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Reality Check

Tesla, Inc.

NASDAQ:TSLA

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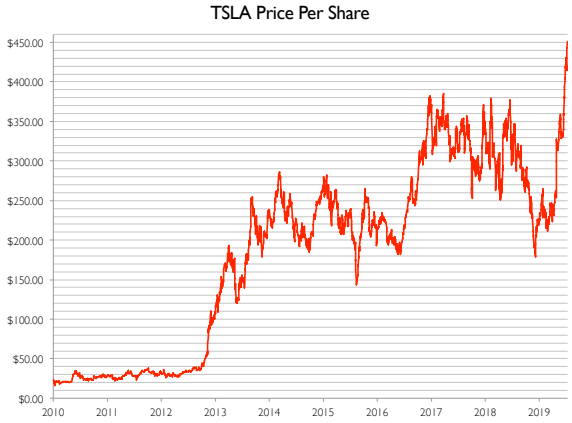
Executive Summary

Tesla, Inc. (NASDAQ: TSLA), a manufacturer of electric vehicles and solar panels, is widely regarded as an American clean energy success story. Its market capitalization has exceeded $80 billion at its peak, and it operates factories in California, Nevada, New York and China. Yet recently released documents obtained by PlainSite affiliate Think Computer Foundation reveal that the entire company is at this point built on a massive, multi-billion dollar fraud orchestrated by its CEO, Elon Musk, who for years has gone to extreme lengths to conceal his unlawful acts from shareholders. In parallel with this core fraud, under Musk's leadership, Tesla defrauded taxpayers in New York and California out of more than 1.2 billion dollars, while producing products with serious and sometimes fatal quality defects that will likely put the company at risk in a projected 300 new lawsuits in 2020.



In 2016, Tesla acquired SolarCity Corporation, a company run by Musk's cousins, Peter and Lyndon Rive, for $2.6 billion. The acquisition, which made no financial sense for Tesla, was a bailout for Musk and his relatives, whose companies faced near-certain bankruptcy without emergency financing.

Since the merger, Tesla has been a financial disaster. In its nearly seventeen years of existence, the company has never turned an annual profit. Even with billions of dollars of subsidies from governments worldwide, it has managed to incinerate money at an astounding pace. Despite having the lowest 5-year trailing earnings per share growth of any NASDAQ company worth more than $50 billion, it also has the highest forward price-to-earnings ratio in the class. Tesla's astounding overvaluation is thanks in large part to a coterie of devoted followers whose television appearances and often fake social media accounts have whipped up a frenzy of hype. Many have also targeted critics and short sellers with vitriol and harassment. While the company's advocates speak of "moats" that give Tesla a competitive advantage, the truth is that Tesla has virtually no protectable intellectual property and it has pledged to open-source its relatively few patents, besides. Management is in shambles. Meanwhile, the coming decade is certain to feature new competitors in the electric vehicle space.

Simply put, Tesla cannot be understood through traditional quantitative metrics because its disclosed numbers are largely fraudulent. Tesla is a broken company, effectively a Ponzi scheme, founded upon the enthusiasm of brilliant hobbyists who unknowingly partnered with a self-described narcissistic "bait and switch[er]." Today, Tesla's story is Musk's story. And that story is much different than the PR narrative.

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Corporate History

The tzero.
Photograph: Tom Gage

The Early Days

Tesla Motors, Inc. was incorporated on July 1, 2003 in Delaware and September 2, 2003 in California by co-founders Martin Eberhard and Marc Tarpenning. Eberhard and Tarpenning had created a prototype electric sports vehicle called the tzero with the engineering expertise of AC Propulsion, a niche auto shop in Los Angeles run by Alan Cocconi, who had developed drivetrain electronic components for the General Motors EV1.[1]

