

1 Steve W. Berman
2 Thomas E. Loeser
3 Robert F. Lopez
4 HAGENS BERMAN SOBOL SHAPIRO LLP
5 1918 Eighth Avenue, Suite 3300
6 Seattle, WA 98101

7 **C.** “Class Notice” shall mean the full notice of pendency and proposed settlement of
8 class action, substantially in the form attached as Exhibit A.

9 **D.** “Class Representatives” or “Plaintiffs” shall mean Dean Sheikh, John Kelner, Tom
10 Milone, Daury Lamarche and Michael Verdolin.

11 **E.** “Complaint” shall mean the Second Amended Complaint filed in this Action.

12 **F.** “Notice Date” shall mean the last date on which notice is mailed to the Settlement
13 Class Members, provided, however, that any remailing of notice shall not affect or delay the
14 Notice Date.

15 **G.** “Released Parties” shall mean Tesla, each and all of its past, present, and future
16 predecessors, successors, affiliates, assigns, parents, subsidiaries, divisions, joint venturers,
17 entities in which Tesla has a controlling interest, shareholders, employees, agents, consultants,
18 representatives, contractors, insurers, directors, officers, partners, principals, attorneys,
19 accountants, financial advisors, investors, investment bankers, underwriters, lenders, auditors,
20 trusts, and corporations; and each and all of the past, present, and future officers, directors,
21 principals, representatives, employees, agents, shareholders, attorneys, successors, executors, and
22 assigns of any of the foregoing persons and entities.

23 **H.** “Releasing Parties” shall mean: (a) Class Representatives; (b) Settlement Class
24 Members; (c) to the extent that a Settlement Class Member is not an individual, each and all of its
25 present, former, and future predecessors, successors, affiliates, assigns, parents, subsidiaries,
26 divisions, joint venturers, shareholders, employees, agents, representatives, consultants,
27 contractors, insurers, directors, officers, partners, principals, attorneys, accountants, financial
28 advisors, investors, investment bankers, underwriters, lenders, auditors, trusts, and corporations of
any of the foregoing entities and each and all of the past, present, and future officers, directors,
principals, representatives, employees, agents, shareholders, attorneys, successors, executors, and

1 assigns of any of the foregoing entities; and (d) to the extent the Settlement Class Member is an
2 individual, any present, former, and future spouses, as well as the present, former, and future
3 heirs, executors, estates, administrators, representatives, agents, attorneys, partners, successors,
4 predecessors, and assigns of each of them, and any other representatives of any of the foregoing
5 persons.

6 **I.** “Settlement” shall mean the settlement described in this Agreement.

7 **J.** “Settlement Administrator” shall mean a neutral third-party settlement
8 administrator approved by the Court.

9 **K.** “Settlement Class” shall mean all U.S. residents who purchased Enhanced
10 Autopilot in connection with their purchase or lease of a Tesla Hardware 2 Model S or Model X
11 vehicle (defined below) delivered to them on or before September 30, 2017.

12 **L.** “Settlement Class Member” shall mean an individual who falls within the
13 definition of the Settlement Class and who does not validly and timely request exclusion from the
14 Settlement Class.

15 **M.** “Settlement Fund” shall mean the Five Million Four Hundred Fifteen Thousand
16 Two Hundred and Eighty Dollars (\$5,415,280) that Tesla has agreed to pay pursuant to the terms
17 of this Agreement into a non-reversionary common fund.

18 **N.** “Summary Notice” shall mean the summary notice of settlement, substantially in
19 the form attached as Exhibit B.

20 **O.** “Tesla’s Enhanced Autopilot” shall mean certain software for Tesla Hardware 2
21 vehicles.

22 **P.** “Tesla Hardware 2 Model S or Model X vehicle” shall mean a Model S or Model
23 X vehicle with Hardware 2 that Tesla commenced shipping in October 2016.

24 **Q.** “Tesla’s Model S” shall mean Tesla Model S Hardware 2 vehicles.

25 **R.** “Tesla’s Model X” shall mean Tesla Model X Hardware 2 vehicles.

26 **RECITALS**

27 This Agreement is made for the following purposes and with reference to the following
28 facts:

1 **A.** On April 19, 2017, Plaintiffs filed a class action complaint against Tesla in the
2 United States District Court for the Northern District of California, San Jose Division, titled
3 *Sheikh, et al. v. Tesla, Inc.* (N.D. Cal. Case No. 5:17-cv-02193-BLF). Plaintiffs filed an amended
4 class action complaint on April 26, 2017. Plaintiffs filed a second amended complaint on July 19,
5 2017 (the “Complaint”).

