

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**JING WANG and WAI-LEUNG CHAN,**

*Plaintiffs,*

**- against -**

**TESLA, INC.,**

*Defendant.*

**Civ. Action No. 1:20-cv-03040**

**FIRST AMENDED COMPLAINT**

Plaintiffs Wai-Leung Chan and Jing Wang, by and through undersigned counsel, bring this First Amended Complaint against Tesla, Inc., to recover damages they suffered as a result of a car accident caused by Tesla's defective Autopilot system.

**PARTIES**

1. Plaintiffs Wai-Leung Chan and Jing Wang are individuals who reside in Little Neck, NY 11362.

2. Defendant, Tesla, Inc., f/k/a Tesla Motors ("Defendant" or "Tesla"), is a corporation organized under the laws of the state of Delaware and having its principal place of business in Palo Alto, California.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 based on the diversity of citizenship. In this case, the Plaintiffs are citizens of the State of New York, and the Defendant is a corporation based in the State of California.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

## FACTS

### *The Vehicle*

5. The Model X is an all-electric sport utility vehicle designed, manufactured, and sold by Tesla.

6. Tesla publicly touts the Model X as “the **safest**, quickest, and most capable sport utility vehicle in history.”<sup>1</sup> In fact, Tesla proclaims the Model X to be “the safest SUV ever.”<sup>2</sup>

7. The Model X is equipped with Tesla’s Autopilot<sup>3</sup> feature, which enables the car to steer, accelerate and brake automatically within its lane. More specifically, Autopilot has an “Autosteer” feature, which gives the Model X assisted steering, with cruise control that matches speed to traffic, as well as a Traffic-Aware Cruise Control feature that allows the Model X to accelerate and decelerate to maintain a preset following distance behind the nearest vehicle. Moreover, Autopilot has a Lane Change feature which allows the Model X to automatically change lanes while driving on the highway. Autopilot uses cameras, ultrasonic sensors, and radar to “[d]etect nearby cars, prevent potential collisions and assist with parking.”<sup>4</sup>

8. According to Tesla, the Model X’s Autopilot technology provides a stress-free driving experience—with advanced safety and convenience features designed to assist you with

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<sup>1</sup> TESLA MOTORS, Model X, last visited Mar. 26, 2020, <https://www.tesla.com/modelx/drive> (emphasis supplied).

<sup>2</sup> *Id.*

<sup>3</sup> As described by the National Transportation Safety Board (“NTSB”), Autopilot is Tesla’s advanced driver assistance systems (“ADAS”) that control vehicle speed and lane positioning by automating braking, steering, and torque to the drive motors. The major subsystems associated with the operation of Autopilot are Traffic-Aware Cruise Control (TACC) and Autosteer. TACC is an adaptive cruise control system that provides longitudinal control (acceleration and deceleration) and Autosteer is a lane-keeping assist system that provides lateral control (steering) of the vehicle inside the lane. NATIONAL TRANSPORTATION SAFETY BOARD (NTSB), Accident Report NTSB/HAR-20/01 PB2020-100112, “Collision Between a Sport Utility Vehicle Operating With Partial Driving Automation and a Crash Attenuator.” Mountain View, California. March 23, 2018.

<sup>4</sup> TESLA MOTORS, Model S Owner’s Manual. About Driver Assistance, at page 65.

the burdensome parts of driving. Tesla claims that Autopilot continuously monitors the Model X's surroundings and autonomously changes the vehicle's speed and direction to maintain safe distances from surrounding objects.<sup>5</sup> In fact, Tesla's CEO, Elon Musk, has declared that Autopilot was "probably better than humans at this point in highway driving."<sup>6</sup>

9. Autopilot is designed, manufactured, and marketed to assume certain operational and decision-making tasks normally required of the operator of the vehicle—"the burdensome parts of driving,"<sup>7</sup> as acknowledged by Tesla. For example, Tesla markets its automobiles with Autopilot to be used in dense traffic situations on highways with multiple lanes. However, Tesla does not disclose that in those circumstances, like freeway driving in dense traffic, Autopilot sometimes does not work, because at times, Autopilot simply does not recognize other cars and roadway hazards.

