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Case No. 12723-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ELLEN PRASINOS, derivatively on behalf TESLA MOTORS, INC., Plaintiff, vs. ELON MUSK, BRAD W. BUSS, ROBYN M. DENHOLM, IRA EHRENPREIS, ANTONIO J. GRACIAS, STEPHEN T. JURVETSON, KIMBAL MUSK, LYNDON RIVE, PETER RIVE, JOHN H. N. FISHER, JEFFREY B. STRAUBEL, D SUBSIDIARY, INC., AND SOLARCITY CORPORATION, Defendants, -and- TESLA MOTORS, INC., a Delaware Corporation, Nominal Defendant	C.A. No.

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff Ellen Prasinos ("Plaintiff"), by and through her undersigned counsel, assert this action derivatively on behalf of Tesla Motors, Inc. ("Telsa" or the "Company") against defendants Elon Musk, Brad W. Buss, Robyn M. Denholm, Ira Ehrenpreis, Antonio J. Gracias, Stephen T. Jurvetson and Kimbal Musk (collectively, the "Board" or the "Director Defendants"), along with Lyndon Rive, Peter Rive, John H. N. Fisher, J.B. Straubel, D Subsidiary, Inc., and

SolarCity Corporation ("SolarCity"). Plaintiff alleges, upon information and belief based upon, *inter alia*, the investigation made by her attorneys, except as to those allegations that pertain to the Plaintiff herself, which are alleged upon knowledge, as follows:

SUMMARY OF THE ACTION

1. Elon Musk ("Musk"), a smart and charismatic businessman, wants to save the world by "making life multi-planetary", and "expedit[ing] the move from a mine-and-burn hydrocarbon economy towards a solar electric economy." While Musk's goal to save the world may be admirable, he uses unethical and illegal tactics to achieve that goal, especially when his personal financial interests and legacy are at stake.

2. With the assistance of his family and friends, Musk began pursuing his goal, also known as his "unified field theory", by funding three companies: (1) Tesla to focus on producing electric cars; (3) Space Exploration Technologies Corporation ("SpaceX") to focus on Musk's ultimate goal of colonizing Mars, and (3) SolarCity to focus on the use of solar energy. Since their earliest days as private companies, Musk, along with his family and friends, have served on the boards of these companies.

3. Now only SpaceX – Musk's most profitable company – remains a private company. Unlike SpaceX, Tesla and SolarCity have yet to turn a regular

profit. Instead, they burned through billions of dollars of investors' cash year after year and, SolarCity is now on the verge of failure.

4. Musk never wanted Tesla and SolarCity to become public companies, but he knew his personal goals to change the world through these companies could not be achieved without funding from the public markets. In fact, he stated that "[i]t is important to emphasize that Tesla and SolarCity are public because they didn't have any choice. Their private capital structure was becoming unwieldy and they needed to raise a lot of equity capital."

5. Musk, therefore, is willing to take advantage of capital from the public markets when it suits his needs to accomplish his goals. In particular, Tesla needs billions of dollars in capital to achieve any possibility of success. Those billions are required to develop the technology for the mass production of affordable electric cars, along with heavily investing in a market strategy to disrupt the entire automotive industry by introducing these electric cars into the mainstream.

6. After Tesla and SolarCity became public companies, Musk and the other directors were required to act in their respective company's public stockholders' best interests. This requirement means that Musk and the other directors could not pursue their personal interests at the expense of their public stockholders' interest. Musk, however, does not care about his fiduciary duties or

complying with good corporate governance practices, especially if they stand in the way of achieving his personal ambitions or if they threaten the financial interests of himself or his friends and family. Therefore, these companies are still run as if they are private companies pursuing Musk's personal goal and protecting his financial interests, regardless of what that means for their public stockholders.

7. Tesla's proposed acquisition of SolarCity represents Musk's latest attempt to ensure his legacy to change the world, while saving the financial interests of himself, and his family and friends, even though this action directly conflicts with Tesla's and its stockholders' best interests.

8. Musk, his family members, close business partners, and SpaceX have provided substantial financial support to SolarCity over the years. This financial support, however, will not be enough for SolarCity to survive, let alone continue its business long-term. As such, Musk, along with his family and friends, are at risk of losing their entire investments in SolarCity as follows:

- Defendant Elon Musk owns: (1) 22,162,037[1] (21.9%) shares of SolarCity stock worth approximately $520 million, of which 6,700,000 shares are pledged as collateral to secure certain indebtedness; (2) a $10 million zero-coupon convertible note secured by SolarCity; and (3) $65 million of SolarCity's bonds owned personally and $165 million of SolarCity's bonds owned indirectly through SpaceX;

[1] These figures and others in the complaint are based on SolarCity's closing stock price of $23.50 on August 19, 2016.

- Defendant Lyndon Rive, Musk's cousin and SolarCity's Chief Executive Officer ("CEO"), owns: (1) 4,029,978 (3.9%) shares of SolarCity stock; excluding his stock options, his stake is worth almost $56 million, of which 1,371,966 are pledged as collateral to secure certain personal indebtedness; (2) a $3 million zero-coupon convertible note secured by SolarCity; and (3) $17.5 million of SolarCity's bonds;

- Defendant Peter Rive, Musk's cousin and SolarCity's Chief Technology Officer ("CTO") owns: (1) 3,928,058 (3.8%) shares of SolarCity stock; excluding his stock options, his stake is worth over $53 million; and (2) $17.5 million of SolarCity's bonds;

- Defendant John Fisher, Musk's business partner and a SolarCity director, beneficially owns 1,672,381 shares of SolarCity stock worth more than $39 million through his venture capital firm, and individually owns 418,409 shares of SolarCity stock worth almost $10 million;

- Defendant Stephen Jurvetson, Musk's close friend and business partner, beneficially owns 1,672,381 shares of SolarCity stock worth more than $39 million through his venture capital firm;

- Defendant Jeffrey Straubel, Musk's loyal Tesla employee, and SolarCity director owns 771,773 shares of SolarCity stock worth approximately $18 million, of which 411,623 shares are pledged as collateral to secure certain personal indebtedness;

- Defendant Antonio Gracias, Musk's close friend and business partner, beneficially owns 211,021 shares of SolarCity stock worth nearly $5 million through his venture capital firm;

- Defendant Kimbal Musk, Musk's brother, owns 147,541 shares of SolarCity stock worth approximately $3.5 million, of which 147,101 shares are pledged as collateral to secure certain personal indebtedness, and the remaining 440 shares are call options); and

- Defendant Brad Buss, SolarCity's former Chief Financial Officer ("CFO") and current Tesla director, owns 37,277 shares of SolarCity stock worth approximately $900,000.

9. As such, the proposed acquisition of SolarCity involves almost $1 billion worth of personal economic interests for Musk, and his family and friends. Perhaps, as importantly to Musk, he is about to lose his legacy in the solar energy sector, along with a key part of his unified field theory if SolarCity fails.

10. Forcing Tesla to acquire SolarCity not only asks Tesla stockholders to bankroll Musk's personal legacy, but also requires that they bailout a virtually insolvent company for more than fair value, along with bailing out Musk and his friends and family personally.

11. Tesla itself has a decent chance of achieving Musk's goal to transform society into an electric car world. Tesla, however, faces a cash crunch, and is under intense pressure to get a lower priced vehicle into mass production, which requires the completion of a new factory. Embarking now on a multi-billion dollar, non-core acquisition, which it cannot afford, is a dangerous distraction for the Tesla.

12. Allowing his personal interests to dictate his actions, Musk used his influence over Tesla's Board to quickly engineer a bailout to SolarCity as its situation turned even worse. On May 31, 2016, Musk proposed that the Tesla Board seriously consider buying a solar company, like SolarCity, at a Board

meeting. Only, three weeks later, on June 21, 2016, Tesla announced that the Board approved a preliminary all-stock proposal to acquire SolarCity, and saddle all its problems on Tesla's stockholders. During a conference call the following day, Musk confirmed that: (1) he expected a signed merger agreement within a few weeks, and (2) "Tesla would provide a bridge loan, if needed" to SolarCity.

13. By July 31, 2016, Tesla announced that it would pay approximately $2.6 billion to acquire SolarCity in an all stock deal (the "Proposed Acquisition"). *The Wall Street Journal* likened Tesla's acquisition of SolarCity to "a shipwrecked man clinging to a piece of driftwood grabbing on to another man without one."

14. Notably, not a single other bidder has made an offer for the struggling company. In fact, one potential bidder dropped out because "it did not believe that it was in a position to make an acquisition proposal within the range of Tesla's original proposal." The consensus is that Tesla is grossly overpaying for SolarCity.

15. The Tesla Board, however, approved the Proposed Acquisition because the directors lack independence and/or are interested in the acquisition. In fact, six of the seven members of Tesla's Board are interested in the Proposed Acquisition. Director Kimbal Musk is Musk's brother, and a SolarCity investor. Directors Stephen T. Jurvetson, Ira Ehrenpreis, and Antonio J. Gracias are Musk's friends and close business partners, who have invested billions of dollars in Tesla,

SolarCity, and SpaceX through their investment funds. Each of these directors' investment funds also have partners on SolarCity and/or SpaceX's board of directors. Director Brad Buss also serves as an advisor to SolarCity after recently retiring from his position as SolarCity's CFO, and owns SolarCity stock worth approximately $1 million. Musk further ensures that all Tesla directors bend to his will, by making sure they are handsomely paid directors' fees that are ***millions*** of dollars more than typical directors' fees.

16. The self-dealing did not stop with the Proposed Acquisition. Musk and his cousins, Lyndon Rive and Peter Rive (collectively the "Rives"), who run SolarCity, ensured themselves another lucrative payout at Tesla and its public stockholders' expense after announcing the Proposed Acquisition.

17. Unsurprisingly, SolarCity remains in dire need of cash to operate its business until the Proposed Acquisition closes. SolarCity, therefore, made a $124 million bond offering to the public. The bonds had an 18-month term and an annual interest rate of 6.5%. That rate is almost eight times higher than the two year U. S. Treasury note's rate, even so the public had no interest in purchasing them due to SolarCity's dismal financial condition.

18. When the bonds failed to sell, Tesla did not provide SolarCity with a bridge loan as Musk had assured the market would happen. Instead, Musk and the Rives bought approximately $100 million worth of those bonds (the "Solar Bond

Investment"). If the Proposed Acquisition closes, Musk and his cousins will be paid an outrageous 6.5% interest on Tesla's credit rather than SolarCity's virtually worthless credit.

19. Accordingly, the Proposed Acquisition and the Solar Bond Investment are nothing more than self-interested, conflicted transactions that benefit Musk, and his family and friends at the expense of Tesla and its public stockholders.

JURISDICTION

20. This Court has jurisdiction over this action pursuant to 10 Del. C. § 341.

21. As directors of a Delaware corporation, Defendants have consented to the jurisdiction of this Court pursuant to 10 Del. C. § 3114.

22. This Court has jurisdiction over Tesla pursuant to 10 Del. C. § 3111.

PARTIES

23. Plaintiff, Ellen Prasinos, is a current stockholder of Tesla and has been a stockholder at all times relevant to the claims asserted herein.

24. Nominal Defendant Tesla is a Delaware corporation with its principal executive offices located at 3500 Deer Creek Road, Palo Alto, California 94304. Tesla designs, develops, manufactures and sells high-performance fully electric vehicles and energy products. It has wholly-owned subsidiaries in North America, Europe and Asia that market, manufacture, sell and/or service Tesla's vehicles and

energy products. The Company's common stock is publicly traded on the NASDAQ under the ticker symbol "TSLA".

25. Defendant Musk, has served as Tesla's CEO, since October 2008 and as Chairman of the Board since April 2004. Musk holds approximately 33.7 million shares in the Company or 18.4% of its voting power, as of August 19, 2016. Musk is the Company's controlling and largest stockholder, owning over twice as much as the next largest stockholder. Musk is also SolarCity's Chairman and largest stockholder, controlling approximately 22.1 million shares of SolarCity stock or 21.9% of SolarCity's voting power. Through his trust, in December 2015, Musk purchased $10 million of SolarCity's $113 million zero-coupon convertible senior note, which is due on December 1, 2020. In August 2016, Musk purchased $65 million of SolarCity's bonds, at a 6.5% interest rate, which are due on February 17, 2018. Musk further serves as the Founder, CEO and Lead Designer at SpaceX.

26. Defendant Kimbal Musk ("Kimbal") is Musk's brother and has been a member of Tesla's Board of Directors since April 2004. In 2015, Kimbal received a total of $4,964,381 in compensation for serving on the Board. Kimbal is also a director of SpaceX. As of August 19, 2016, Kimbal beneficially owned 147,541 shares of SolarCity common stock (147,101 shares of which are pledged as

collateral to secure certain personal indebtedness and subject to a margin call, and the remaining 440 shares are call options).

27. Defendant Ira Ehrenpreis ("Ehrenpreis") has been a member of Tesla's Board since May 2007. In 2015, Ehrenpreis received a total of $7,239,683 in compensation for serving on the Board. Ehrenpreis is a general partner of Technology Partners, a venture capital firm, where he leads its Cleantech practice. Since 2015, Ehrenpreis has also been a managing partner of the venture capital firm of DBL Partners (together with its affiliated entities and funds, "DBL"), which has invested in Tesla, SolarCity and SpaceX. Ehrenpreis also serves as chairman of the World Energy Innovation Forum ("WEIF"), which is held annually at Tesla's factory in Fremont, California.

28. Defendant Antonio Gracias ("Gracias") has been a member of Tesla's Board since May 2007. In 2015, Gracias received a total of $9,790,505 in compensation for serving on the Board. Gracias is also a director of SpaceX and SolarCity. Gracias further serves as the CEO, director and majority owner of Valor Management Corp. (together with its affiliated entities and funds, "VMC"), which has invested in Tesla, SpaceX and SolarCity. Gracias has known Musk for over a decade, and they have become close friends. As of August 19, 2016, Gracias beneficially owned 211,021 shares of SolarCity common stock.

29. Defendant Stephen Jurvetson ("Jurvetson") has been a member of Tesla's Board since June 2009. In 2015, Jurvetson received a total of $6,095,984 in compensation for serving on the Board. Jurvetson is also a director of SpaceX. Since 1995, Jurvetson has been a managing director of Draper Fisher Jurvetson (together with its affiliated entities and funds, "DFJ"), a venture capital firm, which has invested in Tesla, SolarCity and SpaceX. As of August 19, 2016, Jurvetson beneficially owned 1,672,381 shares of SolarCity common stock. Jurvetson has known Musk since 1996.

30. Defendant Brad W. Buss ("Buss") has been a member of Tesla's Board since November 2009. In 2015, Buss received a total of $4,954,785 in compensation for serving on the Board. From August 2014 until his retirement in February 2016, Buss served as SolarCity's CFO. Buss currently serves as an advisor to SolarCity until the end of 2016. As of August 19, 2016, Buss beneficially owned 37,277 shares of SolarCity common stock.

31. Defendant Robyn M. Denholm ("Denholm"), has been a member of Tesla's Board since August 2014. In the mere two years since she joined the Board, Denholm has received $12,160,851 in compensation for serving on the Board.

32. Defendant Lyndon Rive ("L. Rive") is SolarCity's co-founder and CEO, and also serves as a director. L. Rive is Musk's and Kimbal's cousin. L.

Rive owned 4,029,978 shares or 3.9% of SolarCity's stock as of August 19, 2016. L. Rive pledged 1,371,966 of his SolarCity stock as collateral to secure certain personal indebtedness owed to the Bank of America Merrill Lynch, and these shares are subject to a margin call. Currently, L. Rive will receive Tesla stock worth more than $55 million upon the closing of the Proposed Acquisition. In December 2015, L. Rive purchased $3 million of SolarCity's $113 million zero-coupon convertible senior notes, which are due on December 1, 2020. In August 2016, L. Rive purchased $17.5 million of SolarCity's bonds, at a 6.5% interest rate, which are due on February 17, 2018.

