



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SHAHID HAQUE,

Plaintiff,

vs.

TESLA MOTORS, INC.,

Defendant.

C.A. No. _____

**VERIFIED COMPLAINT PURSUANT TO 8 DEL. C. § 220
TO COMPEL INSPECTION OF BOOKS AND RECORDS**

Plaintiff Shahid Haque, as and for his Complaint, alleges as follows, based upon personal knowledge as to himself and his own actions, and based upon information and belief derived from an investigation by him and his counsel as to all other matters.

NATURE OF THE ACTION

1. Plaintiff brings this action to enforce his right to inspect, pursuant to 8 *Del. C.* § 220 (“Section 220”), certain corporate books and records of Defendant Tesla Motors, Inc. (“Tesla” or the “Company”), a Delaware corporation.

2. Shareholders of Tesla invest in the Company based on the promise that the Company will one day become the dominant manufacturer of electric vehicles in the world. Based on this promise, Tesla has developed an almost cult-like following among investors and car buyers alike.

3. However, because consumer demand for Tesla's vehicles is so critical to its future, investors and analysts pore over Tesla's earnings reports to see how many cars were produced and how many cars were delivered (sold) each quarter. Tesla knows the importance of these metrics, and fuels excitement amongst its shareholders by setting for itself ambitious targets. For example, as recently as May 4, 2016, Tesla announced its plan to produce 500,000 all-electric vehicles in 2018, accelerating plans to reach this milestone by two years. (In the six years since its initial public offering in 2010, Tesla has produced only a little over 100,000 vehicles.)

4. Since 2014, however, Tesla has frequently missed its own sales guidance, and has been forced to revise its guidance on several occasions. In response to concerns from investors about the trajectory of Tesla's sales growth, and whether the Company will actually be able to deliver on its promise, Tesla and its senior officers have repeatedly assured investors that there is no problem with demand for its vehicles, and offered numerous excuses for sales shortfalls.

5. Among other excuses, Tesla has blamed production constraints, such as factory shut-downs to give workers "rest," "parts shortages" and production "ramps." Tesla has also blamed sales misses on the fact that customers were absent and unable to take delivery due to holidays; Tesla being unable to complete deliveries because of winter storms; or Tesla being unable to complete deliveries

because of shipping problems. In this manner, Tesla has consistently maintained that demand for its vehicles remains robust, and that the only obstacles to the Company's success has been production and capacity constraints.

6. As set forth below, Tesla's various explanations either contradict the Company's own prior statements, are patently implausible, or can be shown to have been used by the Company in the past to mislead investors. As such, there is a credible basis to question Tesla's policies and procedures regarding its reporting of financial information to shareholders and to infer that shareholders have not received the true picture concerning demand for the Company's vehicles and the purported existence of capacity constraints.

7. On June 15, 2015, Plaintiff made a demand to inspect Tesla's books and records pursuant to Section 220 (the "June 15, 2015 Demand"). *See* Exhibit A attached hereto. After several months of further correspondence, Tesla produced reams of irrelevant data that did not address the issues raised in the June 15, 2015 Demand, and refused to produce any more documents.

8. On July 18, 2016, Plaintiff made a supplemental Section 220 demand (the "July 18, 2016 Demand," and together with the June 15, 2015 Demand, the "Section 220 Demands"). *See* Exhibit B attached hereto. By letter from its counsel, Dean Kristy, dated July 25, 2016, the Company declined to produce the specific books and records sought in Plaintiff's July 18, 2016 Demand.

9. Defendant's rejection of Plaintiff's Section 220 Demands is improper. Inspection of the books and records requested in the Section 220 Demands will enable Plaintiff to determine whether it is appropriate to commence a derivative action on behalf of the Company and, if so, to determine whether pre-suit demand is necessary or would be excused prior to commencing any such action.

10. Plaintiff thus requests that the Section 220 Demands be deemed proper and enforceable, and that Tesla be directed to produce copies of all books and records sought by Plaintiff in the Section 220 Demands immediately.

FACTUAL ALLEGATIONS

I. COMPANY HISTORY AND BACKGROUND

11. Tesla is a Delaware corporation headquartered in Palo Alto, California. Tesla went public via an initial public offering in 2010, and its shares trade on the NASDAQ exchange under the symbol "TSLA."

12. At all times relevant to this Complaint, Elon Musk ("Musk") was the Product Architect, Chief Executive Officer and Chairman of Tesla's Board of Directors ("Board").

13. Tesla designs, develops, manufactures and sells fully electric vehicles and energy storage products. The Company has its own network of vehicle sales and service centers and operates "Supercharger" stations globally for recharging its electric vehicles.

14. Tesla currently produces and sell two fully electric vehicles, the Model S sedan and the Model X sport utility vehicle (SUV). Tesla commenced deliveries of the Model S in June 2012. Tesla commenced customer deliveries of Model X in the third quarter of 2015 (“2015 Q3”). Tesla conducts vehicle manufacturing and assembly operations from its facilities in Fremont, California; Lathrop, California; and Tilburg, Netherlands.

15. Every quarter, Tesla reports, and its shareholders closely monitor, two key metrics: (a) the number of vehicles that were actually produced (manufactured) in the quarter and (b) the number of vehicle sales, which Tesla recognizes when a vehicle is delivered to a customer and the paperwork is checked and completed. Investors focus intensely on deliveries because Tesla’s cumulative deliveries to date are just a tiny fraction of what the established automotive companies produce in a given year. By way of comparison, between the date of its launch in June 2012 and December 31, 2015, Tesla had delivered just over 107,000 new Model S vehicles worldwide. In contrast, General Motors Company sold *9.8 million* vehicles in 2015 alone.