6 **B.** Plaintiffs allege that Tesla did not release Enhanced Autopilot and safety features
7 on the schedule that it had previously indicated to its customers, and that the capabilities of
8 certain of these features were misrepresented by Tesla. Plaintiffs allege violations of state
9 consumer protection statutes as well as common law claims. Plaintiffs seek damages and
10 equitable relief.

11 **C.** Tesla denies each and every one of Plaintiffs’ allegations of wrongful conduct,
12 damages, or other injuries. Further, Tesla maintains that it has strong, meritorious defenses to the
13 claims alleged in the Action and that it was prepared to vigorously defend all aspects of the
14 Action.

15 **D.** Based upon the discovery taken to date, investigation, and evaluation of the facts
16 and law relating to the matters alleged in the pleadings, plus the uncertainties of continued
17 litigation and all factors bearing on the merits of settlement, the Class Representatives and Class
18 Counsel have agreed to settle the claims asserted in the Action pursuant to the provisions of this
19 Settlement.

20 **E.** Following preliminary communications regarding settlement, the Parties
21 participated in a one-day mediation with Randall Wulff, Esq. (the “Mediator”). With Mr. Wulff’s
22 assistance, the Parties reached an agreement on key terms of a proposed class settlement that were
23 later memorialized in this Agreement. During the course of their mediation efforts, the Parties
24 engaged in arm’s-length negotiations between counsel and, with the assistance of Mr. Wulff,
25 reached an agreement in principle regarding settlement as to the merits. After an agreement in
26 principle regarding the merits was reached, the Parties, with the assistance of the Mediator,
27 reached an agreement in principle regarding attorneys’ fees and costs.
28

1 **F.** The Parties intend to settle the Action as to the Plaintiffs, the Settlement Class
2 Members, and Tesla. The Parties intend this Agreement to bind Tesla, Plaintiffs (both as Class
3 Representatives and individuals), and all Settlement Class Members.

4 **NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the
5 Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject
6 to approval by the Court, as follows:

7 **I. CERTIFICATION OF THE SETTLEMENT CLASS**

8 **A. Definition of the Settlement Class**

9 The “Settlement Class” shall be defined as follows:

10 All U.S. residents who purchased Enhanced Autopilot in connection with their purchase
11 or lease of a Tesla Hardware 2 Model S or Model X vehicle delivered to them on or
before September 30, 2017.

12 **B. Stipulation Respecting Conditional Certification**

13 The Parties stipulate and agree that, subject to Court approval, the Settlement Class
14 described in Section I.A above should be conditionally certified solely for purposes of the
15 settlement embodied in this Agreement. If, for any reason, this Agreement is not approved by the
16 Court, the stipulation for certification and all of the agreements contained in this Agreement shall
17 be considered null and void and may not be referred to or used as evidence or for any other
18 purpose whatsoever in the Action or any other action or proceeding.

19 **II. SETTLEMENT RELIEF**

20 **A. Settlement Fund; Notice and Administration Costs**

21 1. Within fourteen (14) days after the Effective Date, Tesla shall deposit Five
22 Million Four Hundred Fifteen Thousand Two Hundred and Eighty Dollars (\$5,415,280) as the
23 Settlement Fund in full settlement of the claims of the Settlement Class Members; provided,
24 however, that notice and administration costs shall be paid separately as set forth below. The
25 Settlement Fund shall be used to pay any attorneys’ fees and costs to Class Counsel and any
26 service awards to the Class Representatives, as ordered by the Court. The amount remaining after
27 such payments (“Settlement Class Recovery”) shall then be allocated and distributed to the
28 Settlement Class Members in accordance with Sections II.B and IX.C below. Other than the

1 payment of notice and administration costs pursuant to Sections II.A.3, IV, and IX.C below, in no
2 event shall Tesla's total financial liability with respect to this Agreement, the Released Claims,
3 and the Settlement exceed Five Million Four Hundred Fifteen Thousand Two Hundred and
4 Eighty Dollars (\$5,415,280). The Settlement Administrator will hold the Settlement Fund
5 amount in escrow until such time as the Settlement Administrator is authorized to disseminate the
6 funds pursuant to this Agreement and the Final Approval Order (as defined below) or other order
7 of the Court in this Action.

8 2. The Settlement Fund shall be a Qualified Settlement Fund ("QSF") under
9 Section 468B of the Internal Revenue Code and 26 C.F.R. § 1.468B-1, established pursuant to the
10 Preliminary Approval Order (defined below). The Settlement Administrator shall be the
11 Administrator of the QSF.

12 3. Tesla shall pay costs of notice and of administering the settlement as
13 provided for in this Section and Sections IV and IX.C below.