33. Defendant Peter Rive ("P. Rive) is a co-founder of SolarCity, its CTO and a director. P. Rive is also the cousin of Musk and Kimbal. P. Rive and L. Rive are brothers. P. Rive owned 3,928,058 shares or 3.8% of SolarCity's stock as of August 19, 2016. Currently, P. Rive will receive Tesla stock worth more than $53 million dollars upon the closing of the Proposed Acquisition. In August 2016, P. Rive purchased $17.5 million of SolarCity's bonds, at a 6.5% interest rate, which are due on February 17, 2018.

34. Defendant Jeffrey B. Straubel ("Straubel"), is a co-founder of Tesla and currently serves as its CTO. Musk introduced Straubel to Tesla in 2004, and he has remained one of Musk's most loyal executives at Tesla. Straubel also serves as a director on SolarCity's board. As of August 19, 2016, Straubel

beneficially owned 771,773 shares of SolarCity common stock (411,623 shares of which are pledged as collateral to secure certain personal indebtedness and subject to a margin call).

35. Defendant John H. N. Fisher ("Fisher") has served as a member of SolarCity's board since August 2007. Fisher has served as managing director of DFJ, along with Jurvetson, for over two decades.

36. Defendant SolarCity Corporation was incorporated in the state of Delaware in July 2006. SolarCity maintains its principal executive offices at 3055 Clearview Way, San Mateo, California 94402. SolarCity's board consists of: Musk, L. Rive, P. Rive, Fisher, Gracias, Donald R. Kendall, Jr. ("Kendall"), Nancy E. Pfund ("Pfund"), and Straubel. From 2006 through 2010, Pfund was an Observer on Tesla's Board.

37. Defendant D Subsidiary, Inc. ("D Subsidiary") is a wholly owned subsidiary of Tesla. D Subsidiary is a Delaware corporation, which was formed on July 21, 2016 for the purpose of effecting the Proposed Acquisition. Upon completion of the Proposed Acquisition, D Subsidiary will be merged with and into SolarCity, with SolarCity surviving as a wholly owned subsidiary of Tesla.

RELEVANT NON-PARTIES

38. SpaceX is a closely-held private Delaware corporation, founded in 2002 by Musk, who serves as its CEO and CTO. SpaceX's headquarters is located

at 1 Rocket Road, Hawthorne, California. The following people serve as SpaceX's board members and advisors: Gracias, Jurvetson, Kimbal, David Kidder, Luke Nosek, Barry Schuler ("Shuler"). Shuler is a managing director at Defendant Jurvetson's venture capital firm, DFJ. Musk, along with DFJ and Defendant Gracias' company VMC, have made substantial investments in SpaceX. SpaceX has also purchased $330 million of SolarCity's unsecured debt.

39. DBL is a venture capital firm co-managed by Defendant Ehrenpreis and Pfund, a SolarCity director. DBL has invested hundreds of millions of dollars in Tesla, SolarCity, and SpaceX. DBL Investors was a venture capital firm created by Pfund from the spin-out of J.P. Morgan's Bay Area Equity Fund in January of 2008. DBL Partners was formed in 2015 from the combination of DBL Investors and the Cleantech practice of Technology Partners, led by Ehrenpreis.

40. DFJ is a venture capital firm that was co-founded by Defendant Jurvetson and Fisher, a SolarCity director, in 1985. DFJ is a significant stockholder of Tesla, SolarCity, and SpaceX, having invested over a billion dollars in these companies. Prior to its investments in Tesla, SolarCity, and SpaceX, DFJ invested, along with Musk, in L. Rive's prior company, EverDream. Specifically, in 1999, DFJ led EverDream's funding round by investing $2 million in that company when L. Rive was only 20 years old. In 2003, Musk set up the Elon Musk Revocable Trust (the "Trust"), for which he is the trustee. The Trust holds

31,100,644 of Musk's 33,738,794 shares of Tesla stock. The Trust is a limited partner of a fund managed by DFJ.

41. VMC was founded by Gracias in 2001. VMC has invested approximately $1.1 billion, $81 million, and $218 million in SpaceX, SolarCity, and Tesla, respectively. Musk's Trust is a limited partner of VCM. Kimbal is also a limited partner of funds advised by VMC.

SUBSTANTIVE ALLEGATIONS

I. Musk, Along With His Family and Friends, Fund SpaceX, SolarCity And Tesla To Assist Musk Accomplish His Personal Goals While Enriching Themselves

42. Musk believes that climate change is the most important concern facing society today and poses an "existential" threat to humanity. When asked whether "there are more important concerns right now than climate change and global warming[,]" Musk responded "[climate change] is not the only important issue, but it is I think the thing that will have the biggest negative effect on humanity if we do not address it…. I think we should take action."

43. Accordingly, Musk has stated that our goal as a civilization must be to "exit the era [of fossil fuels] as quickly as possible. That means we need to move from the old goal with the pre-industrial goal, which was to move from chopping down forests and killing lots of whales… [to] the new goal[, which] is to move to a

sustainable energy future." Musk also wants to reduce the "risk of human extinction" by "making life multi-planetary" by setting up a colony on Mars.

44. In 2002, Musk began to aggressively pursue opportunities to address climate change, including a "true spacefaring civilization", after he made a small fortune of nearly $200 million from selling two internet companies Zip2 Corporation and PayPal. Specifically, Musk used his fortune to fund three companies (Tesla, SolarCity, and SpaceX) with the goal to fulfill his personal ambition to change the world.

45. Musk's family members and friends, who are also his close business partners, readily supported Musk's personal ambitions by investing billions of dollars in Tesla, SolarCity and SpaceX, and joining the boards of those companies.

A. Musk founded SpaceX in order to save civilization from climate change

46. In step with Musk's belief that humanity faces an existential threat on earth due to climate change, in 2002, Musk founded SpaceX, whose "long-term goal [is to] mak[e] humans a multi-planetary species." SpaceX, a privately held corporation, focuses on developing and launching advanced reusable rockets for satellite and eventually human transportation. SpaceX is one of only four entities to have put a space capsule into orbit; the other three are the United States, Russia, and China. Since its beginning, SpaceX has garnered significant media attention

because it has repeatedly made history while allowing its followers to view it rockets on its website.

47. SpaceX was originally funded with $100 million from Musk himself, generated by the PayPal sale. Other private investors provided an additional $100 million and private equity funds invested $200 million. According to a CNBC report, by 2012, SpaceX had entered into contracts worth more than $4 billion with both private customers and NASA, and had already received between $400 and $500 million from NASA.

48. In January 2015, Google and Fidelity invested $1 billion in SpaceX. Google reportedly invested approximately $900 million for a 7.5% stake. Google's investment implied an overall value of SpaceX of $12 billion, making it the fourth most valuable privately held company.

49. Because Fidelity is required to make public disclosures but SpaceX is not, recently, many have looked to Fidelity's valuation of its holdings to determine SpaceX's overall value. For example, Fortune magazine reported that while Fidelity valued its SpaceX shares at $7.54 million as of their purchase date, by September 30, 2015, Fidelity valued those shares at $8.66 million, an increase of almost 15%. Fidelity's Quarterly Holdings Report, filed with the SEC on June 28, 2016, disclosed the value of Fidelity's SpaceX Series G common stock (acquired

in January 2015) at $9.38 million, a 24% increase over the purchase price. A 24% increase over the January 2015 implies a value of $14.88 billion for SpaceX.

50. According to SpaceX's website, SpaceX currently "has over 70 launches on its manifest, representing over $10 billion in contracts." SpaceX's receives $62 million for each Falcon 9 launch. According to the investing website The Motley Fool, SpaceX incurs costs of $50 million on each launch. As a result, SpaceX has a gross profit of $12 million, a margin of 19%. SpaceX's gross profit margin, therefore, is superior to that of Boeing (14.4%) and Lockheed Martin (11.5%). On an annual basis, the author estimated that SpaceX generates $1.3 billion in revenue and $195 million in operating profit.

51. Despite SpaceX's superior performance and eleven-figure valuation, Musk has no intention of taking SpaceX public in the near future. On June 7, 2013, Musk sent an email to SpaceX employees explaining that he was "increasingly concerned about SpaceX going public before the Mars transport system is in place." Specifically, Musk explained that "[c]reating the technology needed to establish life on Mars is and always has been the fundamental goal of SpaceX. If being a public company diminishes that likelihood, then we should not do so until Mars is secure."

52. Musk stated further, "given my experiences with Tesla and SolarCity, I am hesitant to foist being public on SpaceX[.]" Regarding Tesla and SolarCity,

Musk explained that "[i]t is important to emphasize that Tesla and SolarCity are public because they didn't have any choice. Their private capital structure was becoming unwieldy and they needed to raise a lot of equity capital. SolarCity also needed to raise a huge amount of debt at the lowest possible interest rate to fund solar leases."

53. Notably, both Tesla and SolarCity are unprofitable, and given that SpaceX is the only presumably profitable company controlled by Musk, it appears that Musk's motivation in keeping SpaceX private may not be purely idealistic. In addition, even though SpaceX appears to be the healthiest financially of all three of Musk's companies, and has a $165 million financial interest in SolarCity – it curiously is not the company that is bailing out SolarCity.

B. Musk and his cousins start SolarCity to support Musk's quest to fix climate change

54. In 2004, while L. Rive and Musk rode in an RV to Burning Man, a musical festival, they conceived the idea of SolarCity. In this regard, L. Rive told Musk that he "wanted to do something that can have an impact on humanity. Something you feel good about. It's not anymore about working this hard for money." Musk recommended that L. Rive get into the solar industry. The Rives then spent two years learning about solar technology and the dynamics of that business.

55. On July 4, 2006, L. Rive and P. Rive, with Musk's financial backing, founded SolarCity, as a solar installation company for individuals and small companies to provide long-term leases and financing for solar panels. Similar to Tesla, Musk's mission for SolarCity was "to accelerate mass adoption of sustainable energy."

1. From the start, SolarCity has required constant capital injections from Musk and his affiliates due its unsuccessful operations.

56. Since its founding, SolarCity has burned through an obscene amount of cash in an effort to compete with low-cost solar energy rivals with utility scale installations and a decrease in rooftop solar subsidies.

57. Over the last decade, Musk, along with his family and friends (and the U.S. government), have provided substantial financial support to SolarCity as both a private and public company. For example, in September 2006, SolarCity announced a venture funding round, in which four investors participated, Musk, L. Rive, P. Rive, and Defendant Jurvetson's DFJ Fund, raising $10 million for SolarCity. DFJ and Defendant Ehrenpreis' fund DBL also helped fund SolarCity's $29.9 million Series D funding round, and its $23.9 million Series E funding round in 2008 and 2009 respectively. Next, in 2011, Musk, DFJ and DBL were among the five investors investing in SolarCity's $20 million Series F funding round. In

2012, Musk, DBL and Defendant Gracias' fund, VCM were three of the five investors, who participated in SolarCity's $81 million Series G funding round.

58. In December 2012, SolarCity prepared for its initial public offering ("IPO") because it desperately needed cash. At this point, SolarCity had raised $1.57 billion in funding, but only $602 million remained for future deployments.

59. In its filings with the Securities and Exchange Commission (the "SEC"), SolarCity disclosed it anticipated offering 10.1 million shares at a price between $13 and $15 to raise as much as $151 million, valuing the company at approximately $1 billion. Due to tepid interest in SolarCity's stock, SolarCity was forced to delay its IPO for a day, and drop its stock price to $8 per share. This news was disappointing because it valued SolarCity at around $600 million, rather than its earlier projected $1 billion valuation.

60. In an attempt to round up support for SolarCity's IPO, both Musk and DFJ pledged to buy a chunk of its stock offerings.

61. On December 12, 2012, SolarCity's stock finally made its debut on the NASDAQ, raising $92 million, or 40% less than the optimistic numbers in its prospectus. Musk personally invested $15 million in SolarCity's IPO, while DFJ indicated it would buy 1.8 million shares at the offer price.

62. Even after its IPO, SolarCity remained in a precarious financial position, and required constant infusions of cash from Musk and others in order to remain in business.

63. For example, Musk received a personal line of credit from Goldman Sachs Bank USA ("Goldman Sachs") for $275 million, and in 2013, a $200 million loan from Morgan Stanley Smith Barney LLC ("Morgan Stanley") in June 2011. Musk has used these lines of credit to support SolarCity by purchasing an additional 214,869 shares of SolarCity, thereby injecting $10 million into the fledgling company on October 21, 2013.

64. Moreover, in December 2015, Musk purchased $10 million and L. Rive purchased $3 million of a $113 million issuance by SolarCity of zero-coupon convertible senior notes due on December 1, 2020.

65. These notes are convertible into SolarCity stock at a conversion rate of 30.3030 per $1,000 principal amount of the convertible notes. Thus, under the terms of the indenture that governs the convertible notes, the Proposed Acquisition will allow for Musk and L. Rive to convert their notes into SolarCity stock, which will then be exchanged for Tesla equity.

66. In 2014, SolarCity began offering its "Solar Bonds," which are unsecured obligations of SolarCity sold directly by the company. Specifically, in March 2015, SpaceX purchased $90 million worth of Solar Bonds, followed by an

additional $75 million purchase in June 2015. In March 2016, the initial $90 million in Solar Bonds held by SpaceX matured. SpaceX used the proceeds to reinvest in $90 million in aggregate principal amount of Solar Bonds due in March 2017. Again in June 2016, SpaceX's $75 million worth of Solar Bonds matured. It used those proceeds to reinvest in aggregate principal amount due in June 2017.

67. SolarCity's performance (or lack thereof) came to a head in early 2016. On the first day of trading for 2016, SolarCity's stock price closed at $52.79. Less than one and a half months later, SolarCity's stock had fallen over 68% to close at $16.67 per share on February 11, 2016.

68. The collapse of SolarCity's stock price only stalled upon news that Musk had purchased 569,680 shares at approximately $17.56 per share for a total purchase price of approximately $10 million on February 12, 2016.

69. Despite Musk's repeated attempts to stop the company's diving stock price, SolarCity's stock price has fallen nearly 75% in the last two years, as detailed in the chart below:

70. SolarCity cannot even survive without another capital injection while Tesla's offer to purchase it is pending. In this regard, after the Proposed Acquisition was announced, SolarCity's advisors requested that Tesla provide SolarCity with a bridge loan until Tesla completed its purchase of SolarCity. Despite Musk's statements during Tesla's June 22, 2016 conference call that Tesla would provide a bridge loan to SolarCity, if necessary, while the Proposed Acquisition was pending, that did not happen. Instead, Musk and the Rives, took advantage of the situation to unjustly enrich themselves at Tesla and its stockholders' expense.

71. Specifically, on August 23, 2016, SolarCity disclosed that it had completed another Solar Bond offering worth $124 million. Musk brought $65 million in Solar Bonds, while the Rives each bought $17.5 million in Solar Bonds. Notably, their Solar Bond Investment pays 6.5% annual interest and is set to mature in February 2018. That interest rate is almost eight times higher than the two year U. S. Treasury note rate.

72. Despite being offered to the public, the general public has largely stayed away from Solar Bonds. Instead, Musk, SpaceX and the Rives absorbed the majority of Solar Bonds themselves. Now Tesla and its stockholders are unfairly stuck paying outrageous amounts of interests on their Solar Bond Investment due to their self-dealing actions.