16. Tesla is aware of the importance of these two metrics to its shareholders. Among other things, Tesla internally monitors its production capacity. For example, in its annual report for the 2015 fiscal year, filed on February 24, 2016,

Tesla disclosed that it had “completed significant investments to increase our production capacity and to begin production of the Model X at the Tesla Factory.”

17. Moreover, Tesla and Musk frequently address these metrics when reporting to shareholders. In particular, Tesla and Musk have repeatedly stressed in communications with shareholders that Tesla is not experiencing any problems with demand for Tesla’s vehicles, and that Tesla’s growth is constrained only by the lack of manufacturing capacity to satisfy this demand. As such, Tesla has consistently represented to investors that it has delivered as many cars as it has been able to produce. Whenever Tesla has reported a sales miss that would seemingly contradict this story of insatiable demand, Tesla and its senior officers have offered various explanations generally blaming production constraints and other bottlenecks in the production process.

18. For example, in its Shareholder Letter for the 2014 Q2, dated July 31, 2014 (“July 31, 2014 Shareholder Letter”), Tesla stated that “global delivery wait times increased because our production growth was unable to keep pace with increased demand.” Similarly, in its Shareholder Letter for the 2014 Q3, dated November 5, 2014 (“November 5, 2014 Shareholder Letter”), Tesla stated that “[b]eing unable to increase production fast enough, not lack of demand, is a fair criticism of Tesla.” On the shareholder conference call held on the same day, Musk reiterated that “[p]roduction is our issue and being too perfectionist about future

products those are legitimate things to be concerned about, but not demand.” Again, in its Shareholder Letter for the 2014 4Q, dated February 11, 2015 (“February 11, 2015 Shareholder Letter”), Tesla stated that “we remain production constrained” but that “both vehicle production and demand are expected to accelerate in 2015.”

19. As set forth below, there is a credible basis for inferring that these explanations are false. Specifically, it appears that Tesla in fact has more production capacity than it has reported to shareholders, and deliberately withholds some of that production capacity, deliberately under-reports that production capacity, or affirmatively misrepresents the existence of production constraints, in order to more closely match the reported production with anticipated deliveries (sales) in each quarter, thereby creating the impression of insatiable demand.

II. TESLA’S EXPLANATIONS FOR MISSED DELIVERIES IN 2016

A. Tesla’s 2016 Q1 Deliveries Miss

20. On February 10, 2016, Tesla issued a Shareholder Letter (“February 10, 2016 Shareholder Letter”) in which the Company forecast that in “[2016] Q1, we plan to grow deliveries 60% year on year to approximately 16,000 vehicles.” Notably, Tesla issued this forecast nearly *halfway through the 2016 Q1*, and the Company therefore would have had significant visibility as to how the 2016 Q1 would unfold.

21. In the February 10, 2016 Shareholder Letter, Tesla noted some production issues that had occurred in January. However, the Company reassured shareholders that these issues now had been resolved: “In January 2016, we limited Model X production for a period of time to maintain our quality production standards. *We are already seeing improvement from these efforts and we are now significantly increasing our Model X production throughout the balance of the quarter.* We anticipate approaching a Model X production rate of 1,000 vehicles a week in Q2.” (emphasis added).

22. Less than two months later, in a press release issued on April 4, 2016 (“April 4, 2016 Announcement”), Tesla revealed that it had missed its guidance of 16,000 deliveries (sales), instead delivering just 14,820 vehicles in the 2016 Q1.¹ Tesla attributed the lower delivery number to production constraints, stating that “[t]he Q1 delivery count was impacted by severe Model X supplier parts shortages in January and February that lasted much longer than initially expected.” According to Tesla, “[t]he parts in question were only half a dozen out of more than 8,000 unique parts, nonetheless missing even one part means a car cannot be delivered.”

23. Viewed against the Company’s prior statements, there is a credible basis to suspect that this explanation based on Model X parts shortages was

¹ In the subsequent May 4, 2016 Shareholder Letter, Tesla revised this deliveries figure to 14,810 vehicles.

fabricated. The explanation of Model X parts shortages contradicts Tesla's assurances in the February 10, 2016 Shareholder Letter, which specifically addressed Model X production issues, delimited those issues to January 2016 and assured investors that the Company was now "*significantly increasing ... Model X production throughout the balance of the quarter.*" (emphasis added). It is implausible that, nearly halfway through the 2016 Q1, the Company would not have known of any residual problems involving Model X parts shortages, to the extent that any such parts shortages in fact existed.

B. Tesla's 2016 Q2 Deliveries Miss

24. In the 2016 Q2, Tesla again missed its deliveries forecast, and again belatedly blamed production constraints.

25. On May 4, 2016, again nearly *halfway through the 2016 Q2*, Tesla issued a shareholder letter ("May 4, 2016 Shareholder Letter") forecasting that it expected to manufacture 20,000 vehicles in the 2016 Q2 and deliver 17,000 vehicles.

