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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GREGORY WOCHOS, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. TESLA, INC., ELON R. MUSK, DEEPAK AHUJA, and JASON WHEELER, Defendants	Case No. 3:17-cv-05828-CRB **SECOND AMENDED CLASS ACTION COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS** **JURY TRIAL DEMANDED**

Lead Plaintiff Kurt Friedman and Named Plaintiff Uppili Srinivasan (collectively, "Plaintiffs"), individually and on behalf of all other persons similarly situated, by and through their attorneys, allege the following based upon personal knowledge as to Plaintiffs' own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiffs' attorneys, which included, among other things, review and analysis of the Defendants' public documents, conference calls and announcements made by Defendants Tesla, Inc. ("Tesla" or the "Company"), Elon R. Musk ("Musk"), and Deepak Ahuja ("Ahuja"), United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Tesla, analysts' reports and advisories about the Company, interviews with former employees of the Company, and information readily obtainable from public sources. Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a Class consisting of all persons other than Defendants who purchased or otherwise acquired common shares of Tesla between May 3, 2017 and November 1, 2017, both dates inclusive (the "Class Period"). Plaintiffs seek to recover compensable damages caused by Defendants' violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder.

2. Despite firing public imagination with its niche, luxury electric vehicles, for Telsa to survive as an automobile manufacturer in the face of stiff competition from well-established, far better capitalized legacy automobile manufacturers, it must mass produce affordable electric cars.

3. By 2017, to much fanfare, Tesla launched its "affordable" Model 3, accumulating $1,000 deposits from over 500,000 potential customers.

4. Beginning on May 3, 2017 and continuing throughout the Class Period, Defendants misrepresented to investors the then-current state of affairs with respect to whether the Company was "on track" to mass produce the Model 3 in 2017, and whether "progress" had been made

supporting Defendants' claims that 5,000 Model 3s per week would be produced before the end of 2017. Defendants' statements were false.

5. Serious supply chain and production problems existed by the beginning of the Class Period, including incomplete and/or non-existent automated production lines, causing unresolved bottlenecks at both the Company's Fremont, California assembly line and at Tesla's "Gigafactory," its purportedly state of the art, Reno, Nevada battery manufacturing facility. These issues rendered mass producing the Model 3 in 2017 impossible. Defendants knowingly or recklessly misrepresented the then-existing facts on the ground, and misrepresented the Company's ability to mass produce the Model 3 by the end of 2017.

6. In 2016, riding the success of Tesla's niche, luxury Model S, Defendants announced not only their intention to mass produce an "affordable" "Model 3" sedan, but touted the Company's ability to do so in the near term. In 2016, Defendants boasted that production hurdles they had overcome in producing the Models S and X would benefit their ramp-up to mass production of the Model 3.

7. Tesla's long-term success in the auto industry hinged on its ability to mass produce the Model 3. The stakes were existential. Far larger, well-established car companies such as Chevrolet, Mercedes-Benz, Hyundai, Nissan, and Porsche, had already committed billions of dollars to advance electric car technologies. Each already made millions more cars per year than Tesla, and had the know-how and capacity to mass produce cars, regardless of the car's power source. Further, producing the Model 3 cost Tesla billions of dollars, and the Company needed, as quickly as possible, to recoup these expenditures through mass sales of the Model 3, or face a cash crunch.

8. Investors and the public enthusiastically greeted Tesla's announcement that it would mass produce an affordable electric vehicle. The costs and risks for Tesla of failing to mass produce the Model 3 in a timely manner were high.

9. Defendant Musk announced that the Company would divert all income from sales from Tesla's niche luxury vehicles, the Models S and X, to fund mass production of the Model 3.

10. Tesla has admitted that its capital expenditure on the Model 3 was $4 *billion* in 2017, a year that ended with Tesla failing to mass produce the Model 3.

11. A March 12, 2018 Bloomberg article by author Tom Randall captured the consensus about Tesla: the Model 3 production rate was "of existential importance" to Tesla. Analysts concluded that unless Tesla met its promise to produce 5,000 Model 3s per week, it would burn through its remaining cash in a year's time and need to raise capital. The only way to begin recouping these expenditures was to mass produce and sell Model 3s as quickly as possible.

12. Mass production of the Model 3 was dependent not only on designing, installing, testing, and operating fully functional automated lines in Tesla's Fremont, California facility, but on achieving similar mass production success in Tesla's Gigafactory, where Tesla planned to produce its own batteries for the battery-powered Model 3, rather than outsourcing battery production. Failure in either would materially postpone the Company's mass production of the Model 3. Time was of the essence.

13. Beginning in May of 2017, Defendants repeatedly stated that not only would Tesla mass produce 5,000 Model 3s per week before the end of 2017, but that the actual present facts on the ground – "progress" in automated production at both the Fremont and Gigafactory facilities – showed that the Company was "on track" to mass produce Model 3s before the end of 2017. The Company repeated such declarations throughout the Class Period.

14. In May 2017, when Defendants stated that the Company was "on track" to meet its mass production goal, as production on a fully automated production line was supposed to be ready to begin, and in August 2017, when production on a fully automated production line was supposed to have already begun a month earlier and Model 3s were supposed to be coming off the line, according to a number of former employees the Company had not yet finished building its automated production lines in either Fremont or Nevada. Tesla was neither ramping up mass production, nor "on track" to mass produce Model 3s at any time on or around the end of 2017.

15. In fact, all of Defendants' statements regarding progress that the Company had achieved in both Fremont and at the Gigafactory, and the statements they based on these affirmative declarations of actual progress in Model 3 mass production, were false.

16. As early as mid-2016, Tesla executives responsible for planning and building the Model 3 production line plainly told Defendant Musk and the other Defendants– in person, providing specific support for their statements – that the Company could never mass produce the

Model 3 by the end of 2017. These Tesla executives told Musk and the other Defendants that it was an impossible goal.

17. Former Employee ("FE") 1 was Director of Manufacturing at Tesla's Fremont plant before the Class Period. At a May, 2016 meeting FE1 Told Musk directly that there was zero chance that the plant would be able to produce 5,000 Model 3s per week by the end of 2017. FE1's conclusion was based on an actual plan:

- As of FE1's departure in June 2016, Tesla did not yet even have a finalized design for the Model 3, so Tesla could not release information so molds for body parts could be built. Molds take from 9-12 months to make;
- Tesla had not yet begun ordering manufacturing equipment to be installed at the Fremont plant. The timeline for functioning manufacturing equipment includes 1-2 months to seek bids and negotiate contracts with suppliers, 6 months to manufacture equipment, 6 months to install the equipment in the Fremont plant, and 6 months to get the equipment working up to speed;
- Thus, the automated assembly line for the Model 3 could not possibly mass produce cars in 2017. FE1 told Musk directly at the meeting that the ***start*** of manufacturing would be at least 6 months later than July 2017, i.e., in 2018.[1]

18. Tesla itself confirmed FE1's production plan timeline in announcing the requirements necessary to mass produce the Model 3 in 2017. Tesla verbalized an actual plan by which certain aspects of planning, construction, and automation needed to be complete for the Company to reach its mass production goal in 2017.

19. In a May 10, 2017 10-Q for the first quarter of 2017 ("first quarter 2017 10-Q"), the Company told investors that, regarding activity in the first quarter of 2017, that "[w]e have started the installation of Model 3 manufacturing equipment at the Fremont Factory and Gigafactory 1, and we are on-track for start of Model 3 production in July 2017."

20. Tesla thus told investors that it needed to have begun installing the automated lines in Fremont and at the Gigafactory in the first quarter of 2017 in order to begin automated

[1] Musk told FE1 to look for new employment.

production in July, and that beginning automated production in July 2017 was necessary in order to mass produce the Model 3 in 2017.

21. In fact, as witnesses attest, Tesla did not begin automated line installation in the first quarter, and did not begin until late April or early May 2017. Defendants knew, therefore, that actual automated mass production was *not* on schedule to begin in July, 2017. Given the company's statements that beginning installation in the first quarter was necessary to complete line installation (4-6 months) so the Company could begin automated production in July, and that it would take 6 months to ramp up to mass production (July-December), the company knew that, at a minimum, it needed to begin installing the automated lines at least 10-12 months before mass production could be achieved.

22. When the Company spoke in May, 2017, it knew that installation of the automated lines had not started early enough to mass produce the Model 3 in 2017, and that, **by its own timeline**, mass production could not be achieved until well into 2018.

23. As attested to by former employees in both Fremont and at the Gigafactory, actual progress was far more than two months behind what Tesla announced, falsely, it had already accomplished.

24. Tesla perpetuated the lie that it was "on track" for mass production in 2017 during the July 28, 2017 "handover" event, televised online, where Tesla "handed over" the first 30 Model 3s to buyers. During that event, Musk, directing the audience's attention to 50 shiny Model 3s, stated that "there's actually a total of 50 production cars that we made this month…." "Production cars" is a term of art in the automotive industry, a fact Musk, the CEO of a car-making company, knew. A "production car" is produced by automation, such that all vehicles are identical, and offered for sale to the public. Thus, Musk told the world that the 30 cars sold to buyers had been produced on an automated line in July, and that the Company had achieved, and was "on track," with its July, 2017 automated production plan goal.

25. Tesla had **not**, however, produced the vehicles at the handover event on automated lines. According to witnesses, every single Model 3, and every battery in those Model 3s, had been built by hand, because there was no completed automated line in Fremont, nor would there be for months. While the July 28, 2017 false statement led investors to believe Tesla was still "on-track"

for 2017 mass production, ***by Tesla's own production schedule it knew that it would not mass produce the Model 3 in 2017***, and until March 2018, at the earliest.

26. Defendants Musk and Ahuja, who visited the Fremont facility on a regular basis, knew that the Model 3 production line was significantly behind the publicly announced schedule and that it would never mass produce the Model 3 in 2017.

27. As Defendants claimed to be on track for mass production in 2017, the Fremont facility was assembling Model 3s ***by hand*** in the "beta" or "pilot" shop," a facility to assemble prototypes. The actual mass production line at Freemont was yet to be completed. Workers in the pilot shop were not even able to build enough Model 3s to carry out the necessary testing on the vehicles, and most Model 3 workers were being reassigned, or spending their days cleaning. It was evident to anyone who visited the Fremont facility – and Musk himself visited the unbuilt production line area every Wednesday, known internally as "Elon Day" – that the production line was not yet built, that parts for the necessary robots were not present, and that construction workers were spending most of their shifts sitting around with nothing to do. Multiple former employees corroborate the fact that there was no fully functioning automated production line when Tesla was telling the world that there was, and that the construction site where the line was being built was clearly and visibly far from completion.

28. Further, in May 2017, when Defendant Musk stated specifically that, based on what Tesla had already accomplished, the Company was "on track" to mass produce Model 3s in 2017, the Gigafactory did not have sufficient fully functioning production lines, batteries were being built by hand, and only a handful were being produced per week. As in Fremont, the facts on the ground at the Gigafactory, which Musk himself visited, belied Musk's "on track" comment, as well as all of the Company's subsequent statements during the Class Period.

29. Former employees state that there was no chance that the Gigafactory would produce 5,000 batteries per week at any time in 2017, and mass production of Model 3s required mass production of Model 3 batteries.

30. In fact, in February 2018, months after the end of the Class Period, Tesla admitted that its ability to *ever* produce more than 2,500 Model 3 batteries per week at the Gigafactory required the Company to disassemble a production line that was still in Germany, ship it to Nevada,

and reassemble it in Nevada. This gating requirement was omitted from the Company's numerous statements to analysts and investors during the Class Period.

31. Multiple former employees, at both the Fremont facility and at the Gigafactory, have confirmed what was obvious to anybody walking through those facilities both before and during the Class Period. Tesla was never "on track" for mass production of the Model 3 before the end of 2017, much less "on track" to produce 5,000 Model 3s per week before the end of 2017, and the "progress" which Defendants claimed had occurred and supported their mass production statements was illusory.

32. Without mass production lines and without batteries, it was impossible for Tesla to mass produce the Model 3 in 2017, and Defendants knew Tesla had neither.

33. On October 2, 2017, in a press release detailing the Company's vehicle production and deliveries for the third quarter of 2017, showing that the Company produced fewer than three Model 3s per day during the quarter, Tesla cited "production bottlenecks" as the reason for its failure to meet its production goals for its Model 3 sedan.

34. On October 6, 2017, the *Wall Street Journal* published an article, based in part on eyewitness observations by workers at the Fremont plant, that very few Model 3s were being built, and the Model 3s that were completed *were being built almost entirely by hand*, and not on a finished production line. On this news, Tesla's stock dropped $13.94, or 3.91%, to close at $342.94 on October 9, 2017, damaging investors.

35. On November 1, 2017, Tesla itself finally acknowledged that mass production in 2017 would never happen, even as they refused to acknowledge all of their Model 3 production problems, stating that the Gigafactory's lack of battery production had produced a bottleneck preventing the Company from mass producing Model 3s. On this news, Tesla's stock dropped $21.82, or 6.8%, harming investors.

36. Throughout the Class Period, Defendants made false and misleading statements and failed to disclose that: (i) contrary to Defendants' representations that the Company was prepared for mass production of its Model 3 sedan by year-end 2017, in reality, the Company did not have working production lines, and could not possibly build the production lines in the promised time-frame, and was woefully unprepared to mass produce the Model 3 sedan and Model 3 battery as

claimed; (ii) as a result, Defendants' public statements about the state of affairs in Fremont and at the Gigafactory necessary to support mass production, and their statements about the scheduled date for commencement of mass production of the Model 3 were false and misleading at all relevant times.

37. When the true facts concerning mass production of the Model 3 were disclosed to the market, Tesla's share price dropped and Plaintiffs and the Class suffered damages,

PARTIES

38. Lead Plaintiff Kurt Friedman, as set forth in his Certification previously filed with the Court, which is incorporated herein, purchased common shares of Tesla at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

39. Named Plaintiff Uppili Srinivasan purchased common shares of Tesla at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures. The Certification of Uppili Srinavasan was previously filed with this Court as Exhibit A to the Amended Class Action Complaint (ECF No. 24).

40. Defendant Tesla is incorporated in Delaware, and the Company's principal executive offices are located at 3500 Deer Creek Road, Palo Alto, California 94070. Tesla's common stock trades on the NASDAQ under the ticker symbol "TSLA."

41. Defendant Elon R. Musk ("Musk") has served at all relevant times as the Company's Chief Executive Officer ("CEO"), Chairman, and "Product Architect."

42. Defendant Deepak Ahuja ("Ahuja") served as the Company's first Chief Financial Officer ("CFO") from April 2010 until 2015, returning to that position in March 2017. He remains CFO to this day.

43. Defendants Musk and Ahuja are sometimes referred to herein as the "Individual Defendants."

44. Each of the Individual Defendants:

(a) directly participated in the management of the Company;

(b) was directly involved in the day-to-day operations of the Company at the highest levels;

(c) was privy to confidential proprietary information concerning the Company and its business and operations;

(d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;

(e) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company;

(f) signed false certifications attesting to the material accuracy of documents filed with the SEC; and/or

(g) approved or ratified false and misleading statements in violation of the federal securities laws.

45. Tesla is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

46. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to the Company under *respondeat superior* and agency principles.

47. Defendant Tesla and the Individual Defendants are referred to herein, collectively, as the "Defendants."

SUBSTANTIVE ALLEGATIONS

Tesla's Origins and Business

48. Tesla was formed in 2003 by Martin Eberhard and Marc Tarpenning. Tesla is headquartered in Palo Alto.

49. By 2004, Tesla had developed a prototype electric car, the "Tzero," which could go from zero to 60 mph in under 4 seconds. Tesla planned to commercially produce the Tzero under the model name "Roadster." A prototype was finished by November 2004. Tesla floated a price tag of $100,000 for the Roadster.

