

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Daniel Crowley

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JUSTINE HSU

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JUSTINE HSU, an individual,

Plaintiff,

vs.

TESLA, INC. fka TESLA MOTORS, INC.;
DOES 1 through 100, Inclusive,

Defendants.

Case No. **20STCV18473**

Assigned for All Purposes to Judge:

Department:

COMPLAINT FOR:

- 1) **STRICT PRODUCT LIABILITY;**
- 2) **NEGLIGENCE;**
- 3) **NEGLIGENCE – BREACH OF DUTY TO WARN**
- 4) **BREACH OF CONTRACT/COMMON LAW WARRANTY;**
- 5) **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY, CAL. COM. CODE §2314;**
- 6) **BREACH OF EXPRESS WARRANTY, CAL. COM. CODE §2313**
- 7) **INTENTIONAL MISREPRESENTATION;**
- 8) **COMMON LAW FRAUDULENT CONCEALMENT**

Plaintiff JUSTINE HSU alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff JUSTINE HSU, and at all times mentioned in this Complaint, is a resident of the City of El Monte, County of Los Angeles, State of California. (hereinafter “HSU”).

1 2. Defendant TESLA, INC. f/k/a TESLA MOTORS, INC. is at all times mentioned in
2 this Complaint is incorporated in the State of Delaware, with its main vehicle manufacturing facility
3 in the City of Fremont, County of Alameda, State of California (hereinafter “TESLA”). The main
4 headquarters of TESLA is located in the County of Santa Clara.

5 3. The full extent of the facts linking such fictitiously sued Defendants with the causes of
6 action alleged herein are unknown to Plaintiff JUSTINE HSU. PLAINTIFF is informed and believes,
7 and thereupon alleges, that each of the Defendants designated herein as a DOES 1 through 100,
8 inclusive was and is negligently, carelessly, recklessly, unlawfully, tortuously, wantonly, wrongfully,
9 illegally, or in some other actionable manner, responsible for the events and happenings hereinafter
10 referred to, and thereby negligently, carelessly, recklessly, unskillfully, unlawfully, tortuously,
11 wantonly, wrongfully and illegally proximately caused the hereinafter described injuries and damages
12 to the Plaintiff as herein alleged. Plaintiff will hereinafter seek leave of Court to amend this
13 Complaint to show said Defendants’ true names and capacities after the same have been ascertained.

14 4. PLAINTIFF is informed and believes, and based thereupon alleges, that at all times
15 mentioned herein, Defendants, and each of them, including DOES 1 through 100, inclusive, and each
16 of them, were agents, servants, employees and joint venturers of their Co-Defendants, and were, as
17 such, acting within the course, scope and authority of said agency, employment and joint venture, and
18 that each and every Defendant, as aforesaid, when acting as a principal, was negligent in the selection
19 and hiring of each and every Defendant as an agent, employee, contractor, subcontractor and joint
20 venture, and that each Defendant, by and through its officers, directors or managing agents,
21 authorized, ratified or otherwise approved the acts of the remaining Defendants, and that said
22 officers, directors or managing agents participated in said acts with the Defendants, including DOES
23 1 through 100, inclusive, and each of them.

24 5. Defendant TESLA is an American multinational corporation, founded in 2003, based
25 in California, specializing in, among other things, the design, manufacture and sale of all-electric
26 powered cars to be used on the streets and highways of this and other countries. Its products include
27 the Roadster, the Model S sedan, the Model 3 sedan, and the Model X crossover SUV.
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1 6. In an interview with Los Angeles Times published on May 19, 2015, TESLA
2 Chairman Elon Musk stated as TESLA was releasing a software update, “Tesla is a software
3 company as much as it is a hardware company. A huge part of what Tesla is, is a Silicon Valley
4 software company. We view this the same as updating your phone or your laptop.”

5 7. In 2016, HSU was in the market to lease a new vehicle. As she conducted research on
6 the various makes and models on the market, HSU was particularly taken by TESLA’s product line.
7 One of HSU’s chief concerns was safety, and she was encouraged by TESLA’s marketing which
8 claimed that TESLA’s vehicles were the safest cars on the market.

9 8. On July 28, 2016, HSU entered into a three-year lease with TESLA for a 2016 Model
10 S 75D vehicle (the “Model S”). A true and correct copy of the lease is attached hereto as Exhibit A.
11 The sales representatives at the Tesla Gallery in Pasadena, California where HSU entered into her
12 lease further sold her on the Model S’s advanced safety capabilities.

13 9. One of the features of HSU’s Model S was the Autopilot Feature (“Autopilot”).
14 TESLA describes Autopilot as “an advanced driver assistance system that enhances safety and
15 convenience behind the wheel. When used properly, Autopilot reduces [one’s] overall workload as a
16 driver.”¹ Autopilot provides certain driver assistance features which according to TESLA make
17 “driving safer and less stressful.”² This includes Traffic-Aware Cruise Control, which matches the
18 speed of the vehicle to that of surrounding traffic. Autosteer is another Autopilot feature that assists
19 in steering the vehicle within a clearly marked lane using Traffic-Aware Cruise Control.³ In fact,
20 according to TESLA’s 2016 Model S Owner’s Manual, “Autosteer builds upon Traffic-Aware Cruise
21 Control, intelligently keeping [the] Model S in its driving lane when cruising at a set speed. Using the
22 forward looking camera, the radar sensor, and the ultrasonic sensors, Autosteer detects lane markings
23 and the presence of vehicles and objects, steering [the] Model S based on lane markings and the
24 vehicle directly in front of you.” Therefore, the design of Autopilot’s technology was, if working
25 properly – created to prevent the vehicle from driving outside of marked travel lanes, and from
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28 ¹ <https://www.tesla.com/support/autopilot>

² <https://www.tesla.com/support/autopilot>

³ <https://www.tesla.com/support/autopilot>

1 colliding with fixed objects. The Model S was not to leave a marked travel lane, within the input of
2 the driver, in a way to cause damage, harm, or injury.

3 10. Based on TESLA's advertising, promotional materials and owner's manual, HSU
4 believed that the Model S's technology – including Autopilot's design, programming, software,
5 hardware, and systems – would eliminate the risk of harm or injury to the vehicle operator by
6 operating only within marked travel lanes and avoiding other vehicles or obstacles while driving on
7 the roadways. HSU further reasonably believed that the Model S was safer than a human-operated
8 vehicle because of TESLA's claimed technical superiority regarding the Model S's Autopilot system
9 and its driver-assistance features, and because of TESLA's claim that all of the self-driving
10 components engineered into the vehicle would prevent injury from driving into a fixed object of any
11 kind.