26. However, just two months later, on July 3, 2016, Tesla announced in a press release ("July 3, 2016 Announcement") that it produced 18,345 vehicles in 2016 Q2, but that deliveries (sales) in the 2016 Q2 were "lower than anticipated at 14,370 vehicles, consisting of 9,745 Model S and 4,625 Model X." Remarkably, Tesla chose to make this announcement on the Sunday of the July 4, 2016 holiday weekend.

27. The 14,370 deliveries represented a quarter-on-quarter *drop* from the 2016 Q1 deliveries of 14,810 vehicles, a troubling development which called into question Tesla's sales growth trajectory. The 14,370 deliveries also missed by over 15% the Company's prior forecast of 17,000 deliveries, issued in the Company's May 4, 2016 Shareholder Letter.

28. In the July 3, 2016 Announcement, Tesla again sought to blame production issues for the low 2016 Q2 deliveries number. Specifically, Tesla blamed an "extreme production ramp in Q2," which purportedly resulted in "almost half of the quarter's production occur[ing] in the final four weeks." This resulted in there being a "high mix of customer-ordered vehicles still on trucks and ships at the end of the quarter," totaling 5,150 vehicles.

29. Like its explanation for the missed deliveries in the 2016 Q1, Tesla's explanation of an "extreme production ramp" in the last month of the 2016 Q2 is glaringly inconsistent with the Company's prior statements, in particular, the rate of production with which Tesla reportedly exited the 2016 Q1. According to the Company's May 4, 2016 Shareholder Letter, Tesla produced a total of 15,510 vehicles in the 2016 Q1, comprising 12,851 Model S vehicles and 2,659 Model X vehicles. Therefore, Tesla exited the 2016 Q1 with a production rate of *at least* 15,510 vehicles per quarter.

30. In fact, according to its own statements, Tesla exited the 2016 Q1 with a *significantly higher* production level than 15,510 vehicles per quarter. According to the April 4, 2016 Announcement, Tesla was “impacted by severe Model X supplier parts shortages in January and February that lasted much longer than initially expected. Once these issues were resolved, production and delivery rates improved dramatically.” Thus, “[b]y the last full week of March, the build rate rose to 750 Model X vehicles per week.” This build rate of 750 Model X vehicles per week equates to 9,750 Model X vehicles per quarter.

31. Thus, substituting in the Model X end-of-quarter production rate of 9,750 vehicles per quarter, Tesla’s production capacity across all vehicles at the end of the 2016 Q1 was already in excess of 22,000 vehicles per quarter, or 7,300 *vehicles per month*.² Therefore, Tesla’s explanation of an “extreme production ramp” in the last month of the 2016 Q2 appears implausible. Tesla’s reported total production of 18,345 vehicles in the 2016 Q2 falls well within the 22,000 quarterly production capacity with which Tesla reportedly exited the 2016 Q1. It would not have been necessary for Tesla to have an “extreme production ramp” in order to hit the 2016 Q2 production total.

² Analysts have arrived at similar conclusions regarding the production capacity with which Tesla exited the 2016 Q1. See Paulo Santos, *Tesla: A Threshold For Guidance*, SEEKING ALPHA, April 5, 2016 (estimating Tesla’s end-of-2016 Q1 production capacity to be 21,750 vehicles).

32. In addition, if one were to credit Tesla's explanation that almost half of the 2016 Q2 production (18,345 vehicles) was achieved in the last month of the quarter (June), that would imply that half (or a total of approximately 9,000 vehicles) was produced by Tesla in the two months of April and May, or a monthly production of just 4,500 vehicles. This would be significantly less than the 7,300 vehicles per month that Tesla was capable of producing as of March 31, 2016.

33. Furthermore, Tesla's own statements *during the course of the 2016 Q2* belie any notion that Tesla experienced an "extreme production ramp" in the last month of that quarter. Early in the 2016 Q2, in the April 4, 2016 Announcement, Tesla blamed a parts shortage for production shortfalls in the prior quarter, but expressly stated that "production is now on plan," without mentioning any need for an "extreme production ramp" in the last month of the 2016 Q2.

34. A month later, in the May 4, 2016 Shareholder Letter – disseminated nearly *halfway through the 2016 Q2* – Tesla forecast that it could manufacture *20,000* vehicles in the 2016 Q2 and deliver *17,000* vehicles. In the letter, Tesla never mentioned any production issues for the months of April or May that could jeopardize achieving these production and delivery figures. Tesla never mentioned that there would need to be "an extreme production ramp" in the last month of June. In fact, the May 4, 2016 Shareholder Letter suggested the exact opposite, stating: "*now that supply chain constraints have been resolved, we plan to exit Q2 at a steady*

production rate of 2,000 vehicles per week.” (emphasis added). Tesla also expressly stated that the forecast 17,000 deliveries already accounted for the effects of any late-in-the-quarter production. Specifically, Tesla stated that “[d]ue to a large number of vehicles in transit to customers in Europe and Asia at end of quarter, Q2 deliveries are expected to be approximately 17,000 vehicles.”

35. These facts therefore lead to the conclusion that Tesla’s belated explanation that the missed deliveries in the 2016 Q2 were caused by an “extreme production ramp” is materially false, and that the purported “extreme production ramp” was concocted by Tesla to mask faltering delivery (sales) figures.

