UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JING WANG and WAI-LEUNG CHAN, Plaintiffs, - against - TESLA, INC., Defendants.	**Civ. Action No. 1:20-cv-3040**

NOTICE OF MOTION TO DISMISS

PLEASE TAKE NOTICE that upon the Memorandum of Law dated September 21, 2020, the exhibits annexed thereto, and all other papers and proceedings in this action, Defendant, Tesla, Inc., by their undersigned counsel, shall move before the United States District Court for the Eastern District of New York for an Order to dismiss certain causes of action of Plaintiffs, Jing Wang and Wai-Leung Chan's ("Plaintiffs") Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for Partial Dismissal of Plaintiffs' First Amended Complaint and to strike certain Paragraphs of the Plaintiffs' Amended Complaint pursuant to Rule 12(f). Tesla respectfully requests the dismissal of those portions of Plaintiff's Amended Complaint with Prejudice.

PLEASE TAKE FURTHER NOTICE that pursuant to the Court's September 2, 2020 Docket Text Order, Plaintiffs are directed to serve opposition by October 12, 2020.

PLEASE TAKE FURTHER NOTICE that pursuant to the Court's September 2, 2020 Docket Text Order, the moving Defendant is directed to serve its reply and file the fully briefed motion by October 26, 2020.

PLEASE TAKE FURTHER NOTICE that oral argument is requested if the motion is opposed.

Dated: New York, New York
September 21, 2020

Peter J. Fazio

BY: Peter J. Fazio, Esq.
AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP
Attorneys for Defendant
Tesla, Inc.
Office & P.O. Address
600 Third Avenue
New York, NY 10016
212-593-6700

TO: All Parties VIA ECF

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2020, the foregoing Notice of Motion to Dismiss Certain Portions of Plaintiffs' First Amended Complaint was electronically emailed upon the following:

NELSON LAW, LLC
Michael R. Nelson
200 Park Ave., Suite 1700
New York, NY 10166
nelson@nelson.legal

NELSON LAW, LLC
Stephanie Niehaus
200 Park Ave., Suite 1700
New York, NY 10166
Stephanie.Niehaus@nelson.legal

Counsel for Plaintiffs Wai-Leung Chan and Jing Wang

AARON RAPPAPORT FEINSTEIN & DEUTSCH, LLP

By: /s/ PETER J. FAZIO
Peter J. Fazio

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JING WANG and WAI-LEUNG CHAN,

Plaintiffs,

- against -

TESLA, INC.,

Defendants.

Civ. Action No. 1:20-cv-3040

TESLA INC.'S MEMORANDUM OF LAW IN SUPPORT OF RULE 12(b)(6) MOTION FOR PARTIAL DISMISSAL OF PLAINTIFFS' FIRST AMENDED COMPLAINT AND TO STRIKE

AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP
Peter J. Fazio
Attorneys for Defendant
TESLA, INC.
600 Third Avenue
New York, New York 10016
(212) 593-6700

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Defendant, Tesla, Inc. ("Tesla"), by its attorneys, Aaronson Rappaport Feinstein & Deutsch, LLP, submits its Memorandum of Law in Support of Rule 12(b)(6) Motion for Partial Dismissal of Plaintiffs' First Amended Complaint and to Strike as follows:

INTRODUCTION

Plaintiffs purchased a 2016 Tesla Model X with the Autopilot suite of driver assistance features, which Plaintiff Chan claims he regularly used for his daily commute until the subject vehicle was damaged during a collision while Autopilot was engaged. In their First Amended Complaint, Plaintiffs generally allege that Tesla's Autopilot technology is defective and the subject vehicle is not reasonably safe.

This Motion seeks dismissal of Plaintiff's fraud claim, which broadly asserts that Tesla made fraudulent misrepresentations about the safety of the Autopilot functions in its vehicles. Tesla filed its Answer to Plaintiffs' First Amended Complaint on the remaining six counts concurrent with this Motion. Through this Motion, Tesla is also requesting that paragraphs 14, 15, 18, 19, 20 and 21 of the "Fact" section of the First Amended Complaint are stricken because those allegations are immaterial and impertinent to the claims raised by the First Amended Complaint.