10. In fact, even in less complicated driving situations, Autopilot fails to recognize and warn drivers of traffic patterns that involve merging, such as where lane changes take place, traffic exits and enters the highway, and traffic merges as lanes consolidate. Simply put, Autopilot malfunctions for a variety of reasons, including the intermittent failure to recognize a roadway hazard, a roadway interpretation, or a novel traffic pattern. Sometimes, Autopilot just malfunctions without warning.

11. Nonetheless, Tesla fails to adequately disclose in its promotional material, and to its customers and regulators, that Autopilot struggles in certain circumstances to safely identify

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<sup>5</sup> TESLA MOTORS, Model X Owner's Manual. About Driver Assistance, at page 65.

<sup>6</sup> Quote of Elon Musk as reported in The Washington Post, January 11, 2016

<sup>7</sup> TESLA MOTORS, Autopilot, last visited Mar. 26, 2020, <https://www.tesla.com/autopilot>.

and respond to certain situations where vehicles and other objects commonly found in highway driving are undetected and present safety risks.

12. Upon information and belief, Tesla intentionally builds its vehicles and programs its software to ignore slow moving and stationary objects.

13. Upon information and belief, Tesla pushed its Autopilot into commerce with full knowledge of these defects in order to keep its fleet of vehicles operating on the roadway, enabling its fleet of Teslas to capture very valuable data from as many roadway miles as possible to tune its machine learning programs as quickly as possible. In essence, Tesla is using its customers as “guinea pigs,” without their knowledge or consent, to test its Autopilot software, thereby providing Tesla with critical information to improve its products at the risk to consumers and other members of the public.

14. Tesla tries to distance itself from potential liabilities by initially referring to the Model X operating software as being in a “beta-testing phase.” After Germany’s Federal Office for Motor Vehicles refused to approve Autopilot for use on German roads, Tesla explained that the word “beta” is not used in the standard sense of the word but was used to make sure Tesla drivers do not get too comfortable with its autopilot system.<sup>8</sup>

15. Rather than providing transparent disclosures, Tesla tells its customers and regulators that when Autopilot fails, the driver is the fallback option to resume control of the vehicle.<sup>9</sup> This fallback plan is unreliable and unsafe. Not only has Tesla been warned by the NTSB

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<sup>8</sup> Fred Lambert, “European Authority says ‘no safety concerns’ with Tesla’s Autopilot after ‘beta’ scare” Electrek, July 14, 2016, <https://electrek.co/2016/07/14/european-authority-tesla-autopilot-after-beta-scare/>.

<sup>9</sup> Tesla instructs its drivers to maintain their hands on the wheel and apply a significant level of resistance to assure the vehicle’s system that the driver is properly engaged. Steering wheel torque, which is a fundamental premise for Tesla to measure engagement by the driver, and an essential element of Tesla’s safety paradigm, is not a proper way to control for distraction and ensure driver engagement. U.S.

that drivers of their automobiles may become overly reliant on the Autopilot technology,<sup>10</sup> but Tesla also knows or should know, based on scientific and engineering publications, that drivers have a limited ability to execute a “take over response” when Autopilot does not measure up. Indeed, the “takeover response” time for humans varies greatly depending on the circumstances: the type of stimuli, the type of control necessary, and the driving situation. Even the most attentive drivers need a certain amount of time to perform a takeover response. The malfunctioning and defective Autopilot system does not allow for that margin of time, nor does it provide a sufficient warning to enable the driver to properly respond. In other words, Tesla knows that reasonable drivers will not, and more significantly, perhaps cannot safely use Autopilot.<sup>11</sup>

16. Instead, by counseling its customers that they must be ready to assume control, Tesla creates a false premise that a human can always safely take control of a Tesla vehicle that is managing the driving task or performing in an unexpected manner. Tesla misplaces responsibility in the hands of its drivers to safely conduct a takeover response and control a Tesla when the Autopilot malfunctions. When those drivers ultimately are unable to correct the Autopilot error, Tesla tries to lay the blame for accidents resulting from any of these situations at the feet of its customers.

17. Even worse, and compounding this false sense of security, Tesla fails entirely to instruct its customers on the proper use of Autopilot and Tesla’s other purportedly “automated”

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Department of Transportation, National Highway Traffic Safety Administration, DOT HS 812 182, “Human Factors Evaluation of Level 2 and Level 3 Automated Driving Concepts,” at page 1. August 2015.