12 11. On the morning of July 6, 2019, HSU was driving alone in her Model S in the City of
13 Arcadia, California on Live Oak Avenue. As HSU is a petite five foot two, she would typically sit
14 close to the steering wheel and drive with bent elbows so that she could see over the steering wheel
15 and reach the foot pedals.

16 12. As HSU was driving on Live Oak Avenue, the traffic conditions were stop-and-go, so
17 HSU engaged the Model S's Autopilot mode. TESLA drivers frequently engage Autopilot mode
18 when driving in stop-and-go traffic. The road was flat and there were no sharp curves on the path.
19 The visibility conditions that morning were also clear. Both of HSU's hands remained on the Model
20 S's steering wheel before and after she engaged Autopilot mode as the TESLA Owner's Manual
21 instructs drivers to do.

22 13. As HSU crossed the Santa Anita Avenue traffic light, the Autopilot mode had been
23 engaged for approximately twenty seconds. The Model S was driving between approximately 25 to
24 30 miles per hour in the far left lane when the Autopilot failed to recognize the center median.
25 Suddenly and without warning, the Autopilot malfunctioned and the Model S swerved into the center
26 median. The driver's side tire hit the curb of the median, causing the airbags to deploy. The collision
27 happened so suddenly that HSU had no time to react, but she attempted to shield her face from the
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1 airbags by releasing her hands from the steering wheel and positioning them in front of her face.
2 Given the type of collision where the vehicle hit the center median from a left angle, the airbags in
3 fact should have never deployed. Moreover, when the airbag deployed from the steering wheel, it
4 deployed improperly. As the airbag left the consul, it ripped out in a slingshot-like fashion, rather
5 than a plume, and caused numerous breaks in HSU's jaw and the loss of multiple teeth. HSU also
6 suffered injuries to her face, hands, and legs and was bleeding from her hand and mouth.
7 (Hereinafter, the "SUBJECT INCIDENT").

8 14. Another driver on the road who witnessed the SUBJECT INCIDENT immediately
9 called 911. HSU had to crawl out of the passenger's side door to exit her vehicle. Firefighters arrived
10 on scene, and HSU was transported by ambulance twice – first to Methodist Hospital in Arcadia, and
11 then to Huntington Hospital in Pasadena for treatment by the trauma team and the plastic surgeon.

12 15. HSU has since undergone three surgeries and continues to require further medical
13 treatment due to her injuries.

14 **CAUSES OF ACTION**

15 16. The defects in the design, manufacture, configuration and assemble of the subject
16 vehicle were a substantial factor in causing the vehicle to lose control on the subject roadway and in
17 causing the vehicle to crash. Because of the Autopilot failure, and the improper deployment of the
18 airbags, Plaintiff HSU suffered severe injuries, resulting in a broken jaw, broken teeth, and multiple
19 injuries to her face, hands, and legs. Plaintiff HSU also suffered emotional injuries from the shock of
20 the collision.

21 17. Prior to the sale and distribution of said vehicle, Defendants TESLA and DOES 1
22 through 100, inclusive, knew the vehicle was in a defective condition as previously described.
23 Further, said Defendants, through their officers, directors and managing agents, had prior notice and
24 knowledge from several sources, including but not limited to the results of a multiplicity of tests run
25 prior to the date of the said incident, internal memoranda and correspondence, and industry
26 publications, as well as notice of numerous crashes and serious injuries caused by the design of the
27 subject vehicle, that the vehicle was defective and presented a substantial and unreasonable risk of
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1 harm to the American motoring public in that said defects unreasonably subjected occupants to injury
2 as a result of the failure in the event of foreseeable motor vehicle accidents.

3 18. Despite such knowledge, Defendants TESLA and DOES 1 through 100, inclusive,
4 acting through their officers, directors and managing agents, to enhance Defendants' profits,
5 knowingly and deliberately failed to remedy the known defects in said vehicle and failed to warn the
6 public, including PLAINTIFF, of the extreme risk of injury occasioned by said defects. Said
7 Defendants and individuals intentionally proceeded with the design, manufacture, sale distribution
8 and marketing of said vehicle, knowing persons would be exposed to serious potential danger in
9 order to advance their own pecuniary interest. Defendants' conduct was despicable, and so
10 contemptible that it would be looked down upon and despised by ordinary decent people and was
11 carried on by Defendants with a willful and conscious disregard for the safety of PLAINTIFF and
12 others, entitling PLAINTIFF to exemplary damages under Civil Code section 3294.

13 19. As a result of the SUBJECT INCIDENT and the negligent and wrongful conduct of
14 Defendant TESLA and DOES 1 through 100, inclusive, PLAINTIFF sustained serious personal
15 injuries.

16 20. As a further result of the conduct of said Defendants, PLAINTIFF incurred property
17 and other pecuniary losses because of the actions and inactions herein described.

18 21. As a further result of the conduct of said Defendants, PLAINTIFF suffered both past
19 and future economic damages because of the actions and inactions herein described.

20 22. As a further direct and proximate result of the acts and omissions of Defendants, and
21 each of them, PLAINTIFF has incurred general damages in an amount according to proof at trial.

22 **FIRST CAUSE OF ACTION FOR STRICT PRODUCT LIABILITY**

23 (AGAINST DEFENDANTS TESLA, INC. fka TESLA MOTORS, INC.;

24 AND DOES 1 THROUGH 100, INCLUSIVE)

25 23. PLAINTIFF realleges as though fully set forth at length and incorporates herein by
26 reference all of the allegations and statements contained hereinabove.

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1 24. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants TESLA and DOES 1 through 100, inclusive, and each of them, were the
3 manufacturers, designers, developers, processors, producers, assemblers, builders, testers, inspectors,
4 installers, equippers, endorses, exporters, wholesalers, retailers, lessors, renters, sellers, lessors,
5 modifiers, repairers, providers and otherwise distributors of the subject vehicle.

6 25. PLAINTIFF is informed and believes, and thereon alleges, that the 2016 TESLA
7 Model S, as previously described, was defective at the time of its manufacture, design, development,
8 production, assembly, building, testing, inspection, installation, equipping, endorsement, exportation,
9 importation, wholesaling, retailing, selling, renting, leasing, modification, repair and entrustment, and
10 that it failed to meet the reasonable expectations of safety of the class of persons of which HSU was
11 member as lessee and operator of a high-end luxury sedan such as the subject vehicle, which is
12 valued at over \$80,000, and that any benefits derived from the design of said vehicle were
13 substantially outweighed by the risk of harm inherent in said design, in that, and not by way of
14 limitation, despite the availability to Defendants of safer alternative designs, said vehicle presented a
15 substantial and unreasonable risk of injury to the users of said vehicle or those in the vicinity of its
16 use.