III. THERE ARE SIGNIFICANT DISCREPANCIES IN TESLA’S EXPLANATIONS FOR MISSED PRODUCTION AND/OR MISSED DELIVERIES IN PRIOR YEARS

36. The above credible basis for suspecting wrongdoing in Tesla’s reporting of production and production constraints is strengthened by similar, unexplained discrepancies in Tesla’s explanations for missed production and/or missed deliveries in prior years and quarters. As with Tesla’s 2016 statements, there is a credible basis for suspecting that Tesla has manipulated its reported production figures and misrepresented the existence of various production constraints, in order to closely match production with deliveries (sales).

A. There Are Significant Unexplained Discrepancies In Tesla's Reported Production And Deliveries For The 2014 Q3

37. In the July 31, 2014 Shareholder Letter, Tesla informed shareholders that, for the 2014 Q2, the Company produced a record 8,763 vehicles, while delivering a record 7,579 vehicles. Tesla also announced that it was “adding new production capacity at our Fremont factory that will allow us to meet the growing worldwide demand for our vehicles,” and that this added capacity would allow the Company to exceed total production of 35,000 vehicles in 2014. For the 2014 Q3, Tesla stated that it planned to produce 9,000 vehicles and to deliver 7,800 vehicles.

38. Tesla explained that these targets were actually lower than the number the Company theoretically could have achieved, because the targets “take[] into account the effect of the two-week production shutdown related to the transition to the new final assembly line at the Fremont factory.” Without this interruption, Tesla claimed, 2014 Q3 production and deliveries would have been higher, at 11,000 and 9,500 vehicles, respectively.

39. On November 5, 2014, Tesla announced its 2014 Q3 results. In the November 5, 2014 Shareholder Letter, Tesla reported that it delivered 7,785 vehicles in the 2016 Q3, consistent with the prior guidance of 7,800 vehicles. However,

Tesla's CFO, Deepak Ahuja, reported production of only 7,200 vehicles, 1,800 less than the 9,000 guidance.³

40. In the November 5, 2014 Shareholder Letter, Tesla blamed the lower production on the retooling shutdown in the 2014 Q3. Specifically, Tesla explained that the production shutdown lasted *nearly a month*, costing manufacturing output of an additional 2,000 vehicles.

41. Tesla's explanation based on the extended retooling and slower "ramp" did not make sense. In the July 31, 2014 Shareholder Letter, when issuing 2014 Q3 production and delivery guidance of 9,000 and 7,800 vehicles, respectively, Tesla indicated an anticipated *two-week* retooling shutdown which would affect *both* manufacturing and deliveries by 1,700 to 2,000 vehicles. Thus, if the Company did in fact experience a *four-week* retooling shutdown, one would have expected not just manufacturing *production* but also *deliveries* to be equally, negatively impacted. However, deliveries were not impacted at all by the additional two weeks of shutdown, coming in at 7,785, consistent with guidance of 7,800 deliveries. Nor do later quarters evidence any impact on deliveries from the retooling shutdown.

³ Notably, unlike in previous Shareholder Letters, Tesla's November 5, 2014 Shareholder Letter did not disclose the 2014 Q3 production figure. Instead, it was only in response to a direct question from an analyst during a conference call held on the same day that Ahuja answered: "Our third quarter production was about 7200 units."

42. In short, there is a credible basis for inferring that Tesla's manufacturing capacity was in fact greater than the 7,200 vehicles claimed by Ahuja on the November 5, 2014 conference call, and that Tesla may have deliberately held back production and/or sought to mislead by claiming the existence of production constraints in order to more closely match the production figures with the slowing delivery numbers. This inference is supported by the results reported by Tesla for the 2014 Q4.

B. There Are Further Significant Unexplained Discrepancies In The Company's Reported Production And Deliveries For The 2014 Q4

43. On February 11, 2015, Tesla announced its 2014 Q4 results. In the February 11, 2015 Shareholder Letter, Tesla reported that it manufactured 11,627 vehicles in the 2014 Q4, a staggering 61% increase from the 7,200 vehicles purportedly produced in the 2014 Q3. The reported production figure of 11,627 vehicles further supports the inference that Tesla has manipulated its production figures, and that Tesla's explanation of the extended retooling in the previous 2014 Q3 was false.

44. First, not coincidentally, by reporting 11,627 vehicles, Tesla was able to report total 2014 production of 35,125 vehicles. This was significant because it allowed Tesla to hit its much-touted guidance of producing 35,000 vehicles in 2014, guidance that Tesla previously announced on July 31, 2014 and affirmed on November 5, 2014. Thus, there is a credible basis to infer that, solely in order to hit

its guidance of 35,000 vehicles for 2014, Tesla increased production to a rate closer to the Company's true capacity.

45. Second, the sharp 61% increase in production from the 2016 Q3 to the 2016 Q4 also suggests that the 2016 Q3 production capacity was in fact higher than previously reported. In fact, some analysts have observed that, in the 2014 Q4, Tesla was manufacturing vehicles at a rate higher than the reported quarterly production of 11,627 vehicles. At least one analyst has estimated that, during the 2014 Q4, Tesla's Fremont factory was manufacturing about 1,200 to 1,250 cars per week (equivalent to a total 2014 Q4 production capacity of 15,728 to 16,383 vehicles). See Ben Levisohn, *Tesla Motors: "Demand Continues to Outstrip Supply,"* BARRON'S (December 19, 2014).

46. Third, the inference that Tesla had more production capacity than was previously reported is buttressed by the fact that Tesla was unable to sell (deliver) all the 11,627 vehicles. For the 2014 Q4, Tesla reported that it was only able to deliver 9,834 vehicles, nearly 2,000 vehicles less than the production figure of 11,627 vehicles.