73. Things will only get worse for SolarCity going forward as its assistance from the U.S. government dries up. So far, SolarCity has collected over $400 million from the U.S. Treasury in grants. As highlighted in SolarCity's most recent Form 10-K: "[Its] business currently depends on the availability of rebates, tax credits and other financial incentives. The expiration, elimination or reduction of these rebates, credits and incentives would adversely impact our business."

74. SolarCity's meager business will soon to take a serious hit upon the expiration of numerous government subsidies and tax credits that it relies on. For example, SolarCity currently enjoys a tax credit of 30% for solar energy projects that commence construction by December 31, 2019. Thereafter, these tax credits will fall to 10% for commercial projects and completely expire for residential projects in 2022.

2. After failing to ever make a profit, SolarCity and its investors are desperate for a bailout.

75. Despite its numerous capital injections by Musk and his affiliates, and assistance from the U.S. government, SolarCity has faced significant financial concerns since its founding, and has yet to demonstrate that it is a viable going concern. In this regard, over the last ten years, SolarCity has collected total revenue of $1.5 billion, while amassing more than $3 billion in debt.

76. Over the last three years SolarCity has more than doubled its net losses year-over-year. In fiscal 2013 and 2014, SolarCity reported a net loss of

$152 million and $375 million, respectively. Then, in fiscal 2015, SolarCity incurred a net loss of over $768 million, with only $382 million in cash on hand to end the year.

77. Due to SolarCity's high operating costs and negligible profit margins, SolarCity depends on issuing debt, but that debt is now becoming too much for SolarCity to handle. In 2016 alone, SolarCity was forced to raise more than $1.5 billion in project financing.

78. At the end of the first quarter of 2016, SolarCity reported approximately $3.1 billion in total indebtedness, up approximately $400 million from the end of 2015. Notably, of the $3.2 billion of debt owed by SolarCity, $1.2 billion is due within one year.

79. On May 9, 2016, SolarCity announced its financial results for the first quarter of 2016, reporting a non-GAAP net loss of $251 million, or $2.56 per share. SolarCity's losses stemmed from its voracious need for cash to operate its business. In the first quarter of 2016, SolarCity incurred $227 million in operating expenses, up 54% year-over-year, and $33 million in interest expenses. In return for its over $200 million in expenses, SolarCity saw only $123 million in GAAP revenue for the quarter. Nor is SolarCity positioned for strong turn-around, because it downgraded its guidance for the second quarter of 2016 to a predicted

loss per share of between $2.70-$2.80, based on operating expenses of between $240-$250 million and revenue of between only $135-$143 million.

80. In May 2016, analysts at Credit Suisse noted that SolarCity's poor results and guidance raised "existential questions" for it. Credit Suisse then cut its price target in half. Likewise, CNBC's Jim Cramer stated that, "This is a company that I regard in a first-class crisis that acts as if everything is fine….[SolarCity] really [ha]s no business."

81. As of June 30, 2016, SolarCity's debt-to-equity ratio was 375.6% according to Factset, and its available cash had declined to $146 million, from $421 million a year earlier. In the Form S-4 filed with the SEC on August 31, 2016 (the "S-4"). SolarCity disclosed that it had $3.25 billion in total indebtedness; $229 million of which is unsecured and owed to Musk (directly and through his ownership of SpaceX).

82. On August 1, 2016, the Company preannounced its Q2 2016 Operating Metrics and updated its 2016 guidance. In what has become the norm, SolarCity yet again revised its guidance downwards. Specifically, SolarCity reported that residential bookings in the first half of the year were lower than anticipated overall, and as a result, 2016 guidance for MW Installed was lowered to 900 - 1,000 MW, as compared to its previous guidance of 1,000 - 1,100 MW.

83. On August 9, 2016, SolarCity announced its results for the second quarter of 2016, reporting a loss of $250.3 million (compared with $155.7 million in the same period a year prior), while burning through $265.4 million in the quarter.

84. To address SolarCity's dire financial condition, it implemented certain initiatives to realign the company's operating expenses in light of its revised downward guidance, on August 16, 2016. SolarCity anticipates that it will incur restructuring charges ranging from approximately $3 million to $5 million, consisting primarily of severance benefits. These efforts, however, are not sufficient to save SolarCity from its path towards bankruptcy.

85. Moreover, it is clear that there is no outside interest coming to SolarCity's rescue as fifteen institutional investors passed on either acquiring SolarCity or injecting equity into it during the go-shop period related to the Proposed Acquisition. Notably, SolarCity's last potential suitor dropped out because "it did not believe that it was in a position to make an acquisition proposal within the range of Tesla's original proposal."

86. As result, SolarCity's only chance for survival comes from Musk and the Board, who are not only bailing out SolarCity, but themselves in an attempt to save their significant investments in SolarCity, along with Musk's legacy in the solar energy industry.

C. Tesla fulfills Musk's personal ambitions for an emissions-free electric car

87. Today, Musk is the face of Tesla and recognized as one of its founders, and has a cult-like following of millions of people. As Musk developed his image and following, he became Tesla's controlling shareholder while pushing out anyone who stood in his way.

88. In 2003, two engineers, Martin Eberhard ("Eberhard") and Marc Tarpenning ("Tarpenning"), founded Tesla with the dream to position the Company as the first serious manufacturer of electric vehicles to free its customers of the oil burden. Specifically, Tesla was founded on the notion that "[t]he reliance on the gasoline-powered internal combustion engine as the principal automobile powertrain technology has raised environmental concerns, created dependence among industrialized and developing nations on oil largely imported from foreign nations and exposed consumers to volatile fuel prices."

89. Tesla's ideology aligned perfectly with Musk's ambitions, so he personally invested $6.5 million in Tesla's $7.5 million Series A funding round in 2004, after Eberhard and Tarpenning approached him for an investment in the Company. Based on that investment, Musk got the Chairman of the Board position, and appointed his brother, Kimbal, to the Board. Musk then became involved in designing Tesla's first electric car, a sports car called the Roadster. He

also began building a team of loyal employees, like Straubel, who was hired in May 2004 after Musk urged him to meet with the Tesla team.

90. Over the next several years, Musk positioned himself to become Tesla's controlling shareholder by: (1) making significant personal investments in Tesla, (2) convincing his friends to invest in Tesla, (3) becoming involved in Tesla's business strategy and daily activities, and (4) ultimately becoming Tesla's CEO and the face of the Company, by using whatever means were necessary to achieve that status.

91. For example, in February 2005, Musk and Defendant Gracias' fund, VCM, led Tesla's $13 million Series B funding round, with Musk contributing $9 million of that round. Again in May 2006, Musk led Tesla's $40 million Series C funding round by investing another $12 million. This round also included investments by Defendant Jurvetson's fund, DFJ, Defendant Gracias' fund, VMC, Pfund's Bay Area Equity Fund, L. Rive, P. Rive, and his friend, Larry Page, co-founder of Google. The following year in May 2007, Musk, along with DFJ, VMC, Bay Area Equity Fund, and Defendant Ehrenpreis' fund, Technology Partners, were among the ten investors funding Tesla's $45 million Series D funding round. Then in February 2008, Musk, DFJ, VMC, Kimbal, Technology Partners and seven other investors funded Tesla's $40 million Series E funding round. In addition, Musk, VMC and Technology Partners participated in Tesla's

$40.17 million debt financing, which closed in May 2008. Musk, VMC, Kimbal and Technology Partners also participated in Tesla's $40 million debt financing, which closed in March 2009. Finally, DFJ was one of two investors that funded Tesla's $50 million Series E funding round.

92. By July 19, 2006, Tesla was ready to unveil the Roadster at its first event called the Signature One Hundred, which was held in Santa Monica, California. This event was packed with Hollywood celebrities, and others, who were ready to hand over a $100,000 check to reserve one of the first one hundred Roadsters. Although both Musk and Eberhard spoke at this event, Eberhard made a bigger impression, and he did one media interview after another. At this point, Eberhard was "Mr. Tesla", and Musk was largely ignored by the press.

93. Right before the Signature One Hundred event, on July 18, 2006, Musk emailed Mike Harrigan ("Harrigan"), a Tesla employee who worked with Tesla's PR firm, PCGC, to express his anger about the media's portrayal of his role at Tesla:

> The way that my role has been portrayed to date, where I am referred to merely as "an early investor" is outrageous. That would be like calling [Eberhard] being called an "early employee"
>
> Apart from me leading the Series A & B and co-leading the Series C, my influence on the car itself runs from the headlights to the styling to the door sill to the trunk, and my strong interest in electric transport predates Tesla by a decade….the media is difficult to control… However, we need to make a serious effort to correct this misconception.

94. After the New York Times ran an article about the Signature One Hundred event, Musk felt neglected again, and expressed those feelings to PCGC, ccing Harrigan and Eberhard:

> I was incredibly insulted and embarrassed by the NY Times article…where I was not merely unmentioned, but where [Eberhard] is actually referred to as the chairman. If anything like this happens again, please consider the PCGC relationship with Tesla to end immediately upon publication of such a piece. Please ensure that the NYT publishes a correction as soon as possible.

95. When the New York Times ran a story about Tesla about a week later, to again gush about Eberhard, it made no mention of Musk. Tarpenning stated that "Elon was furious. He was livid." Shortly, thereafter, Musk took Harrigan aside and told him if he wanted to keep his job at Tesla, Musk needed to start getting some recognition.

96. By August 2006, Musk began his own push to get recognized for his role at Tesla by publishing an article on Tesla's website, which he deemed his "secret master plan" for Tesla. Musk's strategy for Tesla was "to enter at the high end of the market, where customers are prepared to pay a premium, and then drive down market as fast as possible to higher unit volume and lower prices with each successive model."

97. Musk then began plotting how to minimize Eberhard's high profile role at Tesla, so that he could replace Eberhard as the face of Tesla. In doing so, Musk cemented his role as Tesla's controlling stockholder.

98. In January 2007, Musk and Eberhard had dinner before a Board meeting the following day. During dinner, Eberhard suggested the idea of replacing himself as CEO because figuring out Tesla's financial issues, including implementing and running SAP, were beyond his skill level. The next day, Musk and Eberhard pitched the idea of bringing in a new CEO so Eberhard could focus on Tesla's product. The Board supported this idea, while encouraging Eberhard to remain with the Company in a technical and visionary role.

99. Musk saw the opportunity to replace Eberhard with a CEO of his choosing. By February 2007, Musk hired an executive search firm to find Eberhard's successor.

100. In the early summer, Musk recruited Michael Marks ("Marks"), an early Tesla investor, for the role of interim CEO. Despite never interviewing Marks, in August 2007, while Eberhard was on a business trip, the Board held a meeting, where they approved Musk's suggestion to hire Marks. Musk then called Eberhard to inform him that upon his return from the business trip, he would no longer serve as Tesla's CEO.

101. Upset about a Board meeting occurring behind his back, Eberhard forced another Board meeting via conference call, where he could actually step down. By August 8, 2007, Eberhard had resigned as Tesla's CEO, and took the title of "President of Technology". At this point, Musk, with the Board's support, changed Eberhard's role to focus primarily on troubleshooting and dealing with peripheral issues.

102. Musk, however, was determined to shut Eberhard completely out of Tesla. As Harrigan stated, "[Musk] is the kind of boss where day to day you don't know if you have a job or not…Once he is convinced that you can't do the job, there is no way you can convince him back again. That happened many times to many people, and that's what happened with [Eberhard]. Once he determined that [Eberhard] couldn't be the CEO of Tesla any longer, that was it. He was fired."

103. On November 27, 2007, Musk approached Eberhard to inform him that he no longer wanted Eberhard to be a part of Tesla, either as President of Technology or as a member of the Tesla's Board. Musk strong-armed Eberhard by threatening to convert enough of his preferred stock options to common stock options to give himself control over three more seats on the Board, in addition the three seats that Musk already controlled. Specifically, Eberhard explained on his now defunct blog:

At the time I left the board, it comprised 8 members:
2 appointed by series A shareholders, where Elon was the majority owner, so they were Elon's appointees.
1 was the Series B representative, again where Elon owned the majority of the stock
1 appointed by the Series C shareholders, where Vantage Point appointed Jim Marver
1 appointed by the Series D shareholders, where Elon managed to get a very good friend, Antonio Gracias, appointed.
3 appointed by the Common shareholders – one of these defined as the CEO. Marc & I collectively controlled the Common stock class.

In order to get me off the board, Elon converted enough of his Series A stock to Common stock so as to be able to out-vote Marc and me. (He had enough Series A left still to control Series A as well.) He thus controlled 7 out of 8 board seats at the time, while owning less than 40% of the company's stock.

104. After being forced to sign severance agreements without the opportunity to consult with his attorney, Eberhard left Tesla on November 28, 2007. A week later, the Board "transitioned" Eberhard to the Company's advisory board, and Eberhard posted on www.teslamotorsclub.com that "I am no longer with Tesla Motors – neither on its board of directors nor an employee of any sort", and "I'm not all happy with the way I was treated." Musk commented as follows, "[i]t was not a question of personality differences, as the decision to have [Eberhard] transition to an advisory role was unanimous among the board. Tesla has operational problems that need to be solved and if the board thought there was

any way that [Eberhard] could be part of the solution, then he would still be an employee of the company."

105. Shortly thereafter, Eberhard filed a lawsuit related to his termination, accusing Musk of setting out "to re-write history by falsely claiming that he was the founder or creator of Tesla." Eberhard further accused Tesla of breaching its agreement to provide him with the second Roadster off the production line, part of the historic Founder's Series Production, and giving that car instead, to Musk's "friend" Defendant Gracias. The lawsuit eventually settled out of court.

106. On the same day that Musk orchestrated Eberhard's ouster, he also replaced Marks with Ze'ev Drori ("Drori"), a Silicon Valley semiconductor veteran, as Tesla's new CEO. In this regard, Marks' vision for Tesla had begun to diverge from Musk's vision. Specifically, Marks wanted to package Tesla as an asset that could be sold to a larger car company, which appeared a rational thing to do. Musk, however, had no interest in selling Tesla to the highest bidder, so he replaced Marks with a CEO that he could control. As CEO, Drori was viewed as an executor of Musk's wishes rather than a commanding, independent CEO.

107. Despite these changes, Tesla continued to suffer difficulties, including a financial crisis in 2008. To save Tesla from failure, Musk invested another $20 million, and took further control of the Company. In fact, Musk even gave

personal guarantees to customers to provide them with a refund in the event Tesla failed.

108. By October 2008, Drori was out as Tesla's CEO as Musk took over the helm and fired a quarter of Tesla's employees. With respect to his takeover as CEO, Musk stated, "I've got so many chips on the table with Tesla. It just makes sense for me to have both hands on the wheel."

II. After Developing a Cult-Like Following and Eliminating Anyone Who Stood In His Way, Musk Cements His Domination and Control Over Tesla

109. After the dismal response to his presentation at the Signature One Hundred event, Musk began cultivating a persona, which inspires a cult-like devotion from his investors and the certain members of the public. As Dave Sullivan, an analyst with AutoPacific, put it: "All the people that worship at the church of Musk will come at you with a pitchfork if you say something bad. . . . They're believers."

110. Musk's struggles with public presentations found at the beginning of his career are no longer present. Now Musk draws comparisons to Steve Jobs. Indeed, his showmanship is such that Robert Downey Jr. modeled his portrayal of Tony Stark in the Iron Man movies after him.

111. For example, Musk's showmanship was on full-display at the unveiling event of a new version of Tesla's Model-S in October 2014. Thousands

of people attended the event, which appeared closer to a concert than a product unveiling. As soon as Musk appeared on stage, the audience erupted into cheers with people throughout the crowd angling to take his picture. As Ashlee Vance ("Vance"), the author of an Elon Musk biography,[2] and someone who has seen "about every major tech CEO of the past 20 years speak," explained the event and Musk's performance: "the closest comparison to this scene would be when Jobs talked."

