles may be safely operated.

73. By including such false representations and omissions in its marketing materials provided at the time of sale, as well as other communications to Class Vehicle owners and prospective purchasers, Defendant intended that Class Vehicle purchasers such as Plaintiff and the members of the Illinois Subclasses, rely on such representations and omissions.

74. Plaintiff and the members of the Illinois Subclasses understood the representations to accurately describe the Class Vehicles’ components and operational requirements.

75. Absent Defendant’s misrepresentations and omissions, and had Plaintiff and the members of the Illinois Subclasses been adequately informed of the Collision Warning Defect, they would not have purchased Defendant’s Class Vehicles or would have paid significantly less for them. Had Plaintiff and the members of the Illinois Subclasses known that Defendant would not provide repairs to defects in the Class Vehicles promptly, and not provide over-the-air software updates to fix any defects, they would not have paid the prices they did for the Class Vehicles.

76. Plaintiff and the members of the Illinois Subclasses had no way of discerning that Defendant’s representations were false and misleading, or otherwise learning the facts that Defendant had concealed or failed to disclose, because Defendant did not alert Plaintiff and the

members of the Illinois Subclasses to such information prior to their purchase of their Class Vehicles.

77. Defendant intentionally misrepresented, and concealed, material facts concerning the Collision Warning Defect from Plaintiff and the members of the Illinois Subclasses in an effort to induce Plaintiff and the members of the Illinois Subclasses to purchase the Class Vehicles and to purchase the Class Vehicles at a higher price than Plaintiff and the members of the Illinois Subclasses would have otherwise paid had the defect been properly and appropriately disclosed.

78. Further, Defendant's false and misleading representations, material omissions, and refusal to remedy the Collision Warning Defect are each contrary to public policy, immoral, unethical, oppressive, unscrupulous, and cause substantial injury to consumers by exposing Class Vehicle owners and the general public to the dangers of unexpected and false collision warnings and uncontrolled braking.

79. As a direct and proximate result of Defendant's deceptive and unfair trade practices, Plaintiff and the other the members of the Illinois Subclasses suffered actual damages, including paying excessive amounts for the Class Vehicles, paying excessive premiums for Tesla Insurance, and expectation damages associated with not receiving the benefit of their bargains with Defendant.

80. Defendant's conduct is in violation of the ICFA, and pursuant to 815 ILCS 505/10a, Plaintiff and the members of the Illinois Subclasses are entitled to damages in an amount to be proven at trial, reasonable attorneys' fees, injunctive relief prohibiting Defendant's unfair and deceptive conduct going forward, and any other penalties or awards that may be appropriate under applicable law.

WHEREFORE, Plaintiff, on behalf of himself and the members of the Illinois Subclasses, prays for the following relief:

- A. Entry of an order certifying the Illinois Subclasses as defined above, appointing Plaintiff as class representative, and appointing Plaintiff's counsel as class counsel;
- B. An award of actual or compensatory damages in an amount to be determined at trial;
- C. Injunctive relief prohibiting Defendant's deceptive and unfair practices as described herein;
- D. An award of reasonable attorney's fees and costs; and
- E. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: March 14, 2023

JOSHUA SANTIAGO, individually and on behalf
of similarly situated individuals

By: /s/ Timothy P. Kingsbury
One of Plaintiff's Attorneys

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