17 26. The Model S was defective because its design was a substantial factor in causing
18 HSU's injuries in the SUBJECT INCIDENT, and because it did not perform as safely as an ordinary
19 consumer would have expected it to perform when used or misused in an intended or reasonably
20 foreseeable way.

21 27. The Model S was defective and unreasonably dangerous at the time it was designed,
22 manufactured, distributed, and sold because of the following reasons:

- 23 a. The Model S lacked a properly designed system for crash avoidance, such that the
24 Model S could and would strike and collide with ordinary and foreseeable roadway
25 features – including median dividers – while operating in Autopilot;
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- 1 b. The Model S lacked a properly designed system for crash avoidance, such that
2 Autopilot in fact guided the Model S to seek an obstacle – rather than avoid an
3 obstacle – when the Model S collided with the center median;
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5 c. Autopilot’s reliance on the forward looking camera, and the radar and ultrasonic
6 sensors failed, such that Autopilot failed to detect the center median;
7
8 d. Autopilot failed to keep the Model S within its driving lane when it represented that it
9 does so;
10
11 e. Autopilot failed to make driving “safer and less stressful;”
12
13 f. TESLA failed to adequately test the Autopilot feature to prevent collision events like
14 the SUBJECT INCIDENT;
15
16 g. The Model S airbag failed in that the airbags deployed in a collision situation where
17 they would ordinarily not be meant to deploy;
18
19 h. The Model S airbag failed in that the airbags deployed improperly, deploying like a
20 slingshot rather than in a plume-like fashion;
21
22 i. The Model S airbag lacked critical safety features that would protect drivers from
23 injury in the event of a collision;
24
25 j. TESLA failed to adequately test the airbags to prevent improper deployment, as
26 occurred in the SUBJECT INCIDENT;
27
28 k. The Model S failed to contain adequate warnings to users and their passengers of the
defective and unreasonably dangerous condition of the vehicle – specifically, that
Autopilot could suddenly fail even when a driver was following all of TESLA’s
instructions to use Autopilot safely, and that the airbags could deploy in a dangerous
fashion; and
l. The Model S was otherwise defective in ways that will be demonstrated by evidence
obtained during discovery.

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1 28. The above defects existed at the time of the design, manufacture, and lease of the
2 Model S, continued to remain an integral characteristic of the Model S at the time it was sold by
3 TESLA, and remained as such up to the time of the SUBJECT INCIDENT.

4 29. The PLAINTIFF was unaware of the defects and dangerousness of the Model S,
5 which made the product unsafe for its intended and foreseeable use.

6 30. The foregoing defects in the design, manufacture, configuration and assembly of the
7 subject vehicle were a substantial factor in causing severe personal injuries to PLAINTIFF.

8 31. PLAINTIFF has been severely hurt and injured in her health, strength, and activities,
9 having sustaining bodily injuries. All of said injuries have caused and continue to cause PLAINTIFF
10 mental, physical, nervousness, pain, and suffering. Said injuries have and may result in permanent
11 disability, all to PLAINTIFF's general damage, in such sums as will be proven at time of trial.

12 32. As a further direct and proximate result of said conditions and the conduct of said
13 Defendants, PLAINTIFF was required to, did, and will in the future, employ physicians and surgeons
14 to examine, treat and care for PLAINTIFF, employ specially trained persons to supply care and
15 service and did and will in the future, incur medical and incidental expenses for such care and
16 services.

17 33. As a further direct and proximate result of the acts and omissions of Defendants, and
18 each of them, as set forth herein, PLAINTIFF has suffered permanent and irreparable damage to her
19 future earning capacity and loss of future income of the acts and omissions of the Defendants, and
20 each of them as set forth herein.

21 34. As a further direct and proximate result of the acts and omissions of the Defendants,
22 and each of them as set forth herein, PLAINTIFF has lost the use of and interest on the money owed
23 from the Defendants, and each of them, from the date of the acts complained of herein, to judgment
24 as follows:

- 25
- 26 a. On the past and future medical expenses incurred to judgment.
 - 27 b. On the loss of future earnings and earning capacity to judgment.
 - 28 c. On other past and future special damages incurred to judgment.

- 1 d. On the general damages for pain and suffering to judgment.
- 2 e. On punitive damages in an amount appropriate to punish against TESLA and DOES 1
- 3 through 100 so to deter others from engaging in similar misconduct.

4 **SECOND CAUSE OF ACTION FOR NEGLIGENCE**

5 (AGAINST DEFENDANTS TESLA, INC. f/k/a TESLA MOTORS, INC.;

6 AND DOES 1 THROUGH 100, INCLUSIVE)

- 7 35. PLAINTIFF realleges as though fully set forth at length and incorporates herein by reference
- 8 all of the allegations and statements contained hereinabove.
- 9 36. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein mentioned,
- 10 Defendants TESLA and DOES 1 through 100, inclusive, and each of them, were the
- 11 manufacturers, designers, developers, processors, producers, assemblers, builders, testers,
- 12 inspectors, installers, equippers, endorses, exporters, wholesalers, retailers, lessors, renters,
- 13 sellers, lessors, modifiers, repairers, providers and otherwise distributors of the subject
- 14 vehicle.
- 15 37. At all times herein mentioned, Defendants TESLA and DOES 1 through 100, inclusive, and
- 16 each of them, had a duty to exercise due care to manufacture, develop, design, process,
- 17 produce, assemble, build, test, inspect, install, equip, endorse, export, import, wholesale,
- 18 retail, sell, lease, rent, modify, provide warnings, repair or entrust the Model S.
- 19 38. Said Defendants, and each of them, breached their duty to PLAINTIFF, thereby causing the
- 20 injuries and damages as hereinafter described, in the following ways:
- 21 a. The Model S lacked a properly designed system for crash avoidance, such that the
- 22 Model S could and would strike and collide with ordinary and foreseeable roadway
- 23 features – including median dividers – while operating in Autopilot;
- 24 b. The Model S lacked a properly designed system for crash avoidance, such that
- 25 Autopilot in fact guided the Model S to seek an obstacle – rather than avoid an
- 26 obstacle – when the Model S collided with the center median;
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- c. Autopilot's reliance on the forward looking camera, and the radar and ultrasonic sensors failed, such that Autopilot failed to detect the center median;
- d. Autopilot failed to keep the Model S within its driving lane when it represented that it does so;
- e. Autopilot failed to make driving "safer and less stressful;"
- f. TESLA failed to adequately test the Autopilot feature to prevent collision events like the SUBJECT INCIDENT;
- g. The Model S airbag failed in that the airbags deployed in a collision situation where they would ordinarily not be meant to deploy;
- h. The Model S airbag failed in that the airbags deployed improperly, deploying like a slingshot rather than in a plume-like fashion;
- i. The Model S airbag lacked critical safety features that would protect drivers from injury in the event of a collision;
- j. TESLA failed to adequately test the airbags to prevent improper deployment, as occurred in the SUBJECT INCIDENT;
- k. The Model S failed to contain adequate warnings to users and their passengers of the defective and unreasonably dangerous condition of the vehicle – specifically, that Autopilot could suddenly fail even when a driver was following all of TESLA's instructions to use Autopilot safely, and that the airbags could deploy in a dangerous fashion; and
- l. The Model S was otherwise defective in ways that will be demonstrated by evidence obtained during discovery.