The once ubiquitous Compaq DeskPro 386s. Photograph: M. Blair Martin

The Zip2.com home page in 1996. Source: The Internet Archive

By October 23, 2003, news of the AC Propulsion tzero had reached Harold Rosen, the brother of Compaq's Chairman, Ben Rosen.[2] In a bizarre transaction that speaks to the frenzied nature of the dot-com bubble, staid hardware manufacturer Compaq had purchased South African entrepreneur Elon Musk's first company,[3] Zip2, for $307 million in February 1999.[4,5] Compaq had already acquired Digital Equipment Corporation about a year prior for $9.6 billion, and the AltaVista search engine, which had originated in Digital's Network Systems Laboratory and Western Research Laboratory to show off DEC's 64-bit Alpha microprocessors, was part of the package deal. In theory, Compaq hoped to enhance AltaVista with Zip2's technology, which internet users today would think of as a combination of Yelp and Google Maps. Practically speaking, it made flipping AltaVista even more lucrative for Compaq: ten months after the Zip2 acquisition, Compaq offloaded 83% of AltaVista, Zip2 and the forgotten website

1 Niedermeyer, Edward W., *Ludicrous: The Unvarnished Story of Tesla Motors*, BenBella Books, 2019, Chapter 1. https://books.google.com/books?id=h_SADwAAQBAJ

2 Musk, Elon, June 22, 2009, "In the Beginning." https://web.archive.org/web/20090624221445/http://www.teslamotors.com/blog2/?p=73

3 According to the California Secretary of State, Zip2 Corporation began as Global Link Information Network, Inc. on November 3, 1995—months after Elon Musk claims he "deferred" his enrollment in a Stanford University Ph.D. program after two days to work on his internet business instead. As reported by Ashlee Vance in Appendix 1 of his biography *Elon Musk: Tesla, SpaceX, and the Quest for a Fantastic Future*, according to a June 22, 2009 document sent to Musk from the Stanford University Office of the Registrar, Musk never actually enrolled. As recently as December 28, 2019, Musk claimed to have bootstrapped his way through "Queens Univ with scholarship & debt, then same to UPenn/Wharton & Stanford," but Vance also reports that, "Errol Musk gave his sons $28,000 to help them through" as they got started in Palo Alto. https://books.google.com/books?id=L8-HCgAAQBAJ

4 *The Wall Street Journal*, February 17, 1999, "Compaq Is Buying Zip2 To Broaden AltaVista." https://www.wsj.com/articles/SB919181288287063500

5 After the sale, physicist John O'Reilly, who had met Musk repeatedly, sued Musk for stealing the idea for Zip2 from him. *J. O'Reilly v. E. Musk*, Superior Court of California, County of Santa Clara, Case No. 2007-1-CV-083172. https://www.plainsite.org/dockets/3mrphnzz7/superior-court-of-california-county-of-santa-clara/j-oreilly-v-e-musk/

Elon Musk, shown wearing an ill-fitting tan suit and fancy watch in a 1999 documentary in which Musk states, "Raising $50 million is a matter of making a series of phone calls, and the money is there." Source: https://www.youtube.com/watch?v=eb3pmifEZ44

JB Straubel in 2012. Photograph: Steve Jurvetson

Shopping.com to high-flying CMGI for $2.3 billion.[6] Ten months after that, CMGI had lost 80% of its value.[7] Today, despite those stratospheric valuations, Digital, Compaq, AltaVista, Zip2, and CMGI have all long since ceased to exist.

Aside from being Ben Rosen's brother, Harold Rosen happened to be the boss of a talented engineer named JB Straubel. Straubel e-mailed Elon Musk to discuss electronic aircraft and cars, and over lunch, in Musk's words, "They told me about a company called AC Propulsion that had developed an all electric sports car called the tzero with a range of 300 miles, a 0 to 60 mph time of under 4 seconds and a lithium ion battery pack with seven thousand cells." When Musk asked, AC Propulsion wasn't interested in commercializing its vehicle, but it knew who might be: their partners at Tesla Motors. Eberhard e-mailed Musk himself on March 31, 2004 seeking investment, having previously met him at Stanford Mars Society conference in 2001.[8]