14 **B. Payments to the Settlement Class Members**

15 Each Settlement Class Member's allocated share of the Settlement Class Recovery shall
16 be calculated by the Settlement Administrator based upon a formula reflecting: (1) Tesla's
17 representations regarding Enhanced Autopilot at the time the Settlement Class Member purchased
18 or leased the vehicle, (2) the timing and content of Tesla's releases of Enhanced Autopilot
19 software upgrades, and (3) the total number of months up to and including September 30, 2017
20 during which the Settlement Class Member was in possession of the vehicle. Each Settlement
21 Class Member's estimated approximate allocated share of the Settlement Class Recovery, based
22 on a Settlement Class Recovery of Four Million Four Hundred Fifteen Thousand Two Hundred
23 and Eighty Dollars (\$4,415,280), is set forth in the following chart. The actual allocation will be
24 adjusted in proportion to the actual Settlement Class Recovery, the final number of Settlement
25 Class Members, and other factors.

Month class member took delivery	Oct-16	Nov-16	Dec-16	Jan-2017	Feb-2017	Mar-2017	Apr-2017	May-2017	Jun-2017	Jul-2017	Aug-2017	Sep-2017
Class members who purchased prior to January 24, 2017	\$280	\$280	\$280	\$280	\$225	\$200	\$150	\$125	\$100	\$75	\$50	\$25
Class members who purchased January 24, 2017 or later	NA	NA	NA	\$210	\$170	\$150	\$115	\$95	\$75	\$55	\$40	\$20

Payments shall be made to the Settlement Class Members by check and without any requirement that the Settlement Class Members submit a claim or claim form.

C. Prospective, Non-Monetary Relief

Tesla reaffirms its commitment to release any Enhanced Autopilot features that as of the Effective Date are not already released in Tesla Hardware 2 Vehicles.

III. OBTAINING COURT APPROVAL OF THE AGREEMENT

A. Upon full execution of this Agreement, the Parties shall take all necessary steps to obtain an Order from the Court, substantially in the form attached as Exhibit C (the “Preliminary Approval Order”), granting conditional certification of the Settlement Class, granting preliminary approval of this Agreement, and approving the forms and methods of notice to the Settlement Class set forth in this Agreement. The Preliminary Approval Order shall further set a date for a hearing (“Final Approval Hearing”) at which the Court will determine whether the requirements for certification of the Settlement Class have been met; whether the proposed settlement should be finally approved as fair, reasonable, adequate, and in the best interests of the Settlement Class Members; whether the award of fees and costs to Class Counsel should be approved; whether the award of service awards to the Class Representatives should be approved; and whether a final judgment should be entered dismissing the Action on the merits and with prejudice against the Class Representatives and the Settlement Class Members.

B. If at any point the Court does not approve this Agreement, the Agreement shall terminate and be of no force or effect, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to obtain Court approval.

IV. NOTICE, REQUESTS FOR EXCLUSION AND OBJECTIONS

The Parties agree to, and will request approval by the Court of, the following forms and methods of notice to the Settlement Class:

1 **A.** Tesla will provide the Settlement Administrator with known, reasonably available
2 street addresses for the Settlement Class Members within fourteen (14) business days after entry
3 of the Preliminary Approval Order.

4 **B.** The Settlement Administrator shall establish and maintain a toll-free telephone
5 number (“Toll-Free Number”), which Settlement Class Members may call to request copies of the
6 Class Notice. The Settlement Administrator shall further establish and maintain a settlement
7 website, at the address www.autopilotsettlement.com (“Settlement Website”), which shall
8 include, without limitation, the Class Notice, copies of the Complaint and this Agreement,
9 Frequently Asked Questions, and the Toll-Free Number. The Toll-Free Number and the
10 Settlement Website shall be fully operative on or before the first date notice is mailed to the
11 Settlement Class Members.

12 **C.** Subject to Court approval, within forty-five (45) days after the Court enters the
13 Preliminary Approval Order, the Settlement Administrator shall send direct notice substantially in
14 the form of the Summary Notice in Exhibit B, via U.S. Postal Service, to the names and addresses
15 provided by Tesla to the Settlement Administrator.

16 **D.** All addresses used for mailing the Settlement Class Notice shall be updated by the
17 Settlement Administrator through the U.S. Postal Service’s National Change of Address database.
18 For Summary Notices that are returned with forwarding address information, the Settlement
19 Administrator shall remail the Summary Notice to the new address indicated.

20 **E.** The Class Notice and Summary Notice shall include the address of the Settlement
21 Website and the Toll-Free Number.

22 **F.** The Class Notice shall provide procedures whereby Settlement Class Members
23 may exclude themselves from the Settlement Class or, if they do not timely exclude themselves,
24 object to the Settlement.