50. Elon Musk first became involved in Tesla's Series A funding in 2004. By October 2008, Defendant Musk controlled Tesla, having forced out Eberhard and fired a quarter of Tesla's employees. Musk became Tesla's CEO, Chairman, and "Product Architect."

51. To this day, Tesla is a niche automobile manufacturer, producing fewer than 6,400 cars per month in 2016, all luxury models with an MSRP starting at over $74,000.

52. Tesla competes with established, well-capitalized automobile companies worldwide, all of which are competing or beginning to compete in the electric automobile space. Ford, General Motors, and Fiat-Chrysler dwarf Tesla's production. In 2016, Tesla delivered just 76,000 electric vehicles of all makes, while General Motors sold 10,000,000 cars and trucks, Ford sold over 6,650,000 cars and trucks, and Fiat-Chrysler sold over 4,600,000 vehicles. Tesla's revenue and profitability reflect its relatively few unit sales. On a net basis, in 2012 Tesla Motors lost $396 million on revenues of $410 million, in 2013 Tesla lost $74 million on revenues of $2 billion, in 2014 Tesla lost $294 million on revenues of $3.2 billion, and in 2015 Tesla lost $889 million on revenues of $4 billion. By contrast, Tesla's competitors typically turn a profit, on much higher revenues. For example, in 2015, General Motors earned net income of $9.6 billion on revenues of $152.4 billion.

53. Tesla's competitors reach their sales figures and profits because they mass produce and sell affordable vehicles. Among many others, Ford sells the Ford F-150, General Motors the Silverado, and Fiat-Chrysler the RAM pickup. All of these vehicles start at about $30,000, and these companies have many other offerings at this and other attractive price levels.

54. Until 2016, Tesla produced only two luxury models, the Model S, a sedan, and the Model X, a sport utility vehicle. According to Kelley Blue Book, in 2016, the average new car in the United States sold for approximately $33,000. The base MSRP for the Model S and Model X was more than twice as much. As of December 31, 2015, the least expensive Model S and Model X were approximately $70,000. Premium configurations raised the price as high as double this amount.

55. Tesla's luxury models are not mass-market cars, nor did Tesla ever intend to mass produce them on a large scale.

56. Tesla acknowledges that the market for Models S and X is small. On a May 3, 2017 earnings conference call to discuss Tesla's first quarter 2017 earnings ("May 3, 2017 Conference Call"), Defendant Musk admitted that the demand for luxury sedans is "like nothing – less than 1% of the market, 0.5%."

57. On the call, Musk also stated that annual sales of premium sedans in the United States were approximately 100,000, out of 17 million vehicles sold annually in the United States. Musk essentially acknowledged the existential importance of Tesla succeeding in mass producing the Model 3 in a short period of time.

Tesla Overpromises in Production Goals for Earlier Vehicles

58. Before the Model 3, Tesla only built three cars: the Roadster, the Model S, and the Model X. In announcing the Model 3, Tesla claimed it had learned from mistakes made during the ramp up of production of its luxury models. Those mistakes were numerous.

The Roadster

59. Tesla first designed and built the Roadster, a sports car. Lotus Cars ("Lotus") actually built the Roadster using gliders (car bodies without an engine).

60. Tesla initially planned to begin commercial-level production of the Roadster by 2006. It did not achieve this goal.

61. In July 2006, Tesla took 127 preorders for Roadsters. Customers had to put down the full purchase price of $100,000.[2] In Musk's customer letters, Tesla promised delivery by the summer of 2007.[3] This was just the first in a long line of Defendants' false promises.

62. By January 2007, Lotus had delivered to Tesla, which was responsible for all aspects of the design of their first car, a list of 940 outstanding production problems. Of these, Tesla had resolved only 94.[4]

63. Tesla then announced that it would begin shipping Roadsters in the first quarter of 2008 – a promise that was reiterated as late as November 2007.

64. Tesla, however, did not *begin* production of Roadsters until March 2008, failing to deliver the first until the fall of 2008. By April 2009, the Company had delivered a total of 320 Roadsters.

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[2] *See* "The Making of Tesla: Invention, Betrayal, and the Birth of the Roadster," http://www.businessinsider.com/tesla-the-origin-story-2014-10.

[3] *Id.*

[4] *Id.*

65. By May 2009, however, Tesla recalled all 345 Roadsters built before April 22, 2009. Tesla told customers that without adjustment the driver could lose control of the car and crash.

66. In October 2010, Tesla recalled a further 439 Roadsters, or about one third of the Roadsters that had been sold to date, because of a potential fire hazard.

67. Ultimately, only 2,450 Roadsters were sold before Tesla completed its contract with Lotus in 2012. The contract was not renewed.

The Model S

68. In February 2007, Tesla announced that it would build a luxury sedan, later dubbed the Model S, initially setting the price at approximately $45,000. Reservations cost a minimum down-payment of $5,000.

69. As with production promises for the Roadster's, Tesla delayed the Model S's production date repeatedly, initially promising production by the fall of 2009,[5] but pushing it back first to 2011 and then to 2012.[6]

70. Ultimately, Tesla began shipping the Model S in June 2012, with a base MSRP of about $70,000.

71. Once again, production problems plagued the car's quality. In June 2013, Tesla recalled more than 1,000 Model Ss, because certain parts could cause a collapse of the rear seat back during a crash.

72. In January 2014, Tesla recalled 29,000 Model S units because chargers could overheat, creating fires.

73. In November 2015, again, Tesla recalled all 90,000 Model S units because their seat belts might not be correctly attached, increasing the risk of injury in case of an accident.

74. In April 2017, Tesla recalled another 53,000 Models S and Model X.

[5]https://web.archive.org/web/20100406182037/http://www.teslamotors.com/media/press_room.php?id=257

[6] Tesla IPO Prospectus dated June 29, 2010, at 2.

The Model X

75. The Model X was first unveiled online in 2012. A physical model was first presented in January 2013. At the time, Tesla promised that production would begin by the end of 2013, less than 12 months away, with deliveries beginning in early 2014.

76. In early 2013, Tesla pushed back the start of production to late 2014. In November 2013, Tesla pushed back deliveries to the second quarter of 2015. In November 2014, Tesla pushed production back again, to the third quarter of 2015. Deliveries finally started on September 29, 2015.

77. On an earnings conference call on May 4, 2016 to discuss Tesla's first quarter 2016 results ("May 4, 2016 Conference Call"), Musk told investors that the Model X is "I think unquestionably the most difficult car to manufacture in the world."

78. Tesla has admitted the many mistakes it made with the Model X. Musk stated during the May 3, 2017 Conference Call that the "[Model] X became kind of like a technology bandwagon of every cool thing you can imagine all at once. It's like everything all at once. That was a terrible strategy." Musk blamed "hubris and real overconfidence."

Announcement of the Model 3 – Tesla States this Time Production Will be Different

79. During a February 15, 2012, earnings conference call, Defendant Musk announced that the next Tesla car after the Model X would be an affordable mass market vehicle Tesla dubbed the "Gen 3." During a November 5, 2014, earnings conference call, the Company affirmed that a car like the Model 3 "has been the goal of the company all along."

80. In 2016, over four years after first announcing its intention to design and mass produce an affordable, mass market electric vehicle, Tesla disclosed concrete plans to market and sell the Gen 3, which it now dubbed the "Model 3." Designed to be affordably priced starting at $35,000, the Model 3 was Tesla's first car intended to be mass produced and appeal to a mass market. The Roadster, Model S, and Model X were luxury, niche vehicles never intended for mass production.

81. On the May 3, 2017 Conference Call, Musk boasted that the demand for the Model 3 at $35,000 was between thirty and seventy times the demand for the Model S. Within one day

of Tesla beginning to accept $1,000 refundable deposits to reserve a Model 3, 198,000 people had paid the deposit.

82. From the time of Defendants' 2016 disclosure of plans to produce the Model 3, Defendants told investors that they had learned from their previous mistakes, and that Model 3 production would be different.

83. Defendants downplayed their previous failures to meet production deadlines with their earlier cars in touting their Model 3 production capabilities.

84. On February 10, 2016, during Tesla's fourth quarter 2015 earnings conference call ("February 10, 2016 Conference Call"), Musk told investors that while the Model S was essentially a "proof-of-concept" car that Tesla had designed and produced to convince the world that electric cars could be attractive, Tesla designed the Model 3 "for ease of manufacturing."

85. According to Defendants, the Model 3 was "quite a bit less complex to manufacture than the Model S." According to Defendant Musk, manufacturing costs for the Model 3 would be only 50% of the manufacturing costs of the Model S, due to decreased complexity and economies of scale and general design improvement.

86. During the May 4, 2016 Conference Call, Tesla told investors it anticipated Model 3 sales of approximately 300,000-400,000 in 2018, increasing materially thereafter. At those numbers, Tesla would produce and deliver between 5,769-7,692 Model 3s *per week* in 2018, so Defendants were announcing to the market at this early date that they intended to mass produce the Model 3 before the end of 2017.[7] On that same call, Defendants represented to investors that Tesla had a volume target of close to *one million* vehicles in 2020 – the vast majority of which would be Model 3s. Musk represented that Tesla was "highly confident that [the Model 3] can be made profitably."

87. During the August 3, 2016 earnings conference call ("August 3, 2016 Conference Call"), Musk repeatedly stated that the Model 3 was Tesla's primary focus, stating, e.g., that "the Model 3 [is] our focus," and "the focus really is on Model 3."

[7] By contrast, Tesla's announced target for 2018 production of Models S and X on the May 4, 2016 Conference Call, combined, was 100,000-150,000.

88. According to Defendants, the Company would eliminate the production problems that plagued manufacture of Models S and X, and streamline the manufacture and delivery of the Model 3. During a February 22, 2017 Conference Call to discuss Tesla's fourth quarter 2016 earnings ("February 22, 2017 Conference Call"), Defendant Musk admitted that the relatively small numbers of Models S and X that Tesla produced left Tesla unable to attract premier parts suppliers to make parts for and dedicate their best employees to producing those vehicles. Musk admitted that the parts were manufactured by "the worst team on second-tier suppliers." By contrast, Tesla bragged that because of the Model 3 volume Defendants anticipated, the Company was able to get "the best team on first-tier suppliers," which Musk stated made "really a big difference."

89. As Tesla President of Global Sales & Service Jon McNeill touted on the February 22, 2017 Conference Call, Tesla claimed to have learned from its experience with the Model X:

> I might just add that we really learned a lot of lessons especially from the difficult Model X ramp, and that is something that's in our recent memory. We fought through it and succeeded, but I think in the design the Model 3 and the systems and the lines that produce it, many of those learnings have been incorporated from the beginning. So if the amount of complexity and the operations to assemble the car is dramatically reduced, the amount of operations that involve some sort of assembly craft, where there is more judgment of the operator, is dramatically reduced, almost eliminated. And a lot of these things that we could identify directly as the bottlenecks that hurt us on the X ramp, we have been able to target specifically and reduce or eliminate. So that has -- though painful, it was a helpful experience for us to get ready for Model 3.

90. Musk agreed, stating during the May 3, 2017 Conference Call, on the first day of the Class Period, that the Model 3 would be a radically simpler car to produce than Models S or X.:

> We've gone to great pains with the Model 3 to design it for manufacturing and to not have all sorts of bells and whistles and special features that, like, for example, with X.[8]
>
> ****
>
> So with Model 3 it's the opposite. We've designed it to be easy to make. We've got I think a much better supply chain in place where we've got the A team from the A suppliers. We didn't have that for the Model X or the S. And as far as we know, there are no issues.

91. Further, Tesla intended to automate far more of the Model 3 production than for its previous vehicles. According to Jeffrey B. Straubel, Tesla's Chief Technology Officer, during the May 3, 2017 Conference Call, the Model 3 is "vastly more automated" than Models S or X, perhaps "3 to 4x more automated." Defendant Musk added that the production speed for the Model 3 will be "at or probably slightly better" than the next best car in the world.

The Gigafactory

92. Tesla's ability to achieve mass production of the Model 3 was always dependent on a fully automated, Model 3 dedicated production line in Fremont, California.

93. In addition, for the Model 3 Tesla determined to manufacture its own batteries at a Reno, Nevada facility called Gigafactory 1 ("Gigafactory").[9] Citing a battery shortage as the main reason Tesla had, until that time, been unable to market its vehicles as aggressively as they otherwise would have, in 2013, the Company announced plans to manufacture its own battery production facility, the Gigafactory.[10]

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[8] During the February 22, 2017 Conference Call, Musk cited as examples of "bells and whistles" on Models S and X that would not be in the Model 3 design "self-presenting door handles," a feature where the driver-side door handle automatically sticks out when the owner approaches, and "buckling doors," where the entire door opens as the owner approaches.

[9] The Gigafactory 1 ("Gigafactory") is a lithium-ion battery factory. The numerical "1" designation is indicative of Tesla's plans to build multiple Gigafactories in the United States, Europe, and China. *See* http://www.thedrive.com/tech/9819/tesla-may-announce-four-new-gigafactories-this-year.

[10] *See* https://www.techspot.com/news/54600-tesla-wants-to-build-a-massive-battery-supply-facility-to-curb-shortages.html.

94. Tesla's ability to mass produce the Model 3 depended on its ability to manufacture enough quality batteries at the Gigafactory. During the July 28, 2017 handover event with Tesla employees, Musk stated that "the production rate will move as fast as the slowest… component in the whole mix. Then on top of that we have the Gigafactory…"[11] During the Class Period, The Company produced all batteries for the Model 3 at the Gigafactory.[12]

95. Defendants disclosed that they had conceived the Gigafactory as part of a "vertical integration" strategy. Rather than managing a system of producers who would feed in to Tesla, Defendants intended Tesla to control and manage every aspect of production. Defendants' vertical integration strategy is radically different than the prevailing "lean" production philosophy the auto industry has employed for the past 50 years.[13] With lean production, suppliers deliver components to each team's work station just-in-time for assembly, encouraging resourceful problem-solving and discouraging the practice – common in vertical integration – of relying on a surplus of spare parts.[14]

96. Defendants developed Tesla's vertical integration strategy because Tesla is one of the few automobile manufacturers whose entire line is electric, and none of its previous models was mass produced. Supplies of batteries and other electric vehicle-specific parts was limited, and Tesla was unable to wait for a supply chain to develop to service its demand.[15]

97. Despite that necessity, Tesla's plan to produce its own batteries adds an additional, vital manufacturing challenge its competitors do not face.[16]

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[11] Though Musk told employees that the next six months would be "production hell," he did not waver from a statement the Model 3 would be mass produced around the end of 2017.

[12] According to Tesla, the name Gigafactory comes from the word "Giga," the unit of measurement representing "billions," given that the factory's planned annual battery production capacity is 35 gigawatt-hours (GWh), with one GWh being the equivalent of generating (or consuming) 1 billion watts for one hour. *See* https://www.tesla.com/gigafactory.

[13] *See* http://www.businessinsider.com/tesla-has-to-overcome-a-major-problem-for-its-massive-new-gigafactory-to-succeed-2016-7.

[14] *See* https://www.economist.com/node/14299730.

[15] *See* http://www.businessinsider.com/tesla-has-to-overcome-a-major-problem-for-its-massive-new-gigafactory-to-succeed-2016-7.