Plaintiffs allege in count six of their First Amended Complaint that Tesla engaged in fraudulent business practices by making misleading statements or omissions about the Autopilot features during the marketing or sale of the subject vehicle, and that Plaintiffs relied to their detriment on those statements or omissions in making their purchase. However, Plaintiffs' fraud claim fails as a matter of law.

After having the opportunity to amend their Complaint and cure any deficiencies, Plaintiffs still have not satisfied the particularity standards of Fed. R. Civ. P. 9(b) for alleging circumstances constituting fraud. Plaintiffs fail to identify Tesla's alleged misrepresentations or omissions with

the requisite level of specificity, relying instead on vague generalities regarding the sources, timing and content of information that Plaintiffs allegedly relied on in purchasing the subject vehicle. Plaintiffs also fail to state all the elements of a common law fraud claim based on a failure to disclose or omission, including as a threshold matter that there is a fiduciary relationship between the parties. In this case, the parties merely engaged in an arm's length business transaction, and under New York law, no fiduciary relationship existed. Therefore, even if Plaintiffs otherwise stated the elements of fraud (which they have not), they are unable to satisfy the standards required here. Accordingly, count six of Plaintiffs' First Amended Complaint should be dismissed.

FACTUAL BACKGROUND

Plaintiffs allege that in 2015, Plaintiff Chan placed an online order for a Tesla Model X and took delivery in September 2016, though the purchase was made in his wife Plaintiff Wang's name (the "subject vehicle"). (First Amended Compl. ("FAC") ¶¶ 28-30). Prior to placing the order for the subject vehicle, Plaintiff Chan allegedly made frequent visits to Tesla's website to educate himself about Tesla's vehicles and automotive technology, including but not limited to the Autopilot feature. (FAC ¶¶ 23, 24, 25, 28). Plaintiff Chan also allegedly visited Tesla's Syosset and Manhasset showrooms, where he test drove a Tesla Model S and Model X. (FAC ¶¶ 25, 28). Chan drove with the Autopilot feature on during his test drive of the Tesla Model X. (FAC ¶ 30, 31).

Plaintiff Chan contends that during each of these showroom visits, he spoke with unnamed and unidentified Tesla employees and explained he was interested in the Tesla Autopilot feature given his daily commute in dense traffic on the Long Island Expressway. (FAC ¶¶ 26, 29). Plaintiffs claim that, during the first test drive, these unnamed and unidentified Tesla employees failed to "warn" Plaintiff Chan "that sometimes and under certain circumstances, the Tesla

Autopilot feature is unreliable." (FAC ¶¶ 27). Plaintiff Chan also contends that during the second test drive, a Tesla employee only identified as "Megan" "made a big deal about Tesla's Autopilot feature" and "provided no warnings or caveats about Autopilot's performance in highway traffic…." (FAC ¶¶ 29, 30). Plaintiffs further allege that when Plaintiff Chan took delivery of the subject vehicle at Tesla's Brooklyn facility in September 2016, the unnamed and unidentified employees at that facility did not provide specific training on the Autopilot system, provide Plaintiff Chan with materials on the Autopilot system or "warn" him that Autopilot could be "inactive or unreliable in certain circumstances." (FAC ¶¶ 33, 34).

On December 13, 2017, Plaintiff Chan was allegedly driving the subject vehicle in dense, slow traffic on the Long Island Expressly with the Traffic-Aware Cruise Control and Autosteer functions engaged. (FAC ¶¶ 37, 38). Plaintiffs' First Amended Complaint references portions of the owner's manual—which is accessible through the vehicle's electronic center touchscreen—relating to the vehicle's driver assistance technology, but Plaintiffs failed to include reference to any of the numerous instructions, notes and warnings about proper use of that technology and the responsibilities of the driver while Autopilot driver assistance features are activated. (FAC ¶ 8). For example, Plaintiffs omit the manual's discussion of various limitations of these features and specifically warns drivers as follows: "Never depend on these components to keep you safe. It is the driver's responsibility to stay alert, drive safely, and be in control of the vehicle at all times." (See Exhibit. A, Tesla Model X Owner's Manual). This is merely one example of numerous statements in the owner's manual that warn and remind a driver of his "… responsibility to stay alert, drive safely, and be in control of the vehicle at all times." Plaintiffs do not deny having received the manual, only that they did not receive a physical copy of it. (FAC ¶ 35). And, Plaintiffs' only acknowledgment of these warnings published in the manual relating to driver

responsibility and Autopilot's system limitations is found under Plaintiffs' discussion of "Tesla's Excuses." (FAC ¶¶ 48-50).

