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9 Motors, Inc.

10 **DEPARTMENT OF MOTOR VEHICLES**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:
13 TESLA, INC. dba TESLA MOTORS, INC., a
14 Vehicle Manufacturer,
15 Respondent.

Case No. 21-02188
License No. 63277
AIMS No. 21V1L12011
OAH No.: 2023110194

**RESPONDENT TESLA, INC.'S NOTICE
OF DEFENSE AND OBJECTIONS TO
FIRST AMENDED ACCUSATION**

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19 **NOTICE OF DEFENSE**

20 1. Respondent Tesla, Inc. doing business as Tesla Motors, Inc. (hereinafter "Tesla")
21 acknowledges receipt of a copy of the First Amended Accusation ("FAA").

22 2. Tesla hereby requests a hearing to permit it to present its defenses to the charges
23 contained in the FAA.¹

24 3. All correspondence concerning this proceeding should be sent to the attorneys at
25

26 ¹ By requesting a hearing, Tesla does not waive its right to challenge these administrative
27 proceedings as violating Tesla's right to a jury trial pursuant to the Seventh Amendment to the
28 U.S. Constitution or Article I, Section 16, of the California Constitution, as set forth in its
Statement of Objections and Defenses below.

1 the address identified in the caption of this document.

2 4. Tesla consents to the proceedings at the hearing being recorded/reported
3 electronically.

4 **SPECIFIC DENIAL**

5 5. Pursuant to California Government Code § 11506(c), by this Notice of Defense,
6 Tesla specifically denies all parts of the FAA, including each cause of action and each allegation
7 asserted therein, and further denies that Claimant Department of Motor Vehicles (“DMV” or
8 “Claimant”) is entitled to any relief against Tesla.

9 **STATEMENT OF OBJECTIONS AND AFFIRMATIVE DEFENSES**

10 6. Pursuant to California Government Code § 11506(a), Tesla hereby objects to the
11 FAA upon the ground that it does not state acts or omissions upon which the agency may proceed
12 (Govt. Code § 11506(a)(2)); and objects to the form of the FAA on the ground that it is so
13 indefinite or uncertain that Tesla cannot identify the transaction or prepare a defense (*id.*
14 §11506(a)(3)).

15 7. Pursuant to California Government Code § 11506(a)(5), Tesla objects to the FAA
16 and raises as a New Matter by Way of Defense that Complainant’s claims in the FAA are barred,
17 in whole or in part, by the First Amendment to the United States Constitution and Article I,
18 Section 2, of the California Constitution.

19 8. Pursuant to California Government Code § 11506(a)(5), Tesla objects to the FAA
20 and raises as a New Matter by Way of Defense that Complainant’s claims in the FAA are barred,
21 in whole or in part, by the Seventh Amendment to the United States Constitution and/or Article I,
22 Section 16, of the California Constitution.

23 9. For the avoidance of doubt, Tesla’s objections, affirmative defenses, and New
24 Matters by Way of Defense include, but are not limited to, the following:

25 **FIRST AFFIRMATIVE DEFENSE**

26 **(Violation of First Amendment to the U.S. Constitution and Article I, Section 2 of the**
27 **California Constitution)**

28 10. The Complainant’s claims in the FAA are barred, in whole or in part, by the First

1 Amendment to the United States Constitution and Article I, Section 2, of the California
2 Constitution. Specifically, the Complainant’s claim under Cal. Veh. Code § 24011.5 is barred
3 because the statute is facially invalid under the First Amendment to the United States Constitution
4 and Article I, Section 2, of the California Constitution, as a substantial number of the statute’s
5 applications impermissibly restrict constitutionally protected speech that is truthful and
6 nonmisleading. The Complainant’s claims under Cal. Veh. Code § 24011.5, Cal. Civ. Code
7 § 1770(a)(5), Cal. Code Regs. Title 13 § 260.00, and Cal. Veh. Code § 11713(a) are also barred
8 because these statutes and regulations, as applied to Tesla in this proceeding, are unconstitutional
9 under the First Amendment to the United States Constitution and Article I, Section 2, of the
10 California Constitution, as they impermissibly restrict Tesla’s truthful and nonmisleading speech
11 about its vehicles and their features.