[16] *Id.*

98. Tesla signed an official partnership agreement with Panasonic regarding the Gigafactory in July 2014. Panasonic was already previously supplying Tesla with millions of battery cells. Tesla broke ground on construction of the Gigafactory around the same time.

99. Tesla has stated that it is building the Gigafactory in phases so it can manufacture immediately inside completed sections, while continuing to expand.[17] When the Gigafactory opened in July 2016, a little more than two years after construction began, construction was approximately 14% complete. Currently, the Gigafactory has a footprint of more than 1.9 million square feet, with more than 4.9 million square feet of operational space across several floors. When finished, the Gigafactory is projected to be the biggest building, by footprint, on the planet.[18]

100. The Model 3 battery was designed differently than the batteries for Models S and X to accommodate the Model 3's lower price point, with different numbers and configurations of modules and battery cells. The batteries for Models S and X are not produced at the Gigafactory,[19] and Tesla has confirmed that Model 3 batteries will not be produced on lines that produce Model S and X batteries, nor will the Company change the design of the Models S and X batteries to incorporate the Model 3's lithium-ion cell.[20]

101. Further, batteries of different sizes will be produced for the two versions of the Model 3 (220 mile range and 310 mile range).[21]

102. At the end of the Class Period, Panasonic CEO Kazuhiro Tsuga confirmed that Model 3 battery pack production was *not* automated during the Class Period.[22]

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[17] Currently, the Gigafactory is less than thirty percent complete.

[18] *See* https://www.tesla.com/gigafactory.

[19] *See* "Tesla Batteries 101 – Production Capacity, Uses, Chemistry, & Future Plans," https://cleantechnica.com/2017/12/02/tesla-batteries-101-production-capacity-uses-chemistry-future-plans/.

[20] *See* "Dissecting the Tesla Model 3's 2170 lithium ion battery cell, what's inside?" https://www.teslarati.com/inside-tesla-model-3-2170-lithium-ion-battery/.

[21] *See* "Tesla Model 3: Performance, specs, and news," https://www.digitaltrends.com/cars/tesla-model-3-performance-specs-news-rumors/.

[22] *See* https://arstechnica.com/cars/2017/10/production-problems-at-teslapanasonic-gigafactory-may-be-at-an-end/.

Failure to Mass Produce the Model 3 Presented an Existential Dilemma for Tesla

103. Mass producing the Model 3 before the end of 2017 was critical to Tesla. One March 12, 2018 Bloomberg article stated that "[t]he Model 3 production rate is of existential importance to Tesla."[23] These pressures motivated Defendants to mislead investors during the Class Period to preserve Tesla's stock price and its ability to raise money to fund operations.[24]

104. The *Wall Street Journal* stated that mass production of the Model 3 was "a make-or-break period in which Tesla must boost production of the Model 3 or possibly face severe financial consequences."[25] Tesla's commitment to the Model 3 caused it to spend $4 billion dollars for Model 3 production in 2017, alone. Tesla had to spend cash to ramp up mass production of the Model 3, which it depended upon to increase cash flow and allow the Company to continue its development as an electric vehicle company.

105. If Tesla did not mass produce the Model 3, it would fail to bring in the cash necessary to continue funding the Model 3.

106. During the July 28, 2017 "handover" event, Defendant Musk told the assembled employees that revenues from sales of the Models S and X were being diverted to the Model 3 project ("the money that we make with the S and X all goes into building the Model 3"). In a First Quarter 2017 Update filed by Tesla on May 3, 2017, Defendants stated that "we expect that year-to-date expenditures will be slightly over $2 billion by the start of Model 3 production. In the Second Quarter 2017 Update filed by Tesla on August 2, 2017, the company noted that for the

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[23] http://bloomberg.com/news/articles/2018-03-12/tesla-s-production-problems-spawn-a-legion-of-model-3-stalkers.

[24] On August 7, 2017, Bruce Clark at Moody's stated that Tesla's credit "rating could be downgraded if there are major production or quality problems for the Model 3, if consumer demand erodes to the degree that the company cannot maintain its 5,000 per week production target through 2018, or if the level of Model 3 reservations supported by $1,000 deposits fall from the current level of 455,000 to below 350,000."

[25] https://www.wsj.com/articles/teslas-make-or-break-moment-is-fast-approaching-1521111603?mod=e2tw.

Model 3 "capital expenditures should be about $2 billion during the second half of 2017."[26] Tesla has burned through about $10 billion in cash since 2010.[27]

107. During an August 2, 2017 earnings conference call ("August 2, 2017 Conference Call"), in a colloquy with JPMorgan Securities LLC analyst Ryan Brinkman, the Company reiterated the importance to 2017 results of cash from mass production of the Model 3. Defendants attempted to put investors at ease about the threat of a cash crunch from a failure to mass produce the Model 3 in 2017:

> **Ryan J. Brinkman** - JP Morgan Chase & Co, Research Division - Senior Equity Research Analyst: In just thinking about your liquidity position, while you're operating with more cash than you historically have, $3 billion, ***I see you're also guiding to $2 billion CapEx in the back half and you previously said $1 billion of gross cash is as low as you're comfortable operating at***. So you guide to positive cash from operations the back half, presumably on Model 3 ramp in 4Q. But if it's only a little positive, then I guess you would be close to your targeted cash level. ***So the question is can you help us size up how positive do you expect the cash from operations to be in the back half***? And if that level of cash from operations plus whatever remains available to draw on your asset-backed line, if that's sufficient cushion for you relative to your $1 billion target or whether it might make sense to do another equity raise?
>
> **Elon R. Musk** - Tesla, Inc. - Co-Founder, Chairman, CEO and Product Architect: Yes. Deepak, do you want to...
>
> **Deepak Ahuja** - Tesla, Inc. – CFO: Yes, sure, sure, Ryan. ***So we expect our operating cash flows to be significantly better in the second half compared to the first half. At their highest level, scaling generates cash***.

[26] Tesla repeated this statement in a 10-Q filed on August 4, 2017, stating "we expect to invest approximately $2.0 billion in capital expenditures during the second half of 2017."

[27] https://www.wsj.com/articles/teslas-make-or-break-moment-is-fast-approaching-1521111603?mod=e2tw.

> **Elon R. Musk** - Tesla, Inc. - Co-Founder, Chairman, CEO and Product Architect: ***Yes, it certainly does***.

108. Later in that same August 2, 2017 Conference Call, Musk elaborated, admitting that:

> This is just because of ***Model 3 is fundamentally negative gross margin in the very beginning***, because you've got a gigantic machine producing -- that's meant for 5,000 vehicles a week and it's producing a few hundred vehicles a week.[28]

109. During that same call, Musk emphasized the importance of mass production to Tesla's short term cash position, and to avoid a future cash crunch. Tesla had set a 25% margin for Model 3 sales, and Musk admitted that until Tesla sold 5,000 Model 3s per week, and then for months after, that margin goal would not be met.[29]

110. UBS analyst Colin Langan has stated that until Tesla mass produces 5,000 Model 3s per month, it will continue burning through cash.[30] Tesla had only $3.4 billion cash in hand at the end of 2017, meaning that burning through $4 billion without mass production had created a cash crunch, and failure to mass produce the Model 3 in 2018 would require Tesla to raise funds through debt or equity markets, which would be made more difficult if investors lost confidence in the Company's ability to quickly mass produce Model 3s and the stock price fell.[31]

111. Tesla's existential dilemma is also due to the fact that it is quickly losing any advantage it once had for being first on the market, as far more experienced competitors are investing billions of dollars to compete with Tesla, and some have actually beat Tesla to market

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[28] Musk made this comment during the third quarter of 2017. At no point in that quarter did Tesla produce "a few hundred vehicles a week." Model 3 production averaged less than 3 vehicles per day during the third quarter of 2017.

[29] During the call, Musk further reassured that the investments made are "taking us to 5,000 and beyond [in Model 3 production]."

[30] https://www.wsj.com/articles/teslas-make-or-break-moment-is-fast-approaching-1521111603?mod=e2tw.

[31] *Id*.

with affordable electric vehicles. These facts further underline the need for Tesla to mass produce the Model 3 quickly.

112. Daimler AG, owner of Mercedes-Benz, announced in the third quarter of 2017 that it would invest $1 billion to produce electric vehicles in the United States.[32] Porsche is investing $7.4 billion in electric cars, developing and selling not only electric vehicles but "new technologies, charging infrastructure and smart mobility."[33] General Motors announced in 2017 that it will sell two fully electric models in 2018, and at least 18 more by 2012.[34] Further, GM is establishing significant footprints in countries Tesla has hardly reached, with plans to launch ten electric vehicles in China by 2020.[35] Hyundai has plans to sell the Kona, an electric vehicle with a 292 mile range, which is designed to "battle the Chevy Bolt EV, Nissan Leaf and Tesla Model 3."[36] In July 2017, Volvo announced that as of 2019, *every car Volvo produces* will have a version that runs on electric power.[37] Toyota has announced similar plans for all its vehicles by 2025.[38]

113. Competitors already market and mass produce electric vehicles, selling a higher number of affordable electric vehicles than Tesla. GM sells its Chevy Bolt EV for $33,000. Chevy has sold over 130,000 of its Volt model, and over 25,000 Chevy Bolts. Chevy sold nine times as many Bolts as Tesla sold Model 3s in the final quarter of 2017.[39] Nissan sold approximately 50,000 of its electric Leaf vehicle in 2016. Privately owned Chinese manufacturer BYD ("Build Your Dreams"), which also makes battery cells, is partially owned by Warren Buffett, and has a joint venture with Mercedes-Benz, sold more electric cars in 2015, 2016, and 2017 than any company,

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[32] https://www.bloomberg.com/news/articles/2017-09-21/mercedes-plots-tesla-attack-with-1-billion-u-s-electric-push.

[33] https://www.theverge.com/2018/2/5/16975752/porsche-electric-cars-investment-smart-mobility.

[34] https://www.wired.com/story/general-motors-electric-cars-plan-gm/.

[35] *Id.*

[36] https://www.cnet.com/roadshow/news/hyundai-kona-electric-ev-new-york-auto-show-suv/.

[37] https://www.wired.com/story/volvos-electric-car-plan/.

[38] https://electrek.co/2017/12/18/toyota-electric-car-plans/.

[39] https://seekingalpha.com/article/4135148-december-sales-general-motors-chevy-bolt-ev-outsold-tesla-model-3-3-1.

including Tesla.[40] Internationally, as of July 2017, i.e., during the Class Period, more than 30 fully electric vehicles were available on the international market.[41]

114. With all of these competitive pressures bearing down on Defendants Musk and Tesla, during the Class Period, Defendants repeatedly told investors and analysts that actual already-existing progress, i.e., facts on the ground, supported that Tesla could and would mass produce the Model 3 before the end of 2017. Each of Defendants' statements about Tesla's actual progress towards mass production of the Model 3 was knowingly or recklessly false.

115. On May 3, 2017, after the close of the market, Tesla filed with the SEC its "Tesla First Quarter 2017 Update" as Exhibit 99.1 to an 8-K. Defendants Musk and Ahuja signed the Update. Directly referencing actual facts on the ground with respect to completion of the automated line meant to produce the Model 3, i.e., progress that could be seen, the Company stated that:

> ***[P]reparations at our production facilities are on track*** to support the ramp of Model 3 production to 5,000 vehicles per week at some point in 2017, and to 10,000 vehicles per week at some point in 2018.[42]

116. Later that same day, during the May 3, 2017 Conference Call, Defendant Musk engaged in a colloquy with Deutsche Bank AG analyst Rod Avraham Lache. Again, Musk stated that ***based on what had been achieved to date***, nothing would stop mass production of the Model 3 in 2017:

> Lache: A couple remaining questions. Just one is, since the Model 3 is maybe 2 or 3 months away, could you just give us a sense of what some of the most critical outstanding items are that are going to gate the commercial launch timing? And now that there are actual physical test vehicles on the road, are there any significant changes happening?
>
> Musk: Well, actually it seems to be -- ***we're not really seeing any significant***

[40] https://www.greencarreports.com/news/1115398_chinas-byd-tops-global-electric-car-production-for-third-year-in-a-row.

[41] https://www.wired.com/story/volvos-electric-car-plan/.

[42] Emphasis added unless otherwise noted.

> ***change that needs to occur*** with Model 3. So it's coming in as expected, as the design continuation has predicted, it's getting pretty close to the bull's-eye, and ***I'm not aware of anything that would affect our prior statements about volume target***.
>
> Lache: So there's nothing outstanding vis-à-vis tooling, deliveries or things like that, that you're still viewing as a critical item with some uncertainty?
>
> Musk: There's plenty of things with uncertainty, but ***I don't know anything that would prevent us from starting firstly in July, and exceeding 5,000 units per week by the end of the year***. There may be some cost up there, I just don't know of what that is today.

117. In fact, as described in detail below, Musk was personally aware of existing facts that prevented Model 3 mass production in 2017.

118. Just a week later, on May 10, 2017, the Company struck again in the first quarter 2017 10-Q, reassuring analysts and investors that progress on the ground was going as planned for mass production in 2017:

> In the first quarter of 2016, we unveiled Model 3, a lower priced sedan designed for the mass market. Model 3 vehicle development is nearly complete as we approach the start of initial production in July of this year. Release candidate vehicles, built using production-intent tooling and processes, are being tested to assess fit and finish, to support vehicle software development and to ensure a smooth and predictable homologation process. Road testing is also underway to refine driving dynamics and ensure vehicle durability. ***Simultaneously, preparations at our production facilities are progressing to support the ramp of Model 3 production to 5,000 vehicles per week at some point in 2017*** and to 10,000 vehicles per week at some point in 2018. We are working closely with all Model 3 suppliers to ensure their readiness ahead of the start of production.

119. In the same May 10, 2017 first quarter 2017 10-Q, reporting on developments that had occurred in the first quarter of 2017, the Company told investors that "[i]n the first quarter of

2016, we announced our target to increase overall vehicle production level to 500,000 vehicles in 2018. ***We have started the installation of Model 3 manufacturing equipment at the Fremont Factory and Gigafactory 1, and we are on-track for start of Model 3 production in July 2017.***"

120. The first quarter 2017 10-Q also specifically stated that things were already going well at the Gigafactory to support mass production of the Model 3 in 2017, with the Company writing: ***Although we continue to remain on track with our progress at Gigafactory 1….***

121. At no point in May 2017 did Musk or the other Defendants even hint that preparations for mass production of the Model 3 by the end of 2017 were lagging behind their own production plan, or otherwise of concern.

122. Analysts believed Defendants. In a May 4, 2017 analyst report from Oppenheimer, analyst Colin Rusch noted that with respect to the Model 3, "progress on manufacturing to date is performing ahead of our expectations."

123. Similarly, a Deutsche Bank analyst stated on May 4, 2017, without reservation, that "Tesla remains confident in the launch timing of Model 3, with production expected to begin in July. They still expect to reach a production run rate of 5k/week at some point in 2017…."

124. At the July 28, 2017 "handover event," televised online, where Tesla "handed over" the first 30 Model 3s to buyers, Musk assured investors (falsely) that automated production of the Model 3 had begun, stating "there's actually a total of 50 production cars that we made this month…." Following the July 28, 2017 "handover" event, analysts again expressed confidence in Defendants' statements that already-existing progress meant Tesla was on-target for mass production in 2017. In a July 30, 2017 KeyBanc Capital Markets analyst report, analyst Brad Erickson even reprinted a chart Musk projected to employees on July 28, 2017, building on Musk's assertion that automated production began on schedule in July 2017, and showing production reaching 5,000 Model 3s per week in 2017, or after a 6-month ramp-up.