39. More specifically, Defendants TESLA and DOES 1 through 100, inclusive, and each of them, acted unreasonable risk in designing, manufacturing and marketing products which presented a substantial and unreasonable risk of injury to PLAINTIFF.

40. The negligence of said Defendants, and each of them, was a substantial factor in causing the injuries and damages herein alleged.

1 41. PLAINTIFF has been severely hurt and injured in her health, strength, and activities, having
2 sustaining bodily injuries. All of said injuries have caused and continue to cause PLAINTIFF
3 mental, physical, nervousness, pain, and suffering. Said injuries have and may result in
4 permanent disability, all to PLAINTIFF's general damage, in such sums as will be proven at
5 time of trial.

6 42. As a further direct and proximate result of said conditions and the conduct of said Defendants,
7 PLAINTIFF was required to, did, and will in the future, employ physicians and surgeons to
8 examine, treat and care for PLAINTIFF, employ specially trained persons to supply care and
9 service and did and will in the future, incur medical and incidental expenses for such care and
10 services.

11 43. As a further direct and proximate result of the acts and omissions of Defendants, and each of
12 them, as set forth herein, PLAINTIFF has suffered permanent and irreparable damage to her
13 future earning capacity and loss of future income of the acts and omissions of the Defendants,
14 and each of them as set forth herein.

15 44. As a further direct and proximate result of the acts and omissions of the Defendants, and each
16 of them as set forth herein, PLAINTIFF has lost the use of and interest on the money owed
17 from the Defendants, and each of them, from the date of the acts complained of herein, to
18 judgment as follows:

- 19
- 20 a. On the past and future medical expenses incurred to judgment.
 - 21 b. On the loss of future earnings and earning capacity to judgment.
 - 22 c. On other past and future special damages incurred to judgment.
 - 23 d. On the general damages for pain and suffering to judgment.
 - 24 e. On punitive damages in an amount appropriate to punish against TESLA and DOES 1
25 through 100 so to deter others from engaging in similar misconduct.

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1 **THIRD CAUSE OF ACTION FOR NEGLIGENCE – BREACH OF DUTY TO WARN**

2 (AGAINST DEFENDANTS TESLA, INC. f/k/a TESLA MOTORS, INC.;

3 AND DOES 1 THROUGH 100, INCLUSIVE)

4 45. PLAINTIFF realleges as though fully set forth at length and incorporates herein by reference
5 all of the allegations and statements contained hereinabove.

6 46. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein mentioned,
7 Defendants TESLA and DOES 1 through 100, inclusive, and each of them, were the
8 manufacturers, designers, developers, processors, producers, assemblers, builders, testers,
9 inspectors, installers, equippers, endorses, exporters, wholesalers, retailers, lessors, renters,
10 sellers, lessors, modifiers, repairers, providers and otherwise distributors of the subject
11 vehicle.

12 47. TESLA knew or reasonably should have known that the TESLA was dangerous or likely to be
13 dangerous when used or misused in a reasonably foreseeable manner.

14 48. TESLA knew or reasonably should have known that users would not realize the dangers.

15 49. TESLA failed to adequately warn of the danger and instruct on the safe use of the Model S.
16 Specifically, TESLA failed to warn PLAINTIFF that Autopilot could malfunction despite its
17 usage in reasonable circumstances, and despite PLAINTIFF's adherence to proper driving
18 protocol when engaging Autopilot by keeping her hands on the wheel. TESLA also failed to
19 warn PLAINTIFF that the airbags could deploy in the event of a collision not reasonably
20 foreseeable to prompt airbag deployment, and that the airbags could deploy in a dangerous,
21 slingshot manner rather than as a plume.

22 50. Reasonable manufacturers, designers, developers, processors, producers, assemblers, builders,
23 testers, inspectors, installers, equippers, endorses, exporters, wholesalers, retailers, lessors,
24 renters, sellers, lessors, modifiers, repairers, providers and otherwise distributors under the
25 same or similar circumstances would have warned of the danger, or instructed on the safe use
26 of the Model S.

27 51. HSU was harmed by TESLA's breach of its duty to warn of the Model S's dangers.
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1 52. TESLA's failure to warn or instruct was a substantial factor in causing HSU's harm.

2 53. PLAINTIFF is therefore entitled to damages in an amount to be proven at trial.

3 **FOURTH CAUSE OF ACTION FOR BREACH OF CONTRACT/COMMON LAW**

4 **WARRANTY**

5 (AGAINST DEFENDANT TESLA, INC. f/k/a TESLA MOTORS, INC.;

6 AND DOES 1 THROUGH 100, INCLUSIVE)

7 54. PLAINTIFF realleges as though fully set forth at length and incorporates herein by reference
8 all the allegations and statements contained hereinabove.

9 55. At all times here mentioned, Defendants TESLA and DOES 1 through 100, inclusive,
10 designed, developed, processed, repaired, inspected, represented, tested, distributed, sold,
11 cosigned, delivered, maintained and operated for purpose of sale and distribution, said vehicle
12 for use by the general public. TESLA knew or had reason to know of the specific use for
13 which PLAINTIFF leased the Model S.

14 56. TESLA provided PLAINTIFF with an implied warranty that the Model S and any parts
15 thereof were merchantable and fit for the ordinary purposes for which they were sold.
16 However, the Model S is not fit for its ordinary purpose of providing reasonably reliable and
17 safe transportation at the time of sale/lease or thereafter because, inter alia, the Model S
18 suffered from the defects described herein concerning the Autopilot and airbag components of
19 the vehicle at the time of sale/lease. Therefore, the Model S is not fit for its particular purpose
20 of providing safe and reliable transportation.