<sup>10</sup> NATIONAL TRANSPORTATION SAFETY BOARD (NTSB), Accident Report NTSB/HAR-20/01 PB2020-100112, “Collision Between a Sport Utility Vehicle Operating With Partial Driving Automation and a Crash Attenuator.” Mountain View, California. March 23, 2018., BLOOMBERG NEWS, Tesla Crash in Florida Sparks Transport Safety Board Probe, last visited Mar. 26, 2020, <https://www.bloomberg.com/news/articles/2019-03-02/tesla-crash-in-florida-sparks-transport-safety-board-probe>.

<sup>11</sup> Ibid, 7.

systems, forcing customers to learn the systems by themselves through Tesla's on-line manual and "trial and error," and further fails to adequately and appropriately warn customers about the limitations of those systems. Indeed, upon information and belief, and as occurred in this case as explained with greater particularity below, Tesla's sales representatives routinely misrepresent and overstate the capabilities of Autopilot and the required level of operator involvement, promising that the customer can simply "relax" while relying on Autopilot in the most stressful of driving conditions. These representations and promises are patently false and misleading.

18. The NTSB has investigated several Tesla-related fatalities. For example, in Mountain View, California, a Tesla's Autopilot malfunctioned, and the vehicle accelerated into a cement median at a merge point of two intersecting highways, killing the driver.<sup>12</sup> The NTSB investigation resulted in a report published on March 23, 2020 which stated, in part:

Probable Cause - The National Transportation Safety Board determines that the probable cause of the Mountain View, California, crash was the Tesla Autopilot system steering the sport utility vehicle into a highway gore area due to system limitations, and the driver's lack of response due to distraction likely from a cell phone game application and overreliance on the Autopilot partial driving automation system. Contributing to the crash was the Tesla vehicle's ineffective monitoring of driver engagement, which facilitated the driver's complacency and inattentiveness.

19. Furthermore, the NTSB's report noted the following:

- a. The Tesla Autopilot system did not provide an effective means of monitoring the driver's level of engagement with the driving task;
- b. Because monitoring of driver-applied steering wheel torque is an ineffective surrogate measure of driver engagement, performance standards should be developed pertaining to an effective method of ensuring driver engagement; and

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<sup>12</sup> See *supra* n. 10.

- c. In order for driving automation systems to be safely deployed in a high-speed operating environment, collision avoidance systems must be able to effectively detect and respond to potential hazards, including roadside traffic safety hardware, and be able to execute forward collision avoidance at high speeds.

20. The NTSB ultimately recommended that Tesla incorporate system safeguards that limit the use of automated vehicle control systems to those conditions for which they were designed, or the operational design domain (“ODD”).<sup>13</sup>

21. Prior to the Mountain View, California accident, in March 2019, in Delray Beach, Florida, a 2018 Tesla Model 3 struck a semi-trailer truck when the truck entered the highway without stopping.<sup>14</sup> At the time of the crash, the Tesla’s Autopilot system was active, and the Tesla was traveling at 68 mph in a 55-mph posted speed limit area. The Autopilot system and collision avoidance systems did not classify the crossing truck as a hazard, did not attempt to slow the vehicle, and did not provide a warning to the driver of the approaching crossing truck. Further, the driver did not take evasive action in response to the crossing truck.

22. The Tesla Model X, as designed and by virtue of Tesla’s failure to warn and/or insufficient warnings, is not reasonably safe.

### ***The Purchase of Plaintiffs’ Vehicle***

23. In or about 2015, Plaintiff Chan became interested in purchasing a Tesla vehicle. As his interest in Tesla peaked, Chan became an almost weekly visitor to Tesla’s website, where

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<sup>13</sup> Five automobile manufacturers responded to this recommendation with steps they were taking to address the issue. Tesla, however, has not responded. Tesla has stated that it does not believe such restrictions are applicable to the Autopilot system as long as the driver remains attentive.

<sup>14</sup> This accident is nearly identical to a preceding accident in Williston, Florida, where a Tesla Model S failed to recognize a commercial truck stopped perpendicular to the path of the Tesla operating in Autopilot, resulting in a fatal crash.

he recalls reading about the many touted advances and capabilities of what he viewed as the first readily available electronic car.