47. To explain this large gap, Tesla asserted in the February 11, 2015 Shareholder Letter that "delivering those cars was physically impossible due to a combination of customers being on vacation, severe winter weather and shipping

problems (with actual ships). As a result, about 1,400 vehicles slipped December and were delivered in Q1.”

48. However, this explanation is suspicious because Tesla relied on an almost *identical* explanation to explain lower deliveries two years previously, in the 2012 Q4, which explanation has now been demonstrated to be false. In a Shareholder Letter issued on February 20, 2013, Tesla also blamed its lack of deliveries in the preceding 2012 Q4 on the holiday season, stating:

In the quarter, we also began to scale our delivery strategies. Both personal home delivery and factory pickup were very popular delivery options for customers. However, *we faced some challenges scheduling deliveries near the end of Q4 as our peak production coincided with vacations during the holiday season.*

49. This explanation now appears to have been deliberately misleading. As revealed by journalist/biographer Ashlee Vance (“Vance”) in his book, *ELON MUSK: TESLA, SPACEX, AND THE QUEST FOR A FANTASTIC FUTURE*, HarperCollins (2015), “during the latter stages of 2012 [] Tesla did have a large number of reservations in which people put \$5,000 down for the right to buy a Model S and get in the purchase queue. But the company had struggled to turn these reservations into actual sales.” Thus, the real reason for the deliveries shortfall was a lack of demand. According to Vance in a separate article published on *Bloomberg*, “Tesla’s first customers were prototypical early adopters who wanted a computer on wheels. *By the end of 2012, many were grumbling about the bugs still to be worked out, and sales slowed to a*

trickle.” See Ashlee Vance, *Elon Musk Had a Deal to Sell Tesla to Google in 2013*, BLOOMBERG, April 20, 2015. (emphasis added). In early 2013, demand for Tesla’s cars had fallen so significantly that it threatened Tesla’s survival as a standalone company, causing a “death spiral of missed sales targets and falling shares.” *Id.*

50. Apart from repeating a previously-used and now discredited explanation, the existence of the large 2,000 gap between production and deliveries directly contradicts Tesla’s own prior statements. Tesla has explained that there is a time lag between production and actual delivery (for example, a car manufactured in the first quarter might be delivered only in the second quarter). However, as Tesla itself has admitted, if indeed Tesla were operating at capacity, the difference between the number of cars delivered and the number of cars produced should decrease significantly over the course of future quarters, if not disappear altogether. In a Shareholder Letter issued on May 7, 2014, Tesla stated that “[t]he quarterly gap between production and deliveries is expected to decline in future quarters.” At the time of that Shareholder Letter, Tesla forecast deliveries of 7,500 vehicles in the 2014 Q2, and production of between 8,500 and 9,000 cars – a gap of between 1,000 and 1,500 cars. Instead of declining, however, Tesla reported a larger gap of 2,000 vehicles two quarters later.

51. Therefore, there is a credible basis to infer that, in order to create the impression that it was unable to manufacture enough vehicles to satisfy demand,

Tesla misled investors in the 2014 Q3 and Q4 by manipulating production and falsely claiming the existence of either capacity constraints or delivery problems.

C. There Are Further Significant Unexplained Discrepancies In The Company's Reported Production And Deliveries For The 2015 Q1

52. When reporting the 2014 Q4 results on February 11, 2015, Tesla also issued guidance for production of just 10,000 vehicles for the 2015 Q1. This was despite the Company having just reported 11,627 vehicles in the 2014 Q4. For the reasons set forth below, this lowered forecast also supports the view that Tesla manipulates its production figures to match the anticipated level of demand, and that its explanations of production constraints are false.

53. As to why its 2015 Q1 production guidance would *drop by 14%* from the production figure reported in the 2014 Q4, Tesla explained in the Shareholder Letter that this was “due to [the 2015 Q1] being a shorter quarter than in Q4 [2014] and approximately a week of factory downtime to allow the workforce to rest and tooling upgrades.” During the conference call held on the same day, Musk reiterated this explanation, that the 2015 Q1 was shorter than the 2014 Q4 by “one week” and that, additionally, the Company needed to have its workforce rest one week.

54. These two explanations, however, did not make sense. The 2015 Q1 is only shorter than the 2014 Q4 by *two days* (90 days as opposed to 92 days), not one week.

55. In addition, Tesla’s explanation of the need to give workers a one week “rest” and to conduct retooling are dubious because Tesla and Musk used the *identical explanations* in early 2013, which explanation has now been revealed to be false.

56. In a Shareholder Letter issued on February 20, 2013 (“February 20, 2013 Shareholder letter”), Tesla also relied on “rest” to explain why the 2013 Q1 delivery numbers would be lower, stating “[w]e expect to start the year with about 4,500 deliveries in Q1, as we gave the manufacturing team the first week of the year off to celebrate their accomplishments during 2012.”