125. In fact, the 50 Model 3s were not "production cars," a term of art in the automotive industry. By using this phrase, Musk was conveying to analysts and investors that the cars had been produced on automated lines, when every part of those Model 3s had actually been built by hand, and Tesla was not even close to automated production of the Model 3.

126. When the Company spoke to the public again, in August 2017, Defendants continued telling the public that progress that had already occurred in Fremont and at the Gigafactory supported Model 3 mass production before the end of the year, statements augmented by the fact that in August the Company stated that it was already producing Model 3s at sufficient rates.

127. On August 2, 2017, Tesla filed with the SEC "Tesla Second Quarter 2017 Update" as Exhibit 99.1 to an 8-K. Defendants Musk and Ahuja signed the Update. Directly referencing actual facts on the ground with respect to completion of the automated line meant to produce the Model 3, a line which was supposedly already producing cars, the Company stated, based on current production line advancement, that:

> ***Based on our preparedness at this time***, we are confident we can produce just over 1,500 vehicles in Q3, and achieve a run rate of 5,000 vehicles per week by the end of 2017.

128. Later that same day, during the August 2, 2017 Conference Call, Defendant Musk, in prepared remarks, again referenced production achievements that had progressed as planned, stating that:

> ***And we remain – we believe on track to achieve a 5,000 unit week by the end of this year.***
>
> So, I would certainly urge people not to get too caught up in what exactly falls within the exact calendar boundaries of a quarter, one quarter over the next, because when you have an exponentially growing production ramp, slight changes of a few weeks here or there can appear to have dramatic changes, but that is simply because of the arbitrary nature of when a quarter ends.
>
> ….
>
> And then we – with Model 3, even more vertically integrated. I think people should really not have any concerns that we will reach that outcome [10,000 cars per week by the end of 2018] from a production rate.

129. Again during the August 2, 2017 Conference Call, in prepared remarks, Defendant Musk told investors that events that had already transpired at the Gigafactory, which by this time

was supposed to be producing batteries on a production line to meet the stated mass production goal, were in-line with the stated expectations, stating: ***"[a]nd then batteries – also making great progress on the battery front."***

130. Analysts again credited the Company's statements about progress as they related to meeting the mass production goal. Deutsche Bank Market Research, in an August 2, 2017 report entitled "Tesla's Outlook Bullish vs. Expectations," specifically noted that Tesla had stated that already-completed progress drove their confidence in 2017 mass production, writing that "Tesla's management ***sounded very confident in their level of preparedness to achieve production targets***. The analyst continued that "the combination of higher margins and a faster production ramp would have significant positive implications for earnings and cash flow."

131. Analyst Guggenheim, in an August 3, 2017 report recommending that investors "buy" Tesla stock, were also convinced that progress on the ground was already occurring on pace, writing "Tesla's economic model remains all about Model 3…. Model 3 began production in July, hitting a target we do not believe most thought would even be met just 3-6 months ago…."

Defendants Made Clear their Production Plan for Mass Producing the Model 3 in 2017

132. In May, 2016, FE1, drawing on his experience, told Musk directly that there was zero chance that the plant would be able to produce 5,000 Model 3s per week by the end of 2017. Since, as of FE1's departure in June 2016, Tesla did not yet even have a finalized design for the Model 3, Tesla could not release information so molds for body parts could be built. Molds take from 9-12 months to make. Tesla had not yet begun ordering manufacturing equipment to be installed at the Fremont plant. The timeline for functioning manufacturing equipment includes 1-2 months to seek bids and negotiate contracts with suppliers, 6 months to manufacture equipment, 6 months to install the equipment in the Fremont plant, and 6 months to get the equipment working up to speed. Thus, the automated assembly line for the Model 3 could not possibly mass produce cars in 2017. FE1 also told Musk that there was not enough room in the Fremont facility for equipment to produce 5,000 cars per week, and that expansion would be necessary. For his honesty, Musk told FE1 to leave the company.

133. In fact, Tesla's public statements made clear that they agreed with virtually all of FE1's production plan, and that it was *their* production plan.

134. In the first quarter 2017 10-Q, Defendants stated that in the first quarter of 2017 "[w]e have started the installation of Model 3 manufacturing equipment at the Fremont Factory and Gigafactory 1, and we are on-track for start of Model 3 production in July 2017."

135. Defendants thus largely, and publicly, corroborated FE1's production plan:

- 4-6 months to install equipment, clear from Defendants' statements that installation starting in Q1 2017 was necessary to begin production in July 2017;
- Further, 6 months from the beginning of automated production, in July 2017, to ramp up to automated mass production, by the end of December 2017;
- This schedule is virtually identical to what FE1 told Musk in mid-2016.

136. Finally, Defendants were belatedly forced to accept as true what Musk rejected, that the Fremont facility was not large enough to house production equipment to mass produce the Model 3. In June 2018, Tesla built a large open-air tent with a third Model 3 production line. Musk, admitting that FE1 was correct that the Fremont main facility was inadequate for mass production, tweeted "[n]eeded another general assembly line to reach 5k/week Model 3 production. A new building was impossible, se we built a giant tent in 2 weeks."[43]

137. With a publicly stated production plan, the veracity of Tesla's "on track" statements can only be understood, simply, to be false. If installation began in the first quarter and was complete by July, and if automated production began in July, then the Company would have been "on track." Reality, however, which was as obvious to Musk and Defendants as it was to the workers in Fremont and in the Gigafactory, showed that none of the publicly stated production plan points had been achieved, or even come close to being achieved, and Defendants knew they were not "on track" for 2017 mass production.

Eyewitness Statements from Tesla's Fremont and Gigafactory Employees Show that Defendants Knew that they Would Not Mass Produce the Model 3 in 2017

138. Tesla's own former employees confirm what was obvious to the naked eye. Installation of production equipment did not begin in the first quarter of 2017. Automated production did not begin in July 2017, and, indeed, did not begin for a long time afterwards.

[43] https://electrek.co/2018/06/19/tesla-model-3-assembly-line-inside-tent-elon-musk/.

Defendant Musk's own executives told Musk personally, as far back as mid-2016, that there was zero chance of mass producing the Model 3 in 2017. Former Employee ("FE") 1 was Director of Manufacturing at Tesla's Fremont plant from December 2012 to June 2016. He reported directly to Josh Ensign, Vice President of Manufacturing, and FE1 also reported directly to Musk.

139. FE1 was responsible for the planning for manufacturing capabilities, as well as for production for the Model 3. FE1's area of concentration was plastics and coating, known as the "accordion shop" because it is the part of the production process in-between building the body of the car and assembling the rest of the car. FE1 was required to know what was happening in both the processes upstream and downstream from the "accordion shop."

140. Sometime in late April or early May of 2016, FE1 participated in a meeting with Musk, CFO Jason Wheeler,[44] and the Vice President of Engineering. FE1 stated that during that meeting, ***he told Musk directly*** that there was zero chance that the plant would be able to produce 5,000 Model 3s per week by the end of 2017.

141. FE1 stated that there were many reasons why Tesla would never be able to produce 5,000 Model 3s per week by the end of 2017, all known as of April or May of 2016. As of FE1's departure in June 2016, Tesla did not yet even have a finalized design for the Model 3, so Tesla could not release information so molds for body parts could be built. Molds take from 9-12 months to make.

142. FE1 further stated that Tesla had not yet begun ordering manufacturing equipment to be installed at the Fremont plant. The timeline for functioning manufacturing equipment includes 1-2 months to seek bids and negotiate contracts with suppliers, 6 months to manufacture equipment, 6 months to install the equipment in the Fremont plant, and 6 months to get the equipment working up to speed. Thus, the automated assembly line for the Model 3 could not possibly even be mass producing cars in 2017.

143. FE1 told Musk directly at the meeting that the ***start*** of manufacturing would be at least 6 months later than July 2017, *i.e.*, in 2018. FE1 further told Musk that Tesla needed to expand the area needed at the Fremont plant to prepare the body of the Model 3. Musk rejected this idea.

[44] Wheeler both followed and preceded Defendant Ahuja as CFO.

144. At the conclusion of the April or May 2016 meeting, Musk told FE1 that he should look for new employment. FE1 resigned from Tesla because of the false timeline for the Model 3. FE1 stated that it was obvious to everyone in the factory that Tesla would not be producing 5,000 cars per week by the end of 2017.

145. FE1 stated that Ensign, the Vice President of Manufacturing, also told Musk directly that the Company would never be able to meet Musk's unrealistic timeline for production of 5,000 Model 3s per week by the end of 2017. FE1 stated that Musk then forced Ensign out of the Company. Ensign left Tesla in May 2016.

146. After his resignation, FE1 has continued to speak with former colleagues at Tesla in positions giving them access to the information FE1 now reports. FE1 learned recently that Musk is now expanding the manufacturing area for the Model 3, as well as taking other steps FE1 recommended, and Musk rejected, during FE1's tenure at Tesla.

147. FE1 stated that as Musk knew the announced production timeline was false, he was not telling the truth to the public when he stated that current conditions meant that 5,000 Model 3s per week would be manufactured by the end of 2017.

148. FE2 was a Senior Project Engineer in Material Flow Engineering for the Model 3 at Tesla's Fremont plant from April 2014 to June 2016. FE2 reported to Govin Ranganathan, Engineering Manager, Material Flow Engineering, and to Kevin Vliet, Director, Material Flow Engineering. Vliet reported to Greg Reichow, Vice President of Production between June 2013 and July 2016. Reichow reported directly to Elon Musk.

149. FE2's job was to conceptualize, plan and discuss solutions with suppliers for parts of the production line for the Model 3. FE2 focused on areas of the production line for assembly, receiving the battery packs, and distribution of car parts into and out of the warehouse.

150. FE2 and her team dealt with numerous suppliers who would be building and/or installing the equipment, automation and robots that would comprise parts of the Model 3 production line. FE2 stated that as of June 2016, FE2 and her team had not yet even finalized their plans for the production line, nor settled on all of the suppliers for the equipment and/or solutions.

151. FE2 stated that Tesla's Model 3-related suppliers, including Ilseman, Intelligrated, and Thematic, told Tesla that the timelines Tesla wanted them to meet were "impossible," and

could not be met. FE2 stated that in conversations with colleagues for other sections of the as-yet unbuilt production line, those colleagues told FE2 that suppliers they were dealing with were telling them the exact same thing.

152. When FE2 left Tesla in June 2016, construction of the production line for the Model 3 had not yet begun. FE2 described the production concept for most of the different sections of the line as more "conceptual" than practical through the end of FE2's tenure at Tesla.

153. When FE2 left Tesla in June 2016, only one company had a completed contract with Tesla to supply equipment for the production line.

154. FE2 stated that everyone, including FE2, knew that the Company would not be producing 5,000 Model 3s per week by the end of 2017. FE2 stated that it would take 18-24 months to construct the system and get it up and running and ready for production to begin. Suppliers were telling FE2 that lead times for obtaining materials for the equipment, and then building the equipment, was at least six months. FE2 stated that delivering, installing, and programming the line in the Fremont facility would take at least an additional six to twelve months. Another several months would be needed to work the bugs out of the production line.

155. Further, FE2 stated that Tesla would be dealing with hundreds, or thousands, of vendors, each with a different role in building the assembly line. Suppliers were telling FE2 and Tesla that having to share the space with other workers carrying out different tasks would complicate their ability to complete their work timely, and that as workers with different responsibilities would be working in the same space at the same time, the process would take even longer.[45]

156. FE2 reported to her supervisors what suppliers were saying about their lead times for the equipment and their inability to meet Tesla's timelines. FE2 stated that Tesla was aware of these timelines and difficulties. FE2 stated that based on FE2's and Tesla's experience in building the production line for the Models S and X, Defendants understood how difficult and time-consuming the process would be.

[45] On July 28, 2017, at the "handover" event, Musk confirmed FE2's statement about the number of parts and vendors, stating that "there are 10,000 unique parts in a Model 3, and these are coming from all over the world."

157. When FE2 left Tesla in June 2016, FE2's team had not yet finalized plans for building the production line, or settled on all of the suppliers for equipment and/or solutions. Based on conversations FE2 had after FE2's departure from Tesla with former colleagues who were still employed by Tesla and in positions to know the information FE2 reports, the plans for the production line were still not finalized as of July or August of 2016.

158. By 2017, just before and during the Class Period, the detailed warnings from FE1 and FE2, some spoken directly to Musk himself, were proving to be true. Even as Defendants bragged, during the Class Period, about progress that had already been achieved on Tesla's most important project, the reality in Fremont and at the Gigafactory was far more grim, and visible to anybody visiting the facilities.

159. FE3 worked at Tesla from August 2012 to Oct. 18, 2017, or nearly through the end of the Class Period. FE3 began employment as a production associate in Fremont, was promoted to Team Leader, and in October 2015 was promoted to Production Supervisor - General Assembly for Tesla's luxury Models S and X at the Fremont factory. As a Production Supervisor, FE3 reported to Corey Shaw, Assistant Manager. Shaw reported to Ventura Diaz, Unit Leader, who reported to Mario Panera, Production Manager - General Assembly at Tesla. FE3 stated that the Model 3 production line was constructed in the same building as Models S and X.

160. From FE3's vantage point working as a Production Supervisor, every day, FE3 could observe the section of the uncompleted Model 3 assembly line where Tesla constructed the chassis, including the battery pack, suspension, and brake hubs. During the entirety of his employment, until October 18, 2017, FE3 ***never saw a single Model 3 being constructed on the assembly line***.

161. FE3 stated that the only personnel on the Model 3 assembly line were construction and engineering personnel, responsible for designing and building the line.

162. FE3 stated that the Model 3 production line was not yet operational when he left the company in mid-October 2017. FE3 noted that had cars been produced on the Model 3 assembly line, FE3 would not only have seen the automated production line actually working, but would also have seen some of the vehicles in what was called the "yard," an area where cars

needing a part or system tweaked, e.g., an air leak in a window seal, were placed after being removed from a working assembly line.

163. As of his departure in October 2017, FE3 stated that the Model 3's "body in white line," where the vehicle's body was welded together, ***was not operational***. That section of the factory was still fenced off when FE3 left.

164. An October 6, 2017 *Wall Street Journal* article confirms FE3's observations and knowledge about the "body in white line." In the October 6, 2017 article, entitled "Behind Tesla's Production Delays: Parts of Model 3 were Being Made by Hand,"[46] the Journal reported that it interviewed multiple workers who stated that:

> equipment for the so-called body-in-white line for the Model 3, where the car body's sheet metal is welded together, wasn't installed until by around September. They guessed at least another month of work remained to calibrate the tools.

165. FE3 stated that it was common knowledge at the Fremont facility that construction and assembly of the automated production line for the Model 3, whose assembly only started towards the very end of FE3's tenure at Tesla, was delayed, and not yet completed.

166. FE3 further stated that around September 2017, the Company began terminating many employees working on the Model 3 production team. FE3 attributed these terminations to the production delays, as since the production line was not operational, the Company did not need large numbers of production employees. FE3 estimated that the company terminated the jobs of about 200 employees in the period shortly before FE3 ceased working at Tesla.[47]

167. FE3 also reported a startling fact, not evident from any of Defendants' statements: during the Class Period, Model 3s were not being made at all on an automated line. Rather, they

[46] https://www.wsj.com/articles/behind-teslas-production-delays-parts-of-model-3-were-being-made-by-hand-1507321057

[47] FE3's recollection about mass firings is correct. Fortune.com reported that in early October, 2017, Tesla fired 400-700 workers, including in Fremont. *See* "Tesla Fires Hundreds of Workers After Their Annual Performance Review, http://fortune.com/2017/10/13/tesla-fires-employees/. Many of the fired workers alleged that they were laid off, unrelated to performance reviews. See "Tesla Employees Detail how they Were Fired, Claim Dismissals Were Not Performance Related," https://www.cnbc.com/2017/10/17/tesla-firings-former-and-current-employees-allege-layoffs.html.

were produced in Fremont's "beta" or "pilot" shop, which is where prototypes and test versions of the Model 3 were constructed.