After earning two bachelor's degrees from the University of Pennsylvania[9], Musk had applied to and been accepted by a Stanford University Ph.D. program, but he never formally enrolled. Thanks to that decision, his father's financial support, and the eventual sale to Compaq, Musk had gone from nearly broke to incredibly wealthy overnight. He found even more incredible dot-com luck when five months after founding X.com in November 1999 as an on-line bank, the company merged with Peter Thiel's, Max Levchin's and Luke Nosek's Confinity, best known for its product designed to beam money between PalmPilots using their infrared ports, called PayPal. Musk was the CEO for six months, after which he was ousted in a coup and replaced by Thiel.[10] Years later, for extending credit to customers who had absolutely no creditworthiness, Thiel would describe Musk as, "The man who knew nothing about risk."[11]

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6 *CNet*, January 2, 2002, "CMGI buys AltaVista for $2.3 billion." https://www.cnet.com/news/cmgi-buys-altavista-for-2-3-billion/

7 *The Wall Street Journal*, October 15, 2000, "CMGI Stock Has Lost 80% of Its Value Since January, Sits at 22-Month Low." https://www.wsj.com/articles/SB971467239104182477

8 *Business Insider*, November 11, 2014, "The Making Of Tesla: Invention, Betrayal, And The Birth Of The Roadster." https://www.businessinsider.com/tesla-the-origin-story-2014-10

9 According to Ron Ozio, Director of Media Relations for the University of Pennsylvania, "Elon Musk earned a B.A. in physics and a B.S. in economics (concentrations: finance and entrepreneurial management) from the University of Pennsylvania. The degrees were awarded on May 19, 1997." Musk attributes the two-year delay to a missing credit.

10 According to Chapter 5 of Vance's biography, Musk had insisted on using Microsoft server software over Linux despite reliability problems and was loyal to the X.com brand over "PayPal."

11 *Quartz*, November 14, 2018, "What happened when Elon Musk gave a credit card to anyone who wanted one." https://qz.com/1463422/elon-musk-gave-a-credit-card-to-anyone-who-wanted-one/

Tesla co-founder Martin Eberhard with a red Tesla Roadster in 2006. Photograph: Nicki Dugan

Tesla's original logo, designed at Musk's request by the designers of the SpaceX logo, sought to emulate those frequently used by other automobile manufacturers. Neither the logo nor the name "Tesla Motors" reflected any plans for the company's foray into other parts of the energy sector, such as batteries and solar panels.

This description of Elon Musk explains almost every subsequent event in his career, where raw ambition mixed with a healthy dose of condescending hubris—masked by humor but reinforced by dot-com bubble financial success—consistently served as Musk's guiding force, no matter the risk involved. As an avid science fiction reader, he already had plenty of ideas about what the future should look like, and the billions of dollars that had showered down upon him and others thanks to Alan Greenspan's easy monetary policy[12] gave him no reason to doubt his own decision-making abilities, or the notion that hard work always paid eight- to nine-figure dividends in short order.

Consequently, when Musk met Martin Eberhard to discuss electric cars, one of his lifelong interests, Musk agreed to invest $6.35 million after some cursory questions about the feasibility of manufacturing. Eberhard remained CEO. (JB Straubel joined soon after.) The company's initial product, the Roadster sports coupe, was arguably the first mass-market electric car to use lithium-ion battery cells. With a required deposit of $100,000 for early models, it was targeted at wealthy enthusiasts in California who could afford the luxury of spending more than many people earn in a year to experiment with what was perceived to be the next big thing in clean energy. As documented in Edward W. Niedermeyer's book *Ludicrous: The Unvarnished Story of Tesla Motors*, the fledgling Tesla Motors was not at all prepared for the serious challenges of producing an actual car, and worked closely with Lotus Cars in the United Kingdom to achieve its previously unthinkable goals. Even with Lotus's engineering assistance, the notion that the Roadster would ever be profitable was a pipe dream.[13] Lotus's parts had to be modified by hand when they arrived in the United States, and the Roadster was plagued by quality problems, causing its celebrity owners, such as George Clooney, to ask why they were always stranded on the side of the road in their fancy electric car.