In their First Amended Complaint, Plaintiffs assert seven causes of action including a a claim for "common law fraud/fraudulent misrepresentation." With respect to the fraud claim, Plaintiffs allege that Tesla made fraudulent misrepresentations "that its Autopilot function is safe and ready to be used in common traffic situations and specifically in heavy highway traffic," and that Plaintiffs relied on non-specific marketing by showroom representatives and Tesla's website when they purchased the subject vehicle such that Tesla should have warned them about Autopilot's features. (FAC ¶ 97-105). Plaintiffs seek damages in excess of $100,000, as well as treble, punitive and exemplary damages.

ARGUMENT

I. Rule 12(b)(6) Legal Standard

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim lacks "facial plausibility" unless "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. This standard demands "more than the sheer possibility that a defendant has acted unlawfully." *Id*. Rather, plausibility depends on "the full factual picture presented by the complaint, the particular cause of action and its elements, and the existence of alternative explanations so obvious that they render plaintiff's inferences unreasonable." *Fink v. Time Warner Cable*, 714 F.3d 739, 741 (2d Cir. 2013). A pleading "consisting only of 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft*, 556 U.S. at 678 (citations omitted).

Dismissal with prejudice on a Rule 12(b)(6) motion is appropriate when granting leave to amend would be futile, *i.e.*, when repleading will not cure the defect. *See Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) ("The problem with Cuoco's causes of action is substantive; better pleading will not cure it. Repleading would thus be futile. Such a futile request to replead should be denied."). Here, the Court should dismiss the "sixth cause of action" in Plaintiffs' First Amended Complaint that attempts to raise a fraud claim that claim fails to state a "facially plausible" claim for Fraud.

A. Plaintiffs' First Amended Complaint Fails to State a Claim for Fraud

Plaintiffs' sixth cause of action seeks to recover for alleged "common law fraud/fraudulent misrepresentation" about the safety of the Autopilot function during the marketing or sale of the subject vehicle.

To state a claim for common law fraud, Plaintiffs must show: (1) a misrepresentation or a material omission of fact; (2) which was false and known to be false by defendant; (3) made for the purpose of inducing the other party to rely upon it; (4) justifiable reliance of the other party on the misrepresentation or material omission; (5) and injury. *Lama Holding Co. v. Smith Barney, Inc.*, 668 N.E.2d 1370, 1373 (N.Y. 1996); *Connaughton v. Chipotle Mexican Grill, Inc.*, 23 N.Y.2d 213, 218 (1968)(N.Y. Sup. Ct. 2016). Further, to satisfy the particularity standards of Fed. R. Civ. P. 9(b), Plaintiffs must establish: (1) precisely what statements or omissions were made; (2) the time, place and person responsible for each such statement or omission; (3) the content of such statements or omissions and their effect on plaintiff; and (4) what the defendants gained from the fraud. *Official Publications, Inc. v. Kable News Co., Inc.*, 775 F. Supp. 631, 636-37 (S.D.N.Y. 1991); *Carmona v. Spanish Broadcasting System, Inc.*, 2009 WL 890054, at *4 (S.D.N.Y. March 30, 2009).

1. *Plaintiffs fail to plead fraud with particularity as required by Fed. R. Civ. P. 9(b)*

To state a claim for fraud, not only must a plaintiff plead all of the requisite elements of a common law fraud claim, but they must also meet the above-referenced higher standards of pleading with specificity required by Fed. R. Civ. P. 9(b). *Official Publications*, 775 F. Supp. At 636-37; *Carmona*, 2009 WL 890054, at *4.