168. Multiple former Tesla employees confirm this claim. FE4 was a Manufacturing Engineer working on production of the Model 3 from March 2017 to June 2017. FE4 worked in the pilot shop, and reported to Richard Castro, supervisor of the pilot shop. The pilot shop is located in an extension of the main building in Fremont, separated from the main building by a wall and door. The pilot shop was where Model 3 prototypes, or test cars, were built.

169. FE4 was a "process owner" of an area of assembly of the Model 3. The process owner was the team leader during a particular shift.

170. FE7 also worked in the pilot shop, from February 2017 through the end of June 2017, during the same shift as FE4. FE7 was hired through a temp agency, and was responsible for welding together the outer layers of the Model 3. FE7 reported to supervisor Richard Castro, who reported to Mike Lazaro.

171. FE4's team was responsible for the first part of the assembly process of the Model 3, installing all of the fasteners, including screws, bolts, and nuts. As "process owner" other team members came to FE4 for parts, questions, and to report problems. FE4 reported to a manager on behalf of the team, and spoke with the leader of the next shift at the end of FE4's shift.

172. When FE4 left in June 2017, after Defendants had already told investors that advancement in the Fremont facility and at the Gigafactory showed that the Company was "on track" to mass produce the Model 3 in 2017, FE4 states that ***all Model 3s were being constructed in the pilot shop, mostly by hand***. A total of 120-130 Model 3s had been built. The pilot shop typically completed 3-5 skeletons of cars per day, with a target of 15-20 per week. The finishing touches were completed in another area, and that work was also done mostly by hand, and not on the automated production line that was still under construction. FE4 stated that the number of production associates in the pilot shop far exceeded the personnel needed to produce the small number of Model 3s actually produced. Production associates sometimes spent their entire shifts cleaning, and some were loaned to the Models S and X production lines.

173. FE7 confirmed that through June 2017, Model 3s were still being built by hand in the pilot shop. FE7 further confirmed that in FE7's last month of employment, the pilot shop was

producing 10-15 Model 3s per week. Those vehicles were used for testing, displays and presentations.

174. As a process owner, FE4 regularly entered the main factory area where the Model 3 automated line was under construction, in order to obtain parts from inventory. FE4 further passed the area where the automated production line was being constructed each day in order to get to her work area. FE4 was able to observe the construction progress on the automated line on a daily basis.

175. During FE4's tenure at Tesla, which overlapped with the Class Period, the fully automated line for producing Model 3s was ***never*** in operation, as it was still under construction. FE4 said that the delays were openly visible to anyone in the factory who saw the production line.

176. FE4 stated that construction of the permanent line was significantly delayed. FE4 spoke with the workers constructing the automated line, who stated that the line was not even close to being completed, and that it would not be completed in 2017, and perhaps not until as late as May 2018. Tesla was not providing the workers constructing the line with instructions in an efficient manner. These workers often had no work to do, as it was assigned to them on a day-to-day basis, and no work to do after the mid-point of their shifts.

177. Mauricio Gonzalez, the engineering technician who oversaw FE4's team, told FE4 during an informal conversation that the new projection for completion of the automated line was in 2018. FE4 also heard pilot shop supervisors state that the projection was a 2018 finish date, including during an informal conversation with supervisor Castro. FE4 further named Mike Lazaro and Curtis Hutchins as managers who were contemporaneously aware of delays of the Model 3 production.

178. FE7 stated that the engineers building the production line spoke with his managers, including Castro and Lazaro, about the progress of the automated line. FE7 stated that it was commonly known by even the lowest ranked employees that the production line was in the very early stages of construction, as construction had not begun until April or May 2017, and was nowhere near completion.

179. FE5 was a Robot Programmer on the Model 3 production line at Tesla's Fremont plant from June or July 2017 to September 2017. FE5 worked for Chicago Robot Works ("CRW"),

which was a subcontractor to Comau, an Italian multinational specializing in industrial automation. Tesla hired Comau to install the automated machinery and robotics for the Model 3 production in Fremont. FE5 reported directly to a Comau supervisor.

180. CRW and Comau were already installing the automated robotics for the Model 3 production line at the Fremont plant when FE5 arrived in June or July 2017. Installation was not yet complete.

181. FE5's job was to pre-program and program robots on the "body shop" section of the production line, where Model 3 body parts would be welded together. FE5 worked amongst, but not with, Tesla engineers. FE5 estimated that the body shop production line alone had about 100 robots.

182. When FE5 left Tesla's facility in early September 2017, the body shop for the Model 3 was not yet fully automated, nor was it near completion. It was unclear how much more time would be necessary to achieve full automation of the body shop, though based on his knowledge of the requirements, FE5 estimated that the full production line was approximately 45% finished.

183. FE5 stated that some robot parts for which Tesla was awaiting delivery when he first arrived at the facility had still not arrived when he left in September 2017. FE5 understands that the parts supplier for the robots being installed in the Fremont facility was itself waiting for parts to be delivered to it.

184. FE5 did not know where Model 3s were being built since the full production line was not near completion. However, FE5 stated that Model 3s were ***not*** being built in the building where the automated production line for the Model 3 was being installed.

185. FE6 worked on the Processing and Manufacturing teams for the Model 3 at Tesla's Fremont plant from May 2016 to January 2017. FE6 reported to Shawn Hensen, Manager of Body Engineering, and to Matt Higgins, Manager of Body Advanced Engineering.

186. Beginning in July 2016, FE6 worked in the pilot shop helping to build the rear underbody of the car. FE6 said that between mid-2016 and early 2017 the team in the pilot shop was building Model 3 test cars, called the C-Sample (previous versions were called the B-Sample), that would be put through various manufacturing and functional tests as part of finalizing the

Model 3 design for mass production. FE6 thus confirms FE1's statement that as of July 2016, Tesla did not yet even have a finalized design for mass production of the Model 3.

187. FE6 stated that in or around September 2016, the manufacturing team was told to make twenty C-Samples that would be sent for crash tests, tests for installation and functionality of the battery pack and tests of paint coating, among others. The goal of making 20 C-samples was later reduced to making just 3 C-Samples, because the stamping department, which supplied many of the parts, only produced enough parts to make that many.

188. FE6 stated that most large car manufacturers outsource the stamping to mass production plants in China, but Tesla was doing it in-house. The Company, therefore, faced big delays whenever a machine went down or it could not produce sufficient quantities of what was needed. FE6 stated that Tesla used data from B-samples in lieu of the necessary testing to finalize the Model 3 design.

189. FE6 stated that during FE6's last several months at Tesla, everyone at the Fremont plant, including Musk, was aware that the Company would not be able to produce 5,000 Model 3s a week by the end of 2017, and that the timeline was unrealistic.

190. FE6 recalled a conversation with William Zochodne, a senior manufacturing engineer who attended meetings with Musk. Zochodne expressed that the deadlines for production were unrealistic, and wondered aloud when Musk would change the timeline and admit that producing 5,000 Model 3s per week in 2017 would not happen.

191. The lack of progress in completing automated production lines, necessary for achieving mass production of the Model 3, was not a surprise to Defendant Musk, as Musk regularly visited the Fremont facility.

192. FE3 stated that Musk visited the Fremont factory every Wednesday, and that Wednesdays were referred to internally as "Elon Day." FE3 stated that in advance of Musk's visits, Unit Leaders sent group texts alerting employees that Musk would be visiting, and included reminders/instructions such as "make sure your areas are clean. The boss is here." FE3 saw Musk in the factory meeting room on numerous occasions.

193. FE3 understood that after it was clear that Model 3 production and the production line itself were delayed, Musk convened a meeting where Musk yelled at Model 3 managers about the delays.

194. FE2 confirmed that Musk visited the Fremont plant once a week, on Wednesdays, to speak with lead employees about the Models S, X and 3. FE2 stated that FE2's superiors were informed of what the suppliers told FE2. FE2 understood that those concerns were raised with Musk by superiors during Musk's visits to the Fremont facility.

195. FE6's desk was in close proximity to employee meeting rooms, and FE6 saw Musk regularly, for meetings with plant directors from engineering, manufacturing and other departments to discuss, among other things, Comau's budget for installing the production line robots and the timeline for when the line could be up and running.

196. Despite Musk's statement to investors during the Class Period that battery production at the Gigafactory was making "great progress," the production problems in Nevada were at least as dire as those in Fremont, and it was plain to anybody visiting the Nevada facility that Tesla would not mass produce batteries for the Model 3 in 2017.

197. FE8 was a Quality Technician who trained Line Inspectors at the Gigafactory in Nevada, from January of 2014 through September 2017, through most of the Class Period. FE8 reported to a manager, Guillermo Gutierrez, and to a supervisor, Anthony D'Amico.

198. FE8 stated that each Model 3 battery pack consisted of four modules, each of which was approximately 5-6 feet long. Each module contained approximately 20,000 batteries that were glued together. Workers were required to inspect alignment of the batteries and measure and test the coolant tubes.

199. FE8 stated that each Model 3 module was vertically aligned in order for the pack to be placed in the bottom of the vehicle. The battery pack was designed to run the length of the car, from the rear wheels to the front wheels. The battery pack consisted of a clamshell on top, and other wiring and bonding. A bandolier, produced at the end of the assembly line, secured the batteries in the enclosure.

200. FE8 stated that the batteries and modules were required to pass several inspection stages, and that there was a high failure rate for the modules produced for the Model 3 during

FE8's entire three year tenure at the Gigafactory. Each module was inspected at a sub-assembly location and inspectors signed off on the inspection and recorded the serial numbers for each module. If the height of even a single battery was incorrect during the sealing process, the entire module would be discarded. FE8 stated that high failure rates and module issues persisted during all of FE8's employment. Modules that did not pass inspection were sent to the "Non-Comforming Material" area of the Gigafactory facility.

201. FE8 further stated that production downtime was common, often lasting 7-8 hours, due mainly to a lack of parts, inadequate machine programming, and automation problems.

202. FE9 was a Process Technician for Tesla at the Gigafactory location in Nevada from March of 2017 until October of 2017, assigned to the Model 3 production team. FE9 observed workers on and off the assembly line during both manual and automated assembly.

203. When FE9 began working in March 2017, ***all*** battery module assembly was manual, a process FE9 described as "messy." Automated production lines were being built during most of FE9's tenure at Tesla, and partial automated battery production, which did not encompass all of the production process, did not even begin until September 2017.

204. At the end of the Class Period, the CEO of Tesla's Gigafactory partner, Panasonic, confirmed FE9's statement that battery production to that point was ***not*** automated.[48]

205. According to FE9, the Gigafactory was plagued by problems related to producing usable modules, and the first battery module was completed long past the deadline when the Model 3 was supposed to have been launched. The process required applying adhesive at a specific ratio, which if not done properly caused the batteries to "fall off." Parts and spaces between parts were small, making correct module completion challenging. FE9 stated that prior to automated production, human error resulted in poorly produced modules "all the time," with workers rushing products through the line, assuming problems "would fix [themselves]," which they did not.

206. FE8 stated that further delays were caused by Panasonic, Tesla's partner in the Nevada Gigafactory, because Panasonic batteries contained metal fibers, and Panasonic employees

[48] *See* https://arstechnica.com/cars/2017/10/production-problems-at-teslapanasonic-gigafactory-may-be-at-an-end/.

were required to check every pallet of modules to confirm there were no sealing problems with the metal fibers.

207. FE9 also recalled that the partial automated production, once it finally began in September 2017, was plagued with production problems. Many of the specifications were incorrect, the automated lines did not work properly, and specific production issues persisted, including insufficient quantities of adhesive. Further delays and production problems were a result of inexperienced employees who did not receive adequate training.

208. FE8 corroborated this account of automation-related malfunctions, stating that some problems were caused by incorrect programming, in Germany, of German-sourced machines. FE8 stated that machines were constantly being re-programmed.

209. FE8 stated that Gigafactory workers were brought in from Intellisource and other temp agencies, leading to high turnover and a negative effect on production. FE8 recalled busloads of approximately 27-30 workers arriving at the Gigafactory from temp agencies, and that number being weeded out to 3-4 total workers in just two to three weeks.

210. During FE9's tenure, which lasted almost to the end of the Class Period, the Gigafactory produced no more than ***two battery packs, at most, per day***, sufficient for two cars. Realistically, it took a full day – comprised of two shifts – to produce a single battery pack, and, even then, it was not a "customer saleable pack," i.e., a pack that passed inspection and was ready to be installed in the Model 3.

211. The only "customer saleable pack" was completed in October 2017, shortly before FE9 left Tesla. A company-wide email was sent congratulating the engineers and production workers for their hard work.

212. FE10 was a Production Associate at the Gigafactory from October 2017 to January 2018. FE10 reported to Production Supervisor Timothy Mosher.

213. FE10 worked on a battery production line applying glue to the windows of the battery. The battery packs that were assembled on FE10's line arrived in an elevator. The person next to FE10 scanned the battery into the computer system, and the battery was cleaned at the end of the line.

214. FE10 described frequent production stoppage due to equipment breakdown, and line workers being "starved for work." Malfunctioning equipment included facility elevators, and production machines. A shutdown of any part of the line process stopped work on the entire line.

215. FE11 worked as a Materials Handler at the Gigafactory from December 2016 to January 2018. FE11 reported to Material Flow Manager Scott Dowler.

216. FE11 confirmed that very few Model 3 batteries were completed during the Class Period. FE11 recalled 14 production lines, each with 5-6 Tesla employees. Panasonic employees would deliver batteries to the Tesla employees, who assembled each battery pack.

217. FE11 stated that it took 1-2 weeks for each production line at the Gigafactory to produce one (1) finished battery, so no more than 14 finished Model 3 batteries were completed every 1-2 weeks.

218. FE11 stated that it was not uncommon to receive faulty modules, which were sent to technicians to fix. Problems ranged from leakage, to parts of incorrect size, to broken or malfunctioning parts. It took approximately a full week to resolve any issues that arose on the line.

219. FE11 confirmed FE8's statement that Tesla brought in temp workers from staffing agencies, and that Tesla did a poor job training the workers.

220. FE12 was Operations Planning Manager at the Gigafactory from May 2017 to June 2018. FE12 began working at Tesla after the May, 2017 SEC filings.

221. FE12's job was to oversee planning for production operations that made or assembled Model 3 components at the Gigafactory. His job required him to coordinate with departments involved in different aspects of Gigafactory production, allowing him insight into overall production operations in the Gigafactory. FE12 regularly spoke with managers in material supplies, operations, new product integration (in both Fremont and at the Gigafactory), and Tesla's liaison with Panasonic.

222. FE12 reported to Anoop Thulaseedas, Gigafactory Supply Chain Planning. Thulaseedas reported to Adam Plumpton, Logistics Director, who reported to Sascha Zahnd, Vice President of Global Supply Chain.

223. Upon beginning employment, FE12 had conversations with Flora Rooker, Senior Material Planner, who told FE12 that the Gigafactory had been behind schedule continuously for a year.