112. The October 2014 unveiling event was not unique. Musk has taken steps to carefully cultivate his public persona, and one of those steps is to follow in Apple's footsteps and hold events that are "simultaneously flashy but still cool and casual" for his companies.

113. Musk's persona is also based presenting himself as the sole person responsible for innovation at his companies. As an article in the MIT Technology Review described: "Musk sells himself as a singular mover of mountains and does not like to share credit for his success." For example, Musk presents himself as the public face of SpaceX, even claiming to the press "to have designed the Falcon

[2] Vance's book, "Elon Musk: Tesla, SpaceX, and the Quest for a Fantastic Future", is based on approximately thirty hours of interviews with Musk himself, along with interviews with his "closest" friends and family members. In fact, Vance noted in the Acknowledgements section that Defendants Gracias and Jurvetson, "really went out of their way for Musk and for [Vance]"and that he "owe[d] a tremendous debt of gratitude" to Musk's family members, including Defendants Kimbal, L. Rive and P. Rive.

rocket more or less by himself," which drove SpaceX's engineers—*i.e.*, those who designed the rockets—into "a collective rage."

114. Musk operates similarly at Telsa. As vice president of industry analysis at AutoPacific explained: "Elon is Tesla, Tesla is Elon. He comes across as being extremely hands-on in the development process. Who knows what the reality is, but he puts forth that impression." In actually, Straubel is responsible for the Company's major technical advances, and Eberhard, one of the founders of Tesla who left Tesla after a bitter feud with Musk, contributed significantly to the Company's engineering achievements.

115. Another key foundation of his public persona is his presence on social media. Musk has almost 5 million followers on Twitter, and personally sends out his own tweets, which gives his Twitter followers the sense that they are being given an inside look at his companies. For instance, in the week leading-up to the October 2014 reveal of the new version of Tesla's Model-S, Musk hinted via Twitter as to what the new product would be, which sent his followers into a frenzy of speculation. His hint was retweeted 15,000 times. In August 2016, alone, Musk sent thirty-one of tweets.

116. Musk also has ensured that SpaceX's rocket launches are broadcast live on the internet and are then hosted on SpaceX's YouTube channel, which has over 380,000 followers. As a result, people from across the globe watch SpaceX's

launches and cheer him on when successful, or commiserate with him in defeat when SpaceX rockets explode.

117. Musk's persona has led to public websites devoted to him, including elonenthusiast.com and cultmusk.tumblr.com, as well as fan clubs on Facebook and Google+. These sites and clubs track Elon Musk's announcements and news, and provide a place for his fans to discuss him and his companies. Musk's fan are even called "Muskalites".

A. Due to Musk's celebrity status, Tesla's Stock Has Soared Regardless Of Tesla's Many Missteps And Its Lack of Profitability

118. Musk did not want to take Tesla public because he had done everything in his power to maintain absolute control over Tesla, and preferred to operate in secrecy. Tesla, however, needed a lot of capital, and Musk had no desire to see his significant personal investments in the Company, along his legacy to transform the automotive industry fail.

119. On June 29, 2010, Telsa entered the IPO market, and was listed on the NASDAQ with a $17 per share stock price and attracted more than $225 million of investments. By the end of the first day, Tesla's stock price had jumped to $23.89.

120. Tesla's stock price then hovered between approximately $20 and $40 until 2013, when it exploded. In February 2013, Tesla reported a small profit—the only quarterly profit Tesla has ever seen—of $11.2 million for the first quarter of

2013. One glimmer of hope with all Musk's fans needed, and Tesla's stock, which had opened 2013 at $35.36 per share on January 2, 2013, shot up approximately 325% to end 2013 at $150.43 per share on December 31, 2013.

121. Even in 2013, certain analysts were questioning the value of Tesla's inflated stock price, with Bank of America Merrill Lynch stating in October 2013 that it "continue[s] to view Tesla shares as vastly overvalued and maintain our $45 PO, which is based on a 2015e EV/EBITDA multiple of about 12X (currently 12.7X)."

122. Tesla's stock price surged once again in February 2014, ending the month with its stock price at $244.81 on February 28, 2014. Since then, Tesla's stock price has generally fluctuated between $200 and $250.

123. Moreover, Musk's messiah-like status has allowed him to wave away multiple problems that others would be heavily criticized for. As Bob Lutz ("Lutz"), the former CEO of General Motors ("GM") current head of VLF Automotive, remarked:

> Look at Model S sales[, which have declined]. What I can't believe is that the normally critical analysts — guys who used to just beat me up at GM —, at Morgan Stanley and Goldman Sachs swallow everything. [About Musk] they just come back and say, "What a genius!" He's accelerating the move to 500,000 units. Even business school professors who normally would look somewhat analytically call him a visionary. They say, "He's going for the long term. He's keeping pedal to the metal, eschewing short-term profit and trying to save the planet, all at the same time." What a crock.

124. Lutz is not the only one whose has raised these concerns, Ronnie Moas, Standpoint Research founder, noted that Tesla, "which was not even turning a profit, had a market capitalization that was greater than Mazda, Fiat, Porsche and Ferrari combined."

125. A further example of the impact Musk's cult-like persona is seen in the insignificant changes in Tesla's stock price following reports that deaths had resulted from failures of Tesla's autopilot feature. In contrast, after Musk tweeted on Sunday, July 10, 2016, about working on part two of his "Top Secret Tesla Masterplan," Tesla's stock went up $8.

III. Musk Repeatedly Favors SolarCity and SpaceX in Tesla's Prior Business Deals Along With Using Those Companies For Tesla's Advantage To Support His Unified Field Theory

126. Through his ability to control Tesla, Musk has ensured that Tesla has conducted a few business transactions with SolarCity and SpaceX. Musk does so because in his mind, these three companies make up his "unified field theory", and he wants each of his businesses to be interconnected in the short and long term. At this point, however, all of the related business deals between the three companies are minimal, except for SpaceX's purchases of $330 million worth of SolarCity's unsecured debt over the years.

127. For instance, when Tesla began it had an informal arrangement with SpaceX, allowing Tesla to use building space and information technology services

in SpaceX's California facilities. Tesla stayed at SpaceX's facilities until 2011, when Tesla's personnel moved to its own facilities. Once Tesla opened its own facilities, SpaceX began to pay Tesla approximately $3,200 per month for leasing certain car parking spaces located in the south parking lot of Tesla's Los Angeles Design Studio.

128. Tesla also sold certain equipment to SpaceX during 2012, including battery cells and a wire bonder, for approximately $147,000.

129. In February 2014, Tesla and SpaceX entered into an agreement relating to Tesla's use of an aircraft leased and operated by SpaceX. In 2014 and 2015, Tesla paid SpaceX approximately $1.4 million, and anticipates paying SpaceX an additional $1 million in 2016 for use of its airplane.

130. Moreover, in March 2009, when Tesla was in dire need of a cash infusion, Musk personally borrowed $20 million from SpaceX in order to provide the necessary funding. Only when the Company went public in June 2010 did Musk repay the SpaceX loan by selling $23.8 million in Tesla stock.

131. Similarly, in January 2011, SolarCity subcontracted Tesla to provide design, engineering and consulting services as part of a grant that SolarCity received from the California Solar Initiative of the California Public Utilities Commission. Under the agreement, Tesla received over half a million dollars for its services.

132. Tesla also paid SolarCity to install its "Superchargers," which are Tesla's free and public charging stations for Tesla cars, around the country. SolarCity charged Tesla approximately $910,000 and $748,000 in 2012 and 2013, respectively, for installation services at Supercharger stations.

133. In April 2013, Tesla entered into a supply agreement with SolarCity under which Tesla sold SolarCity its energy storage products. Tesla received approximately $5 million from SolarCity from 2013 through 2015, under this agreement. In 2015, Tesla also sold an additional $2.4 million of other energy storage products to SolarCity too.

134. None of the business transactions that Tesla and SolarCity have done together, however, support Musk's proposition that the Proposed Acquisition is a "no-brainer." In fact, the business relationship between SolarCity and Tesla is minimal. Moreover, it only exists because Musk has created opportunities for the companies to do business together to further his unified field theory.

IV. Musk and the Board Repeatedly Reject Any Attempts To Weaken Musk's Control Over Tesla Despite Stockholders' Criticism of Tesla's Corporate Governance Structure

135. Whenever stockholders make attempts to weaken Musk's control over the Company, Musk and his fellow Board members defeat those efforts or ignore them. For example, Tesla's bylaws contain a supermajority voting requirement for any changes at the Company, including a merger, acquisition or changes to the

Board's compensation. Earlier in 2016, Musk owned nearly 27% of Tesla's stock. Now Musk owns nearly 20% of Tesla's stock, but he also has very large quantities of vested stock options that he can exercise to increase his voting stake at any time. The supermajority voting requirement, therefore, gives him effective control to defeat any action requiring stockholder's approval if he does not agree with that particular action.

136. Certain stockholders began challenging Tesla's supermajority voting requirement at Tesla's 2014 annual meeting. In this regard, James McRitchie ("McRitchie"), a Tesla stockholder, who focuses on corporate governance, spoke at that annual meeting, and urged stockholders to adopt a proposal to eliminate this requirement. Specifically, McRitchie stated that supermajority requirements are "an impediment to good governance." The Board voiced its opposition to the proposal, and it was defeated, even though 42% of Tesla's stockholders voted in favor of this proposal.

137. Similarly, at Tesla's 2016 annual meeting, McRitchie submitted another proposal to eliminate supermajority voting requirements from Tesla's charter and bylaws, and replace them with a simple majority requirement. As expected Musk's controlled Board recommended "against" the proposal.

138. In contrast to the Board's recommendation, Institutional Shareholder Services, Inc. ("ISS"), a leading provider of proxy research to institutional

investors, recommended that stockholders vote "for" the proposal to reduce supermajority voting requirements. ISS noted that "[r]equiring more than a simple majority may permit management to entrench itself by blocking amendments that are in shareholders' best interests. The company's current supermajority vote requirements would apply, for example, to any attempt to declassify the board or allow shareholders to take action between annual meetings[.]" Indeed, ISS scored Tesla's Board Structure a dismal 9; with a score of 1 indicating lower governance risk and a 10 indicating higher governance risk.

139. Although the proposal did not pass, again 42% of the votes cast were in favor of it. Accordingly, absent the self-interested votes casted by Tesla-insiders, the proposal would have likely passed both times.

140. Other stockholders, like the CtW Investment Group ("CtW"), have also complained about Tesla's corporate governance, including issues related to Musk's control over the board. Specifically, on August 1, 2014, CtW sent a letter to Gracias about how Tesla's governance needs to be restructured to be more consistent with other publicly traded companies. CtW noted that Tesla should "consider transitioning from a governance model that is reminiscent of the firm's venture-backed roots to one that reflects Tesla's more dispersed institutional investor base." In particular, CtW focused on the Board's lack of independence, stating that "[w]e are concerned that all but one of the directors classified as

independent by the board maintain outside affiliations with Mr. Musk…In addition, the current directors do not only appear to have professional or personal ties to our current CEO but their primary places of business are located in Silicon Valley, making them part of an industry culture known for is homogeneity." CtW urged Tesla to make its Board more diverse.

141. CtW also criticized Musk's dual role as CEO and Chairman. Specifically, CtW stated "Overseeing the complexity of Tesla's day-to-day operations is certainly a demanding job. Because Mr. Musk is also the Chairman and CEO of SpaceX, as well as Chairman of the board of SolarCity, another publicly traded company, he may run the risk of being spread too thinly to perform effectively in all of these roles. Therefore, it becomes critical Tesla's board entrust the role of Chairman to an independent director so that Mr. Musk may focus his full attention on his role as CEO of Tesla and to provide a better balance of power between the CEO and the Board."

142. CtW further urged Tesla to get rid of its supermajority voting requirement and its classified board structure.

143. After the announcement of the Proposed Acquisition, CtW sent another letter to Gracias on June 28, 2016, stating "In the wake of the proposed acquisition of SolarCity, we are compelled to reiterate our long-standing concern about corporate governance at Tesla." CtW then stated that the "core problem with

Tesla's governance is the continuing dominance of the board by Mr. Musk." CtW explained that "In the early days of a new company it is understandable that a dynamic founder like Mr. Musk will play a dominant role across the corporation. However, over time, leadership and responsibility must be shared by a wider number of individuals and across a larger number of internal structures. In particular, once a company becomes public it must form a credible, accountable and thoroughly independent board of directors so that outside stockholders, who lack the time and resources to monitor in detail the activities of the company, as confident that their interests are being protected."

144. In this letter, CtW outlined the relationships between Musk, Kimbal, Gracias, Jurvetson, and Ehrenpreis, which create corporate governance risks at Tesla, including how these relationships can "give rise to self-dealing behavior when transactions like that proposed with SolarCity are undertaken."

145. CtW demanded Tesla "move immediately to remedy its underlying governance deficiencies" by implementing certain proposals. Those proposals included, (1) "recruiting two genuinely independent directors to the board to a form a 'Special Transaction Committee' [with Denholm] to re-consider the Proposed Acquisition, with the ability to terminate it, (2) separating the roles of Chairman and CEO, (3) declassifying the board so that stockholders have an annual say on the election of all directors; and (4) amending Tesla's guidelines to

state that "immediate family members of any current board member or member of the senior executive should not concurrently serve on the board of directors", which would require that Kimbal resign from the Board.

146. The Board has seemingly ignored the letters from CtW as it pushes forward with the Proposed Acquisition without making any corporate governance changes.

V. Currently, Tesla's Business Is At a Critical Juncture As It Faces Productions Delays and a Cash Crunch

147. Telsa has always had problems meeting its production goals, and those problems usually require the Company to raise additional capital to reach its production goals.

A. Tesla's History of Production Delays Shows That Tesla Needs To Focus Its Resources On Producing Its Model 3, And Completing Construction of the Gigafactory To Remain Viable

148. After significant delays and a financial crisis that nearly killed the Company, the Roadster was finally launched in 2008, at a cost of approximately $100,000; instead of in 2006 as originally planned. By May 2009, however, Tesla had recalled 75% of its Roadsters made between March 2008 and April 2009. Tesla no longer produces the Roadster.

149. Currently, Tesla produces and sells two fully electric vehicles: the Model S sedan and the Model X sport utility vehicle. Deliveries of the Model S began in June 2012 and as of December 31, 2015 Tesla has delivered over 107,000

new Model S vehicles worldwide. Tesla has continued to improve the Model S by introducing performance, all-wheel drive dual motor, and autopilot options, as well as free over-the-air software updates. Deliveries for the Model X began in the third quarter of 2015. Tesla is currently ramping up production and deliveries of the Model X in the United States and plans to offer it in Europe and Asia in 2016.

150. Tesla appears to be producing a solid product, but like any car company or business, Tesla's challenge now relates to the execution. In this regard, Tesla must be able to manufacture a quality product at a reasonable price and make enough sales to justify the Company's $29 billion valuation.