57. However, as publicly revealed by Vance for the first time in his biography of Musk, this explanation was false. At the time of the February 20, 2013 Shareholder Letter, the reality was starkly different to the picture portrayed by Tesla and Musk:

By the middle of February 2013, Tesla had fallen into a crisis state. If it could not convert its reservations into purchases quickly, its factory would sit idle, costing the company vast amounts of money. And if anyone caught wind of the factory slowdown, Tesla’s shares would likely plummet, prospective owners would become even more cautious, and the short sellers would win. (emphasis added)

58. The crisis worsened so much that Musk approached Google to see if it was interested in buying Tesla:

During the first week of April, Musk reached out to his friend Larry Page at Google. According to people familiar with their

discussion, Musk voiced his concerns about Tesla's ability to survive the next few weeks. Not only were customers failing to convert their reservations to orders at the rate Musk hoped, but existing customers had also started to defer their orders as they heard about upcoming features and new color choices. *The situation got so bad that Tesla shut down its factory. Publicly, Tesla said it needed to conduct maintenance on the factory, which was technically true, although the company would have soldiered on had the orders been closing as expected.* (emphasis added)

59. Thus, there is a credible basis to infer that, once again, in order to maintain the story that demand exceeded capacity, Tesla misrepresented to investors its production capacity for the 2015 Q1 and the existence of capacity constraints in that quarter, in order to set for itself a lower hurdle to meet with respect to deliveries in the 2015 Q1. Unsurprisingly, on May 6, 2015, Tesla issued a Shareholder Letter reporting that, in fact, in the 2015 Q1, Tesla "manufactured 11,160 vehicles, 10% better than guidance, as we averaged more than 1,000 cars per production week." Tesla offered no explanation for this greater production.

IV. ANALYSTS HAVE QUESTIONED WHETHER TESLA IS UNDER-REPORTING ITS TRUE CAPACITY AND PRODUCTION

60. Based on the same facts set forth above, several analysts have publicly questioned the accuracy of Tesla's statements concerning production and capacity.

61. On February 12, 2015, *Seeking Alpha* published an article suggesting that Tesla appeared to have deliberately held back production in order to create the

impression of capacity constraints. See Paulo Santos, *Why Is Tesla Throttling Production?*, SEEKING ALPHA, February 12, 2015. According to this analyst:

As you can see, even taking into account the two fewer days in the quarter and the one week of rest, Tesla sees its estimated weekly production rate fall to just 84.3% of the stated production capacity. That's the lowest it has been since Q3 2013 (which was as far back as I tracked it). And even Q4 2014 was already rather low at just 88.5% of rated capacity.

As it stands, this looks like a factory working below rated capacity not a factory so overwhelmed with orders that it is "production-constrained" and can't service them all. Indeed, there's also a clear trend toward Tesla's average weekly production being lower and lower than its stated production capacity (at the beginning of the quarter). This trend has been in place since Q1 2014.

This fact makes the whole thing strange. Why is Tesla not producing at or near its production capacity? Why is capacity seemingly not increasing further at all during the last six months in spite of the excess in orders? No matter what the excuses are, this is a very strange situation. (emphasis added).

62. On February 23, 2015, Bank of America Merrill Lynch analyst, John Lovallo, published a research note about Tesla, in which he cut the target price for the Company to \$65. In his research note, Mr. Lovallo stated:

We have long contended that Tesla's primary challenge is a lack of demand for its [electric vehicles.] Tesla's management and the bulls consistently argue that the company can stimulate demand at will and that the true issue is capacity and supply. In our view, this optimistic thesis has been largely debunked, given that we now know Tesla is producing at levels that are both well below past run-rates and the company's current installed

capacity. In other words, Tesla appears to be pulling back on production, which we believe could create the appearance of rising demand. (emphasis added)

V. KEY SENIOR EXECUTIVES HAVE DEPARTED TESLA IN THE PAST YEAR

63. Apart from the Company's contradictory disclosures and constantly shifting and implausible explanations, there is a further basis for inferring wrongdoing based on the troubling departures of key senior executives from Tesla's finance, production and communications departments in just the past year.

64. In June 2015, Ahuja, the Company's chief financial officer, announced that he was retiring. Ahuja was replaced by Jason Wheeler in November 2015.

65. In January 2016, Tesla's Chief Information Officer, Jay Vijayan, left Tesla.

66. On March 16, 2016, *Bloomberg* reported that Ricardo Reyes, Vice President of Global Communications (Tesla's top communications department job), had left the Company after less than 18 months in his position.

67. On March 24, 2016, it was reported that Michael Zaroni, Vice President of Finance and Global Controller, had departed the Company.

68. On April 13, 2016, it was reported that James Chen, Tesla's Vice President of Regulatory Affairs and Deputy General Counsel, had departed the Company.

69. In May 2016, Tesla announced that Greg Reichow (“Reichow”), the Company’s Vice President of Production, was departing and would take a leave of absence after his successor was found. Reichow was the leader of car production and had been one of Tesla’s highest-compensated employees, making almost \$6.4 million in cash, stock, and options in the last two years, according to company filings. The timing of Mr. Reichow’s departure was unusual, given the looming launch of Tesla’s new mass-market car, the Model 3. Reichow had been expected to lead the manufacturing of that vehicle.

70. At the same time, it was reported that Josh Ensign, Vice President of Manufacturing, was also departing the Company.

71. These departures are troubling and provide a further credible basis for inferring wrongdoing. As reported by *CNBC*, “[f]amed short seller Jim Chanos told *CNBC* that by his count, Tesla has already seen eight executives leave the company this year.... [O]ne of his firm’s ‘historical signposts of a company in trouble is when numbers of senior people leave over a short period of time.’” *See* Christine Wang, *Short Seller Chanos Says Tesla Sure Does Remind Him Of Valeant*, *CNBC*, July 6, 2016. According to Chanos, “[t]he last high-profile company that we saw with such a similar large number of senior executive departures was Valeant.”