224. Within one month of employment at Tesla, FE12 knew that Tesla would not be able to produce 5,000 Model 3s per week by the end of 2017, and that the Gigafactory specifically would not be able to produce enough batteries to meet that goal. Tesla's "internal production equipment wasn't capable of doing 5,000" batteries by the end of 2017, according to FE12.

225. Beginning in June 2017, FE12 wrote production capacity forecasts, each of which concluded that the Gigafactory would not produce enough "car sets" for 5,000 Model 3s per week in 2017. A "car set" is comprised of a drive unit and a battery pack, the two components manufactured at the Gigafactory. The battery packs were assembled using battery cells supplied by Panasonic.

226. In the summer of 2017, not long after he began working at Tesla, FE12 told Plumpton and Thulaseedas that the Gigafactory was not capable of meeting the stated 2017 goal.

227. By July 2017, a "massive [parts] inventory" had built up because actual production was behind schedule. FE12 requested, but was denied permission, to cut back on deliveries. Instead, he was instructed to rent extra storage spaces to store supplies for months.

228. FE12 cited several reasons for the Gigafactory's failure to meet production goals: suppliers delivering equipment late, problems installing equipment, difficulty getting equipment to run, poor equipment design, difficulty getting equipment and lines qualified, and a shortage of engineers and manpower to fix these issues.

229. These issues resulted in "constant delays" in building production lines and producing usable parts.

230. FE12 believes that the conversion from manual to automated production at the Gigafactory did not occur until the end of the third quarter of 2017. However, automated production was so cumbersome and beset by problems that in the fourth quarter of 2017 or the first quarter of 2018, Tesla switched back to manual production because it improved production numbers.

231. Panasonic supplied the battery cells for the Model 3's battery packs. Panasonic was well behind schedule in building its part of the Gigafactory, according to FE12. The construction delays meant that battery cell production would not be sufficient to meet Tesla's stated goal in 2017, which, again, FE12 realized shortly after beginning his employment at Tesla.

232. In July, 2017, FE12 recalls that even as it was obvious that the December goal was not going to be achieved, and was not reachable for at least three months into 2018, Musk "was still saying 5,000, 5,000, 5,000." FE12 stated that, at a minimum, Defendant Musk was "willful[ly] ignorant" of the already existing present facts that meant that Tesla would be unable to produce 5,000 Model 3s per week.

233. As the automated line was being installed, the lines producing inverters and drive units immediately suffered from "tons of issues," forcing the lines to be shut down, and low-quality modules to be scrapped. Further, MOSFETS (metal oxide semiconductor field-effect transistors) necessary for inverters were in short supply, and large quantities were scrapped due to quality issues.

234. As with Musk's weekly visits to the Fremont facility, where the lack of a functioning automated production line was obvious to anybody present, so too did Defendant Musk personally observe the complete lack of mass production of Model 3 batteries at the Gigafactory in Nevada during the Class Period.

235. Musk bragged to all of his Twitter followers that during at least part of the Class Period, he was ***sleeping in the Gigafactory***, as that allowed him to be more efficient and avoid driving 30 minutes to Reno and the nearest hotel. Musk posted a photo to Instagram of himself and others drinking whiskey around a fire on the roof of the Gigafactory, singing Johnny Cash songs.[49]

236. Even if fully automated, the Gigafactory could never have produced 5,000 Model 3 batteries per week during 2017, a fact Defendants admitted long after the end of the Class Period. In an 8-K filed on February 9, 2018, Tesla had to "clarify" a statement made by Defendant Musk

[49] *See* "Elon Musk is Sleeping in the Tesla Factory Again," https://www.gearbrain.com/elon-musk-sleep-tesla-factory-2502241359.html.

during a conference call two days earlier, on February 7, 2018, concerning battery production capacity at the Gigafactory ***in February 2018***:

> Tesla, Inc. is clarifying the following statement made by Elon Musk, Tesla's Chief Executive Officer, during Tesla's fourth quarter and full year 2017 financial results conference call held on February 7, 2018:
> *"[We] expect the new automated lines to arrive next month in March. And then it's already working in Germany so that's going to be disassembled, brought out to the Gigafactory and reassembled and then go into operation at the Gigafactory. It's not a question whether it works or not. It's just a question of disassembly, transport and reassembly. So we expect to alleviate that constraint. With alleviating that constraint, that's what gets us to the roughly 2,000 to 2,500 unit per week production rate."*
>
> The "2,000 to 2,500" units per week cited in this comment refers solely to the capacity of the additional automated battery module manufacturing equipment that is currently located in Germany, and not to Tesla's total Model 3 production run rate or to the capacity of the automated battery module equipment that is already present at Gigafactory 1. Tesla's ability to meet its target of 2,500 per week by end of Q1 2018 is not dependent on the additional equipment that is currently located in Germany, as that equipment is expected to start ramping production during Q2 2018. With respect to battery module production, Tesla's ability to meet its target of 2,500 per week by end of Q1 2018 is dependent only on the equipment that is already present at Gigafactory 1, as well as the incremental capacity that is currently being added through the semi-automated lines that were also discussed during the conference call. (emphasis in original).

237. Thus, more than three months after the end of the Class Period, Defendants admitted that production equipment required to even start to think about producing 5,000 Model 3 batteries in a week ***was still in Germany in February 2018.***

MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS ISSUED DURING THE CLASS PERIOD

238. The Class Period begins on May 3, 2017. On that date, after the close of the market, Tesla filed with the SEC its "Tesla First Quarter 2017 Update" as Exhibit 99.1 to an 8-K. The document was signed by Defendants Musk and Ahuja. Directly referencing actual facts on the ground with respect to completion of the automated line meant to produce the Model 3, the Company stated that:

> ***[P]reparations at our production facilities are on track*** to support the ramp of Model 3 production to 5,000 vehicles per week at some point in 2017, and to 10,000 vehicles per week at some point in 2018.

239. The foregoing was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that Tesla could not mass produce the Model 3 in 2017 because:

- Tesla executives had informed the Company that mass production of the Model 3 in 2017 was impossible;
- The automated production line in Fremont was not built, or close to completion, in May 2017;
- There was no automated production line at the Gigafactory, nor were automated lines close to completion;
- Tesla knew that in order to begin automated production in July, 2017, it needed 4-6 months to construct the automated lines, thus it needed to begin construction in the first quarter of 2017. Construction, however, did not even begin until the second quarter of 2017, and was then immediately beset with problems and delays, therefore automated production would not begin in July, 2017, and mass production could not be achieved, at the earliest, until months into 2018;

- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany;
- Preparations at the Fremont and Nevada production facilities were woefully short of being "on track" to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017.
- The Individual Defendants were personally aware from eyewitness observation of both the Fremont and Nevada facilities that the automated lines in Fremont and in Nevada were not completed, or near completion, and that mass production of the Model 3 was not possible in 2017, much less production of 5,000 Model 3s a week at any time in 2017, and that Tesla could not achieve mass production until March 2018, at the earliest;
- During the Class Period there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory.

240. Later that same day, during the May 3, 2017 Conference Call, held after the close of the market, Defendant Musk engaged in a colloquy with Deutsche Bank AG analyst Rod Avraham Lache, as follows:

> Lache: A couple remaining questions. Just one is, since the Model 3 is maybe 2 or 3 months away, could you just give us a sense of what some of the most critical outstanding items are that are going to gate the commercial launch timing? And now that there are actual physical test vehicles on the road, are there any significant changes happening?
>
> Musk: Well, actually it seems to be -- ***we're not really seeing any significant change that needs to occur*** with Model 3. So it's coming in as expected, as the design continuation has predicted, it's getting pretty close to the bull's-eye, and ***I'm not aware of anything that would affect our prior statements about volume target***.
>
> Lache: So there's nothing outstanding vis-à-vis tooling, deliveries or things like that, that you're still viewing as a critical item with some uncertainty?

> Musk: There's plenty of things with uncertainty, but ***I don't know anything that would prevent us from starting firstly in July, and exceeding 5,000 units per week by the end of the year***. There may be some cost up there, I just don't know of what that is today.

241. The foregoing statements were false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that Tesla could not mass produce the Model 3 in 2017 because:

- During the Class Period there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- Tesla executives had informed the Company that mass production of the Model 3 in 2017 was impossible;
- The automated production line in Fremont was not built, or close to completion, in May 2017;
- There was no automated production line at the Gigafactory, nor were automated lines close to completion;
- Tesla knew that in order to begin automated production in July, 2017, it needed 4-6 months to construct the automated lines, thus it needed to begin construction in the first quarter of 2017. Construction, however, did not even begin until the second quarter of 2017, and was then immediately beset with problems and delays, therefore automated production would not begin in July, 2017, and mass production could not be achieved, at the earliest, until March 2018;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany;
- Preparations at the Fremont and Nevada production facilities were woefully short of being “on track” to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;
- The Individual Defendants were personally aware from eyewitness observation of both the Fremont and Nevada facilities that the automated lines in Fremont and in

Nevada were not completed, or near completion, and that mass production of the Model 3 was not possible in 2017, much less production of 5,000 Model 3s a week at any time in 2017, therefore Defendants were indeed aware of "anything" that might prevent mass production of the Model 3 in 2017.

242. On May 10, 2017, after the close of the market, Tesla filed a quarterly report on Form 10-Q with the SEC, announcing the Company's financial and operating results for the quarter ended March 31, 2017 (the "first quarter 2017 10-Q"). The 10-Q was signed by Defendant Ahuja.

243. During the May 3, 2017 Conference Call, Musk, discussing Tesla's actions with the Model 3 and comparing it to the Model X, stated:

> X became kind of like a technology bandwagon of every cool thing you can imagine all at once. It's like everything all at once. That was a terrible strategy. You really want to start off simple and add things over time. But that was some hubris and real overconfident there. So with Model 3 it's the opposite. We've designed it to be easy to make. ***We've got I think a much better supply chain in place where we've got the A team from the A suppliers. We didn't have that for the Model X or the S. And as far as we know, there are no issues***.

244. The foregoing statement was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that Tesla could not mass produce the Model 3 at any time in 2017 because:

- Tesla did not have a supply chain in place at the start of the Class Period, so Defendants were aware of serious "issues" with suppliers. Contracts for all necessary suppliers had not been finalized;
- Parts necessary for constructing the automated production line in Fremont had not been delivered, and some would not arrive for months;
- Suppliers had informed Tesla that the production timelines were impossible;
- The automated production line in Fremont was not built, or close to completion, in May 2017;

- There was no automated production line at the Gigafactory, nor were automated lines close to completion;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany;
- Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;
- The Individual Defendants were personally aware from eyewitness observation of both the Fremont and Nevada facilities that the automated lines in Fremont and in Nevada were not completed, or near completion, and that mass production of the Model 3 was not possible in 2017, much less production of 5,000 Model 3s a week at any time in 2017, therefore Defendants were aware of "anything" that might prevent mass production of the Model 3 in 2017.

245. In the first quarter 2017 10-Q, the Company stated, in relevant part:

> In the first quarter of 2016, we unveiled Model 3, a lower priced sedan designed for the mass market. Model 3 vehicle development is nearly complete as we approach the start of initial production in July of this year. Release candidate vehicles, built using production-intent tooling and processes, are being tested to assess fit and finish, to support vehicle software development and to ensure a smooth and predictable homologation process. Road testing is also underway to refine driving dynamics and ensure vehicle durability. ***Simultaneously, preparations at our production facilities are progressing to support the ramp of Model 3 production to 5,000 vehicles per week at some point in*** 2017 and to 10,000 vehicles per week at some point in 2018. We are working closely with all Model 3 suppliers to ensure their readiness ahead of the start of production.

246. The foregoing was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that Tesla could not mass produce the Model 3 in 2017 because:

- Preparedness for mass production at both the Fremont and Nevada facilities was non-existent. Fully functioning automated lines were not completed, or close to being completed, and would not support mass production of Model 3s in 2017, much less production of 5,000 Model 3s a week at any time in 2017. All Model 3s were being constructed by hand in the Fremont pilot shop;
- Defendants own Model 3 production plan mandated that construction of the automated lines begin in the first quarter of 2017 in order to begin automated production in July, 2017, and mass produce the Model 3 in 2017. Automated line installation did not, however, begin in the first quarter of 2017;
- The Individual Defendants were personally aware from eyewitness observation of both the Fremont and Nevada facilities during the Class Period that there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory, and that "preparations" were not "progressing";
- Tesla did not have a supply chain in place at the start of the Class Period, so Defendants were aware of serious problems with suppliers. Contracts for all necessary suppliers had not been finalized;
- Parts necessary for constructing the automated production line in Fremont had not been delivered, and some would not arrive for months;
- Suppliers had informed Tesla that the production timelines were impossible;
- The automated production line in Fremont was not built, or close to completion, in May 2017;
- There was no automated production line at the Gigafactory, nor were automated lines close to completion;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany;

- "Preparations" at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017.

247. In the first quarter 2017 10-Q, the Company stated, in relevant part:

> "[i]n the first quarter of 2016, we announced our target to increase overall vehicle production level to 500,000 vehicles in 2018. We have started the installation of Model 3 manufacturing equipment at the Fremont Factory and Gigafactory 1, and we are on-track for start of Model 3 production in July 2017."

248. The foregoing was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that Tesla could not mass produce the Model 3 in 2017 because:

- Defendants knew that automated line installation did not begin in the first quarter of 2017, thus, by their own production plan requiring at least 4-6 months for installation, they knew that actual automated production would not begin in July, 2017, and therefore, as their own plan required 6 months of "ramp-up" to reach mass production once automated production began, mass production would not be achieved until, at earliest, March 2018. Therefore, no later than May 1, 2017, Defendants knew or recklessly disregarded that Tesla was not "on-track" either for start of automated production in July, 2017, for Model 3 mass production in 2017;
- The Individual Defendants were personally aware from eyewitness observation of both the Fremont and Nevada facilities during the Class Period that installation of the automated lines did not begin in the first quarter of 2017, and that Tesla was not "on-track" either for start of automated production in July, 2017, or for Model 3 mass production in 2017, and that Tesla could not achieve mass production until March 2018, at the earliest;
- Tesla did not have a supply chain in place at the start of the Class Period, so Defendants were aware of serious problems with suppliers. Contracts for all necessary suppliers had not been finalized;
- Parts necessary for constructing the automated production line in Fremont had not been delivered, and some would not arrive for months;

- Suppliers had informed Tesla that the production timelines were impossible;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany;
- "Preparations" at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017.

249. The May 10, 2017, first quarter 2017 10-Q included the following "risk factor":

> ***We may experience delays in realizing our projected timelines and cost and volume targets for the production, launch and ramp of our Model 3 vehicle, which could harm our business, prospects, financial condition and operating results.***
>
> Our future business depends in large part on our ability to execute on our plans to develop, manufacture, market and sell the Model 3 vehicle, which we intend to offer at a lower price point and to produce at significantly higher volumes than our present production capabilities for the Model S or Model X vehicles. We unveiled a prototype of Model 3 in March 2016 and have announced our goal to achieve volume production and deliveries of this vehicle in the second half of 2017. (emphasis in original).