24. An engineer by training and profession, Chan was taken with Tesla's speed and sleek styling, but mostly with its promises of cutting-edge automotive technology, including its Autopilot feature. Indeed, Autopilot was a particularly intriguing selling point for Chan, and it heavily influenced his interest in (and ultimately his decision to purchase) a Tesla vehicle, as Chan hoped it might ease the burden and stress of his daily commute in Long Island's notorious bumper-to-bumper traffic.

25. Chan searched Tesla's website and made an appointment at Tesla's showroom in Syosset, New York, to speak with Tesla's representatives directly and to test drive a Model S, which was the only model available at that time.

26. During his visit to the Syosset showroom and his discussions with Tesla's representatives there, Chan explained his particular interest in Tesla's Autopilot features given the requirements of his daily commute on the Long Island Expressway. Tesla's representatives did not advise Chan of the hidden dangers of operating a Tesla vehicle equipped with Autopilot in those situations.

27. Chan also test drove a Model S accompanied by a Tesla representative from the Syosset showroom, who did not offer to demonstrate the Autopilot feature for Chan during the test drive. Nor did that representative (or any other representative of Tesla) warn Chan in connection with the test drive that sometimes and under certain circumstances the Tesla Autopilot feature is unreliable.

28. Chan did not purchase a Model S after his first test drive, but continued to explore the possibility of purchasing a Tesla and continued to visit Tesla's website routinely. In late 2015



or early 2016, Chan learned from the website that a new model—the Model X—was available for preorder. Chan also learned that a new Tesla showroom had opened in Manhasset, New York. Based on his research on the Tesla website and his experience at the Syosset showroom, and with the belief that a Tesla vehicle was uniquely suited to his transportation needs, Chan put down a deposit to reserve a Model X and made an appointment to test drive the new model at the Manhasset showroom.

29. During his visit to the Manhasset showroom, as he did in Syosset, Chan explained to Tesla’s representatives that he was looking for a vehicle to make his daily drives in heavy Long Island traffic more manageable. He engaged extensively with one agent in particular—a woman named “Megan”—telling her about his four to five daily trips along the congested Long Island Expressway. In response, Chan recalls the agent made a big deal about Tesla’s Autopilot feature, assuring him that it would help him out in traffic—even going so far as to tell him that he could take the Tesla into the HOV lane (where Teslas are permitted to drive with single passengers) and then close his eyes and “relax.”

30. The Tesla agent also accompanied Chan on a roughly twenty-minute test drive in the Model X. After driving in “local” Manhasset traffic, where she advised him against using the Autopilot feature, the Tesla agent encouraged Chan to get on the expressway where she said the feature would perform better. Unlike her caution about local traffic, the agent provided no warnings or caveats about Autopilot’s performance in highway traffic, including its response to slowed or merging vehicles. Chan also does not recall any other warnings or caveats about other features’ performance.

31. Chan’s Model X test drive took place on a weekday with its typical heavy traffic patterns, and he recalls that the Autopilot performed “fantastically” for the brief time he had it

engaged on the expressway. Chan was even more convinced by his experience in Manhasset and the representations made by agents there that the Tesla Model X was uniquely suited for his commuting needs.

32. Title to the Tesla Model X was placed in the name of Chan's spouse, Plaintiff Wang, but Chan is the only person to have operated the Tesla Model X. Chan was authorized by Wang to drive the Tesla Model X.

33. In or about September 2016, Chan took delivery of the Tesla Model X at Tesla's showroom in Brooklyn, New York. Chan recalls that the showroom was extremely busy as Tesla representatives tried to keep up with customer appointments for new Tesla pick-ups, which were scheduled only fifteen to twenty minutes apart, leaving little to no time for the Tesla representatives to provide any instruction on proper operation and use of Tesla's many technologically advanced features—in other words, despite the novel, cutting-edge nature of the vehicle it was delivering, Tesla did not even provide a traditional delivery experience with the personalized set up and instruction that automotive consumers have come to expect.

34. Indeed, when Chan took delivery of the new Model X, he received no instruction or training on the Autopilot system or any other feature of the vehicle. He received no warnings or physical manuals or other materials regarding the operation and functionality of the Autopilot system, other than directions to access the on-board user manual. And, like the representatives at Syosset and Manhasset, the Tesla representatives at the Brooklyn showroom did not warn Chan that the Model X's Autopilot features are inactive or unreliable in certain circumstances.