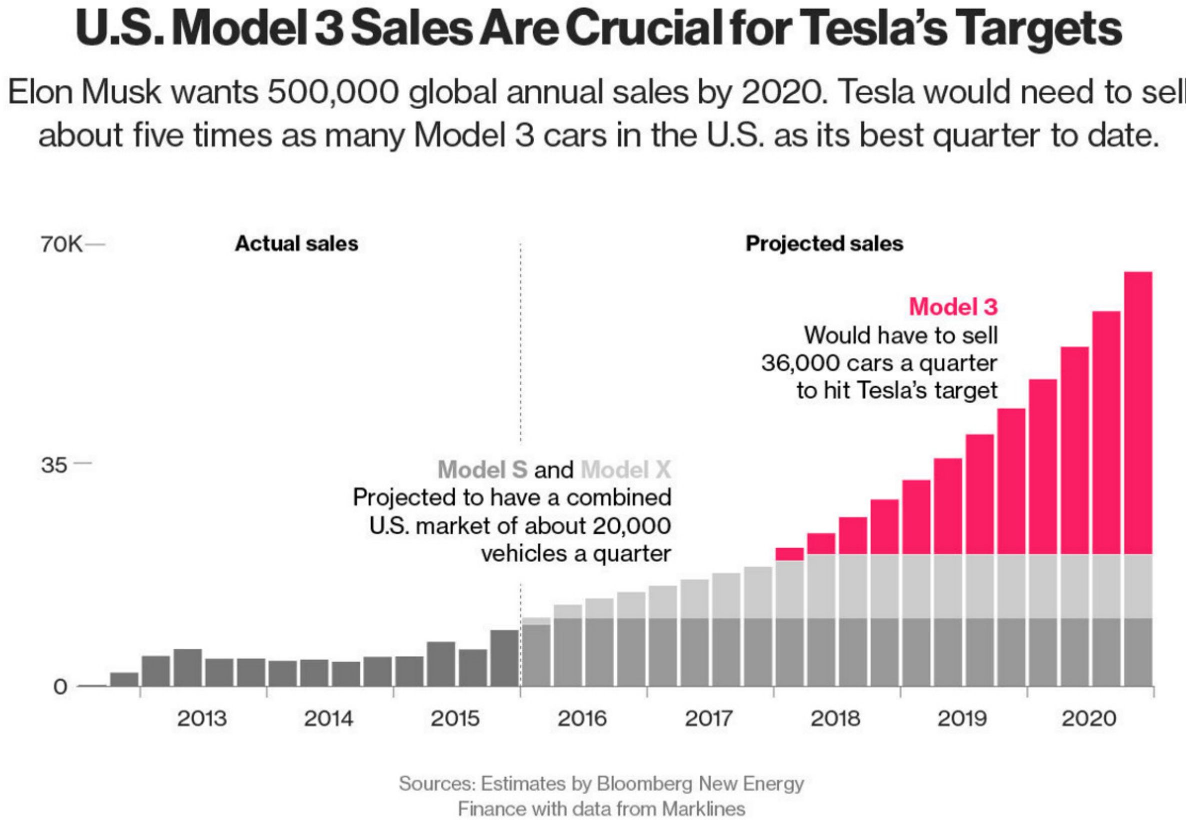
151. On March 31, 2016, the Company unveiled its fourth fully electric vehicle, the Model 3, which is a lower priced sedan. When the Model 3 was unveiled, the Company projected that it would achieve volume production and deliveries of the Model 3 in late 2017. Due to the Model 3's lower price point ($35,000, compared to the Model X's $80,000 base price and Model S's $70,000 base price), Tesla expects to produce and sell higher volumes of it than its Model S or Model X vehicles.

152. Notably, the Model 3 is the culmination of the second step in Musk's first Master Plan. The Model 3 is a lower priced sedan that should appeal to a broader swath of customers, and finally project Tesla from a specialty car company into the mainstream. Presumably, the Model 3 will create the real profitability that

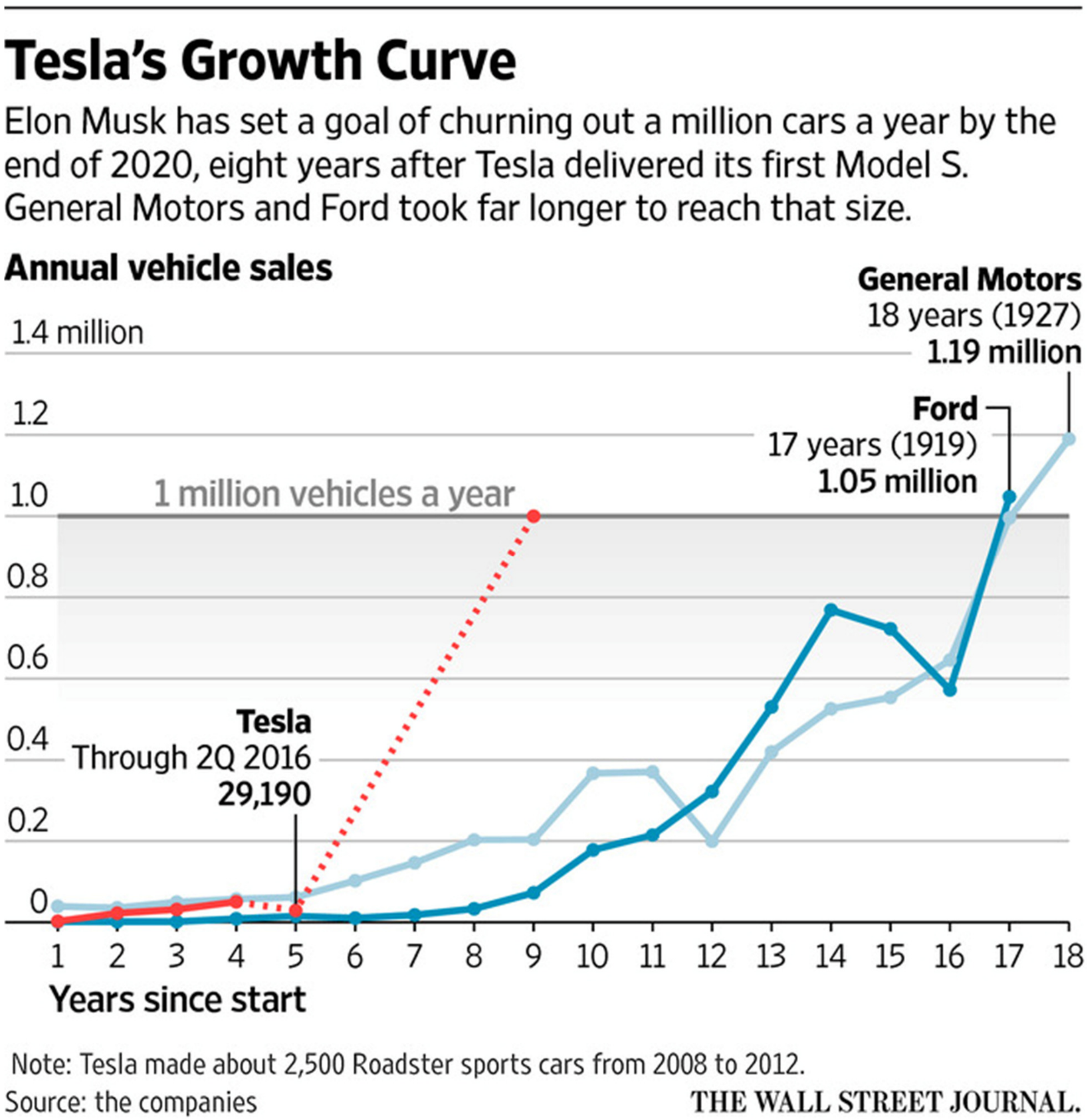
Tesla's stockholders have long been waiting for. In fact, analysts at the investment research firm, Trefis, estimated that the Model 3 accounts for nearly 50% of Tesla's current valuation.

153. As of May 15, 2016, Tesla held deposits from about 373,000 customers who had made $1,000 deposits for the Model 3, projected by Tesla to be delivered in late 2017. Because of the significant demand for the Model 3, Tesla advanced its 500,000 total vehicle build plan (combined for Model S, Model X, and Model 3) to 2018, two years earlier than previously planned.

154. Tesla's production target of 500,000 vehicles in 2018, however, will pose a sizable challenge for a company that produced only 50,580 vehicles in 2015, and has a history of production difficulties. Analysts at UBS have openly questioned Tesla's ability to increase its production tenfold, referring to Musk's production targets as "ridiculously aggressive."



155. Notably, even if Tesla were to achieve its fanciful target of 500,000 cars by 2018, it would still be far shy of the amount of cars sold by Ford and GM. In 2015 alone, GM and Ford sold 10 million and 6.6 million cars, respectively. Remarkably, Wall Street has largely ignored the disparity between the companies; Tesla has a market capitalization of approximately a third of Ford and GM combined. As revealed in the chart below, Tesla has a long way to go.



156. Indeed, based on Tesla's track record, a smooth, problem-free production of the Model 3 is unlikely and UBS's hesitations are warranted. Over the past five years, Musk has made more than twenty production and financial projections for Tesla that it has missed. For each of Tesla's previous vehicles (the

Roadster, Model S, and Model X) the launch dates were delayed at least six months. Specifically, the Roadster was delayed about nine months, the Model S more than six months, and the Model X was delayed more than a year and a half.

157. As recently as April 4, 2016, Tesla announced that its first quarter of 2016 "delivery count was impacted by severe Model X supplier parts shortages in January and February that lasted much longer than initially expected." Tesla peculiarly deflects responsibility for the delays, stating that "[t]he root causes of the parts shortages were: Tesla's hubris in adding far too much new technology to the Model X in version 1, insufficient supplier capability validation, and Tesla not having broad enough internal capability to manufacture the parts in-house."

158. The delays in the Model X did not come cheaply. Analysts at Morgan Stanley have estimated that the delays in the Model X have "added hundreds of millions of dollars to costs while potentially losing some customers."

159. Indeed, part of the delays in the Model X's production can be attributed to Musk's overbearing control over the Company. For instance, *The Wall Street Journal* reported that Musk personally caused the delay because he was unsatisfied with and distraught over the molding that runs along the Model X's doors. Musk demanded that the molding look like a single strip with no crack where the door opened. When Musk found out that Tesla's engineers were unable to incorporate his design because it was "impossible," he fired Tesla's global head

of production (one of the highest paid executives at the Company) and "fixed it [him]self." In addition to Tesla's global head of production, *Bloomberg* reported that the molding issues and delays in Model X productions resulted in Musk's termination of Tesla's vice president of manufacturing.

160. Now it appears that Musk is preparing its customers for further delays in the Model 3's production. Specifically, during a conference call with analysts in May 2016, Musk told investors that he expected the Model 3 to begin production on July 1, 2017. A mere two months later, however, Musk asked rhetorically: "Do I think production of the Model 3 will start on July 1 of next year?" to which he responded "No."

161. Aside from getting the Model 3 ready for sale, Tesla is also focusing on another significant and costly project, the construction of a factory near Reno, Nevada (*i.e.,* the "Gigafactory"). The Gigafactory will be used to integrate battery material, cell, module and battery pack production in one location. The battery packs manufactured at the Gigafactory will be used in Tesla's vehicles and Powerwall products[3], and they will be vital for the future profitability of the Company's energy storage products and vehicles.

[3] Tesla's energy storage products include the 7 kilowatt-hour and 10 kilowatt-hour Powerwall for residential applications, and the 100 kilowatt-hour Powerpack for commercial and industrial applications.

162. Although Tesla began construction of its Gigafactory in June 2014, it is not expected to be completed until 2020. At that point, the total capital expenditures associated with the Gigafactory are projected to be $4 to $5 billion, of which approximately $2 billion is expected to come from Tesla.

163. On July 25, 2016, the *Wall Street Journal* published an article, "Tesla Can't Afford Any Wasted Time", which highlighted the pressures on Tesla, and how Tesla must quickly scale up its production of the Model 3 and complete construction on the Gigafactory. In particular, this article stated that "Tesla's lofty market valuation depends in large part on a successful Model 3 launch, which is set for late next year." In addition, the article focused on the timing pressures that Tesla faces due to competition from traditional car companies. Specifically, in July 2016, Daimler indicated its growing emphasis on electric vehicles, joining Volkswagen, and GM. The article noted that some of Tesla's competition will beat the Model 3 to market as well.

164. Moreover, in its public filings, the Company has highlighted the importance of the Gigafactory and Model 3, and its reliance upon the success of these ventures in order to achieve regular profitability for the first time in its history. Specifically, Tesla noted that any "[p]roblems or delays in bringing the Gigafactory online and operating it in line with [its] expectations could negatively affect the production and profitability of [Tesla's] products, such as Model 3 or

Tesla Energy products." This risk is heightened due to the fact that Tesla has "limited experience in building a factory, and no direct experience in the production of lithium-ion cells."

165. Tesla stressed that "the cost and complexity of building and operating the Gigafactory could exceed [its] current expectations and the Gigafactory may take longer to bring online for lithium-ion cell and battery pack production than [its] anticipate[s]. … Any such problems or delays with the Gigafactory could negatively affect [Tesla's] brand and harm [its] business, prospects, financial condition and operating results."

166. Furthermore, Tesla's success for the Model 3 is heavily dependent on the Gigafactory's ability to reduce the cost of producing the vehicles' batteries. "If [Tesla is] unable to adequately reduce the manufacturing costs of Model S, control manufacturing costs for Model X, or otherwise control the costs associated with operating [its] business, [its]financial condition and operating results will suffer."

167. In addition to its primary focus on getting the Model 3 into mass production and completing the construction of the Gigafactory, Tesla faces other serious issues that require its attention. In this regard, Tesla has been under increasing regulatory scrutiny related to alleged defects in its highly touted semi-autonomous autopilot feature, which resulted in the death of the driver. Tesla is currently under a federal investigation by the National Highway Traffic Safety

Administration for the fatal car crash, as well as the SEC, for failing to disclose to investors the fatal crash for which its autopilot feature may be responsible.

168. In addition to internal factors impacting Tesla's business, it will soon be facing greater external threats to its business. First, the Model 3 will not be the only mass-market electric vehicle. GM's Chevy Bolt is expected to be sold and available prior to the first delivery of the Model 3, and will be able to drive 200 miles on a charge and cost $35,000. Many of the luxury car brands will also be releasing inexpensive electric cars, as well. Second, many of the federal and state subsidies available to Tesla customers may not be available in the future. For example, once Tesla produces 200,000 domestic electric vehicles a U.S. tax credit of $7,500 will gradually be phased out until it is no longer be available to Tesla purchasers.

B. Tesla Faces an Increasing Cash Crunch

169. By adhering to Musk's first Master Plan, Tesla has developed some of the most desired and highly-rated automobiles. To reach this point, Tesla has spent a large fortune, which it continues to do to this day in order to pay for its projects of the future – the Gigafactory and the Model 3 production. Tesla is now confronted with cash flow issues, putting its future projects (and the Company) in jeopardy.

170. Like SolarCity, Telsa has burned through cash since its establishment. For example, in years 2013 through 2015, Tesla burned through $517.5 million, $1.06 billion, and $1.6 billion, respectively. After burning through hundreds of millions and billions in cash in 2013 through 2015, Tesla reported net losses of $74 million, $294 million, and $889 million, respectively.

171. Tesla's history of being in a precarious financial condition is no secret. In fact, in December 2015, Musk stated: "I think we just made it by the skin of our teeth. These days, the last few years, it's really I'd say the last two years is when Tesla's achieved a level where it's not facing imminent death. Even as recently as early 2013, we were operating with maybe one to two weeks of money."

172. In 2016, Tesla has shown no sign of improving its cash burn rate and profitability (or lack thereof). In the first quarter of 2016, Tesla burned through $500.7 million and reported a net loss of $282.2 million. On August 5, 2016, Tesla announced more disappointing financial results for the second quarter of 2016. Specifically, Tesla reported an increase in revenue, but disclosed that it spent $512.8 million in the quarter, resulting in a net loss of $293 million (up approximately 60% over the same quarter a year prior).

173. Moreover, back in February 2016, Tesla projected that it would be cash-flow positive and achieve non-GAAP profitability by the year's end. Within

three months of its projections, however, in its Shareholder Letter for the first quarter of 2016, dated May 4, 2016, Tesla quickly retracted its projection, adding that it will "likely" still require additional capital.