**PLAINTIFF'S DEMANDS
SET FORTH A PROPER PURPOSE**

I. PLAINTIFF'S JUNE 15, 2015 DEMAND

72. On June 15, 2015, after several months of investigation, including a review of Tesla's public filings and its officers' statements on conference calls and in press releases, Plaintiff sent the June 15, 2015 Demand seeking to inspect the Company's books and records under Section 220. Plaintiff sought documents relating to the misconduct described herein, in order to investigate possible breaches of fiduciary duty and mismanagement by the officers of the Company in order to determine whether a derivative action is warranted, and if so, whether a pre-suit demand would be excused.

73. The June 15, 2015 Demand was accompanied by an affidavit and documents evidencing Plaintiff's beneficial ownership of Tesla stock and a Power of Attorney signed under oath by Plaintiff, appointing his counsel as Plaintiff's agent and attorney-in-fact to act on Plaintiff's behalf to make the demand pursuant to Section 220. *See* Exhibit A. The June 15, 2015 Demand and supporting documents indicated that Plaintiff was the beneficial owner of 200 shares of common stock of Tesla and had continuously owned shares of Tesla's stock since August 15, 2013.

74. In the June 15, 2015 Demand, Plaintiff requested the Company produce or allow the inspection of the following documents:

- (1) All books and records dated or created during the Relevant

Period [defined in the June 15, 2015 Demand as January 1, 2014 through the present] related to any proceedings of Tesla's Board or a committee of the Board, if those proceedings in any way relate to demand for Tesla's vehicles, orders for Tesla's vehicles, Tesla's production, Tesla's capacity, Tesla's deliveries and sales, and Tesla's inventory (collectively, Tesla's "Financial Performance").

- (2) All books and records dated or created during the Relevant Period related to the manner by which the Company accounts for orders for Tesla's vehicles, Tesla's production, Tesla's capacity, Tesla's deliveries and sales, and Tesla's inventory.
- (3) All books and records dated or created during the Relevant Period related to the Company's purported production shutdowns in the 2014 3Q and 2015 1Q.
- (4) All books and records dated or created during the Relevant Period related to the Company's disclosures, in its financial statements, proxy statements and other filings with the Securities and Exchange Commission, regarding the Company's Financial Performance.
- (5) All books and records dated or created during the Relevant Period related to any investigation at the Company or of the Company related to the Company's Financial Performance.

75. The June 15, 2015 Demand identified the following legitimate and proper purposes for the inspection of the demanded books and records:

- (1) investigate wrongdoing in connection with Tesla's reporting of the Company's Financial Performance and the issuance by Tesla of financial guidance, including but not limited to determining whether the Company's officers and/or directors have properly discharged their fiduciary duties to the Company and its stockholders;

- (2) obtain information to determine whether or not the Company's officers and/or directors are independent and disinterested, and whether they have acted in good faith; and
- (3) take any appropriate action in the event that any wrongdoing is revealed.

76. These purposes are reasonably related to Plaintiff's interest as a stockholder of the Company, and the inspection is not sought for a purpose that is in the interest of a business or object other than the business of the Company. The books and records sought are narrowly tailored to serve Plaintiff's purposes in sending the June 15, 2015 Demand.

II. TESLA'S IMPROPER REJECTION OF PLAINTIFF'S JUNE 15, 2015 DEMAND

77. On July 21, 2015, Tesla rejected Plaintiff's right to inspect the demanded books and records of the Company, contending that Plaintiff did not have a proper purpose for seeking the Company's books and records and, specifically, that Plaintiff had not established a credible basis for suspecting wrongdoing. Tesla also contended that the categories of documents sought in Plaintiff's Section 220 Demand were too broad or otherwise objectionable.

78. In the months following Tesla's rejection of the June 15, 2015 Demand, Plaintiff's counsel further corresponded and conducted conference calls with Tesla's counsel in order to resolve the Company's objections.

79. On October 13, 2015, Tesla made a production of 878 pages of documents. However, the documents did not relate to Tesla's production capacity, but instead contained irrelevant sales data that did not address the June 15, 2015 Demand.

80. On October 16, 2015, Plaintiff informed Tesla that the October 13, 2015 production was deficient and failed to address the requests made in the June 15, 2015 Demand. Plaintiff requested that Tesla address the deficiencies with respect to the October 13, 2015 production.

81. On December 17, 2015, Tesla again rejected Plaintiff's right to inspect the demanded books and records of the Company, contending that Plaintiff did not have a credible basis for suspecting wrongdoing. Tesla stated the Company would not further respond to Plaintiff's June 15, 2015 Demand.

III. PLAINTIFF'S JULY 18, 2016 DEMAND

82. On July 18, 2016, following Tesla's July 3, 2016 Announcement, Plaintiff sent a second demand to inspect the Company's books and records under Section 220. In the July 18, 2016 Demand, Plaintiff sought documents relating to the misconduct described herein, in order to investigate possible breaches of fiduciary duty and mismanagement by the officers of the Company in order to determine whether a derivative action is warranted, and if so, whether a pre-suit demand would be excused.