35. Each of the Tesla representatives with whom Chan interacted in deciding to purchase and in taking delivery of the Model X failed to adequately warn Chan or Plaintiff Wang of the Model X's limitations and defects, or to instruct him on proper operation and use of the

Model X. Furthermore, none of Tesla's written materials (which Chan was not given but had to access on his own) provided adequate warnings or instruction.

36. At no time did Plaintiffs modify the Tesla Model X in any way that might void applicable warranties or cause the Tesla Model X to operate outside its design parameters.

***The Malfunction and Accident***

37. On December 13, 2017, at or about 4:40 PM Eastern Time, Chan was driving the Tesla Model X (hereinafter, the "Vehicle") eastbound in the far-right lane of the Long Island Expressway (U.S. 495) near Exit 26 and 185th Street. Chan was using the Vehicle as it was intended to be used, and as he had been led to believe it was particularly suited to be used by Tesla's promotional materials and representatives' statements. In fact, Chan was driving in what may be the most common environment for any Tesla sold in metropolitan New York or any other major metropolitan area—dense, slow traffic.

38. At the time of the accident, the Vehicle's Traffic-Aware Cruise Control and Autosteer functions were engaged, with the following distance set at "3."

39. At all-times relevant, Chan remained alert and prepared to resume control of the Vehicle.

40. The Vehicle was following a white tractor-trailer in dense traffic, when, from an entrance ramp to the right, a white Audi began to merge in between the tractor trailer and the Vehicle. At first, as the merging Audi entered the lane between the tractor-trailer and by the Vehicle, the Vehicle decelerated. Unbeknownst to Chan, the Vehicle decelerated because the tractor-trailer he had been following slowed for traffic, not because the Audi had started to enter into Chan's lane of travel.

41. As the Audi was in its merge maneuver, the Vehicle moved forward suddenly and accelerated on a collision course with the Audi. To Chan's surprise, the Vehicle did not recognize

that the Audi had merged into the lane of travel that the Vehicle occupied or that the Audi was even present at all. The Vehicle failed to react or warn Chan of the impending collision and failed to deploy its Automatic Emergency Braking.

42. By the time it became clear that the Vehicle had set itself on a collision course with the Audi, Chan had approximately one second to react. Chan intervened as quickly as he could and steered to the left to avoid a collision with the Audi. As a result, Chan instead collided with two other vehicles in the adjoining center and left lane before coming to a stop. The Vehicle again failed to recognize a potential collision with the two adjacent vehicles and failed to deploy the Automatic Emergency Braking.

43. The collision severely damaged the Vehicle and also damaged the two other vehicles. The Vehicle was deemed a total loss.

44. Plaintiff Chan used the Vehicle for its intended purpose and in a manner consistent with that of a reasonable, similarly situated driver.

45. Plaintiff Chan used the Vehicle consistently with representations made by Tesla's representatives as to its fitness for that use.

46. Plaintiff Chan was unable, even by the exercise of reasonable care, to avoid the accident.

47. The footage of Plaintiffs' accident is available online at <https://www.youtube.com/watch?v=GJJOHauhto0&t=1s>.

*Tesla's Excuses*

48. Tesla refuses to take responsibility for the accident. Interestingly, Tesla has previously acknowledged that Autopilot occasionally fails to identify or appropriately respond to white obstacles and slow-moving vehicles.<sup>15</sup>

49. Tesla insists that the Vehicle acted appropriately and that Traffic-Aware Cruise Control and Autosteer “disengaged as designed” when the Vehicle decelerated below the systems’ minimum operating speed. Furthermore, Tesla relies on statements in its owner’s manual (which is 206 pages long), reminding drivers to remain alert and never rely on Autopilot to steer or decelerate the vehicle, even though Tesla knows that this is an unreasonable and in some cases impossible expectation of its customers, and is inconsistent with other representations Tesla makes about the capabilities of its vehicles.

50. Tesla also relied on the fact that the Model X owner’s manual discloses that the vehicle’s “Forward Collision Warning and Automatic Emergency Braking functions do not operate at speeds under 4 mph and 5 mph, respectively.” But the Model X does not adequately or timely warn the driver when Autopilot functions are disengaged or about to disengage, and Tesla knows in any event that its expectations of human response time are unreasonable or impossible.