174. After the second quarter of 2016, the Company projected it would burn through $2.25 billion in capital expenditures for the full year (up from its projection of $1.5 billion in February 2106), which will be necessary to support its production plans for the Model 3, and a 30% increase in total non-GAAP operating expenses for the full year.

175. Consequentially, Tesla has incurred a sizable debt load resulting from its relentless cash burn rate. As of June 30, 2016, Tesla had a total of $9.3 billion in liabilities, $3.7 billion of which is due within one year, with only $3.2 billion in cash and cash equivalents on hand.

176. In August 2016, Musk disclosed that Tesla will likely require an additional equity capital raise for hundreds of millions or billions of dollars in order to fund the Model 3 production and de-risk Tesla's balance sheet. Later in August 2016, Tesla further disclosed that it has to pay its bondholders $422 million in the third quarter, and that it will need to raise additional money by the end of the year. Tesla requires the additional capital, among other things, to complete the Proposed Acquisition.

VI. Tesla's Proposed Acquisition of SolarCity Personally Benefits Musk, Along With His Family and Friends, While Putting Tesla's Future At Risk

177. With SolarCity on life support, Musk quickly engineered a deal for Tesla to rescue SolarCity, along with nearly $1 billion worth of investments made by himself, and his family and friends in that company. Specifically, on June 21, 2016, Tesla announced on its website that the Board had approved a preliminary all-stock proposal to acquire SolarCity. Notably, Tesla's announcement also disclosed that it was contemplating acquiring all of SolarCity's common stock at an exchange ratio of 0.122 to 0.131 shares of Tesla common stock for each share of SolarCity common stock, subject to due diligence. That exchange ratio represented a value of $26.50 to $28.50 per share of SolarCity common stock based on the volume weighted average price of shares of Tesla common stock on the NASDAQ for the five days ending June 20, 2016.

178. After announcing the Proposed Acquisition, Tesla had a conference call, where Musk stated that the due diligence phase should be conducted very quickly, so that there could be a signed merger agreement "in the next two [or] three weeks[.]" As such, before either Tesla's or SolarCity's board had voted on any final deal, Musk had informed the public that a deal would happen.

179. Unsurprisingly, a little more than a month after the Proposed Acquisition was announced, on July 31, 2016, Tesla's Board approved and entered into a merger agreement with SolarCity. Specifically, Tesla will acquire SolarCity, through its wholly-owned subsidiary, Merger Sub, for 0.11 shares of Tesla common stock per outstanding share of SolarCity, valuing SolarCity common stock at $25.37 per share based on the 5-day volume weighted average price of Tesla shares as of July 29, 2016. Thus, Tesla provided SolarCity with an equity value of $2.6 billion, even though that company is on the verge of failure.

180. The Proposed Acquisition is subject to the approval of a majority of disinterested stockholders of Tesla. The merger agreement also provided for a 45-day go-shop period, but no superior bidder emerged for the cash-draining company.

A. The Proposed Acquisition is the Result of an Unfair Process

181. The process for the Proposed Acquisition was unfair because it was dominated by Musk and others who were interested in securing nearly $1 billion in personal benefits for themselves at Tesla's expense.

182. On August 31, 2016, Tesla filed the S-4 concerning the details of the Proposed Transaction. The S-4 revealed that the actions of Musk, and other conflicted individuals, including Tesla directors, dominated the process from the beginning to the end. Specifically, Musk claims that the idea of Tesla acquiring

SolarCity began in 2006 with his blog post entitled "The Secret Tesla Motors Master Plan", in which he stated that Tesla sought to "expedite the world's move from a mine-and-burn hydrocarbon economy to a solar electric economy."

183. The S-4 further revealed that Musk and his cousin, L. Rive, have repeatedly discussed the possibility of Tesla acquiring SolarCity since 2011. L. Rive, who has called Musk "one of the greatest people out there. Not only a good business partner, but a phenomenal friend", was willing to do whatever his cousin asked him to do. For example, when asked about competition between himself, his brother and his cousins, L. Rive responded, "Business competition? No. There is no competition. Elon trumps all."

184. In February 2016, Musk suggested to L. Rive that more serious consideration of a potential combination between Tesla and SolarCity was in order, L. Rive was ready to assist Musk with his suggestion. By February 29, 2016, Musk had Jason Wheeler, Tesla's CFO, present the Board with preliminary considerations related to acquiring SolarCity at a special board meeting. Notably, SolarCity stock fell from opening at $35.20 per share on February 1, 2016 to closing at $18.51 per share on February 29, 2016.

185. Initially, the Board correctly determined that evaluating a potential transaction of any solar energy company did not make sense due to the potential impact of Tesla's management's time and resources in light of Tesla's execution of

ongoing operational and strategic initiatives, including Tesla's ongoing production ramp of its Model X vehicle.

186. Musk, however, was undeterred by the Board's initial unfavorable reaction to acquiring SolarCity. As Musk's ex-wife, Justine, has reflected: "I do think of [Musk] as the Terminator. He locks his gaze on to something and says, 'It shall be mine.'" Musk was determined that Tesla would acquire SolarCity, so he used his influence over the Board to make it happen.

187. On May 31, 2016, the Board held a regular meeting, where Musk again raised the idea of acquiring a solar energy company, like SolarCity. This time, the Board quickly followed Musk's lead, directing Tesla's management to assess a potential acquisition of SolarCity, along with other potential targets, to assist the Board with its review and evaluation of any acquisition. Showing that the Board was seriously considering Musk's idea of acquiring SolarCity, it also directed management to get legal analysis and financial analysis concerning any potential deal. Management quickly engaged the law firm of Wachtell, Lipton, Rosen & Katz and the financial firm, Evercore, to perform these tasks.

188. By this time SolarCity was in big financial trouble with no real prospects to provide funding to keep the business operating. Musk and his cousins were presumably under pressure to find a savior for SolarCity.

189. Less than three weeks later, on June 20, 2016, the Board held a special meeting, where it approved a preliminary proposal to acquire SolarCity.

190. No legitimate business reason existed for Tesla to move so quickly to acquire SolarCity, other than to save Musk's, and his family's and friends' financial interests worth almost $1 billion, along with Musk's legacy in the solar energy field.

191. To paper the record, Tesla made a superficial attempt to address Musk's and Gracias' obvious conflict of interests. In this regard, Tesla stated: "as a result of their overlapping directorships, Elon Musk and Antonio Gracias have recused themselves from voting on this proposal at the Tesla board meeting at which it was approved, and will recuse themselves from voting on this proposal at the SolarCity board as well." Musk's and Gracias' recusal from voting on the deal failed to provide the process with any validity. Furthermore, the Board made no attempt to address the other conflicted directors' participation in the process.

192. Patrick Jobin, a CreditSuisse analyst, noted: "Despite the recusals from voting and formation of the special committee, many are still frustrated by the board discussions that have already taken place, with interested parties having the ability to influence the discussions." Jobin's report concluded that due to the overlapping boards, it is "nearly impossible" for board discussions to have not been "influenced by interested parties." Jobin was correct.

193. During a Tesla conference call on June 22, 2016, Tesla confirmed that Musk and Gracias would remain a part of the process despite their readily apparent conflicts of interests. Specifically, during this call, an analyst from Barclays Capital asked Todd Maron ("Maron"), Tesla's General Counsel (and Musk's former divorce attorney), "when you say [Musk and Garcia will be] recused from voting does that also mean recused from discussion and not present in the room when this was brought up?" Maron responded, "[n]o, it was recused from voting."

194. The S-4 confirms that Musk and Gracias participated in the process, and that Musk participated on **both** sides of the deal.

195. In fact, Musk, along with the Rives, Fisher, and Straubel, attended SolarCity's Board meeting on June 22, 2016, where that board first discussed Tesla's proposal, and then formed a special committee.

196. Then on July 5, 2016, the Tesla Board held a special meeting, which both Musk and Gracias attended. During this meeting, the key terms of the Merger Agreement and the negotiating strategy was discussed. The Tesla Board, including Musk and Gracias, also voted to authorize the delivery of a merger agreement to SolarCity.

197. In addition, on July 14, 2016, Musk and the head of SolarCity's special committee had a private discussion that included, among other things, a request for Musk to sign a voting agreement related to his SolarCity stock.

198. Musk and Gracias also participated in a Tesla Board meeting on July 19, 2016, where due diligence issues were discussed before recusing themselves while the remaining directors discussed the potential acquisition price. Musk, again, participated at the Tesla Board's July 22, 2016 meeting, where he discussed his views and expectations about SolarCity's operations after Tesla acquired it, and SolarCity's position in the solar energy industry in general.

199. Musk and Gracias both attended the Tesla Board meeting on July 24, 2016. At this meeting, they expressed their views about their expectations following a potential acquisition of SolarCity related to SolarCity's operations and its competitive positioning relative to the solar energy industry generally.

200. On July 29, 2016, Musk, along with the Rives, Fisher and Straubel, attended the SolarCity board meeting, where Lazard, SolarCity's financial advisor, presented its fairness opinion related to the Proposed Acquisition. Then, Musk, along with the other attending SolarCity directors, unanimously approved the deal with Tesla.

201. Musk, the Rives, Fisher and Straubel also attended SolarCity's board meetings on August 24 and 26, 2016, where Lazard presented information concerning its computational error, which caused it to recalculate its discounted cash flow analyses. At this meeting, Musk and the other present directors voted to

affirm their recommendation that the stockholders of SolarCity approve the transaction with Tesla.

202. As is blatantly obvious, Musk is conflicted for a multitude of reasons, which tainted the entire process. Most importantly, Musk is the controlling stockholder of Tesla and SolarCity's largest stockholder. Musk is also a significant investor in SpaceX, which has purchased hundreds of millions of dollars in SolarCity's unsecured debt. He is an investor in investment funds managed by DFJ and VMC, which are both investors and directors in SpaceX, Tesla, and SolarCity. L. Rive and P. Rive, SolarCity's co-founders, executives and directors, are Musk's cousins. Moreover, Musk and DFJ have previously worked together when they funded L. Rive's previous company, EverDream.

203. Notably, Musk's personal liquidity is tied to his personal lines of credit. In this regard, Musk does not earn a salary from any of his three companies. Instead, he relies upon his stock ownership in Tesla and SolarCity, and pledges his stock from those companies. Musk currently has $475 million in personal credit lines from Goldman Sachs and Morgan Stanley. Currently, Musk's personal lines of credit are secured by his pledge of 11.6 million Tesla shares (approximately 35% of his personal stake in the Company), and 6.7 million shares of SolarCity (approximately 30% of his personal stake in SolarCity).

204. Similarly, 208,014 shares beneficially owned by Gracias (approximately 48% of his personal stake in Tesla) and 148,333 shares beneficially owned by Kimbal (approximately 73% of his personal stake in Tesla) are pledged as collateral to secure certain indebtedness.

205. Musk caused Tesla to bailout SolarCity because of his personal goals for the Company, which are incongruous with that of Tesla's public stockholders. Musk's reason for investing in Tesla "is to help expedite the move from a mine-and-burn hydrocarbon economy towards a solar electric economy, which I believe to be the primary, but not exclusive, sustainable solution[,]" whereas directors have a fiduciary duty to their public stockholders to run companies for all of its stockholders' best interests.

206. Like Musk, Gracias was motivated to offer a bailout of SolarCity, at the expense of Tesla's best interests. If SolarCity were to fail it would have a serious impact on Gracias, both directly, due to his considerable investment in the company, and indirectly, as a result of its effect on SpaceX, for which he is a director and has invested at least $218 million in. Moreover, Gracias is as stone-headed as Musk. A long-time associate of Gracias noted that "[h]e'll put money into an undermanaged business; he'll put people into it… He will not let something fail."

207. In addition, as described above, four of the purportedly independent directors, Kimbal, Jurvetson, Ehrenpreis, and Buss, each have significant and longstanding relationships with Musk and/or SolarCity, such that their impartiality on the Proposed Acquisition is completely illusory. Kimbal is Musk's brother and cousins with P. Rive and L. Rive. Buss worked as SolarCity's CFO as of February of this year, and continues to serve as an advisor to SolarCity while owning approximately $1 million of SolarCity's stock. Jurvetson's co-managing director at DFJ, Fisher, is SolarCity's fourth largest stockholder and stands to personally benefit by using Tesla to bailout SolarCity. Likewise, Ehrenpreis is a managing partner of DBL, which was an investor in SolarCity, Tesla, and SpaceX. Further, Ehrenpreis' co-managing partner at DBL is a director and seventh largest stockholder at SolarCity.

208. In fact, on Tesla's initial conference call discussing the Proposed Acquisition, Musk inadvertently highlighted the farce of an "independent director" vote, stating that it is "extremely unlikely" that the purported independent board members of Tesla and SolarCity will not recommend in favor of the Proposed Acquisition.

209. Indeed, Musk has a more personal reason to acquire SolarCity, without Tesla's offer to acquire SolarCity, the company's stock price would have continued to free-fall, which may trigger a margin call on Musk's stock that

secures his personal lines of credit. In addition, if SolarCity fails, Musk's legacy in the solar energy sector fails as well.

210. By bailing out SolarCity, Musk not only saved his own SolarCity stock from a margin call and his legacy, but investments made by his family and friends too. As disclosed in the S-4, L. Rive pledged 1,371,996 shares of SolarCity (approximately 34% of his personal holdings) as collateral to secure certain personal indebtedness. Likewise, Straubel pledged 411,623 shares of SolarCity stock (approximately 53% of his personal holdings) as collateral to secure certain personal indebtedness.

211. Musk and the Rives are further saving their investments in the Solar Bond Investment too. Specifically, after the Proposed Transaction was announced, SolarCity attempted to raise additional capital through a $124 bond offering. Even though the bond offered an extremely high interest rate of 6.5% for an eighteen month period, the public largely stayed away for these bonds. Musk and the Rives, however, bought $100 million worth of these bonds. As such, they are unjustly enriching themselves by forcing Tesla to eventually pay them this money after it acquires SolarCity.

212. In addition, if Tesla does not bail out SolarCity, the SolarCity stock options held by Musk, Gracias, Straubel, Fisher, Pfund, and the other members of SolarCity's board will become worthless. For example, L. Rive and P. Rive each

have over 1.6 million vested stock options of SolarCity shares that will be converted into Tesla stock options based on transaction's the exchange ratio.

213. In a perplexing defense of the self-described "unique relationship" between Tesla and SolarCity, in which "Tesla is favoring SolarCity or SolarCity is favoring Tesla," and the Proposed Acquisition, Musk stated that Tesla must acquire SolarCity in order to prevent future conflicts of interest. Amazingly, Musk's retort defending the Proposed Acquisition totally encapsulates the issues with it—*i.e.* Musk has routinely dominated and controlled Tesla for the benefit of SolarCity, in disregard of his duties owed to Tesla's stockholders.

B. The Board Approved Tesla's Acquisition of SolarCity At An Unfair Price

214. Absent Musk's desire to advance his personal ambitions and protect the investments he and his associates made in SolarCity, the Proposed Acquisition makes no financial or business sense.

215. The $2.6 billion purchase price to acquire SolarCity cannot be justified under any metric. Unsurprisingly, market analysts and investors have been overwhelmingly negative towards the Proposed Acquisition.

216. A July 12, 2016 article on forbes.com entitled "Bailing Out SolarCity Costs Tesla Investors $7.4 Billion," harshly criticized the deal, concluding that, "even in the most optimistic cash flow scenario for [SolarCity], Tesla should pay no more than $332 million, or $3/share for SolarCity."