21 57. TESLA impliedly warranted that the Model S was of merchantable quality and fit for such
22 use. This implied warranty included, among other things: (a) a warranty that the Model S
23 manufactured, supplied, distributed, and/or sold by TESLA was safe and reliable for the
24 purpose for which it was installed in the Model S; and (b) a warranty that the Model S would
25 be fit for its intended use while being operated.

26 58. Contrary to the applicable implied warranties, the Model S at the time of sale/lease and
27 thereafter was not fit for its ordinary and intended purpose of providing PLAINTIFF with
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1 reliable, durable, and safe transportation. Instead, the Model S suffers from a defective
2 design(s) and/or manufacturing defect(s).

3 59. TESLA's actions, as complained of herein, breached the implied warranty that the Model S
4 was of merchantable quality and fit for such use.

5 **FIFTH CAUSE OF ACTION FOR BREACH OF IMPLIED WARRANTY OF**
6 **MERCHANTABILITY, CAL. COM. CODE §2314**

7 (AGAINST DEFENDANTS TESLA, INC. f/k/a TESLA MOTORS, INC.;

8 AND DOES 1 THROUGH 100, INCLUSIVE)

9 60. PLAINTIFF re-alleges as though fully set forth at length and incorporates herein by reference
10 all of the allegations and statements contained hereinabove forth herein.

11 61. TESLA was at all relevant times the manufacturer, distributor, warrantor, and/or seller of the
12 Model S. TESLA knew or had reason to know of the specific use for which the Model S was
13 purchased.

14 62. TESLA provided PLAINTIFF with an implied warranty that the Model S, and any parts
15 thereof, are merchantable and fit for the ordinary purposes for which they were sold.
16 However, the Model S is not fit for its ordinary purpose of providing reasonably reliable and
17 safe transportation at the time of sale or thereafter because, inter alia, there are defects in the
18 vehicle control system, including:

- 19
- 20 a. Failure to properly design a system for crash avoidance, such that the Model S could
21 and did strike and collide with ordinary and foreseeable roadway features – including
22 median dividers – while operating in Autopilot;
- 23 b. Autopilot failure to conduct obstacle avoidance, such that Autopilot in fact guides the
24 Model S to seek an obstacle;
- 25 c. Autopilot's failed reliance on the forward looking camera, and the failure of the radar
26 and ultrasonic sensors, such that Autopilot failed to detect the center median;
- 27 d. Autopilot failure to keep the Model S within its driving lane when it represented that it
28 does so;

- e. Autopilot failure to make driving “safer and less stressful;”
- f. Failure to adequately test the Autopilot feature to prevent collision events like the SUBJECT INCIDENT;
- g. Airbag failure in that the airbags deploy in a collision situation where they would ordinarily not be meant to deploy;
- h. Airbag failure in that the airbags deploy improperly, deploying like a slingshot rather than in a plume-like fashion;
- i. Failure to adequately test the airbags to prevent improper deployment, as occurred in the SUBJECT INCIDENT; and
- j. Other defects that will be demonstrated by evidence obtained during discovery.

63. Therefore, the Model S is not fit for its particular purpose of providing safe and reliable transportation.

64. TESLA impliedly warranted that the Model S was of merchantable quality and fit for such use. This implied warranty included, among other things: (a) a warranty that the vehicles TESLA manufactured, supplied, distributed, and/or sold were safe and reliable for providing transportation, and would not experience premature and catastrophic failure; and (b) a warranty that the Model S would be fit for its intended use while being operated.

65. Contrary to the applicable implied warranties, the Model S at the time of sale and thereafter was not fit for its ordinary and intended purpose of providing PLAINTIFF with reliable, durable, and safe transportation. Instead, the Model S suffers from a defective design(s) and/or manufacturing defect(s).

66. TESLA’s actions, as complained of herein, breached the implied warranty that the Model S was of merchantable quality and fit for such use.

67. After PLAINTIFF received the injuries complained of herein, notice was given by PLAINTIFF to Defendant, by direct communication with Defendant TESLA as well as by the filing of this lawsuit in the time and manner and in the form prescribed by law, of the breach of said implied warranty.

1 68. As a legal and proximate result of the breach of said implied warranty, PLAINTIFF sustained
2 the damages herein set forth.

3 69. PLAINTIFF is, therefore, entitled to damages in an amount to be proven at trial.

4 **SIXTH CAUSE OF ACTION FOR BREACH OF EXPRESS WARRANTY, CAL. COM.**

5 **CODE §2313**

6 (AGAINST DEFENDANTS TESLA, INC. f/k/a TESLA MOTORS, INC.;

7 AND DOES 1 THROUGH 100, INCLUSIVE)

8 70. PLAINTIFF re-alleges as though fully set forth at length and incorporates herein by reference
9 all of the allegations and statements contained hereinabove forth herein.

10 71. TESLA provided PLAINTIFF, as lessee of the Model S, with the express warranties
11 described herein, which became part of the basis of the parties' bargain. Accordingly,
12 TESLA's warranties are express warranties under state law.

13 72. In the course of selling and leasing its vehicles, TESLA expressly warranted in writing that its
14 vehicles were covered by a New Vehicle Limited Warranty (or "Basic Vehicle Limited
15 Warranty") that provided: "the Basic Vehicle Limited warranty covers the repair or
16 replacement necessary to correct defects in the materials or workmanship of any parts
17 manufactured or supplied by Tesla that occur under normal use for a period of 4 years or
18 50,000 miles (80,000 km), whichever comes first."

19 73. TESLA distributed the defective parts causing the defects in the Model S, and said parts are
20 covered by TESLA's warranties granted to PLAINTIFF as lessor of the Model S.

21 74. TESLA breached these warranties by leasing the Model S with the defects, requiring repair or
22 replacement within the applicable warranty periods, and refusing to honor the warranties by
23 providing free repairs or replacements during the applicable warranty periods.

24 75. PLAINTIFF notified TESLA of its breach within a reasonable time, and/or was not required
25 to do so because affording TESLA a reasonable opportunity to cure its breaches would have
26 been futile. TESLA also knew about the defects, but chose instead to conceal them as a means
27 of avoiding compliance with its warranty obligations.
28

1 76. As a direct and proximate cause of TESLA's breach, PLAINTIFF leased the Model S that she
2 otherwise would not have, overpaid for her vehicle, did not receive the benefit of the bargain,
3 and her Model S suffered a diminution in value. PLAINTIFF has incurred and will continue
4 to incur costs related to the defects' diagnosis and repair.