25 **G. Exclusions**

26 1. Settlement Class Members shall have the right to exclude themselves from
27 the Settlement Class during the opt-out period. The opt-out period shall run for forty-five (45)
28 days after the Notice Date. To be valid, a request for exclusion must be in writing, must be

1 mailed to the Settlement Administrator at the address indicated in the Class Notice, must be
2 postmarked no later than forty-five (45) days after the Notice Date, and must clearly state the
3 Class Member's desire to be excluded from the Settlement Class, as well as the Class Member's
4 name, address, and signature.

5 2. Any Class Member who does not timely and validly request exclusion shall
6 be a Settlement Class Member and shall be bound by the terms of this Agreement. No later than
7 five (5) business days following the end of the opt-out period, the Settlement Administrator shall
8 provide Class Counsel and counsel for Tesla with a final list of Settlement Class Members who
9 submitted timely and valid requests for exclusion. Prior to or at the Final Approval Hearing, the
10 Court shall be provided with a final list of Settlement Class Members who submitted timely and
11 valid requests for exclusion.

12 **H. Objections**

13 1. Settlement Class Members who do not submit timely and valid requests for
14 exclusion may file objections to the Settlement, Class Counsel's request for attorneys' fees and
15 costs, and/or the requested service awards for the Class Representatives.

16 2. Any Settlement Class Member who intends to object to this Agreement
17 must file with the Court a written statement that includes: a caption or title that identifies it as
18 "Objection to Class Settlement in *Sheikh, et al. v. Tesla, Inc.*, Case No. 5:17-CV-02193-BLF;" the
19 Settlement Class Member's name, address, and telephone number; all grounds for the objection,
20 with any factual and legal support for each stated ground; the identity of any witnesses he or she
21 may call to testify; copies of any exhibits that he or she intends to introduce into evidence at the
22 Final Approval Hearing; and a statement of whether the Settlement Class Member intends to
23 appear at the Final Approval Hearing with or without counsel. To be timely, the objection must
24 (a) be submitted to the Court either by mailing it to the Class Action Clerk, United States District
25 Court for the Northern District of California, 280 S. 1st Street, San Jose, CA 91513, or by filing it
26 in person at any location of the United States District Court for the Northern District of
27 California, and (b) be filed or postmarked no later than forty-five (45) days after the Notice Date.
28

1 3. Any Settlement Class Member who fails to timely file with the Court a
2 written objection in accordance with the terms of Section IV.H.2 of this Agreement and as
3 detailed in the Class Notice shall waive and forfeit any and all rights he or she may have to
4 object, appear, present witness testimony, and/or submit evidence; shall be barred from
5 appearing, speaking, or introducing any testimony or evidence at the Final Approval Hearing;
6 shall be precluded from seeking review of this Agreement by appeal or other means; and shall be
7 bound by all the terms of this Agreement and by all proceedings, orders, and judgments in the
8 Action. Class Counsel shall file their application for attorneys' fees and costs and service awards
9 fourteen (14) days in advance of the deadline for filing and serving objections. Once it is filed,
10 Class Counsel's application for attorneys' fees and costs and service awards shall be posted on
11 the Settlement Website.

12 4. Class Counsel and Tesla shall have the right, but not the obligation, to
13 respond to any objection no later than ten (10) days prior to the Final Approval Hearing. The
14 party responding shall file a copy of the response with the Court, and shall serve a copy, by hand
15 or overnight delivery, on the objector (or counsel for the objector).

16 **V. PAYMENT OF ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL;**
17 **SERVICE AWARDS**

18 **A.** Class Counsel will petition the Court for, and Tesla will not oppose, an award of
19 attorneys' fees and costs not to exceed Nine Hundred Seventy-Six Thousand Dollars (\$976,000).
20 Class Counsel agrees that any award of attorneys' fees and costs ("Fee Award") shall be paid
21 solely out of the Settlement Fund and shall not increase Tesla's total financial liability with
22 respect to this Agreement. The Court's award of any Fee Award shall be separate from its
23 determination of whether to approve the Settlement. In the event the Court approves the
24 Settlement, but declines to award Class Counsel's attorneys' fees or costs in the amount requested
25 by Class Counsel, the Settlement will nevertheless be binding on the Parties to the extent
26 permissible under applicable law.

27 **B.** Class Counsel will petition the Court for, and Tesla will not oppose, service
28 awards in an amount not to exceed Four Thousand Eight Hundred Dollars (\$4,800) for each of the

1 Class Representatives, in recognition of their efforts on behalf of the Settlement Class (“Service
 2 Awards”). The Parties agree that Tesla’s payment of any Service Awards approved by the Court
 3 shall be paid solely out of the Settlement Fund and shall not increase Tesla’s total financial
 4 liability with respect to this Agreement. The Court’s award of any Service Awards shall be
 5 separate from its determination of whether to approve the Settlement. In the event the Court
 6 approves the Settlement, but declines to award any Class Representatives Service Awards in the
 7 amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties to
 8 the extent permissible under applicable law.