250. The foregoing risk disclosure was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that events had already occurred that prevented Tesla from mass producing the Model 3 at any time on or around December 31, 2017 because:

- Defendants knew or recklessly disregarded that this general risk factor had already occurred, and that mass production of Model 3s would not and could not happen in 2017, much less production of 5,000 Model 3s a week at any time in 2017. Defendants were duty bound, but failed, to disclose that the specific adverse event the Company was warning of hypothetically had already transpired, rendering the foregoing risk disclosures false and misleading;

- Defendants knew that automated line installation did not begin in the first quarter of 2017, thus, by their own production plan requiring at least 4-6 months for installation, they knew that actual automated production would not begin in July, 2017, and therefore, as their own plan required 6 months of "ramp-up" to reach mass production once automated production began, mass production would not be achieved in 2017. Therefore, Defendants knew that Tesla was not "on-track" either for start of automated production in July, 2017, or for Model 3 mass production in 2017;

- Preparedness for mass production at both the Fremont and Nevada facilities was non-existent. Fully functioning automated lines were not completed, or close to being completed, and would not support mass production of Model 3s in 2017, much less production of 5,000 Model 3s a week at any time in 2017. All Model 3s were being constructed by hand in the Fremont pilot shop;

- The Individual Defendants were personally aware from eyewitness observation of both the Fremont and Nevada facilities during the Class Period that there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory, and that "preparations" were not "progressing";

- Tesla did not have a supply chain in place at the start of the Class Period, so Defendants were aware of serious problems with suppliers. Contracts for all necessary suppliers had not been finalized;

- Parts necessary for constructing the automated production line in Fremont had not been delivered, and some would not arrive for months;

- Suppliers had informed Tesla that the production timelines were impossible;

- The automated production line in Fremont was not built, or even close to completion, in May 2017;

- There was no automated production line at the Gigafactory, nor were automated lines close to completion;

- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany;
- Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017.

251. The first quarter 2017 10-Q included the following statement:

> ***Although we continue to remain on track with our progress at Gigafactory 1***, given the size and complexity of this undertaking, it is possible that future events could result in the cost of building and operating Gigafactory 1 exceeding our current expectations and Gigafactory 1 taking longer to expand than we currently anticipate. In addition, we continue to expand production capacity at our Fremont Factory and are exploring additional production capacity in Asia and Europe.

252. The foregoing statement was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that Tesla could not mass produce the Model 3 at any time on or around December 31, 2017 because:

- During the Class Period there were no automated lines producing batteries in the Gigafactory, much less process sufficient for mass production of batteries;
- Progress at the Nevada production facility was woefully short of being "on track" to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;
- The Individual Defendants were personally aware from eyewitness observation of the Nevada facility during the Class Period that there were fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory, and that "progress" was not "on track";
- Tesla did not have a supply chain in place at the start of the Class Period, so Defendants were aware of serious issues with suppliers. Contracts for all necessary suppliers had not been finalized;

- Suppliers had informed Tesla that the production timelines were impossible;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany.
- The warning that "it is possible that future events could result in the cost of building and operating Gigafactory 1 exceeding our current expectations and Gigafactory 1 taking longer to expand than we currently anticipate" was misleading because this event had already occurred. The building and operating of the automated line at the Gigafactory 1 was already delayed and plagued with serious problems preventing mass production of batteries for the Model 3.

253. Exhibit 31.1 to the first quarter 2017 10-Q was a Certification, signed by Defendant Musk, which stated, in part:

> I, Elon Musk, certify that: 1. I have reviewed this Quarterly Report on Form 10-Q of Tesla, Inc.; 2. Based on my knowledge, this report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report[.]

254. Exhibit 31.2 to the first quarter 2017 10-Q was a Certification, signed by Defendant Ahuja, which stated, in part:

> I, Deepak Ahuja, certify that: 1. I have reviewed this Quarterly Report on Form 10-Q of Tesla, Inc.; 2. Based on my knowledge, this report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report[.]

255. The preceding certifications were false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that their statements in the filing

were false because Tesla could not mass produce the Model 3 at any time on or around December 31, 2017 because:

- During the Class Period there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;
- Defendants knew that automated line installation did not begin in the first quarter of 2017, thus, by their own production plan requiring at least 4-6 months for installation, they knew that actual automated production would not begin in July, 2017, and therefore, as their own plan required 6 months of "ramp-up" to reach mass production once automated production began, mass production would not be achieved in 2017. Therefore, Defendants knew that Tesla was not "on-track" either for start of automated production in July, 2017, or for Model 3 mass production in 2017, and that Tesla could not achieve mass production until March 2018, at the earliest;
- The general risk factor regarding delays in mass production of the Model 3 in 2017 had specifically materialized, mass production of Model 3s would not happen in 2017, much less production of 5,000 Model 3s a week at any time in 2017. Defendants were duty bound, but failed, to disclose that the hypothetical "risks" warned of had already occurred, rendering the foregoing risk disclosures meaningless.

256. During the July 28, 2017 "handover" event, televised online, where Tesla "handed over" the first 30 Model 3s to buyers, Defendant Musk stated that "there's actually a total of 50 production cars that we made this month…."

257. The foregoing was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that:

- The 50 Model 3s at the handover event were not "production cars," *i.e.*, identical cars built on an automated line, but rather were built by hand, and the batteries in all 50 Model 3s were also built by hand;

- Contrary to Musk's clear statement by using the term "production cars" at the handover event, automated production of Model 3s had not yet begun, thus Tesla had missed its own July, 2017 production plan for beginning automated production of the Model 3, and would not be able to mass produce the Model 3 in 2017, and could not achieve mass production until March 2018, at the earliest;
- During the Class Period there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017.

258. On August 2, 2017, after the close of the market, Tesla filed "Tesla Second Quarter 2017 Update" as Exhibit 99.1 to an 8-K. The document was signed by Defendants Musk and Ahuja. Directly referencing actual facts on the ground with respect to completion of the automated line meant to produce Model 3, the Company stated, based on current production line advancement, that:

> ***Based on our preparedness at this time***, we are confident we can produce just over 1,500 vehicles in Q3, and achieve a run rate of 5,000 vehicles per week by the end of 2017.

259. The foregoing statement was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that Tesla was unable to mass produce the Model 3 either in the third quarter or at any time on or around December 31, 2017 because:

- During the Class Period there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- The level of "preparedness" at the Fremont and Nevada production facilities was woefully short of being "on track" to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;

- The Individual Defendants were personally aware from eyewitness observation of both the Fremont and Nevada facilities during the Class Period that there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory, and that "preparations" were not "progressing";
- Tesla did not have a supply chain in place at the start of the Class Period, so Defendants were aware of serious issues with suppliers. Contracts for all necessary suppliers had not been finalized;
- Parts necessary for constructing the automated production line in Fremont had not been delivered, and some would not arrive for months;
- Suppliers had informed Tesla that the production timelines were impossible;
- The automated production line in Fremont was not close to completion, in August 2017;
- There was no automated production lines at the Gigafactory;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany;
- Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017.

260. Later that same day, during the August 2, 2017 Conference Call, held after the close of the market, Defendant Musk, in prepared remarks, stated that:

> ***And we remain – we believe on track to achieve a 5,000 unit week by the end of this year.***
>
> So, I would certainly urge people not to get too caught up in what exactly falls within the exact calendar boundaries of a quarter, one quarter over the next, because when you have an exponentially growing production ramp, slight changes of a few weeks here or there can appear to have dramatic changes,

> but that is simply because of the arbitrary nature of when a quarter ends.
>
> ….
>
> And then we – with Model 3, even more vertically integrated. I think people should really not have any concerns that we will reach that outcome [10,000 cars per week by the end of 2018] from a production rate.

261. The foregoing statement was false and misleading because Defendants knew or were reckless in not knowing that Tesla was not "on track" to mass produce the Model 3 at any date on or near December 31, 2017 because:

- During the Class Period there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- Preparations at the Fremont and Nevada production facilities were woefully short of being "on track" to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;
- The Individual Defendants were personally aware from eyewitness observation of both the Fremont and Nevada facilities during the Class Period that there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- Tesla executives had informed the Company that mass production of the Model 3 in 2017 was impossible;
- The automated production line in Fremont was not close to completion in August 2017;
- There was no automated production line at the Gigafactory;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany; the Individual Defendants were personally aware from eyewitness observation of both the Fremont and Nevada facilities that the automated lines in Fremont and in Nevada were not completed, or near completion, and that mass production of the

Model 3 was not possible in 2017, much less production of 5,000 Model 3s a week at any time in 2017, and Tesla could not achieve mass production until March 2018, at the earliest.

262. During the August 2, 2017 earnings conference call, again in prepared remarks, Defendant Musk stated that ***"[a]nd then batteries – also making great progress on the battery front."***

263. The foregoing statement was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that the Gigafactory was unable to mass produce and deliver Model 3 batteries to Fremont on or around December 31, 2017 because:

- During the Class Period there were no functioning automated production lines at the Gigafactory, much less production lines sufficient to mass produce batteries, and only a handful of Model 3 batteries were being produced each week;
- Defendants were personally aware from eyewitness observation of the Gigafactory facility during the Class Period that there were no fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- Tesla executives had informed the Company that mass production of the Model 3 in 2017 was not feasible;
- There was no automated production line at the Gigafactory;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany.

264. During the August 2, 2017 Conference Call, analyst David Tamberrino of Goldman Sachs & Co. LLC asked:

> Okay. Then I guess my follow-up question will just be on your 3Q gross margin guidance of a dip below 20%. How far below – to phrase correctly, how dependent upon production and hitting an S-curve or ramping up do you think that below 20% is? Could it be a couple hundred basis points below 20%, or is it just think you're going to be around that area based on what the curve that you've laid out so far is going to look like?

Defendant Musk responded with the following claim about current production on the automated line, stating:

> Yes. This is just because of Model 3 is fundamentally negative gross margin in the very beginning. Because you got a gigantic machine producing – that's meant for 5,000 vehicles a week ***and it's producing a few hundred vehicles a week.***

265. Defendant Musk's preceding statements were materially false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that Tesla could not mass produce the Model 3 at any time on or around December 31, 2017 because:

- No automated line, or "gigantic machine," was "producing a few hundred vehicles a week in the Fremont facility. The automated production line for the Model 3 in Fremont was not yet functioning. The Company only produced 260 Model 3s during the entire third quarter of 2017, an average of fewer than 3 Model 3s per day;
- As of August 2, 2017, Model 3s were still being produced by hand in the pilot shop in Fremont;
- Defendants were personally aware from eyewitness observation of the Fremont facility during the Class Period that there were no fully functioning automated lines to produce hundreds of Model 3s per week, and that such production was not occurring.

266. On August 4, 2017, after the market closed, Tesla filed with the SEC a 10-Q for the quarter ended June 30, 2017. The 10-Q was signed by Defendant Ahuja. The filing included the following risk factor:

> ***We may experience delays in realizing our projected timelines and cost and volume targets for the production, launch and ramp of our Model 3 vehicle, which could harm our business, prospects, financial condition and operating results.***
>
> Our future business depends in large part on our ability to execute on our plans to manufacture, market and sell the Model 3 vehicle, which we intend to offer at a lower price point and to produce at significantly higher volumes than our present production capabilities for the Model S or Model X vehicles. We commenced production and initial customer deliveries of Model 3 in July 2017 and have announced our goal to increase Model 3 vehicle production to

> 5,000 vehicles per week by the end of 2017 and 10,000 vehicles per week at some point in 2018.
>
> (emphasis in original).

267. The preceding risk disclosure was false and misleading because, as described in detail above, Defendants knew or recklessly disregarded that:

- The adverse event warned of hypothetically in this general risk factor had already occurred, and mass production of Model 3s would not happen in 2017, much less production of 5,000 Model 3s a week at any time in 2017. Defendants were duty bound, but failed, to disclose the true state of affairs, rendering the foregoing risk disclosure meaningless.
- Preparedness for mass production at both the Fremont and Nevada facilities was non-existent. Fully functioning automated lines were not completed, or close to being completed, and would not support mass production of Model 3s in 2017, much less production of 5,000 Model 3s a week at any time in 2017. All Model 3s were being constructed by hand in the Fremont pilot shop;
- The Individual Defendants were personally aware from eyewitness observation of both the Fremont and Nevada facilities during the Class Period that there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory, and that preparations were not progressing;
- Tesla did not have a supply chain in place at the start of the Class Period, so Defendants were aware of serious issues with suppliers. Contracts for all necessary suppliers had not been finalized;
- Parts necessary for constructing the automated production line in Fremont had not been delivered, and some would not arrive for months;
- Suppliers had informed Tesla that the production timelines were impossible;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany;

- Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017.

268. In the same August 4, 2017, second quarter 2017 10-Q, with respect to current progress at the Gigafactory in Nevada, the Company stated that:

> ***While we currently believe that our progress at Gigafactory 1 will allow us to reach our production targets***, our ultimate ability to do so will require us to resolve the types of challenges that are typical of a production ramp, such as those that we have experienced to date, including at Gigafactory 1.

269. The preceding statement was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that they would fail to reach their production target of mass production of the Model 3 on or around December 31, 2017 because:

- During the Class Period there were no automated lines producing sufficient numbers of Model 3 batteries for mass production in the Gigafactory;
- "Progress" at the Nevada production facility was virtually nonexistent, and only a handful of Model 3 batteries were being produced each week. Preparations were woefully short of being "on track" to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;
- Defendants were personally aware from eyewitness observation of the Gigafactory facility during the Class Period that there were no fully functioning automated lines to produce hundreds of Model 3 batteries per week, and that such production was not occurring;
- Only a handful of Model 3 batteries were being produced each week;
- Defendants were personally aware from eyewitness observation of the Gigafactory facility during the Class Period that there were no fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- Tesla executives had informed the Company that mass production of the Model 3 in 2017 was not feasible;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany.

270. The second quarter 2017 10-Q contained the following "risk factor" with respect to battery production at the Gigafactory:

> To lower the cost of cell production and produce cells in high volume, we are integrating the production of lithium-ion cells and finished battery packs for the Model 3 and energy storage products at Gigafactory 1. While Gigafactory 1 began producing lithium-ion cells for energy storage products in January 2017 and has since begun producing lithium-ion cells for Model 3, we have no other direct experience in the production of lithium-ion cells. Given the size and complexity of this undertaking, it is possible that future events could result in the cost of expanding and operating Gigafactory 1 exceeding our current expectations and Gigafactory 1 taking longer to ramp production and expand than we currently anticipate. In order to reach our planned volume and gross margin for Model 3, we must have significant cell production from Gigafactory 1, which, among other things, requires Panasonic to successfully ramp its all-new cell production lines to significant volumes over a short period of time. Although Panasonic has a long track record of producing high-quality cells at significant volume at its factories in Japan, it has never before started and ramped cell production at a factory in the U.S. like at Gigafactory 1. We are now in the early stages of production and have experienced the types of challenges that typically come with a production ramp. We expect that we will continue to experience challenges as we move through the ramp, and we will continue to fine-tune our manufacturing lines to address them. ***While we currently believe that we will reach our production targets***, if we are unable to resolve ramping challenges and expand Gigafactory 1 production in a timely manner and at reasonable prices, and if we or Panasonic are unable to attract, hire and retain a substantial number of highly skilled personnel, our ability to supply battery packs to our vehicles, especially Model 3, and other products could be negatively impacted. Any such problems or delays with Gigafactory 1 could negatively affect our brand

and harm our business, prospects, financial condition and operating results.