51. Tesla’s practice of selling or leasing vehicles with Autopilot, without properly warning about and/or disclosing the defects and limitations in that system prior to the time of sale or lease to consumers, and in some cases affirmatively or by omission misrepresenting the capabilities of the system, as alleged herein, violates generally accepted ethical principles of business conduct.

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<sup>15</sup> TESLA MOTORS. A Tragic Loss. Last accessed March 26, 2019. <https://www.tesla.com/blog/tragic-loss>.

52. Indeed, Tesla’s practices are wantonly reckless and grossly negligent, and put both the safety of consumers and the general public at risk, as Tesla continues to push its vehicles to market without proper testing, warning, or instruction, which upon information and belief is being done to provide Tesla with critical on-road information to improve its own products and its bottom line.

**FIRST CAUSE OF ACTION**  
**Breach of Express Warranty**

53. Plaintiffs repeat and incorporate each and every allegation contained in the preceding paragraphs as though fully set forth herein.

54. Defendant expressly and deliberately represents the Model X as a safe, technologically sophisticated vehicle that is opening the door to fully self-driving vehicles of the future.

55. Defendant expressly and deliberately represents the Tesla Model X’s Enhanced Autopilot features as being capable of assisting users with the “burdensome parts of driving” by actively assuming certain decision-making responsibilities and autonomously altering the speed and direction of the vehicle.

56. Defendant makes these representations—and allows prospective buyers to act under mistaken beliefs about the capabilities of the Model X—to induce prospective buyers to choose the Model X over other, less sophisticated competitors.

57. Under Uniform Commercial Code section 2-313, as well as other statutes and common law, these representations constitute express warranties.

58. In fact, however, in the most burdensome of traffic conditions, Autopilot simply does not work.

59. By failing to adequately disclose these limitations, Defendant has breached an express warranty regarding the Tesla Model X's capabilities to safely and independently navigate the dense urban environments in which the vehicle is marketed and sold.

60. This express warranty favorably influenced Plaintiffs' decision to buy the Tesla Model X.

61. And this express warranty influenced Plaintiff Chan's use of the Autopilot functions while driving the Tesla Model X.

62. Plaintiff Chan used the Tesla Model X for its intended purpose and in a manner consistent with that of a reasonable, similarly situated driver.

63. Defendant breached its express warranties because the Tesla Model X failed to perform in the manner Defendant led Plaintiff Chan to believe it would through its promotional materials and the express statements of its representatives.

64. Defendant's breach of its express warranty was a direct and proximate cause of Plaintiff Chan's accident, resulting in damages to Plaintiffs in amounts to be determined at trial but in no event less than \$100,000.

**SECOND CAUSE OF ACTION**  
**Breach of Implied Warranty of Merchantability**

65. Plaintiffs repeat and incorporate each and every allegation contained in the preceding paragraphs as though fully set forth herein.

66. Defendant has an implied duty to produce and market vehicles that are reasonably fit for the ordinary purposes for which such vehicles are used.

67. Defendant produced, marketed, and sold the Model X to operate in, among other circumstances, densely trafficked urban environments.

68. Defendant represented, and allowed prospective buyers to act on the understanding that, the Model X's Autopilot functions would operate safely in such an environment.

69. Under Uniform Commercial Code sections 2-314 and 2-315, as well as other statutes and common law, these representations constitute implied warranties that the Tesla Model X was fit for the ordinary purpose for which such vehicles are used.

70. Defendant breached these implied warranties, however, because the Tesla Model X's Autopilot functions in fact operated unreliably and unsafely.

71. Defendant breach of these implied warranties was a direct and proximate cause of Plaintiff Chan's accident, resulting in damages to Plaintiffs in amounts to be determined at trial but in no event less than \$100,000.

**THIRD CAUSE OF ACTION**  
**Breach of the Implied Warranty of Fitness for a Particular Purpose**

72. Plaintiffs repeat and incorporate each and every allegation contained in the preceding paragraphs as though fully set forth herein.

73. Plaintiff Chan had a particular purpose in purchasing a Tesla—i.e., to ease the burden of his daily commute on the Long Island Expressway and other densely-trafficked roads—and communicated that purpose to the various Tesla representatives with whom he engaged in deciding to purchase and in purchasing the Vehicle.