217. An article entitled "Why Tesla Shareholders Should Be Nervous About Acquiring SolarCity" also harshly criticized the Proposed Acquisition, noting that the "deal feels like it's less about synergies between the two companies than about Musk wanting to use the resources of a company that's in relatively good shape to help one that's struggling." The article also emphasized that, given SolarCity's balance sheet, the actual cost to Tesla's stockholders to acquire SolarCity is closer to $5.2 billion. Specifically, as of March 31, 2016, SolarCity had over $1.3 billion in long-term debt, over $200 million in solar bonds, nearly $900 million in convertible debt and nearly $625 million in solar asset-backed notes, which was offset by just $362 million in cash and $52 million in restricted cash.

218. Adam Jones, a Morgan Stanley analyst and a long-time cheerleader of Tesla, hoarsely criticized Tesla's initial proposal, stating that the proposed transaction would not help Tesla sell cars, improve its cash burn, or improve its access to capital markets. Following the announcement of that proposal, Morgan Stanley quickly reduced its price target for Tesla's stock from $333 to $245 per share.

219. Colin Rusch, an analyst at Oppenheimer & Co., downgraded his price target for Tesla, stating that "investors are likely to view [the June Proposal] as a bailout for SolarCity and a distraction to Tesla's own production hurdles," and that

Oppenheimer & Co. "does not view this acquisition as the best and highest use of [Tesla's] capital and human resources[.]"

220. UBS analysts stated that the Company's acquisition of SolarCity was an unnecessary cash burn and an "unneeded distraction" for Tesla at a time when the Company should be focused on its already difficult Model 3 rollout. UBS's analysis charged that "SolarCity's GAAP losses could be a significant drag [on Tesla, and] . . . SolarCity would continue to require at least upfront capital investment to grow its business, likely increasing overall cash burn for Tesla."

221. Moreover, Tesla's attempt to acquire SolarCity could not come at a worse time. Tesla already burns through an excessive amount of cash to fund its vastly non-profitable operations. In 2015 alone, Tesla burned through $789.9 million in cash related to its operating activities. Between 2013 and 2015, Tesla spent over $3.1 billion dollars and had net losses of over $1 billion. Going-forward, even without the Proposed Acquisition, Tesla is going to need significant cash in connection with further development of the Gigafactory and Model 3. Indeed, in May 2016, Tesla announced that it would have to issue up to $2 billion in common stock in order to fund its production plans for the Model 3. Tesla ended up selling $1.4 billion in common stock with the remaining $600 covering Musk's stock options.

222. By acquiring SolarCity, which has its own excessive cash burn rate, Tesla will further constrain its abilities to generate sufficient cash flow and grow its own business. In 2014 and 2015, SolarCity spent over $1 billion in connection with operating activities and burned through $3.89 billion in cumulative free cash flow. Indeed, SolarCity's interest expenses alone (approximately $56 million and $91 million in 2014 and 2015, respectively) were nearly as much as it reported in gross profit (approximately $79 million and $119 million in 2014 and 2015, respectively). Through the first half of 2016, SolarCity has spent over $388 million in connection with operating activities and $1.2 billion in cumulative free cash flow. Despite burning through such large amounts, SolarCity never saw a profit.

223. As the *Wall Street Journal* stated in an August 1, 2016 article, "Tesla latching on to SolarCity is the equivalent of a shipwrecked man clinging to a piece of driftwood grabbing on to another man without one." The article highlighted the fact that "Tesla burned through 50 cents of cash for each dollar of revenue in the past four quarters, while SolarCity consumed a whopping $6.00."

224. The article also cautioned that:

> In terms of actual cost-benefit for Tesla, bolting on SolarCity presents a double dose of danger. While it is being bought for stock, pending shareholder approval of the deal, it adds another cash drain when Tesla is spending heavily on starting production of its mass-market Model 3 sedan and finishing its battery "gigafactory." A more immediate danger is that skepticism about the deal casts more doubt

> on Tesla itself, dragging on its valuation. It can ill afford that as it makes raising fresh capital more dilutive.

225. A June 23, 2016, MarketWatch article entitled "Three reasons to be wary of a Tesla-SolarCity deal," stated that analysts from Barclays had similar fears. Barclays' analysts felt that "there's little in the way of synergies [between the two companies], . . . and much in the way of cash burn—a perennial concern with Tesla." The analysts further cautioned that the combined company "is likely to magnify the losses and cash burn that both were seeing individually". Those analysts also cautioned that after combining the current non-GAAP estimates for both companies, they forecast pretax losses between $1.3 billion to $1.4 billion in 2016 through 2018 for a combined company.

226. Multiple market analysts have commented that the combination of Tesla and SolarCity makes no sense from a business or financial perspective, and that the Company's claimed $150 million in synergies between the two companies is not likely to occur.

227. A June 25, 2016 *Barron's* article entitled "Tesla, SolarCity Look Like a Bad Fit," highlighted that investors do not see any purported synergies between Tesla and SolarCity and "s[ee] two unprofitable companies aligning behind the name with the better cost of capital, so they can raise the billions they need to achieve Musk's bold ambitions." *Barron's* criticized Musk's claim that Tesla

customers would pick "up a $40,000 car, a $10,000 battery backup system, and a 20-year solar contract in one trip" as "implausible."

228. *New York Times* columnist Farhad Manjoo questioned the Proposed Acquisition's supposed benefits, stating: "Musk has sketched out this idea that Tesla is better when customers can get solar installation and battery installation in a very seamless way and tied together to their cars. What's unclear is why they can't do that right now, why SolarCity can't do that right now and what makes it better if these two companies are together[.]"

229. Deutsche Bank analysts separately questioned the purported synergies touted by Musk, stating that "Tesla vehicle owners primarily buy the vehicle because it's one of the best, most advanced vehicles available [and] [t]hey are generally not looking for an end-to-end energy solution."

230. Moreover, Tesla's stockholders, who have no affiliation with Musk, have additional reasons to be concerned about this deal, notwithstanding the seemingly absent business rationale for it. Specifically, in connection with the Proposed Acquisition, Tesla will issue approximately 15 million shares to SolarCity stockholders, which will further dilute Tesla's current stockholders' stake in the Company. This issuance is in addition to the $2 billion of common stock Tesla issued in May of 2016, in order to fund Model 3 production. Notably,

in May 2016, not all stockholders were diluted. Of the $2 billion shares sold, Musk received $600 million dollars' worth.

231. Furthermore, these stocks issuances will not be the end of the dilution Tesla stockholders will suffer. On a recent conference call with investors, Musk disclosed that Tesla will likely require an additional equity capital raise for hundreds of millions or billions of dollars in order to fund the Model 3 production and de-risk Tesla's balance sheet.

232. The conflict of interest presented by Musk's attempt to have Tesla acquire SolarCity was aptly summarized by Charles Elson, director of the John L. Weinberg Center for Corporate Governance at the University of Delaware, "You're supposed to get the best deal for the company on whose board you sit, but if you're on both how does that work?... The bottom line is that investors of one company or the other will lose in the transaction." Indeed, Mr. Elson's apprehension was correct. Musk used his influence and domination over Tesla to cause it to acquire a cash-burning business that will hamper the Company's future for the personal benefit of Musk, and his family and friends.

233. Even if the Board was to accept Musk's far-fetched premise that acquiring a solar panel manufacturer and installer would be accretive to Tesla, Musk has failed to demonstrate why it should acquire SolarCity at a premium as

opposed to its competitors. Thus, by acquiring SolarCity, Musk caused Tesla to significantly over pay for a solar company.

234. In fact, SolarCity's annual report shows that the Board could have seriously considered numerous alternative potential targets, including: Vivint Solar Inc., Sunrun Inc., NRG Home Solar, Sungevity, Inc., Trinity Solar, Verengo, Inc., SunPower Corporation, SunEdison LLC, Borrego Solar Systems, Inc., G&S Solar Installers, and Cenergy Power. Musk, however, caused the Board to primarily focus on his own, SolarCity.

235. In addition, the market had an even further negative reaction to the Proposed Acquisition after the announcement of Solar Bond Investment by Musk and the Rives. Specifically, S&P analyst, Efraim Levy stated that it raised "red flags" for him that the vast majority of the bonds were bought by Musk and the Rives. Levy questioned, "No one is buying it, so you guys have to buy it? And you're not buying equity, but bonds, which are more protected."

236. Similarly, on August 25, 2016, the *Wall Street Journal* published an article, "SolarCity's Bonds are Tesla's Woe", highlighting that SolarCity had "never offered such a high coupon on its debt for such a brief maturity" before. This article warned Tesla stockholders that the "higher interest costs should alarm" them, because they will inherit SolarCity's obligations if they approve the Proposed Acquisition. In fact, the article pointed out that "[g]iven the bullish

global backdrop for bonds, a company offering an interest rate as high as 6.5% on such a short maturity, should be beating back investors, if all were well."

VII. Demand Is Excused As Futile

237. The facts alleged in the preceding paragraphs show that, at a minimum, reasonable doubt exists as to whether: (1) the Board is disinterested and independent, and (2) the challenged transaction was the product of a valid exercise of business judgment.

238. Plaintiff has owned Tesla stock continuously during the time of the wrongful course of conduct and continues to hold Tesla stock.

239. Plaintiff will adequately and fairly represent the interests of Tesla in enforcing and prosecuting its rights and has retained competent counsel experienced in stockholder derivative litigation.

A. A Majority of the Board Is Interested and/or Lacks Independence Making Demand Futile

240. Demand is excused because a majority of the Board are neither independent nor disinterested in the Tesla's acquisition of SolarCity. In fact, the entire Board either lacks independence from Musk and/or is interested in the Proposed Acquisition.

241. Tesla's Board is currently comprised of: Musk, Chairman of the Board, Buss, Denholm, Ehrenpreis, Gracias, the Board's Lead Independent Director, Jurvetson, and Kimbal. Notably, all but one member of Tesla's Board,

Denholm, have longstanding deep personal and/or business relationships with Musk outside of their positions at Tesla.

242. **Elon Musk:** No questions exist that Musk is conflicted, and cannot consider a demand. In addition to his executive and Board positions at Tesla, Musk is its largest stockholder, with over twice as much as the next largest stockholder. As of August 19, 2016 Musk holds approximately 33.7 million shares in the Company or 18.4% of its voting power. Musk is also SolarCity's largest stockholder, with 22.1 million shares, or 21.9% of SolarCity's voting power. Musk also directly owns $65 million worth of Solar Bonds, and indirectly owns $165 million worth of Solar Bonds through SpaceX.

243. Indeed, while Musk does not own over 50% of Tesla or SolarCity's equity, there is little doubt amongst the respective boards, their stockholders, and Musk himself who controls the companies. As bluntly stated by Musk in December 2015, "Tesla and SolarCity, [are] my companies[.]"

244. Musk shows that he controls all aspects of Tesla. For example, when Tesla had gone without a General Counsel for over two years, Musk promoted his former divorce attorney, Maron, to the position.

245. In addition, when Tesla fell into a financial crisis in February 2013, Musk took matters into his own hands, completely disregarding his fiduciary duties as an officer and director of a public company. Specifically, during the first week

in April 2013, Musk reached out to his close friend, Larry Page at Google. He told Page that he was concerned about Tesla's ability to survive the following weeks, and told him all the reasons why. Without informing the Board, much less seeking its approval, Musk struck a handshake deal for Google to acquire Tesla. Although Musk did not want to sell Tesla, at the time the deal seemed like the only viable course for Tesla's future, and he wanted to protect his substantial personal investments in the Company. Even so Musk proposed terms to ensure that he would remain in control of Tesla for eight years or until it started pumping out a mass-market car as a requirement of any deal. The deal with Google never happened, because as Musk, Page and Google's attorneys debated the parameters of an acquisition, a miracle occurred. Tesla posted its first-ever profit as a public company, which sent its stock soaring from $30 to $130 per share. The Company had some cash again, and Musk ended the talks with Google.

246. Moreover, Tesla highly compensates its executives and directors and should easily be able to retain individuals with highly specialized knowledge and vast experience. Yet, Musk opts to populate the Board with individuals with whom he has longstanding relationships with and are loyal to him.

247. Through his control and dominance over the three companies, Musk has put in place directors that have a shared zealousness for sustainable energy and are loyal to him. Accordingly, multiple Tesla directors and officers have

longstanding ties to SolarCity, SpaceX, and Musk outside of their positions at Tesla as follows:

248. **Kimbal Musk**. First and foremost, in addition working together at Zip2 and serving together as directors at SpaceX and Tesla, Musk and Kimbal are brothers, and cousins with SolarCity's L. Rive and P. Rive. While Kimbal's professional experience has largely been in the food-services industry, he is a director for his brother's space-aeronautics company and electric-vehicle company.

249. **Ira Ehrenpreis**. Ehrenpreis is a managing partner DBL, which has invested hundreds of millions of dollars in SolarCity, Tesla, and SpaceX. DBL has representatives on Tesla and SolarCity's boards of directors, Ehrenpreis and Pfund, respectively. From 2006 through 2010, Pfund was also an Observer on Tesla's Board. It's been noted that "[t]he duo [of Pfund and Ehrenpreis] have been successfully backing entrepreneur Elon Musk [since] his early (and difficult) days." In addition to serving as a director of the company, Pfund, beneficially owns approximately 1.5 million shares of SolarCity stock, making her one of its largest stockholders. Between 2008 and 2012, DBL invested over $152 million in numerous funding rounds at SolarCity. In addition, Ehrenpreis' company, Technology Partners, invested over $13 million in Tesla's early financing rounds, which it completely liquidated in 2013.

250. In addition, Ehrenpreis lacks independence because in December 2015, Tesla entered into an agreement with Mapbox Inc. ("Mapbox"), a provider of custom online maps. Ehrenpreis and Randy Glein, a Managing Director of DFJ who led DFJ's later stage backing of SpaceX and Tesla, are two of Mapbox's investors. Tesla anticipates that it will pay Mapbox $5 million in the first twelve months alone under the agreement.

251. Moreover, at WEIF's 2014 event, which was held at Tesla's Fremont factory, Ehrenpreis gave the opening remarks, during which he sang the praises of Musk. Specifically, Ehrenpreis stated that Musk is "an engineer of society and the world," and "engineering is his toolbox." Ehrenpreis noted that, "In his worldview, failure is not an option." He then admired Musk's "clarity of vision" and that "[Musk] has a vision so big and bold and a tenacity that sets him apart from anyone I've worked with[.]" Ehrenpreis's blind devotion to Musk was revealed in his comment that "[Musk's] powerful vision and operational intensity and dedication combine to create game-changing companies."

252. **Stephen T. Jurvetson**. Jurvetson is a managing director of DFJ, which is a significant stockholder of Tesla, SolarCity, and SpaceX. DFJ has invested over $95 million in SolarCity since 2008, and over $1.1 billion in SpaceX since 2009. DFJ's investment in Tesla is its largest investment for that fund. DFJ has representatives on all the boards of Musk's companies – Tesla, SolarCity, and

SpaceX. For example, in addition to being a member of Tesla's Board, Jurvetson is SpaceX director, and Fisher is a member of SolarCity's board.

253. In December 31, 2015, DFJ funds owned approximately 3.6 million shares of SolarCity stock, which, together with the 418,409 shares held personally by Fisher, made Fisher one of the largest stockholder of SolarCity. DFJ's relationship with Musk and L. Rive predates its investments in Tesla, SolarCity, and SpaceX. DFJ was an early investor in L. Rive's previous company, EverDream. Musk's Trust also has personal investments in a DFJ fund.