9 **C.** Class Counsel and Class Representatives agree to provide the Settlement
 10 Administrator all identification information necessary to effectuate the payment of any Fee
 11 Award and Service Awards, including, but not limited to, Taxpayer Identification Number(s),
 12 completed Internal Revenue Service Form W-9(s), and wire transfer information. The payment
 13 of any Fee Award or Service Award is separate from and in addition to the other relief afforded
 14 the Settlement Class Members in this Agreement.

15 **D.** The Settlement Administrator shall pay any Fee Award and Service Awards five
 16 (5) days after Tesla deposits the Settlement Fund as set forth in Section II.A.1 of this Agreement.

17 **VI. FINAL APPROVAL ORDER AND JUDGMENT APPROVING SETTLEMENT**
 18 **AND DISMISSING CLAIMS OF SETTLEMENT CLASS MEMBERS WITH**
 19 **PREJUDICE; RELEASE OF CLAIMS BY SETTLEMENT CLASS MEMBERS**

20 **A. Entry of Final Approval Order and Judgment**

21 Upon the Court’s approval of this Agreement and the Settlement set forth in this
 22 Agreement, an Order substantially in the form attached as Exhibit D (“Final Approval Order”)
 23 and judgment substantially in the form attached as Exhibit E (“Judgment”) shall be entered
 24 dismissing the claims of Plaintiffs and of the Settlement Class Members against Tesla with
 25 prejudice.

26 **B. Release of Claims**

27 1. As of the Effective Date of this Agreement as defined below, Releasing
 28 Parties hereby fully and irrevocably release and forever discharge Released Parties from any and
 all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts,

1 agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any
 2 kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected,
 3 whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown
 4 claims, which they have or may claim now or in the future to have, that were or could have been
 5 alleged or asserted against any of the Released Parties in this Action arising from or relating to
 6 the allegations in the Complaint and all complaints filed in this Action regarding Enhanced
 7 Autopilot and safety features ("Released Claims"). The Released Claims do not cover claims
 8 relating to a motor vehicle accident or involving personal injury.

9 2. Plaintiffs, on behalf of themselves and all Settlement Class Members,
 10 hereby waive any and all provisions, rights, and benefits conferred by section 1542 of the
 11 California Civil Code or any comparable statutory or common law provision of any other
 12 jurisdiction. Section 1542 reads as follows:

13 Certain Claims Not Affected By General Release: A general
 14 release does not extend to claims which the creditor does not know
 15 or suspect to exist in his or her favor at the time of executing the
 release, which if known by him or her must have materially
 affected his or her settlement with the debtor.

16 Plaintiffs, on behalf of themselves and of all Settlement Class Members, expressly acknowledge
 17 that Plaintiffs and the Settlement Class Members are waiving the protections of section 1542 and
 18 of any comparable statutory or common law provision of any other jurisdiction.

19 3. Notwithstanding the entry of Judgment, this Court shall retain jurisdiction
 20 of the Action until such time as the Court determines that the Settlement is fully consummated
 21 according to the terms and conditions of this Agreement.

22 **VII. PLAINTIFFS' CLAIMS AND THE BENEFITS OF SETTLEMENT**

23 A. Before commencing the Action and during settlement negotiations, Class Counsel
 24 conducted an examination and evaluation of the relevant law and facts to assess the merits of
 25 Plaintiffs' claims and potential claims and to determine how best to serve the interests of the
 26 Class. Further, Tesla provided Class Counsel with information requested to permit them to assess
 27 the merits of Plaintiffs' claims and potential claims and negotiate a settlement. Class Counsel and
 28 the Class Representatives believe that the claims asserted in the Action have merit.

1 **B.** However, Class Counsel and the Class Representatives, on behalf of the
2 Settlement Class, have agreed to settle the Action pursuant to the provisions of this Agreement
3 after considering, among other things: (a) the benefits to Plaintiffs and the Settlement Class
4 Members under the Settlement; (b) the attendant risks and uncertainty of litigation, especially in
5 complex actions such as this, as well as the difficulties and delays inherent in such litigation; and
6 (c) the desirability of consummating this Settlement to provide effective timely relief to Plaintiffs
7 and the Settlement Class Members.

8 **C.** In consideration of all of these circumstances, Class Counsel and the Class
9 Representatives have concluded that the proposed Settlement set forth in this Agreement is fair,
10 adequate, reasonable, and in the best interests of the Settlement Class.