74. Plaintiff Chan reasonably relied on the skill and judgment of the Tesla agents who represented to him that the Tesla Model X and specifically its Autopilot function were uniquely and well suited to his particular purpose and needs.

75. Under Uniform Commercial Code sections 2-314 and 2-315, as well as other statutes and common law, these representations constitute implied warranties that the Tesla Model X was fit for Chan's particular purpose in purchasing the Vehicle.



76. Defendant breached these implied warranties, however, because the Tesla Model X's Autopilot functions were not, in fact, suitable for Chan's particular purpose.

77. Defendant's breach of these implied warranties was a direct and proximate cause of Plaintiff Chan's accident, resulting in damages to Plaintiffs in amounts to be determined at trial but in no event less than \$100,000.

**FOURTH CAUSE OF ACTION  
Failure to Warn/Inadequacy of Warnings**

78. Plaintiffs repeat and incorporate each and every allegation contained in the preceding paragraphs as though fully set forth herein.

79. Tesla has duty to consumers to exercise ordinary and reasonable care in the manufacture, design, and sale of its vehicles.

80. In this case, Tesla breached its duty of care to Plaintiffs by failing to warn of known and foreseeable risks associated with the Model X, including the known and foreseeable risk that Autopilot would fail to function as represented in dense traffic, and the known and foreseeable risk that drivers would not be able to react in time to correct for such a failure.

81. Tesla's failure to warn and/or its inadequate warnings were a direct and proximate cause of Plaintiff Chan's accident, resulting in damages to Plaintiffs in amounts to be determined at trial but in no event less than \$100,000.

82. Tesla's failure to warn and/or its inadequate warnings were further reckless, and done in conscious disregard for the rights and safety of consumers and the general public, thus warranting punitive damages.

**FIFTH CAUSE OF ACTION  
Deceptive and Misleading Business Practices and False Advertising**

83. Plaintiffs repeat and incorporate each and every allegation contained in the preceding paragraphs as though fully set forth herein.

84. Pursuant to New York General Business Law (“GBL”) §§ 349 and 350, Plaintiffs bring this action against Defendant for its repeatedly fraudulent and deceptive practices and false and fraudulent advertising in the sale of its vehicles.

85. Defendant engages in consumer-related activities that affect consumers at large.

86. Defendant engaged in consumer-related activities is the dissemination of advertising through various mediums, including through its website, which Plaintiff Chan frequently accessed in deciding to purchase the Vehicle.

87. The disseminated advertising contained information that is deceptive in material aspects, and had the purpose of influencing consumers like Plaintiff Chan to purchase a Tesla vehicle.

88. The disseminated deceptive advertising further caused Plaintiff Chan’s reliance on Tesla’s automated features, including its Autopilot technology.

89. Tesla’s Autopilot technology did not function as represented and advertised.

90. A reasonable person who knew of this potential for causing injury would have concluded that the Tesla Model X should not have been sold with these defectively designed Autopilot features and/or subject to false and misleading statements regarding the features’ proper use and capabilities. Tesla placed the needs of its business interest ahead of the interest of its customers and those who could be injured or suffer damages as a result of these unsafe Tesla vehicles.

91. Tesla needed to sell these unsafe vehicles and put these vehicles on the road way so that they could generate and capture data all the while touting them as the safest on the road. This was dishonest and placed its customers and the public at risk all in violation of New York law.

92. Plaintiff Chan's incident occurred as a result of Tesla's failed Autopilot technology, but the marketing and sale of the Model X was founded on Tesla's purposeful misleading business practices designed to sell cars, get more Teslas on the road, gather more data, use that data to enhance Tesla's products, and position itself in the marketplace.

93. Defendant's violations of GBL §§ 349 and 350 caused Plaintiff Chan's accident, resulting in damages to Plaintiffs in amounts to be determined at trial but in no event less than \$100,000.

94. Defendant's violations of GBL §§ 349 and 350 entitle Plaintiffs to treble damages, other statutory penalties, and punitive damages.

**SIXTH CAUSE OF ACTION**  
**Common Law Fraud/Fraudulent Misrepresentation**

95. Plaintiffs repeat and incorporate each and every allegation contained in the preceding paragraphs as though fully set forth herein.

96. Pursuant to a claim for fraud under New York common law, Plaintiffs bring this action against Defendant, who repeatedly made fraudulent misrepresentations of fact and engaged in fraudulent and deceptive practices toward Plaintiffs.