83. The July 18, 2016 Demand was accompanied by an affidavit and documents evidencing Plaintiff's beneficial ownership of Tesla stock and a Power of Attorney signed under oath by Plaintiff, appointing his counsel as Plaintiff's agent and attorney-in-fact to act on Plaintiff's behalf to make the demand pursuant to Section 220. *See* Exhibit B.

84. In the July 18, 2016 Demand, Plaintiff requested the Company produce or allow the inspection of the following documents:

- (1) All books and records dated or created during the Relevant Period [defined in the July 18, 2016 Demand as January 1, 2016 through the present] related to any proceedings of Tesla's Board or a committee of the Board, if those proceedings in any way relate to Tesla's electric vehicle production capacity, Tesla's forecast production, Tesla's actual production, Tesla's capacity utilization, any purported production constraints, and Tesla's actual deliveries (sales).
- (2) Internal reports and analyses related to Tesla's electric vehicle production capacity, Tesla's forecast production, Tesla's actual production, Tesla's capacity utilization, any purported production constraints, and Tesla's actual deliveries.
- (3) Books and records sufficient to support the statements made by Tesla in the February 10, 2016 Shareholder Letter, April 4, 2016 Announcement, May 4, 2016 Shareholder Letter, and July 3, 2016 Announcement concerning Tesla's electric vehicle production capacity, Tesla's forecast production, Tesla's actual production, and Tesla's purported production constraints.
- (4) Books and records dated or created during the Relevant Period related to the purported "supplier parts shortages" experienced in January and February of 2016, which Tesla

described in the April 4, 2016 Announcement as responsible for delivery shortfalls in the 2016 Q1.

- (5) Books and records dated or created during the Relevant Period related to the purported “extreme production ramp” in the 2016 Q2, as described in the July 3, 2016 Announcement.

85. The July 18, 2016 Demand identified the following legitimate and proper purposes for the inspection of the demanded books and records:

- (1) investigate wrongdoing in connection with Tesla’s reporting of electric vehicle production capacity, Tesla’s forecast production, Tesla’s actual production, Tesla’s capacity utilization, any purported production constraints, and/or Tesla’s actual deliveries (sales), including but not limited to determining whether the Company’s officers and/or directors have properly discharged their fiduciary duties to the Company and its stockholders;
- (2) obtain information to determine whether or not the Company’s officers and/or directors are independent and disinterested, and whether they have acted in good faith; and
- (3) take any appropriate action in the event that any wrongdoing is revealed.

86. As with the June 15, 2015 Demand, these purposes are reasonably related to Plaintiff’s interest as a stockholder of the Company, and the inspection is not sought for a purpose that is in the interest of a business or object other than the business of the Company. The books and records sought are narrowly tailored to serve Plaintiff’s purposes in sending the July 18, 2016 Demand.

IV. TESLA'S REFUSAL TO PRODUCE BOOKS AND RECORDS IN RESPONSE TO THE JULY 18, 2016 DEMAND

87. On July 25, 2016, Tesla responded to the July 18, 2016 Demand, asserting that it failed to articulate a credible basis for inferring wrongdoing, and that the requests in the demand were “overbroad” and “otherwise objectionable.” Nevertheless, Tesla’s counsel stated that “the Company will undertake to search for documents sufficient to address Mr. Haque’s central thesis that ‘faltering demand’ in Q1 and Q2 2016 caused the Company to ‘concoct’ production challenges.” Tesla’s undertaking was phrased deliberately vaguely, as Tesla never expressly undertook to produce any of the specific categories of documents requested in the July 18, 2016 Demand.

88. On July 27, 2016, Plaintiff sent a further letter to Tesla seeking confirmation from Tesla whether it intended to produce the specific books and records requested in the July 18, 2016 Demand.

89. Tesla’s counsel failed to respond with any such confirmation.

90. Tesla has thus violated its statutory obligation to permit Plaintiff to inspect the books and records demanded by Plaintiff. As a result, Plaintiff now seeks judicial intervention to ensure that Tesla complies with Plaintiff’s June 15, 2015 Demand and July 18, 2016 Demand.

COUNT I
(Demand For Inspection Pursuant to 8 Del. C. § 220)

91. Plaintiff repeats and realleges all of the preceding allegations as if fully set forth herein.

92. On June 15, 2015, Plaintiff made written demand upon Tesla for the inspection of books, records and documents. On July 18, 2016, Plaintiff made a second demand upon Tesla for the inspection of books, records and documents.

93. Plaintiff has complied fully with all requirements under Section 220 with respect to the form and manner of making a demand for inspection of the books, records and documents set forth in the Section 220 Demands.

94. Plaintiff's demands for inspection are for proper purposes. Moreover, the documents identified in the Section 220 Demands are essential to those purposes.

95. More than five business days have passed since Tesla received the Section 220 Demands, and the Company has refused to permit the inspection sought by Plaintiff.

96. By reason of the foregoing and pursuant to 8 Del. C. § 220, Plaintiff is entitled to an order permitting him to inspect and make copies of the books and records set forth in the Section 220 Demands.

97. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- A. An order requiring Tesla to permit the inspection and copying of each and every book and record requested by Plaintiff's June 15, 2015 Demand and July 18, 2016 Demand immediately;
- B. An order directing Tesla to pay reasonable attorneys' fees and expenses in connection with Plaintiff's Section 220 Demands and related litigation; and
- C. Such other relief as this Court deems just and appropriate.

Dated: August 12, 2016

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