5 77. Any attempt to disclaim or limit these express warranties vis-à-vis consumers is
6 unconscionable and inadequate to protect PLAINTIFF. Among other things, PLINTIFF had
7 no meaningful choice in determining the time limitations, the terms of which unreasonably
8 favored TESLA. A gross disparity in bargaining power existed between TESLA and
9 PLAINTIFF because TESLA knew or should have known that the Model S was defective at
10 the time of sale and would fail well before its useful life.

11 78. PLAINTIFF has complied with all obligations under the warranty, or otherwise has been
12 excused from performance of said obligations as a result of TESLA's conduct.

13 **SEVENTH CAUSE OF ACTION FOR INTENTIONAL MISREPRESENTATION**

14 (AGAINST DEFENDANT TESLA, INC. f/k/a TESLA MOTORS, INC.; and

15 DOES 1 THROUGH 100, INCLUSIVE)

16 79. PLAINTIFF realleges as though fully set forth at length and incorporates herein by reference
17 all the allegations and statements contained hereinabove.

18 80. At all times HSU and Defendants entered into the aforementioned agreements, Defendant
19 TESLA and DOES 1 through 100 had no intention of complying with its obligations under
20 said agreements, including but not limited to: Defendants' representations that the Model S
21 was the safest sedan on the road; the Model S conformed to reasonable consumer
22 expectations; Defendants' failure to abide by its warranties; and Defendants' failure to
23 implement functioning reasonable safety features so to ensure the Model S would not engage
24 the type of collision as occurred in the SUBJECT INCIDENT.

25 81. At the time the Defendant TESLA and DOES 1 through 100, by and through its authorized
26 agents, made the aforementioned promises and representations, said Defendants did not intend
27 to perform said promises or to perform as represented but rather made said promises and
28

1 representations with the intent to induce HSU to purchase the Model S. Had HSU known that
2 Defendants TESLA and DOES 1 through 100 did not intend to comply with the
3 representations described herein, she would not have purchased the Model S, placing her life
4 and family's life at risk.

5 82. HSU reasonably relied upon the aforementioned promises and representations of Defendants
6 TESLA and DOES 1 through 100 in purchasing the Model S despite said vehicle not
7 conforming to reasonable consumer expectations, including, but not limited to safety, secure
8 operations, control, free of defects, and not a risk to life and limb. HSU had no reason to
9 suspect then that the promises and representations were false.

10 83. As a result of making the aforementioned false promises and representations, and in
11 wrongfully inducing HSU's reliance thereupon, Defendants TESLA and DOES 1 through 100
12 and its authorized agents and employees, are liable to HSU for the aforementioned fraudulent
13 misrepresentations and all damages proximately resulting therefrom.

14 84. As a direct and proximate result of the Defendants' fraud in inducing HSU to purchase the
15 Model S, a non-conforming and defective vehicle, HSU has incurred special damages in a
16 sum, which will be shown at trial according to proof.

17 85. In performing the intentionally tortious fraudulent conduct described herein, Defendants
18 TESLA and DOES 1 through 100 acted with oppression, fraud, malice and in conscious
19 disregard of PLAINTIFF'S rights. HSU is thus entitled to punitive damages from Defendants
20 in an amount to be reasonably calculated to punish same, to be determined at trial

21 **EIGHTH CAUSE OF ACTION FOR COMMON LAW FRAUDULENT CONCEALMENT**

22 (AGAINST DEFENDANT TESLA, INC. f/k/a TESLA MOTORS, INC.; and
23 DOES 1 THROUGH 100, INCLUSIVE)

24 86. PLAINTIFF realleges as though fully set forth at length and incorporates herein by reference
25 all the allegations and statements contained hereinabove.

26 87. TESLA made material omissions concerning a presently existing or past fact. Specifically,
27 TESLA did not fully and truthfully disclose to its customers, including PLAINTIFF, the true
28

1 nature of the inherent defects of the Model S, as described herein. Said defects were not
2 readily discoverable until years later – in PLAINTIFF’s case, when the SUBJECT
3 INCIDENT occurred.

4 88. As a result, PLAINTIFF was fraudulently induced to lease the Model S with the said defects
5 and all of the associated problems.

6 89. TESLA made these representations with knowledge of their falsity, and with the intent that
7 PLAINTIFF rely on them.

8 90. PLAINTIFF reasonably relied on these omissions and suffered damages as a result.

9 **PRAYER**

10 WHEREFORE, Plaintiff JUSTINE HSU prays for judgment against Defendants, and each of
11 them, as follows:

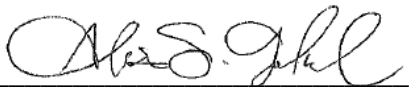
- 12 1. On the past and future medical expenses incurred to judgment;
- 13 2. On the loss of future earnings and earning capacity to judgment;
- 14 3. On other past and future special damages incurred to judgment;
- 15 4. On the general damages for pain and suffering to judgment.
- 16 5. On exemplary and punitive damages in an amount appropriate to punish
17 against TESLA and DOES 1 through 100 so to deter others from engaging in
18 similar misconduct;
- 19 6. Rescission of the contract and restitution of all consideration;
- 20 7. Diminution in value;
- 21 8. Doubling of actual, compensatory and general damages as a civil penalty;
- 22 9. Pre-judgment interest from the date of rescission;
- 23 10. Attorneys’ fees incurred herein according to proof;
- 24 11. Costs of suit and expenses, according to proof; and
- 25 12. Other relief the Court deems appropriate.

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27 ///

1 Dated: May 14, 2020

GOKAL LAW GROUP, INC.

2
3 BY: 
4 Alison S. Gokal, Esq.,
5 Anum Arshad, Esq.,
6 Attorneys for Plaintiff Justine Hsu
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EXHIBIT A



LEASE AGREEMENT

Lessee / Co-Lessee (You) Name and Address			Garaging Address if Different	Lessor (We, Us, or It)
Pacific Best Inc 10725 E Rush St South El Monte, CA 91733			Justine Hsu 10725 E Rush St South El Monte, CA 91733	Tesla Motors, Inc. 3500 Deer Creek Road Palo Alto, CA 94304

Description of Leased Vehicle (Vehicle) and Trade-In (if applicable)							
A. Leased Vehicle	New	Year 2016	Make Tesla	Model Model S	Vehicle Identification Number 5YJSA1E13GF143596	Odometer 000050	
B. Trade-in	Year	Make	Model	Agreed Upon Value 0.00	Payoff Amount 0.00	Net Value (Item 7A or 12G) 0.00	

THERE IS NO COOLING OFF PERIOD

California law does not provide for a "cooling off" or other cancellation period for vehicle leases. Therefore, you cannot later cancel this lease simply because you change your mind, decided the vehicle costs too much, or wish you had acquired a different vehicle. You may cancel this lease only with the agreement of the lessor or for legal cause, such as fraud.