11 **VIII. TESLA’S DENIAL OF LIABILITY; AGREEMENT AS DEFENSE IN FUTURE**
12 **PROCEEDINGS**

13 **A.** Tesla has indicated its intent to vigorously contest each and every claim in the
14 Action, and continues vigorously to deny all of the material allegations in the Action. Tesla
15 enters into this Agreement without in any way acknowledging any fault, liability, or wrongdoing
16 of any kind. Tesla nonetheless has concluded that it is in Tesla’s best interests that the Action be
17 settled on the terms and conditions set forth in this Agreement.

18 **B.** Neither this Agreement, nor any of its terms or provisions, nor any of the
19 negotiations or proceedings connected with it, shall be construed as an admission or concession
20 by Tesla of the truth of any of the allegations in the Action, or of any liability, fault, or
21 wrongdoing of any kind, nor as an admission or concession by Plaintiffs of any lack of merit of
22 their claims against Tesla.

23 **C.** To the extent permitted by law, neither this Agreement, nor any of its terms or
24 provisions, nor any of the negotiations or proceedings connected with it, shall be offered as
25 evidence or received in evidence in any pending or future civil, criminal, or administrative action
26 or proceeding to establish any liability or admission by Tesla.

27 **D.** To the extent permitted by law, the Agreement may be pleaded as a full and
28 complete defense to, and may be used as the basis for an injunction against, any action, suit, or

1 other proceeding which may be instituted, prosecuted, or attempted for Released Claims as
2 defined in this Agreement.

3 **IX. ADMINISTRATIVE AND IMPLEMENTATION MATTERS**

4 **A. Effective Date of the Agreement**

5 The “Effective Date” of this Agreement shall be the first day after which all of the
6 following events and conditions of this Agreement have been met or have occurred:

- 7 1. All of the Parties and their counsel have executed this Agreement;
- 8 2. The Court has conditionally certified the Settlement Class, preliminarily
9 approved the Settlement embodied in this Agreement, and provided for approved notice to the
10 Settlement Class by entry of an order substantially in the form attached as Exhibit C;
- 11 3. Following the final date for Class Members to exclude themselves from the
12 Settlement Class pursuant to Section IV.G hereof, and no less than seven (7) days prior to the
13 Final Approval Hearing, the Settlement Administrator has verified in writing or via email to the
14 Parties that fewer than five percent (5%) of the Class Members have submitted timely and valid
15 requests to exclude themselves from the Settlement Class, except that if this condition is not met,
16 Tesla shall have the option to give written notice to Class Counsel waiving this condition and
17 stating that Tesla intends to proceed with the Settlement set forth in this Agreement;
- 18 4. The Court has entered the Final Order finally approving the Settlement
19 substantially in the form attached as Exhibit D and has entered Judgment substantially in the form
20 attached as Exhibit E; and
- 21 5. The Judgment has become “final” in that the time for appeal of, or writ as
22 to, the Judgment has expired or, if any such appeal and/or petition for review is taken and the
23 Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ
24 of certiorari can be taken has expired. If the Judgment is set aside, materially modified, or
25 overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the
26 Judgment shall not become “final” as contemplated by this subsection.

27 **B. Termination of Agreement**

1 If this Agreement is terminated or fails to become effective, the Parties shall be restored to
2 their respective positions in the Action as of the date of the signing of this Agreement. In such
3 event, any final approval order and final judgment or other order entered by the Court in
4 accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the
5 Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had
6 never been entered into. In the event of a termination, the Settlement Administrator shall return
7 the balance, if any, of the Settlement Fund to Tesla within fourteen (14) days of receiving notice
8 of the termination.

9 **C. Payment of Claims**

10 1. Within thirty (30) days after the Effective Date, or such other date as the
11 Court may set, the Settlement Administrator shall pay Settlement Class Members their allocated
12 share of the Settlement Class Recovery with no requirement that they submit a claim. Each
13 Settlement Class Member's allocated share of the Settlement Class Recovery shall be calculated
14 pursuant to the methodology set forth in Section II.B above.

15 2. The Settlement Administrator shall send to each Settlement Class Member
16 a payment equal to the Settlement Class Member's allocated share of the Settlement Class
17 Recovery as determined by the Settlement Class Administrator. Such payments shall be in the
18 form of a check made payable to each Settlement Class Member.

19 3. All payments issued to Settlement Class Members via check will state on
20 the face of the check that the check will expire and become null and void unless cashed within
21 ninety (90) days after the date of issuance. To the extent that any checks to Settlement Class
22 Members expire and become null and void:

23 a. If the sum of the amounts of such null and void checks is such that
24 an equal distribution of the remaining sum to Settlement Class Members who cashed their checks
25 would be \$15 (fifteen dollars) or more, then the Settlement Administrator shall complete a second
26 distribution of equal shares of the remaining sum to such Settlement Class Members.