Here, in their second attempt to plead a fraud claim,[1] Plaintiff's allegations are vague and non-specific with respect to Tesla's allegedly fraudulent statements or omissions, and are insufficient as a matter of law. Plaintiffs generally refer to Plaintiff Chan's review of the Tesla website, suggesting that he visited the site on a frequent basis prior to purchasing the subject vehicle. (FAC ¶¶ 23, 25, 28). But Plaintiffs do not explain what false and fraudulent content Plaintiff Chan viewed on Tesla's website; when he accessed the content; the specific effect of the content on Plaintiff Chan; and what Tesla gained from the allegedly false and fraudulent content. The same is true for Plaintiff Chan's visits to the two Tesla showrooms. He allegedly engaged with certain unnamed and unidentified Tesla employees, as well as one employee named "Megan," but Plaintiffs fail to provide any specific details about Plaintiff Chan's interactions beyond their claim that about the employee's overarching failure to provide "warnings or caveats" about Autopilot's features. (FAC ¶¶ 26, 27, 30). Such speculative and conclusory allegations warrant dismissal as they do not satisfy the standards for pleading a fraud claim under New York law. *Official Publications*, 775 F. Supp. At 636-37; *Carmona*, 2009 WL 890054 at *4. *See also, e.g.*, *Landesbank Baden-Wurttemberg v. Goldman, Sachs & Co.*, 821 F. Supp. 2d 616 (S.D.N.Y 2011) (dismissing fraud claim where the plaintiff relied on "perfunctory allegations" that contained

[1] As the Court will no doubt recall, in response to Plaintiffs' initial Complaint that also contained a Fraud claim, Tesla filed a Rule 12(b)(6) Motion to dismiss that claim for reasons that are similar to Tesla's reasons here.

insufficient detail and noting that "'[b]road reference to raw data' is not sufficient to plead that defendants knowingly made false statements."); *Cadle Co. v. Rochfort Enterprises (Bahamas) Ltd.*, No. 02 CIV. 9348 (LAK), 2003 WL 1702262 (S.D.N.Y. Mar. 31, 2003) (dismissing complaint because it "simply fails to set out the circumstances with particularity, much less a factual basis for inferring actual intent to defraud.")

Not only do Plaintiffs fail to meet the heightened standards of Rule 9(b), but Plaintiffs' fraud claim contains nothing more than rote allegations regarding the elements of a fraud claim, referring generally back to the undefined "fraudulent misrepresentations" that Plaintiffs allegedly "described above." (FAC ¶¶ 96-99). Plaintiffs do not – and cannot – provide factual support to show all of the required elements for a fraud claim under New York law, namely: (1) a misrepresentation or a material omission of fact; (2) which was false and known to be false by defendant; (3) made for the purpose of inducing the other party to rely upon it; (4) justifiable reliance of the other party on the misrepresentation or material omission; (5) and injury. *Lama Holding Co.*, 668 N.E.2d at 1373. Fraud claims of this nature cannot withstand a motion to dismiss. *See, e.g., Carmona*, 2009 WL 890054 at *5 ("[P]laintiffs do not provide a single factual allegation to support those conclusory assertions. Accordingly, plaintiffs' fraud claim against SBS is insufficient."); *SNS Bank, N.V. v. Citibank, N.A.*, 7 A.D.3d 352, 356 (N.Y. App. Div. 2004) ("[T]he amended complaint contains no factual (as opposed to conclusory) allegations that defendants acted with intent to defraud.").

2. *Plaintiffs' fraud by omission claim fails because the parties had no fiduciary relationship*

Even if Plaintiffs stated their claim with sufficient particularity, detail and factual support under New York law and Fed. R. Civ. P. 9(b), Plaintiffs' fraud claim would still fail because in

circumstances where, as here, the alleged fraud is based on an omission, there must be a fiduciary relationship between the parties.

"It is well settled that in order to allege a fraud based on a failure to disclose or omission, the plaintiff must allege a confidential or fiduciary relationship giving rise to a duty to speak." *Martian Entm't, LLC v. Harris*, 824 N.Y.S.2d 769, 769 (N.Y. Sup. Ct. 2006). *See also SNS Bank, N.V.*, 7 A.D.3d at 356 ("[A]n omission does not constitute fraud unless there is a fiduciary relationship between the parties.").