Federal Consumer Lending Act Disclosures			
2. Amount Due at Lease Signing or Delivery (itemized below)* <u>\$10,540.48</u>	3. Monthly Payments Your first monthly payment of <u>\$964.95</u> is due on <u>07/28/2016</u> , followed by 35 payments of \$964.95 due on the 28 of each month. The total of your monthly payments is <u>\$34,738.20</u> .	4. Other Charges (not part of your monthly payment) Disposition fee <u>\$395.00</u> Total <u>\$395.00</u>	5. Total of Payments (the amount you will have paid by the end of the lease) <u>\$44,708.73</u>

Itemization of Amount Due at Lease Signing or Delivery

6. Amount Due at Lease Signing or Delivery		7. How the Amount Due at Lease Signing or Delivery Will be Paid	
A. Capitalized cost reduction	\$ 7,500.00	A. Net trade-in allowance	\$ 0.00
B. First monthly payment	\$ 964.95	B. Rebates and noncash credits	\$ 0.00
C. Title fees	\$ 0.00	C. Amount applied from deposit	\$ 10,540.48
D. Registration fees	\$ 81.00	D. Amount to be paid in cash	\$ 0.00
E. License fees	\$ 514.00		
F. Sales/use tax	\$ 66.03		
G. Sales tax on capitalized cost reduction	\$ 712.50		
H. Acquisition fee	\$ 695.00		
I. California tire fee	\$ 7.00		
J. Other:	\$ 0.00		
Total	\$ 10,540.48	Total	\$ 10,540.48

8. Your Monthly Payment is Determined as Shown Below

A. Gross Capitalized Cost. The agreed upon value of the vehicle (\$ <u>79,100.00</u>) and any items you pay for over the lease term (such as taxes, fees, service contracts, insurance, and any outstanding prior credit or lease balance) (see item 12 for an itemization of this amount).	\$ 79,100.00
B. Capitalized Cost Reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost.	- \$ 7,500.00
C. Adjusted Capitalized Cost. The amount used in calculating your base monthly payment.	= \$ 71,600.00
D. Residual Value. The value of the vehicle at the end of the lease used in calculating your base monthly payment.	- \$ 47,600.00
E. Depreciation and Any Amortized Amounts. The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term.	= \$ 24,000.00
F. Rent Charge. The amount charged in addition to the depreciation and any amortized amounts.	+ \$ 7,724.16
G. Total of Base Monthly Payments. The depreciation and any amortized amounts plus the rent charge.	= \$ 31,724.16
H. Lease Payments. The number of payments in your lease.	+ 36
I. Base Monthly Payment.	= \$ 881.23
J. Monthly Sales/use Tax.	+ \$ 83.72
Total Monthly Payment.	= \$ 964.95

Early Termination. You may have to pay a substantial charge if you end the lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

9. **Excessive Wear and Use.** You may be charged for excessive wear based on our standards for normal use and for mileage in excess of total miles over the scheduled lease term of 45,000 miles, at the rate of 25 cents per mile.
10. **Purchase Option at End of Lease Term.** You will have an option to purchase the vehicle at the scheduled end of the lease for \$47,600.00, plus official fees and taxes.
11. **Other Important Terms.** See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, and insurance.

Itemization of Gross Capitalized Cost			
A. Agreed upon value of vehicle as equipped	\$ 79,100.00	F. Maintenance agreement	\$ 0.00
B. Title fees	\$ 0.00	G. Net trade-in balance	\$ 0.00
C. Registration fees	\$ 0.00	H. Sales tax on capitalized cost reduction	\$ 0.00
D. License fees	\$ 0.00	I. Other	\$ 0.00
E. Sales/use tax	\$ 0.00	Total (A to I)	\$ 79,100.00

13. Estimated Official Fees and Taxes You Will Pay During the Lease

\$4,549.45 is our estimate of the total of official fees and taxes you will have to pay over the lease term. The actual amount may be higher or lower, depending on the tax rates in effect or the value of the vehicle at the time a fee or tax is assessed. (See item 23 for a description of your responsibility for official fees and taxes.)

14. Lease Date	15. Scheduled End of Lease Term	16. Lease Term (Number of Months)
7/28/2016	7/28/2019	36

17. Agreement. You agree to everything in this lease, including items 2-11, and are not buying a vehicle. We intend to assign this lease to Tesla Lease Trust. Tesla Finance LLC helped arrange this lease and will service it.

18. Payments and Late Charge. You will pay us any amounts under this lease when they become due, which may be after the lease ends. A late fee of 5% of any amount we do not receive by 10 days after the due date will be charged.

19. Insurance. You must insure the vehicle through policies and insurers acceptable to us from the delivery of the vehicle to you until you return it to us, and show us proof if we ask. The liability insurance must cover at least \$50,000, \$300,000 and \$500,000 for property damage, for bodily injuries to any one person, and for any one accident, respectively. The physical damage insurance must cover the vehicle's full value and no deductible under it may exceed \$2,500. The policies must cover the driving of the vehicle by you or anyone likely to do so and must show as additional insureds us and anyone else we designate. We will be entitled to any insurance proceeds for damage, theft or destruction of the vehicle.

20. Delivery. By signing below, you acknowledge the delivery to, and acceptance by, you of the vehicle, and you assume the risks of loss or damage.

21. Warranty. The only warranties on the vehicle are the Tesla Motors New Vehicle Limited Warranty provided to you (which is separate from this lease and states any coverage limits) and a warranty that the vehicle conforms to the description in this lease.

22. Maintenance and Use. You will keep the vehicle in good working order and repair and follow any maintenance schedules or recall advisories we or our affiliate may notify you of. You are responsible for all operating costs. You will not use the vehicle or allow it to be used illegally, outside of your insurance coverage, or for transport or rental for payment. You will notify us if the vehicle is out of the state where it is first titled for more than 30 days. You will keep the vehicle free from liens or claims of, or confiscation by, others.

23. Fees, Fines and Taxes. You will pay all fees, fines and taxes mandated by the government, and road tolls, related to the vehicle or its use (except our net income taxes), including those accruing from your failure to pay when due. We will charge you for any such amounts that we pay on your behalf.

24. Return at Scheduled Lease End. You will return the vehicle at the scheduled lease term end to the place we designate, unless you purchase it (see item 26). You will pay us: (i) any excess mileage charge (see item 9); (ii) any excess wear charge (see item 25); and (iii) any amounts due under item 30. For each month you keep the vehicle beyond the scheduled lease term end, you will be in default and will also pay us the monthly payment amount.