97. As alleged herein, Defendant intentionally made false representations of material fact regarding its vehicles, including that its Autopilot function is safe and ready to be used in common traffic situations and specifically in heavy highway traffic.

98. The Autopilot function is not safe nor ready to be used in heavy traffic situations.

99. Defendant's statements about its Autopilot function detailed above, which were disseminated to the general public and also made directly to Plaintiffs via Defendant's website and through its showroom agents, were likely to deceive a reasonable consumer and did deceive Plaintiffs into purchasing a Tesla vehicle.

100. Defendant knew or in the exercise of reasonable care should have known that the Autopilot function is not safe nor ready to be used in heavy traffic.

101. Tesla sells its vehicles on the basis that if its vehicles fail to perform, the driver is responsible, even though Tesla knows it is impossible for a human being to reasonably appreciate that a failure is occurring, or comprehend how the driver should take control.

102. Defendant intended that consumers like Plaintiffs rely on the false and misleading statements about the Autopilot function.

103. Plaintiff Chan specifically relied on Defendant's fraudulent misrepresentations in utilizing the Autopilot technology in his daily commute through heavy highway traffic.

104. Plaintiff Chan's incident occurred as a direct and proximate result of Tesla's misrepresentations about that technology and its ultimate failure to perform as represented. The sale of that technology under false pretenses constitutes fraud.

105. Defendant's fraudulent practices and misrepresentations formed the basis of Plaintiffs' buying decision and directly led to the Tesla causing Plaintiff Chan's accident, resulting in damages to Plaintiffs in amounts to be determined at trial but in no event less than \$100,000.

106. Defendant's fraudulent practices and misrepresentations also entitle Plaintiffs to an award of punitive damages.

**SEVENTH CAUSE OF ACTION**  
**Negligence/Negligent Misrepresentation**

107. Plaintiffs repeat and incorporate each and every allegation contained in the preceding paragraphs as though fully set forth herein.

108. As alleged herein, Defendant negligently made material misrepresentations of fact regarding its vehicles, including that the Autopilot function is safe and ready to be used in common traffic situations and specifically in heavy highway traffic.

109. The Autopilot function is not safe nor ready to be used in heavy traffic situations.

110. Defendant knew, or in the exercise of reasonable care should have known, that the Model X Autopilot features were not reasonably safe. Tesla intentionally designed those features to operate as they do, and Tesla marketed those features to induce potential customers to buy the Model X.

111. Defendant's misrepresentations about its vehicles including its misrepresentations about Autopilot were furnished for the purpose of influencing Plaintiffs' and other members of the public's purchasing choices.

112. Defendant intended that consumers rely on the misleading misrepresentations detailed above, and Plaintiffs did in fact reasonably rely on Defendant's representations and omissions, and the representations and omissions of Defendant's agents, when they purchased and operated the Tesla Model X.

113. In making statements that it knew or should have known Plaintiffs would rely on in making purchasing decisions, Defendant had a duty to take reasonable care in ensuring that those statements were correct.

114. Defendant breached this duty of care to Plaintiffs in making incorrect and misleading statements about the use and capabilities of its vehicles, as detailed above.

115. Defendant's negligence caused Plaintiff Chan's accident, resulting in damages to Plaintiffs in amounts to be determined at trial but in no event less than \$100,000.

116. Tesla's negligence was further reckless, and done in conscious disregard for the rights and safety of consumers and the general public, thus warranting punitive damages.

**WHEREFORE**, Plaintiffs demand judgment against Defendant as follows:

A. An award of damages, against Defendant, in an amount to be determined at trial, including but not limited to the value of the damage to the Vehicle, and in no event less than \$100,000;

B. Treble, punitive and exemplary damages; and

C. Such other and further relief as the Court deems just and proper, including counsel fees, costs of court, and pre-judgment interest.

Dated: New York, New York  
August 31, 2020

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**JURY DEMAND**

Plaintiffs demand a trial by jury of all claims so triable as a matter of right.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of August 2020 a true and correct copy of the foregoing was electronically filed with the Court's CM/ECF system and was thus served automatically upon all counsel of record in this matter.

s/ Stephanie E. Niehaus  
*One of the Attorneys for Plaintiffs*