254. Moreover, Jurvetson considers Musk "his friend", and said that DFJ began making investments in Tesla because "Elon knew us[,] [a]nd through this…we came to understand the SpaceX project." Jurvetson has known Musk since 1996, and the two have become good friends. For instance, Jurvetson has attended Musk's birthday party, which has documented on social media, like www.flickr.com highlighting their close friendship. In addition, Musk provided Jurvetson with a preprint of Ashlee Vance's biography on Musk, and then invited Jurvetson to participate at an event discussing this book at a Bloomberg Salon in San Francisco. Jurvetson posted a picture online about that event as well. In fact, Jurvetson's pictures are featured in Musk's biography too.

255. Jurvetson has publicly stated that he finds Musk to be a "remarkable individual," "more amazing" than Steve Jobs and Ben Franklin. He continued to

state that Musk could be regarded "as one of the most important entrepreneurs in U.S. history[,]" "the most prolific investor in the clean energy and clean tech wave[,]" and that his story as an entrepreneur and immigrant is "breathtaking." Tellingly, Jurvetson stated that Musk is the "most-risk immune person I've ever met… He's really an American hero, more than anyone I've ever met."

256. Amazingly, Jurvetson admitted that he has so much faith in Musk that his firm would "probably want to support just about anything he did."

257. **Antonio J. Gracias**. Gracias is a member of the boards of all three of Musk's companies—Tesla, SolarCity, and SpaceX. Gracias is also the CEO, director and majority owner of VMC, which has invested over $1.3 billion in Musk's companies. Specifically, VMC has invested approximately $1.1 billion, $81 million, and $218 million in SpaceX, SolarCity, and Tesla, respectively. Moreover, Musk's Trust, and Kimbal are limited partners of funds advised by VMC.

258. Gracias has known Musk for a longtime, having struck a friendship when he invested in PayPal. In Ashlee Vance's biography on Musk, which was written with exclusive access to Musk, his family and friends, he revealed that Gracias is "one of Musk's closest friends." When Tesla needed additional funding, Musk reached out to Gracias to participate as one of two outside investors in the Series B funding round.

259. In addition to their overlapping and shared investments in Tesla, SolarCity, and SpaceX, DFJ, DBL, and VMC have mutual investments in numerous other start-up companies. Specifically, as mentioned above, both DFJ and DBL have invested in Mapbox. Additionally, DFJ and DBL Investors have funded BrightSource Energy, which designs and builds utility-scale solar power plants to help companies lessen their dependency on fossil fuels, and Plant Labs, a satellite imagining company.

260. **Brad W. Buss**. Buss served as SolarCity's CFO from August 2014 through his retirement in February 2016. Following his retirement, Buss agreed to remain as an advisor at SolarCity for the remainder of 2016.

261. **Robyn M. Denholm**. While Denholm does not have longstanding personal ties to Musk she has shown her affinity for him. Commenting on her position at Tesla she stated: "It's great, and [Musk] is great, he's just phenomenal." She continued: "To see what he's created there, it's a company that has a hugely innovative culture, really wanting to change the world. And that to me is a great tenant for a technology company. What I get to see with Tesla is what they're doing from an artificial intelligence perspective, but also the impact they're having on the world environmentally and geopolitically. I love these companies that transform industries."

1. Tesla's Directors Also Lack Independence From Musk Due To Their Excessive Compensation

262. Moreover, Tesla's directors receive outsized compensation packages for serving on Tesla's Board, which incentives the directors not to challenge Musk, lest they be removed from the Board and lose their lucrative Board seat.

263. In 2015, Tesla's non-employee directors, received on average $6,337,520.50 per director. Specifically, Tesla's non-employee received the following compensation in 2015:

2015 Compensation			
Name	**Cash**	**Option Awards**	**Total**
Buss	$20,000	$4,934,785	$4,954,785
Denholm	$45,000	$4,934,785	$4,979,785
Ehrenpreis	$37,500	$7,202,183	$7,239,683
Gracias	$37,500	$9,753,005	$9,790,505
Jurvetson	$27,500	$6,068,484	$6,095,984
Kimbal[4]	$20,000	$4,934,785	$4,954,785
Average	$31,250	$6,304,671	$6,335,921
TOTAL	$187,500	$37,828,027	$38,015,527

264. The majority of each directors' 2015 compensation were stock option awards, with each director receiving stock options worth an average of $6,304,671. Tesla represents that the stock options are intended to compensate the directors for three years. However, even spread across three years, the non-employee directors still receive on average $2,112,507 worth of stock options each year – far more

[4] Kimbal received an additional $9,596 that is omitted from the chart.

than what non-employee directors at peer companies receive for their total compensation in any given year.

265. ISS, a leading provider of proxy research to institutional investors, has identified 12 peers for Tesla to evaluate Tesla's compensation program. The peers are: American Axle & Manufacturing Holdings, Inc., BorgWarner Inc., Cooper-Standard Holdings Inc., Federal-Mogul Holdings Corporation, Tenneco Inc., Tower International, Inc., Autoliv, Inc., Cooper Tire & Rubber Company, Dana Holding Corporation, Harley-Davidson, Inc., Thor Industries, Inc., and Visteon Corporation (collectively, the "Peer Group").

266. The chart below shows the average 2015 non-employee director compensation for each company in the Peer Group and the average value of Tesla's non-employee directors' 2015 stock options adjusted for a three-year period. The average non-employee director compensation for each peer company is calculated based on the Director Compensation Table in that company's proxy statement. Excluding Tesla, the Peer Group ranges from Federal-Mogul Holdings Corporation, whose non-employee directors received an average of $67,750 each, to Dana Holding Corporation, whose directors received an average of $262,728 each. The average 2015 non-employee director compensation for the Peer Group (excluding Tesla) was $211,169.

2015 Peer Compensation	
Company	**Average Director Compensation**
Tesla Motors, Inc.	**$2,112,507**
Dana Holding Corporation	$262,728
Autoliv, Inc.	$224,583
Harley-Davidson, Inc.	$247,000
BorgWarner Inc.	$235,503
Thor Industries, Inc.	$232,617
Visteon Corporation	$225,000
American Axle & Manufacturing Holdings, Inc.	$205,294
Cooper Tire & Rubber Company	$232,000
Tenneco Inc.	$218,929
Tower International, Inc.	$230,843
Cooper-Standard Holdings Inc.	$151,775
Federal-Mogul Holdings Corporation	$67,750

267. Tesla's non-employee directors' average $2,112,507 worth of stock options in 2015 was approximately 900% greater than the $211,169 average compensation paid to non-employee directors at peer companies. The Company's non-employee directors' average stock option award was also approximately 704% greater than the average compensation received by the non-employee directors of Dana Holding Corporation, the company with the next highest paid non-employee directors after Tesla.

268. In addition, the $2,112,507 average stock option awards received by the Company's non-employee directors in 2015 vastly exceeds what a typical non-

employee director is paid even outside the Peer Group. In September 2015, F. W. Cook & Co., Inc. ("F. W. Cook"), an independent consulting firm specializing in executive and director compensation, published its *2015 Non-Employee Director Compensation Report* (the "F. W. Cook Report"). This was a study based on 300 companies selected to include financial services, industrial, retail, technology, and energy sectors of various sizes. For Large Cap companies (companies whose market capitalization exceeds $5 billion), F. W. Cook found that the median, non-employee director compensation was $259,583 and the 75th percentile was $300,000. In contrast, Tesla's non-employee directors received on average $2,112,507 worth of stock options each, or approximately 604% greater than even the 75th percentile.

269. Denholm, in particular, has received an excessive amount of compensation for serving on Tesla's Board. Upon joining the Board in 2014, Tesla issued her $7,163,580 worth of stock options. Combined with her 2015 stock options, Denholm has thus received $12,098,365 in stock options alone for serving on Tesla's Board for only approximately two years. Indeed, at the time Denholm was issued her 2015 stock options in June 2015 (bringing her total compensation to over $12 million), she had served on Tesla's Board for less than a year.

270. In fact, Denholm has received more compensation for serving on Tesla's Board than she has received from her full-time employment. When she

joined Tesla's Board, Denholm was the Executive Vice President and Chief Financial and Operations Officer of Juniper Networks, Inc. ("Juniper"). In 2014 and 2015, Denholm received total compensation of $10,132,619 from her employment at Juniper – almost $2 million less than what she received for serving on Tesla's Board. Furthermore, Denholm resigned from Juniper in February 2016, and does not appear to currently have any full-time employment. As such, Tesla represents the majority of her current and likely future income, creating a strong incentive for her not to challenge Musk and risk her Board seat.

271. Accordingly, as detailed above, the Board currently consists of seven directors, all of which are interested in the Proposed Acquisition and/or not independent.

B. The Board's Action Was Not A Valid Exercise of Business Judgment

272. Demand is also excused because the Proposed Acquisition was not a valid exercise of business judgment as further detailed above in Section VI. Given SolarCity's annual loses, cash-burn rate, and business headwinds, Tesla's acquisition of the company will place further impediments to Tesla's ultimate success. Notwithstanding, Tesla's Board allowed the Company to acquire SolarCity, for approximately 6.5% of Tesla's equity, valuing the failing company at $2.6 billion. Thus, Musk dominated and controlled the Board to ensure that Tesla paid far too much for SolarCity. The Board's failure to adequately consider

SolarCity's value and impact on Tesla, renders the Proposed Acquisition intrinsically unfair to the Company and therefore not a valid exercise of business judgment. Consequently, the Board is tasked with the burden of proving that the Proposed Acquisition is entirely fair, which it will not be able to do because the transaction was unfair to Tesla and its stockholders.

DERIVATIVE CAUSES OF ACTION

COUNT I
Breach of Fiduciary Duties
(Against The Director Defendants)

273. Plaintiff repeats each and every allegation contained above as though fully set forth herein.

274. As alleged in detail herein, the Director Defendants, as directors of Tesla, are fiduciaries of the Company and its stockholders. As such, they owe the Company the highest duties of loyalty, care, candor, good faith and fair dealing.

275. The Director Defendants breached their fiduciary duties by agreeing to acquire SolarCity at a critical time in Tesla's development, when it cannot afford to integrate a non-core asset. Indeed, Tesla's acquisition of SolarCity, a fledgling, if not failing, business, could not have been the result of exercising good faith business judgment. Rather, Tesla's acquisition of SolarCity is intended to unduly benefit Defendants Musk, Kimbal, Buss, Jurvetson (through his holdings in DFJ), Gracias (through his holdings in VMC), Straubel, Fisher, and the Rives, at

the expense of the Company. The Director Defendants further breached their fiduciary duties by failing to fully evaluate the Proposed Acquisition, and authorizing the purchase of SolarCity at an excessive and inequitable price.

276. As a direct and proximate result of the Director Defendants' actions, the Company has been and will be damaged.

277. Plaintiff and the Company have no adequate remedy at law.

COUNT II
Breach of Fiduciary Duties
(Against Musk as Tesla's Controlling Shareholder and as an Officer)

278. Plaintiff repeats each and every allegation contained above as though fully set forth herein.

279. Defendant Musk, as a Tesla's controlling shareholder and Tesla's CEO, is a fiduciary of the Company and its stockholders. As such, Musk owes them the highest duties of loyalty, care, candor, good faith and fair dealing.

280. Defendant Musk, as a controlling stockholder and officer of the Company, breached his fiduciary duties by using his control and influence over Tesla and the Director Defendants to cause Tesla to enter into the Proposed Acquisition at an excessive price, which makes no business sense. Rather than act in furtherance of the Company and its stockholders as a whole, Musk caused the Company to enter into a costly transaction in order to protect his investments, and

his family and friends' investments in SolarCity, and protect his legacy in the solar energy industry.

281. In contemplating, planning, and/or effecting the foregoing conduct and in pursuing and structuring the Proposed Acquisition, Musk did not act in good faith and breached his fiduciary duties.

282. As a result of the actions of Musk, the Company has been and will be damaged.

283. Plaintiff and the Company have no adequate remedy a law.

COUNT III
Waste
(Against The Director Defendants)

284. Plaintiff repeats each and every allegation contained above as if fully set forth herein.

285. As directors of the Company, the Director Defendants owe the Company and its stockholders fiduciary duties.

286. By causing the Company to acquire SolarCity, a failing company that loses through hundreds of millions of dollars a year, the Director Defendants breached their fiduciary duties by causing the Company to issue Company stock in exchange for SolarCity. The decision to enter into the merger agreement and acquire SolarCity thus constitutes a breach of the Board members' fiduciary duties.

287. The Company will receive consideration that is so disproportionately small in exchange for approximately 6.5% of the Company's equity. Thus, Tesla's acquisition of SolarCity effectively constituted a gift to Musk and other investors in SolarCity. The Proposed Acquisition serves no valid corporate purpose, and no reasonable person acting in the best interests of the Company would have awarded.

288. As a result of Director Defendants' actions, the Company has been and will be harmed.

289. Plaintiff and the Company have no adequate remedy at law.

COUNT IV
Unjust Enrichment
(Against Musk, Jurvetson, Gracias, Fisher, Straubel, Kimbal, Buss, L. Rive, and P. Rive)

290. Plaintiff repeats each and every allegation set forth above as if set forth fully herein.

291. By its wrongful acts and omissions, Defendants Musk, Jurvetson, Gracias, Fisher, Straubel, Kimbal, Buss, L. Rive, and P. Rive will be unjustly enriched at the expense of, and to the detriment of, Tesla.

292. Defendants Musk, Jurvetson, Gracias, Fisher, Straubel, Kimbal, Buss, L. Rive, and P. Rive will be unjustly enriched as a result of Tesla's acquisition of SolarCity.

293. Plaintiff, as a stockholder and representative of Tesla, seeks restitution from Defendants Musk, Jurvetson (as a representative of DFJ), Gracias

(individually and as owner of VMC), Fisher (individually and as a representative of DFJ), Straubel, Kimbal, Buss, L. Rive, and P. Rive, and seeks an order from this Court to disgorge all profits obtained by them from their wrongful conduct and fiduciary breaches resulting from the consummation of the Proposed Acquisition.

294. Plaintiff and the Company have no adequate remedy at law.

COUNT V
Aiding and Abetting
(Against L. Rive, P. Rive, Fisher, Straubel, D Subsidiary and SolarCity)

295. Plaintiff repeats each and every allegation set forth above as if set forth fully herein.

296. As alleged in detail herein, each of member of the Board had a fiduciary duty to, among other things, act in furtherance of the best interests of Tesla and its stockholders so as to benefit all stockholders equally and not in furtherance of their personal interest or benefit.

297. Musk and the rest of the Board breached their fiduciary duties by approving and/or causing Tesla to acquire SolarCity, as complained herein, which was not, and could not have been, exercises of good faith business judgment. Rather, they were intended to, and did, unduly benefit Musk and the other SolarCity stockholders affiliated with Musk at the expense of Tesla and were not entirely fair to Tesla.

298. As alleged in more detail above, L. Rive, P. Rive, Straubel, Fisher, SolarCity, and D Subsidiary aided and abetted the Board's breaches of fiduciary duties by causing Tesla to bailout and acquire SolarCity.

299. As a direct and proximate result of these breaches of fiduciary duties, Tesla has sustained substantial damages

300. Plaintiff and the Company have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Determining that this action is a proper derivative action maintainable under law and that demand was excused as futile and/or not required as a matter of law;

B. Determining and awarding restitution to Tesla for the damages sustained by it as a result of the violations set forth above from each of the defendants, jointly and severally, together with interest thereon

C. Awarding the Company the amount of damages it sustained as a result of the Defendants' breaches of fiduciary duties and waste of corporate assets;

D. Equitable and/or injunctive relief as necessary or permitted by law and equity;

E. Awarding Plaintiff the costs and disbursements of this action, including a reasonable allowance of fees and costs for Plaintiff's attorneys and experts; and

F. Granting Plaintiff such other and further relief as the Court may deem just and proper.

Dated: September 6 , 2016

McCARTER & ENGLISH, LLP

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