271. The preceding risk disclosure was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that they would fail to reach their production target of mass production of the Model 3 on or around December 31, 2017 because:

- The adverse event warned of hypothetically in this general risk factor had already occurred, and mass production of the Model 3 would not happen in 2017, much less reach the production target of 5,000 Model 3s a week in 2017. As Defendants were eyewitnesses to the failure of mass production at the Gigafactory, Defendants were duty bound, but failed, to disclose the specific risk to the Company, rendering the foregoing risk disclosure meaningless;
- Preparedness for mass production at both the Fremont and Nevada facilities was non-existent. Fully functioning automated lines were not completed, or close to being completed, and would not support mass production of Model 3s in 2017, much less production of 5,000 Model 3s a week at any time in 2017. All Model 3s were being constructed by hand in the Fremont pilot shop;
- The Individual Defendants were personally aware from eyewitness observation of both the Fremont and Nevada facilities during the Class Period that there were no fully functioning automated lines to produce sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory, and that "preparations" were not "progressing";
- Tesla did not have a supply chain in place at the start of the Class Period, so Defendants were aware of serious issues with suppliers. Contracts for all necessary suppliers had not been finalized;
- Parts necessary for constructing the automated production line in Fremont had not been delivered, and some would not arrive for months;
- Suppliers had informed Tesla that the production timelines were impossible;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany;

- Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017.

272. Exhibit 31.1 to the second quarter 2017 10-Q was a Certification, signed by Defendant Musk, which stated, in part:

> I, Elon Musk, certify that: 1. I have reviewed this Quarterly Report on Form 10-Q of Tesla, Inc.; 2. Based on my knowledge, this report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report[.]

273. Exhibit 31.2 to the second quarter 2017 10-Q was a Certification, signed by Defendant Ahuja, which stated, in part:

> I, Deepak Ahuja, certify that: 1. I have reviewed this Quarterly Report on Form 10-Q of Tesla, Inc.; 2. Based on my knowledge, this report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report[.]

274. The preceding certifications were false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that their statements in the filing were false because Tesla could not mass produce the Model 3 at any time on or around December 31, 2017 because:

- During the Class Period there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;

- The general risk factor warned of hypothetically regarding delays in mass production of the Model 3 in 2017 had already occurred, mass production of Model 3s and Model 3 batteries would not happen in 2017, much less production of 5,000 Model 3s per week at any time in 2017. Defendants were duty bound, but failed, to disclose the true state of affairs of the Company, rendering the foregoing risk disclosures meaningless;
- Tesla did not have a supply chain in place at the start of the Class Period, so Defendants were aware of serious issues with suppliers. Contracts for all necessary suppliers had not been finalized;
- Parts necessary for constructing the automated production line in Fremont had not been delivered, and some would not arrive for months;
- Suppliers had informed Tesla that the production timelines were impossible;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany.

The Truth Begins to Emerge

275. On October 2, 2017, in a press release detailing the Company's vehicle production and deliveries for the third quarter of 2017, Tesla cited "production bottlenecks" as the reason for its failure to meet its production goals for its Model 3 sedan.

276. On October 6, 2017, post-market, the *Wall Street Journal* published an article entitled "Behind Tesla's Production Delays: Parts of Model 3 Were Being Made by Hand," reporting in part, that:

> Unknown to analysts, investors and the hundreds of thousands of customers who signed up to buy it, as recently as early September major portions of the Model 3 were still being banged out by hand, away from the automated production line, according to people familiar with the matter.
>
> While the car's production began in early July, the advanced assembly line Tesla has boasted of building still wasn't fully ready as of a few weeks ago, the people said. Tesla's factory workers had been piecing together parts of

the cars in a special area while the company feverishly worked to finish the machinery designed to produce Model 3's at a rate of thousands a week, the people said.

Automotive experts say it is unusual to be building large parts of a car by hand during production. "That's not how mass production vehicles are made," said Dennis Virag, a manufacturing consultant who has worked in the automotive industry for 40 years. "That's horse-and-carriage type manufacturing. That's not today's automotive world."

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Behind the scenes, Tesla had fallen weeks behind in finishing the manufacturing systems to build the vehicle, the people said.

The extent of the problem came to light on Monday when Tesla said it made only 260 Model 3s during the third quarter—averaging three cars a day. The company cited production bottlenecks but didn't explain much further.

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It isn't uncommon for much larger auto makers to hand build pre-production versions of a car prior to the sales launch, but those are typically reserved for employees and others willing to test the cars and return them to the company. By the time a car goes on sale, the body shop is typically fully automated.

Inside the Fremont factory, workers said equipment for the so-called body-in-white line for the Model 3, where the car body's sheet metal is welded together, wasn't installed until by around September. They guessed at least another month of work remained to calibrate the tools.

One worker who spent time in the Model 3 shop—dubbed by some as Area 51 because of the limited access and secretive nature—described watching young workers in September struggling to move large pieces of steel to weld together instead of using robots as is traditionally the case.

> "In place of the robots…you've got two associates lining up with a big, old spot welder hanging from the ceiling by a chain, and you've got one associate kind of like balancing it and trying to get the welder in position, and you've got another welder with his arm guiding it," this worker recalled seeing. "Sparks go flying."

277. As a result of this news, Tesla's share price fell $13.94, or 3.91%, to close at $342.94 on October 9, 2017, damaging investors.

278. On November 1, 2017, after market close, Tesla filed with the SEC an 8-K reporting the results of operations of the Third Quarter of 2017. Attached as Exhibit 99-1 to the 8-K was "Tesla Third Quarter 2017 Update." Tesla revealed in Exhibit 99-1 that production bottlenecks at its Gigafactory facility in Nevada caused by the complexity of "the battery module assembly line at Gigafactory 1, where cells are packaged into modules…., " had prevented Tesla from reaching its mass production goals for the Model 3. Tesla further stated that it was redirecting its "best engineering talent" to the Gigafactory to attempt to remove the production bottlenecks. Tesla further moved out its production of 5,000 Model 3s per week to the end of the first quarter of 2018.

279. On November 2, 2017, at approximately 12 p.m. EST, the car blog Jalopnik published an article entitled "Tesla's 'Hell' Threatens its Future."[50] The article confirmed many of the statements of the former employees cited herein, including that: (a) as of mid-October, some suppliers had not yet received production approval for their tooling, (b) the Model 3 assembly line was not in operation as of October 2017, causing the Company to dial back Model 3 parts orders by 40%, (c) witnesses confirmed that the Model 3 was being built by hand as of October 2017, (d) witnesses further confirmed that Model 3s were being built in an area separate from the area containing the automated production line, (e) witnesses who walked through the Fremont facility stated that the fact that the automated production line is not functioning as planned is "plainly obvious if you see the Model 3 area of the Fremont plant," and (f) an ex-employee who had recently left Tesla stated with respect to the Model 3 production line in Fremont "as far as being able to push a car through there, automated, hell no."

[50] https://jalopnik.com/teslas-hell-threatens-its-future-1819917980.

280. As a result of Tesla's November 1, 2017 8-K and the Jalopnik article entitled "Tesla's 'Hell' Threatens its Future," Tesla's share price fell $21.82, or 6.8%, to close at $299.26 on November 2, 2017, damaging investors.

281. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's common shares, Plaintiffs and other Class members have suffered significant losses and damages.

Further Post-Class Period Events

282. In an 8-K Defendants filed with the SEC on February 9, 2018, Tesla "clarif[ied]" Defendant Musk's statement made during an earnings conference call two days earlier, on February 7, 2018, concerning battery production capacity at the Gigafactory ***in February 2018***:

> Tesla, Inc. is clarifying the following statement made by Elon Musk, Tesla's Chief Executive Officer, during Tesla's fourth quarter and full year 2017 financial results conference call held on February 7, 2018:
>
> *"[We] expect the new automated lines to arrive next month in March. And then it's already working in Germany so that's going to be disassembled, brought out to the Gigafactory and reassembled and then go into operation at the Gigafactory. It's not a question whether it works or not. It's just a question of disassembly, transport and reassembly. So we expect to alleviate that constraint. With alleviating that constraint, that's what gets us to the roughly 2,000 to 2,500 unit per week production rate."*
>
> The "2,000 to 2,500" units per week cited in this comment refers solely to the capacity of the additional automated battery module manufacturing equipment that is currently located in Germany, and not to Tesla's total Model 3 production run rate or to the capacity of the automated battery module equipment that is already present at Gigafactory 1. Tesla's ability to meet its target of 2,500 per week by end of Q1 2018 is not dependent on the additional equipment that is currently located in Germany, as that equipment is expected to start ramping production during Q2 2018. With respect to battery module production, Tesla's ability to meet its target

of 2,500 per week by end of Q1 2018 is dependent only on the equipment that is already present at Gigafactory 1, as well as the incremental capacity that is currently being added through the semi-automated lines that were also discussed during the conference call.

283. With this filing Tesla admitted that mass production of Model 3 batteries in the Gigafactory had never been a possibility in 2017.

284. Subsequent to the Class Period, Tesla again moved back its production deadline of 5,000 Model 3s per week to the end of the second quarter of 2018. Tesla stated that it would produce 2,500 Model 3's per week by the end of the first quarter of 2018.

285. Bloomberg calculates how many Model 3s are produced per week, as Tesla, unlike almost every author carmaker, releases such figures after every financial quarter, rather than each month. As of September 28, 2018, Tesla is producing approximately 2,266 Model 3s per week.[51]

286. Jalopnik published an article on January 25, 2018, entitled "Tesla's Making Model 3 Batteries by Hand Amid More Gigafactory Problems: Report."[52] The article confirmed statements from Former Employees cited herein, including that (a) Tesla was making batteries by hand as late as December 2017, and (b) Tesla is "not close to mass-producing batteries for the basic $35,000 model of this electric sedan."

287. On March 14, 2018, CNBC reported that Tesla's own employees were reporting that the Company is manufacturing a high ratio of flawed parts and Model 3 vehicles requiring rework and repair.[53] According to a Tesla engineer, approximately 40% of parts made or received in Fremont require rework, contributing to delays.

288. On March 27, 2018, Moody's announced that it was downgrading Tesla's credit rating.

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[51] *See* https://www.bloomberg.com/graphics/2018-tesla-tracker/.

[52] *See* https://jalopnik.com/teslas-making-model-3-batteries-by-hand-amid-more-gigaf-1822426440.

[53] *See* https://www.cnbc.com/2018/03/14/tesla-manufacturing-high-volume-of-flawed-parts-employees.html.

289. On September 27, 2018, the SEC filed a Complaint charging Elon Musk with repeatedly lying to investors on August 7, 2018 about a plan to take Tesla private.[54] The SEC minced no words, charging that "Musk's statements were premised on a long series of baseless assumptions and were contrary to facts that Musk knew." *SEC v. Musk*, at ¶69. Not only has the SEC alleged that Musk's lies harmed investors, but in one instance Musk told a specific lie because he thought "his girlfriend would find it funny." *Id.* at ¶24. On August 24, 2018, Musk "corrected his multiple previous misstatements," *id.* at ¶59, causing Tesla's stock price to plummet. *Id.* at 60. The SEC is seeking to bar Musk from serving as the CEO or as a board member of any publicly traded company.

PLAINTIFFS' CLASS ACTION ALLEGATIONS

290. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Tesla common shares traded on the NASDAQ during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

291. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Tesla common shares were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiffs at this time and can be ascertained only through appropriate discovery, Plaintiffs believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Tesla or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

[54] *U.S. SEC v. Musk*, No. 1:18-cv-8865 (S.D.N.Y. 2018).

292. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

293. Plaintiffs will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

294. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the federal securities laws were violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the financial condition, business, operations, and management of Tesla;
- whether Defendants caused Tesla to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Tesla securities during the Class Period were artificially inflated because of Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

295. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

296. Plaintiffs will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Tesla common shares are traded in efficient markets;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ, and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's common shares; and
- Plaintiffs and members of the Class purchased and/or sold Tesla common shares between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

297. At all relevant times, the market for Tesla's securities was an efficient market for the following reasons, among others:

- Tesla's stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- As a regulated issuer in U.S., Tesla filed periodic public reports with the SEC;
- Tesla regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;

- Tesla was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace. Analysts covering Tesla included, without limitation, Jefferies, Barclays, Morgan Stanley, Morningstar, Inc., Guggeheim Securities, Goldman Sachs, J.P. Morgan, Oppenheimer & Co., and UBS;
- The price of Tesla's stock reacted to the release of new, material, company-specific information;
- At the beginning of the Class Period, Tesla's market capitalization or the total value of all outstanding shares was approximately $51.07 billion;
- As of May 2, 2017, just before the Class Period, Tesla reported shares outstanding of approximately 164 million shares. As of May 3, 2017, the beginning of the Class Period, Tesla's equity float, or the number of shares outstanding less shares held by insiders and affiliated corporate entities, was approximately 111 million shares;
- Tesla had 44 market makers during the Class Period;
- During the Class Period, Tesla was entitled to file S-3 Registration Statements in connection with public offerings, and did in fact file an S-3 Registration Statement on November 7, 2017.

298. Based upon the foregoing, the market for Tesla's securities promptly digested current information regarding Tesla from all publicly available sources and reflected such information in Tesla's stock price. Under these circumstances, all purchasers of Tesla's securities during the Class Period suffered similar injury through their purchase of Tesla's securities at artificially inflated prices and Plaintiffs and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

299. Alternatively, Plaintiffs and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material

information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

COUNT I

Violation of Section 10(b) of The Exchange Act and Rule 10b-5 Against All Defendants

300. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

301. This Count is asserted against Tesla and the Individual Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

302. During the Class Period, Tesla and the Individual Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

303. Tesla and the Individual Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiffs and others similarly situated in connection with their purchases of Tesla common shares during the Class Period.

304. Tesla and the Individual Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of Tesla were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These Defendants by virtue of their receipt of information reflecting the true facts of Tesla, their control

over, and/or receipt and/or modification of Tesla allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning Tesla, participated in the fraudulent scheme alleged herein.

305. Individual Defendants, who are the senior officers and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiffs and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other Tesla personnel to members of the investing public, including Plaintiffs and the Class.

306. As a result of the foregoing, the market price of Tesla common shares was artificially inflated during the Class Period. In ignorance of the falsity of Tesla's and the Individual Defendants' statements, Plaintiffs and the other members of the Class relied on the statements described above and/or the integrity of the market price of Tesla common shares during the Class Period in purchasing Tesla common shares at prices that were artificially inflated as a result of Tesla's and the Individual Defendants' false and misleading statements.

307. Had Plaintiffs and the other members of the Class been aware that the market price of Tesla common shares had been artificially and falsely inflated by Tesla's and the Individual Defendants' misleading statements and by the material adverse information which Tesla's and the Individual Defendants did not disclose, they would not have purchased Tesla's common shares at the artificially inflated prices that they did, or at all.

308. As a result of the wrongful conduct alleged herein, Plaintiffs and other members of the Class have suffered damages in an amount to be established at trial.

309. By reason of the foregoing, Tesla and the Individual Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiffs and the other members of the Class for substantial damages which they suffered in connection with their purchase of Tesla common shares during the Class Period.

COUNT II

Violation of Section 20(a) of The Exchange Act Against The Individual Defendants

310. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

311. During the Class Period, the Individual Defendants participated in the operation and management of Tesla, and conducted and participated, directly and indirectly, in the conduct of Tesla's business affairs. Because of their senior positions, they knew the adverse non-public information regarding the Company's inadequate internal safeguards in data security protocols.

312. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Tesla's financial condition and results of operations, and to correct promptly any public statements issued by Tesla which had become materially false or misleading.

313. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Tesla disseminated in the marketplace during the Class Period. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Tesla to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of Tesla within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Tesla common shares.

314. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Tesla.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Lead Plaintiff as the Class representative;

B. Requiring Defendants to pay damages sustained by Plaintiffs and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiffs and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury.

Dated: September 28, 2018

Respectfully submitted,

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Additional Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2018, I caused a true and correct copy of the foregoing **SECOND AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS**, to be served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ *Laurence M. Rosen*