12 **SECOND AFFIRMATIVE DEFENSE**

13 **(Violation of Seventh Amendment to the U.S. Constitution and/or Article I, Section 16, of the**
14 **California Constitution)**

15 11. The FAA, and each and every purported cause of action therein, which are brought
16 in a proceeding before an administrative law judge, violates Tesla’s right to a jury trial under the
17 Seventh Amendment to the U.S. Constitution, and/or Article I, Section 16, of the California
18 Constitution.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Estoppel)**

21 12. Claimant is estopped from pursuing the FAA, and each and every cause of action
22 stated therein, by reason of Claimant’s own actions and course of conduct.

23 13. Claimant alleges that Tesla has “made or disseminated statements that are untrue or
24 misleading, and not based on facts, in advertising vehicles as equipped, or potentially equipped,
25 with advanced driver assistance systems (ADAS) features” including by using the brand names
26 “Autopilot” and “Full Self-Driving Capability.” Claimant has been aware that Tesla has been
27 using the brand names Autopilot and Full Self-Driving Capability since Tesla started using those
28 names in 2014 and 2016 respectively. Not only was Claimant aware that Tesla has been using

1 these brand names since that time, Claimant has been in regular communication with Tesla from
2 then until now about the use of these brand names and Tesla’s communications and advertising to
3 consumers regarding its Advanced Driver Assistance System (“ADAS”) features. Before
4 Claimant filed the original Accusation in July 2022, Claimant had never told Tesla to stop using
5 these brand names or otherwise indicated to Tesla that these brand names or its advertising were in
6 any way problematic.

7 14. In addition, in 2014, Claimant investigated Tesla’s advertising of its ADAS
8 features, including its use of the brand name Autopilot, and took no action. And in 2017,
9 Claimant conducted two additional investigations into Tesla’s use of Autopilot and Full Self-
10 Driving Capability. The DMV chose *not* to take any action against Tesla or otherwise
11 communicate to Tesla that its advertising or use of these brand names was or might be
12 problematic.

13 15. Moreover, in 2016, the DMV proposed a draft regulation regarding Statement
14 About Autonomous Technology. The draft regulation stated that “Terms such as ‘self-driving’,
15 ‘automated’, ‘auto-pilot’ or other statements made that are likely to induce a reasonably prudent
16 person to believe a vehicle is autonomous, as defined, constitute an advertisement that the vehicle
17 is autonomous for the purposes of this section and Vehicle Code section 11713.” However, the
18 DMV removed the language prohibiting the use of the words “self-driving”, “automated”, and
19 “auto-pilot” from the final regulation such that the enacted legislation, California Code of
20 Regulations Title 13 228.28, contains no prohibition on using those terms.

21 16. Claimant is therefore estopped from asserting the myriad false advertising claims in
22 the FAA against Tesla because it knew of Tesla’s use of the brand names Autopilot and Full Self-
23 Driving Capability and Tesla’s advertising of these packages for over five years and failed take
24 any action. Tesla relied upon Claimant’s implicit approval of these brand names. Claimant is
25 estopped from now attempting to hold Tesla liable for conduct that Claimant implicitly approved.

26 17. Tesla reserves the right to provide other examples of Claimant’s claims being
27 barred by their own actions and conduct that are identified during the discovery process.

28

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Laches)**

3 18. Claimant is barred from pursuing the FAA, and each and every cause of action
4 stated therein, by the doctrine of laches.

5 19. Claimant alleges that Tesla has “made or disseminated statements that are untrue or
6 misleading, and not based on facts, in advertising vehicles as equipped, or potentially equipped,
7 with advanced driver assistance systems (ADAS) features” including by using the brand names
8 “Autopilot” and “Full Self-Driving Capability.” Claimant has been aware that Tesla has been
9 using the brand names Autopilot and Full Self-Driving Capability since Tesla started using those
10 names in 2014 and 2016 respectively. Not only was Claimant aware that Tesla has been using
11 these brand names since that time, Claimant has been in regular communication with Tesla from
12 then until now about the use of these brand names and Tesla’s communications and advertising to
13 consumers regarding its ADAS features. Before Claimant filed the original Accusation in July
14 2022, Claimant had never told Tesla to stop using these brand names or otherwise indicated to
15 Tesla that these brand names or its advertising were in any way problematic.

16 20. In addition, in 2014, Claimant investigated Tesla’s advertising of its ADAS
17 features, including its use of the brand name Autopilot, and took no action. And in 2017,
18 Claimant conducted two additional investigations into Tesla’s use of Autopilot and Full Self-
19 Driving Capability. The DMV chose *not* to take any action against Tesla or otherwise
20 communicate to Tesla that its advertising or use of these brand names was or might be
21 problematic.