25. Excess Wear. The charge for excess wear will be our estimated or actual cost of repairing wear beyond that reasonably expected with ordinary, everyday use and maintenance according to this lease. It includes: (i) parts, accessories and vehicle specifications present in or on the vehicle or provided at delivery being incomplete, modified or replaced with items of inferior quality or design; (ii) any tire with less than 1/8 inch of tread or not part of a matching set of four; (iii) dents, scratches, gouges or cracks in the vehicle's external parts or glass; (iv) torn or burned interior parts or upholstery; (v) inoperative mechanical or electrical components; and (vi) any damage or neglect resulting from your failure to follow any maintenance schedules or recall advisories we or our affiliate may notify you of.

26. Option to Purchase. You may buy the vehicle "AS IS," either at the scheduled lease term end by paying the amount in item 10 or during the lease term by paying the adjusted lease balance (see item 28) plus, in each case, any amounts due under item 30. If you buy the vehicle, you will re-title and re-register it in your name as soon as possible.

27. Terminating the Lease Early. This lease may be ended before its scheduled term end by you for any reason, or by us if: (i) you default on this lease (see item 32); or (ii) the vehicle is a total loss; or (iii) you die with no surviving lessee. You will have to pay any early end liability (see items 28 and 29).

28. Early End Liability. If the lease ends early and you do not purchase the vehicle under item 26, you will pay the amount of any excess of the "adjusted lease balance" over the "realized value" (see below). However, if such excess is greater than the sum of the following, you will pay such sum instead: (i) all monthly lease payments not yet due plus (ii) any excess mileage charge (see item 9) plus (iii) any excess wear charge (see item 25). Either way, you will also owe us any amounts due under item 30.

- Adjusted Lease Balance:** The adjusted lease balance on any date is the adjusted capitalized cost (see item 8.C) less all depreciation/amortization through that date. We calculate the split between (i) depreciation/amortization and (ii) rent in each monthly payment using the "constant yield method," a written explanation of which will be provided to you upon request. Our calculations assume that rent charges for each month are earned in advance, that your lease payments are received on their due dates and that the lease ends on the scheduled end date.
- Realized Value:** If: (i) we keep the vehicle, the vehicle's wholesale fair market value; or (ii) we dispose of the vehicle, the price we receive (including any insurance settlement we receive where "gap protection" under item 29 does not apply). Appraisal Right: However, you may pay for an independent third party agreeable to us to conduct a professional appraisal of the wholesale value of the vehicle that could be realized at sale, in which case the "realized value" will instead be such appraised value.

29. Gap Protection. If your vehicle is a total loss and we get a settlement under your insurance policy that complies with this lease, you will not owe an early end liability under item 28. Instead, if such settlement is less than the adjusted lease balance (see item 28), you will owe the difference (up to your insurance deductible) plus any amounts due under item 30. We will credit you for any excess of the insurance settlement over the adjusted lease balance.

30. Other Amounts Due at Lease End. You will owe us the following when this lease ends: (i) any monthly payments already due and unpaid at such time; (ii) any official fees and taxes for the lease end (and vehicle purchase, if applicable); and (iii) any other amounts due and unpaid under this lease.

31. Odometer Disclosure. Federal law requires you to tell us the vehicle's mileage in connection with a transfer of vehicle ownership. You may be fined and/or imprisoned if you do not complete the disclosure or you make a false statement.

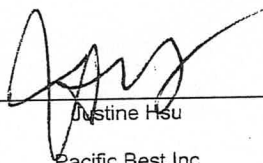
32. Default and Remedies. You will be in default if you breach any agreement in this lease, provide false or misleading information in your credit application, or do anything else the law says is a default. If you are in default, we may, after any legally required notice or waiting period: (i) end this lease and charge an early end liability (see items 28 and 29); (ii) do anything to protect our interest in the vehicle, including repossessing the vehicle using legally permitted means, (iii) locate the vehicle electronically using our remote dynamic vehicle connection described in our Privacy Policy; (iv) use the vehicle's license plates to move it; (v) sue you for damages or to get the vehicle back; and/or (vi) charge you for amounts we spend taking these actions.

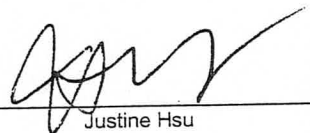
33. Indemnification. You agree to indemnify us and hold us and our assignees, agents, and insurers harmless from and against any and all liabilities, damages, claims and expenses, including reasonable attorneys' fees to the extent permitted by law, arising out of the condition, maintenance, use and operation of the vehicle, including claims under a strict liability doctrine.

34. **Assignment.** Any sale of the vehicle and assignment of this lease will not be considered to change materially your duties, burden, or risk under this lease. If we assign this lease, you will not receive notice of assignment. **You will not sublease or assign this lease without our prior written consent.**
35. **Privacy Policy.** Our Privacy Policy is incorporated into this lease and can be viewed at www.teslamotors.com/about/privacy.
36. **Electronic Signatures and Conversion.** If signed electronically, the authoritative copy of this lease will be held in a designated document management system, but we may convert it into a paper copy marked "Original" onto which your electronic signature is affixed. If we do, the affixed signature will be your legally valid and binding signature and the paper copy alone will be the original of this lease.
37. **Enforceability.** Invalidation of any part of this lease will not affect any other part. No delay or abstention in enforcing our rights will be a waiver.
38. **Entire Agreement.** This lease contains the entire agreement of the parties. Any changes to this lease must be in writing and must be signed by us.
- You have the right to return the vehicle and receive a refund of any payments made if the credit application is not approved, unless nonapproval results from an incomplete application or from incorrect information provided by you.

(1) Do not sign this lease before you read it or if it contains any blank spaces to be filled in; (2) You are entitled to a completely filled in copy of this lease; (3) Warning—Unless a charge is included in this lease for public liability or property damage insurance, payment for that coverage is not provided by this lease.

Acknowledgment: This lease is entered into as of the date shown in item 14. By signing below, you agree to the terms of this lease, confirm that before you signed this lease you were free to review and keep a copy, and acknowledge that you have read all pages of this lease. You acknowledge receipt of a true and completely filled copy of all pages of this lease at the time you signed it.

Lessee's Signature: X 
By: Justine Hsu
As authorized signatory of Pacific Best Inc

Co-Lessee's Signature: X 
By: Justine Hsu

[This area between the signature blocks is intentionally left blank.]

Lessor's Signature: TESLA MOTORS, INC.
By: X William J. Donnelly
William J. Donnelly
Vice President, Financial Services