Here, Plaintiffs' fraud allegations are premised on Tesla's alleged failure to do or say certain things, namely an alleged failure to advise, warn or demonstrate with respect to the Autopilot functions on the subject vehicle. While Plaintiffs vaguely assert that Tesla employees made certain statements about Autopilot's performance or functionality, as stated above, they do not do so with sufficient particularity and fail to demonstrate any fraudulent intent or falsity. The overall tenor of Plaintiffs' First Amended Complaint is Tesla's alleged omissions, as further evidenced by Plaintiffs' failure to warn and negligence claims.

In that regard, Plaintiffs and Tesla had no fiduciary or special relationship. They were engaged in an arm's length business transaction and had no confidential relationship prior to the transaction giving rise to the alleged wrong. As such, under New York law, there can be no fraud in these circumstances. *See SNS Bank, N.V.*, 7 A.D.3d at 355–56 ("Plaintiff's claims for breach of fiduciary duty against Citibank and the Citibank employees who were members of the administrative committee were properly dismissed because the parties merely had an arm's length business relationship.").

Accordingly, Plaintiffs have failed to state a claim for fraud, and count six of Plaintiffs' First Amended Complaint should be dismissed.

B. Plaintiffs Have Failed to State a Legally Cognizable Claim for Punitive or Exemplary Damages

The prayer for relief in Plaintiffs' First Amended Complaint requests "punitive" and "exemplary" damages. However, Plaintiffs' First Amended Complaint contains no cause of action or claim that even alleges these words let alone the allegations required to state a legally cognizable claim that would allow such extreme damages.[2] In order to recover punitive damages under New York law, Plaintiffs must demonstrate that the wrong complained of rose to a level of "such wanton dishonesty as to imply a criminal indifference to civil obligations." *Martin v. Grp. Health Inc.*, 2 A.D.3d 414 (N.Y. App. Div. 2003); *Rocanova v. Equitable Life Assur. Soc. of U.S.*, 83 N.Y.2d 603 (1994) (*quoting Walker v. Sheldon*, 10 N.Y.2d 401 (1961)). Punitive damages are recoverable in all actions based upon tortious acts that involve ingredients of malice, fraud, oppression, insult, wanton or reckless disregard of one's rights, or other circumstances of aggravation. *See Walker*, 10 N.Y.2d 401; *Cushing v. Seemann*, 247 A.D.2d 891 (N.Y. App. Div. 1998); *Collins v. Willcox*, 600 N.Y.S.2d 884 (N.Y. Sup. Ct. 1992); *Witherwax v. Transcare, Inc.*, 801 N.Y.S.2d 782, (N.Y. Sup. Ct. 2005). *See also Outside Connection, Inc. v. DiGennaro*, 795 N.Y.S.2d 669 (N.Y. App. Div. 1995) ("[P]laintiffs failed to establish that the defendants' alleged conduct was so gross, wanton, or willful, or of such high moral culpability, as to warrant an award of punitive damages."). Furthermore, punitive damages are available "for the purpose of vindicating a public right only where the actions of the alleged tortfeasor constitute gross recklessness or intentional, wanton or malicious conduct aimed at the public generally or are activated by evil or reprehensible motives." *Nooger v. Jay-Dee Fast Delivery*, 251 A.D.2d 307 (N.Y. App. Div. 1998); *Boykin v. Mora*, 274 A.D.2d 441 (N.Y. App. Div. 2000).

[2] Tesla acknowledges that Plaintiffs' First Amended Complaint, which spans 116 paragraphs over 7 causes action, does contain the words "reckless and grossly negligent" (¶ 52) and "reckless and conscious disregard" (¶¶ 82 & 116) but no other allegations and certainly no cause of action specific to Punitive or Exemplary damages.

Although Plaintiffs are not required to "prove" their case at the pleading stage, they are at a minimum required to articulate their allegations supporting this claim and despite including three fleeting references to "reckless and grossly negligent" and "reckless and conscious disregard" they completely failed to allege any legally sufficient basis for either punitive or exemplary damages. The prayer for relief requesting those extreme damages can and should be dismissed as a matter of law.