22 21. Moreover, in 2016, the DMV proposed a draft regulation regarding Statement
23 About Autonomous Technology. The draft regulation stated that “Terms such as ‘self-driving’,
24 ‘automated’, ‘auto-pilot’ or other statements made that are likely to induce a reasonably prudent
25 person to believe a vehicle is autonomous, as defined, constitute an advertisement that the vehicle
26 is autonomous for the purposes of this section and Vehicle Code section 11713.” However, the
27 DMV removed the language prohibiting the use of the words “self-driving”, “automated”, and
28 “auto-pilot” from the final regulation such that the enacted legislation, California Code of

1 Regulations Title 13 228.28, contains no prohibition on using those terms.

2 22. Claimant is therefore estopped from asserting the myriad false advertising claims in
3 the FAA against Tesla because it knew of Tesla's use of the brand names Autopilot and Full Self-
4 Driving Capability and Tesla's advertising of these packages for over five years and failed take
5 any action. Tesla relied upon Claimant's implicit approval of these brand names. Claimant is
6 estopped by the doctrine of laches from now attempting to hold Tesla liable for conduct that
7 Claimant implicitly approved.

8 23. Tesla reserves the right to provide other examples of Plaintiffs' claims being barred
9 by their own actions and conduct that are identified during the discovery process.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 **(Failure to State Acts Upon Which the Agency May Proceed)**

12 24. The FAA, and each and every purported cause of action therein, fails to state acts
13 or omissions upon which the agency may proceed.

14 **SIXTH AFFIRMATIVE DEFENSE**

15 **(Uncertainty of Accusation)**

16 25. The FAA, and each and every purported cause of action therein, is vague and
17 uncertain such that Tesla cannot prepare a response.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 **(Statute of Limitations)**

20 26. The FAA, and each and every purported cause of action therein, is barred, in whole
21 or in part, by the applicable statute of limitations.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 **(Other Affirmative Defenses)**

24 27. Tesla reserves the right to supplement or amend this Notice of Defense and
25 Objections, including through the addition of further affirmative defenses, based upon the course
26 of discovery and proceedings in this action.

27 **PRAYER FOR RELIEF**

28 Tesla is entitled to have its Objections to the FAA heard prior to commencement of a


1 hearing in this case. *See Rolfe v. Munro*, 165 Cal. App. 2d 726, 728-29 (1958) (“[A]ppellants
2 were entitled to have the objections which they filed [pursuant to Government Code § 11506]
3 ruled upon by the department.”).

4 WHEREFORE, Tesla denies that DMV is entitled to the relief demanded in the FAA, or
5 any other relief. Accordingly, Tesla respectfully requests that a hearing be conducted on Tesla’s
6 Objections and:

- 7 1. The Court enter a ruling that Claimant take nothing by way of the FAA;
- 8 2. The FAA and its claims be dismissed on the merits with prejudice;
- 9 3. An order be entered in Tesla’s favor, and against Claimant, on the FAA and its
10 purported causes of action or claims for relief; and
- 11 4. Tesla be awarded its costs, attorneys’ fees, and other expenses incurred in this
12 action.

13
14 DATED: December 5, 2023

Ariel A. Neuman
Ekwan E. Rhow
Oliver Rocos
Miri E. Gold
Bird, Marella, Boxer, Wolpert, Nessim,
Drooks, Lincenberg & Rhow, P.C.

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19 By: 
20 _____
Ariel A. Neuman
Attorneys for Respondent Tesla Inc. d/b/a Tesla
21 Motors, Inc.
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PROOF OF SERVICE

In the Matter of the Accusation Against Tesla Inc. dba Tesla Motors Inc.
Case No. 21-02188 and 21-02189, AIMS No. 21V1L12011

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1875 Century Park East, 23rd Floor, Los Angeles, CA 90067-2561.

On December 5, 2023, I served the following document(s) described as **RESPONDENT TESLA, INC.’S NOTICE OF DEFENSE AND OBJECTIONS TO FIRST AMENDED ACCUSATION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: By placing a true copy thereof in sealed envelopes addressed to the parties listed on the attached Service List and causing them to be deposited in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with our firm’s practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the document(s) to be sent from e-mail address kferguson@birdmarella.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 5, 2023, at Los Angeles, California.



Katherine J. Ferguson

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SERVICE LIST
In the Matter of the Accusation Against Tesla Inc. dba Tesla Motors Inc.
Case No. 21-02188 and 21-02189, AIMS No. 21V1L12011

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