Undeterred as usual, in an August 2, 2006 blog post, Elon Musk outlined his "master plan": an affordable, mass-market vehicle that required no gasoline whatsoever, built using the money earned from selling a sports car (the Roadster) and a slightly more

12 *The Los Angeles Times*, October 16, 1998, "Fed, in Surprise Move, Cuts Interest Rates; Dow Up 330." https://www.latimes.com/archives/la-xpm-1998-oct-16-mn-33138-story.html

13 Niedermeyer, Edward W., *Ludicrous: The Unvarnished Story of Tesla Motors*, BenBella Books, 2019, Chapter 2. https://books.google.com/books?id=h_SADwAAQBAJ

Musk at the Tesla annual shareholder meeting in June 2019. Photograph: Steve Jurvetson

affordable mass-market car (the Model S and Model X).[14] The first trick would be actually building any car, at scale, for a profit. The second trick would be convincing the world that the plan was working, even if none of the cars in the first two steps were generating any consistent profit at all.

Accordingly, the company pinned its hopes on Whitestar, a code name for what came to be known as the Model S: a mid-size sedan that looked similar to a Toyota Camry. With Tesla's employee roster growing and technical challenges multiplying, company management was increasingly at odds with one another. Musk's attention-seeking nature began consuming Tesla's limited human resources. Eventually, there was a falling out between Eberhard and Musk, and on May 26, 2009, Eberhard sued Musk in San Mateo County Superior Court for libel, slander, breach of contract, conversion, negligence, and a host of other claims, including the incorrect presumption that Musk had lied about having graduated from Penn.[15] The lawsuit ultimately settled, with Musk contractually permitted to refer to himself as a "co-founder" of the company according to the settlement terms. Eberhard had effectively been pushed out.

Securing Funding From Uncle Sam

In order to survive as a company, Eberhard and Tarpenning turned to two sources of income: customer deposits (hoping to finance their cars in the same manner as airplanes) and the federal government. On Tesla's behalf, Musk lied to customers early on, telling them via e-mail, "the Department of Energy informed Tesla last week that they expect to disburse funds from our $350M loan application within four to five months," referring to a loan application submitted to the United States Department of Energy that had not actually been approved. Per a Freedom of Information Act (FOIA) request by Edward W. Niedermeyer, "[Tesla's] December 2, 2008, application had been rejected due to insufficient data to verify efficiency claims and environmental regulation compliance. Tesla's successful application to the loan program wouldn't be filed until May 4, 2009, months after Musk's claim about imminent disbursement."[16]

After years of development, in the burgeoning world of electric cars, the Model S was a major success. Though hardly cheap, it was far less expensive than the Roadster—essentially the only electric car that a well-to-do middle class family in Palo Alto

14 Musk, Elon, August 2, 2006, "The Secret Tesla Motors Master Plan (just between you and me)." https://www.tesla.com/blog/secret-tesla-motors-master-plan-just-between-you-and-me

15 *Martin Eberhard v. Elon Musk et al*, Superior Court of California, County of San Mateo, Case No. CIV484400. https://www.plainsite.org/dockets/3cberzj42/superior-court-of-california-county-of-san-mateo/martin-eberhard-v-elon-musk-et-al/

16 Niedermeyer, Edward W., *Ludicrous: The Unvarnished Story of Tesla Motors*, BenBella Books, 2019, Chapter 6. https://books.google.com/books?id=h_SADwAAQBAJ

or Mountain View, California might actually consider buying to help save the environment. Consequently, the Model S was the best-selling plug-in electric car in 2015 and 2016. Yet it was still not successful enough to make Tesla Motors profitable on an ongoing basis. By the end of 2016, Tesla's retained earnings totaled negative three billion dollars.

Using the Model S platform, the company's next car was the Model X, which Tesla started producing in 2015: a modernized, electric homage to the 1980s silver DMC DeLorean featured in the *Back To The Future* series of films. While its falcon-wing doors made it somewhat popular, it too was not profitable enough to swing Tesla consistently into the black. But Musk's apparent fascination with John DeLorean, a charismatic former General Motors executive who sought to build a new American car company and ended up arrested on drug charges,[17] would prove intriguing.