II. Rule 12(f) Legal Standard

A court may strike from any pleading "an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act: (1) on its own; or (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading." Fed. R. Civ. P. 12(f). In bringing a Rule 12(f) motion to strike, "a party must demonstrate that '(1) no evidence in support of the allegations would be admissible; (2) that the allegations have no bearing on the issues in the case; and (3) that to permit the allegations to stand would result in prejudice to the movant.'" *In re Fannie Mae 2008 Sec. Litig.*, 891 F.Supp.2d 458, 471 (S.D.N.Y. 2012) (*citing S.E.C. v. Lee*, 720 F.Supp.2d 305, 340–341 (S.D.N.Y. 2010)).

A. First Amended Complaint Paragraphs 14, 15, 18, 19, 20 and 21 Are Immaterial and Impertinent to Plaintiffs' claims And Should be Stricken

The vehicle and alleged incident at the center of Plaintiffs' First Amended Complaint is a 2016 Tesla Model X that was allegedly involved in a collision in New York State in 2017. However, paragraphs 14, 15, 18, 19, 20 and 21 of the "Fact" section of Plaintiffs' First Amended Complaint are allegations with no "facts" about the subject vehicle or the alleged incident. Instead, the allegations in those paragraphs have no connection or relevance to: (i) Plaintiffs purchase of the subject vehicle; (ii) the instructions or warnings Plaintiffs were allegedly given or not given

about the subject vehicle at or after purchase; (iii) the subject vehicle itself; or (iv) the alleged collision. Rather, most of these paragraphs (15 and 18-21) are allegations about an incident that occurred over two years *after* Plaintiffs' purchase of the subject vehicle and over a year after the collision involving the subject vehicle. There is no possible relevance between an incident that occurred *after* the purchase date of the subject vehicle, *after* the date of the alleged incident and under circumstances that Plaintiffs' do not even attempt to allege as similar to the circumstances of their alleged incident. In short, the allegations on paragraphs 14, 15, 18, 19, 20 and 21 of the First Amended Complaint are not "Facts" related to subject vehicle, Plaintiffs' alleged incident or the claims in the First Amended Complaint specific to these Plaintiffs making them immaterial, impertinent and bearing no possible relation to the controversy before the Court.

Additionally, these immaterial and inadmissible allegations will result in prejudice to Tesla if permitted to remain as "allegations" in Plaintiffs' First Amended Complaint. Plaintiffs have included this irrelevant "information" in the First Amended Complaint to create an inappropriate and unfair narrative, which Plaintiffs will undoubtedly use as a basis to seek discovery in this matter that has no relevance or connection to the actual narrow claims in this First Amended Complaint about a vehicle, a purchase transaction and alleged collision incident. Thus, these paragraphs can and should be stricken from the First Amended Complaint.

CONCLUSION

For the foregoing reasons, Tesla requests that this Honorable Court grant its motion and: (i) dismiss count six of Plaintiffs' First Amended Complaint with prejudice; (ii) dismiss Plaintiffs' prayer for punitive and exemplary damages with prejudice; (iii) strike paragraphs 14, 15, 18, 19, 20 and 21 from the First Amended Complaint with prejudice; and (iv) further award Tesla any and all additional relief the Court may deem just and proper.

Dated: New York, New York
September 21, 2020

Peter J. Fazio

BY: Peter J. Fazio, Esq.
AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP
Attorneys for Defendant
Tesla, Inc.
Office & P.O. Address
600 Third Avenue
New York, NY 10016
212-593-6700

TO: All Parties VIA ECF

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2020, the foregoing Memorandum of Law in Support of Tesla's Motion to Dismiss Certain Portions of Plaintiffs' First Amended Complaint was electronically emailed upon the following:

NELSON LAW, LLC
Michael R. Nelson
200 Park Ave., Suite 1700
New York, NY 10166
nelson@nelson.legal

NELSON LAW, LLC
Stephanie Niehaus
200 Park Ave., Suite 1700
New York, NY 10166
Stephanie.Niehaus@nelson.legal

Counsel for Plaintiffs Wai-Leung Chan and Jing Wang

AARON RAPPAPORT FEINSTEIN & DEUTSCH, LLP

By: /s/ PETER J. FAZIO
Peter J. Fazio