27 b. If, after the initial or second distribution (if any), the remaining sum
28 is such that an equal distribution of the remaining sum to Settlement Class Members who cashed

1 their checks would be less than \$15 (fifteen dollars), the Settlement Administrator shall distribute
2 the funds associated with those checks as a *cy pres* award to the Ohio State University Center for
3 Automotive Research and/or Texas A&M Transportation Institute, Center for Transportation
4 Safety.

5 **X. MISCELLANEOUS PROVISIONS**

6 **A. Extensions of Time**

7 Unless otherwise ordered by the Court, the Parties may jointly agree to reasonable
8 extensions of time to carry out any of the provisions of this Agreement.

9 **B. No Pending Actions**

10 Each of the Parties represents and warrants that he, she, or it is not aware of any other
11 lawsuits or administrative proceedings regarding the claims in the Complaint.

12 **C. Integration**

13 This Agreement, including all exhibits, constitutes a single, integrated written contract
14 expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants,
15 agreements, representations, or warranties of any kind whatsoever have been made by any Party
16 in this Action, except as provided for in this Agreement or attached as an exhibit.

17 **D. Governing Law**

18 This Agreement shall be construed in accordance with, and be governed by, the laws of
19 the State of California, without regard to the principles thereof regarding choice of law.

20 **E. Gender and Plurals**

21 As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or
22 plural number, shall each be deemed to include the others whenever the context so indicates.

23 **F. Survival of Warranties and Representations**

24 The warranties and representations of this Agreement are deemed to survive the date of
25 execution hereof.

26 **G. Representative Capacity**

27 Each person executing this Agreement in a representative capacity represents and warrants
28 that he or she is empowered to do so.

1 **H. Counterparts**

2 This Agreement may be executed in any number of counterparts, each of which shall be
3 deemed an original, but all of which together shall constitute one and the same instrument, even
4 though all Parties do not sign the same counterparts.

5 **I. Cooperation of Parties**

6 The Parties to this Agreement agree to prepare and execute all documents, to seek Court
7 approvals, to defend Court approvals, and to do all things reasonably necessary to complete the
8 Settlement described in this Agreement.

9 **J. Execution Voluntary**

10 This Agreement is executed voluntarily by each of the Parties without any duress or undue
11 influence on the part, or on behalf, of any of them. The Parties represent and warrant to each
12 other that they have read and fully understand the provisions of this Agreement and have relied
13 on the advice and representation of legal counsel of their own choosing. Each of the Parties,
14 including through counsel, has cooperated in the drafting and preparation of this Agreement and
15 has been advised by counsel regarding the terms, effects, and consequences of this Agreement.
16 Accordingly, in any construction to be made of this Agreement, this Agreement shall not be
17 construed as having been drafted solely by any one or more of the Parties.

18 **K. Notices**

19 1. All Notices to Class Counsel provided for in this Agreement shall be sent
20 by email or facsimile to: Steve W. Berman, HAGENS BERMAN SOBOL SHAPIRO LLP, 918
21 Eighth Avenue, Suite 3300, Seattle, Washington 98101, facsimile number (206) 623-7292,
22 steve@hbsslaw.com, with a hard copy sent by overnight mail.

23 2. All Notices to Tesla provided for in this Agreement shall be sent by email
24 or facsimile to: Penelope A. Prevolos, Morrison & Foerster LLP, 425 Market Street, San
25 Francisco, California 94105-2482, facsimile number (415) 268-7522, pprevolos@mofocom,
26 with a hard copy sent by overnight mail.

27 3. The notice recipients and addresses designated in Section X.K.1-2 above
28 may be changed by written notice pursuant to this Section.

1 4. Upon the request of any of the Parties, the Parties agree to promptly
2 provide each other with copies of objections, requests for exclusion, or other filings received as a
3 result of the Class Notice.

4 **L. Modification and Amendment**

5 This Agreement may be amended or modified only by a written instrument signed by the
6 Parties' counsel and approved by the Court.

7 **M. Continuing Jurisdiction**

8 The United States District Court for the Northern District of California shall retain
9 jurisdiction over the Parties and all such disputes regarding the Action and the Settlement.

10 **N. Confidentiality**

11 The terms of this Agreement, including the fact of the proposed Settlement, shall remain
12 completely confidential until all documents are executed and a motion for preliminary approval of
13 the Settlement is filed.

14
15 Dated: 5/8, 2018

TESLA, INC.
By: [Signature]
Title: Deputy General Counsel

19 Dated: _____, 2018

Dean Sheikh

21 Dated: _____, 2018

John Kelner

23 Dated: _____, 2018

Tom Milone

25 Dated: _____, 2018

Daury Lamarche

27 Dated: _____, 2018

Michael Verdolin

28

1 4. Upon the request of any of the Parties, the Parties agree to promptly
2 provide each other with copies of objections, requests for exclusion, or other filings received as a
3 result of the Class Notice.

4 **L. Modification and Amendment**

5 This Agreement may be amended or modified only by a written instrument signed by the
6 Parties' counsel and approved by the Court.

7 **M. Continuing Jurisdiction**

8 The United States District Court for the Northern District of California shall retain
9 jurisdiction over the Parties and all such disputes regarding the Action and the Settlement.

10 **N. Confidentiality**

11 The terms of this Agreement, including the fact of the proposed Settlement, shall remain
12 completely confidential until all documents are executed and a motion for preliminary approval of
13 the Settlement is filed.

14
15 Dated: _____, 2018

TESLA, INC.

16 By: _____

17 Title: _____

18
19 Dated: 4/28, 2018



Dean Sheikh

20
21 Dated: _____, 2018

John Kelner

22
23 Dated: _____, 2018

Tom Milone

24
25 Dated: _____, 2018

Daury Lamarche

26
27 Dated: _____, 2018

Michael Verdolen

1 4. Upon the request of any of the Parties, the Parties agree to promptly
2 provide each other with copies of objections, requests for exclusion, or other filings received as a
3 result of the Class Notice.

4 **L. Modification and Amendment**

5 This Agreement may be amended or modified only by a written instrument signed by the
6 Parties' counsel and approved by the Court.

7 **M. Continuing Jurisdiction**

8 The United States District Court for the Northern District of California shall retain
9 jurisdiction over the Parties and all such disputes regarding the Action and the Settlement.

10 **N. Confidentiality**

11 The terms of this Agreement, including the fact of the proposed Settlement, shall remain
12 completely confidential until all documents are executed and a motion for preliminary approval of
13 the Settlement is filed.

14
15 Dated: _____, 2018 TESLA, INC.

16 By: _____

17 Title: _____

18
19 Dated: _____, 2018

20 _____
Dean Sheikh

21 Dated: _____, 2018

22 _____
John Kelner

23 Dated: May 2 _____, 2018

24 

25 Dated: _____, 2018

26 _____
Daury Lamarche

27 Dated: _____, 2018

28 _____
Michael Verdolen

The terms of this Agreement, including the fact of the proposed Settlement, shall remain completely confidential until all documents are executed and a motion for preliminary approval of the Settlement is filed.

Dated: _____, 2018

TESLA, INC.

By: _____

Title: _____

Dated: _____, 2018

Dean Sheikh

Dated: _____, 2018

John Kelner

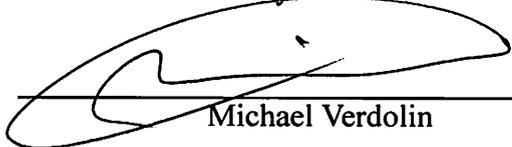
Dated: _____, 2018

Tom Milone

Dated: _____, 2018

Daury Lamarche

Dated: 4 MAY, 2018



Michael Verdolin

APPROVED AS TO FORM:

Dated: _____, 2018

MORRISON & FOERSTER LLP
PENELOPE A. PREVOLOS
CLAUDIA M. VETESI

CHARIS LEX P.C.
SEAN GATES

By: _____

Penelope A. Prevolos
Attorneys for Defendant
TESLA, INC.

Dated: _____, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP

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APPROVED AS TO FORM:

Dated: May 22, 2018

MORRISON & FOERSTER LLP
PENELOPE A. PREOVOLOS
CLAUDIA M. VETESI

CHARIS LEX P.C.
SEAN GATES

By: 
Penelope A. Preovolos
Attorneys for Defendant
TESLA, INC.

Dated: _____, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP
STEVE W. BERMAN
THOMAS E. LOESER

By: _____
Steve W. Berman
Attorneys for Plaintiffs and for the
Settlement Class

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APPROVED AS TO FORM:

Dated: _____, 2018

MORRISON & FOERSTER LLP
PENELOPE A. PREOVOLOS
CLAUDIA M. VETESI

CHARIS LEX P.C.
SEAN GATES

By: _____
Penelope A. Preovolos
Attorneys for Defendant
TESLA, INC.

Dated: May 23, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP
STEVE W. BERMAN
THOMAS E. LOESER

By: _____
Steve W. Berman
Attorneys for Plaintiffs and for the
Settlement Class