Perceived Market Advantages

The Charismatic Leader

Tesla's greatest asset is its first major investor, Elon Musk. Musk is a household name from the United States to South Africa to China to Japan, whose reputation for being a freewheeling, science-driven innovator precedes him wherever he goes. In turn, Musk's greatest asset is his sense of humor, which he deploys frequently to deflect criticism and endear fans, many of whom view him as a demigod who can do no wrong. As of the writing of this report, Musk boasts 30 million followers on the Twitter social network. Of those 30 million, Musk most often interacts with roughly a dozen accounts, giving the illusion that he is accessible to just about anyone.

Next-Generation Technology

Tesla has been undeniably ahead of other car companies in deploying technologies that are taken for granted in Silicon Valley, but which are less frequently associated with Detroit. Tesla's vehicles are equipped with wireless internet connectivity for downloading "over-the-air" software updates that can enhance the car's features, Bluetooth-enabled locks, and a sophisticated touchscreen-based entertainment console that makes BMW's iDrive knobs and arrows look about as modern as a cassette deck. The company's image recognition software, commonly referred to as employing "artificial intelligence," can handle basic object recognition and lane centering in many cases, and does not use Light Detection and Ranging (LIDAR) sensors, lowering the expense of deployment.

17 *The Washington Post*, August 17, 1984, "DeLorean Acquitted Of All Eight Charges In Drug-Scheme Trial." https://www.washingtonpost.com/archive/politics/1984/08/17/delorean-acquitted-of-all-eight-charges-in-drug-scheme-trial/3a2de886-9c81-468f-80ff-386f4e527201/

Tesla Model 3 vehicles in their natural habitat: Palo Alto, California. Photograph: PlainSite

The Model 3

The Tesla Model 3 is the first ever mass-market electric vehicle that is affordable on a middle-class family budget, with a base price near $35,000. With an austere, touchscreen-based interior that appeals to a generation accustomed to iPads, the Model 3 is considerably more popular than any other electric vehicle on the market at present, and has received generally positive reviews for its safety features. The Model 3 also shares many of its components with the forthcoming Model Y, which makes manufacturing easier.

Battery Production

Under Musk's leadership, Tesla has invested heavily in battery production for its own cars via a partnership with Panasonic in order to reduce the price per unit. High battery costs present a significant challenge to delivering an affordable electric vehicle for every automaker. By agreeing to purchase an enormous volume of batteries from Panasonic in advance and by building a dedicated plant in Storey County, Nevada (near Reno), Tesla has been able to leapfrog its competition, which is only now starting to catch up.

Global Footprint

Although it is based in the United States, Tesla now has a car factory in China, as well as plans to build a factory in a suburb of Berlin in Germany. Once up and running, its distributed global manufacturing operations will give Tesla the ability to produce cars more cheaply than it otherwise could, while saving on substantial shipping costs. China is also a potentially large market for the sale of electric vehicles, and Tesla appears to have the backing of the government there.

Unrecognized Risks

A History of Deliberate Deception for Personal Gain

In *Ludicrous*, Niedermeyer documents the fact that Elon Musk's history of fraudulent behavior dates back to at least as early as 2009, when Tesla was struggling to survive as it sold the Roadster electric sports car to its wealthy, early-adopter customers. Since then, Musk's burgeoning empire has grown far more complex, as have the lies.

Elon's Pyramid

Elon Musk is known for being the CEO or Chairman of three major companies that combined into two after the 2016 SolarCity deal: Space Exploration Technologies Corporation, or SpaceX for short; Tesla, Inc., formerly known as Tesla Motors, Inc.; and SolarCity Corporation.

The logos of the three main companies in Elon Musk's self-described "pyramid."

In an April 27, 2016 *Wall Street Journal* article, Musk revealed that the intertwined nature of his enterprises is as much a vulnerability as it is an advantage when he was quoted as stating that it is "important that there not be some sort of house of cards that crumbles if one element of the pyramid of Tesla, SolarCity and SpaceX falters."[18] Another key entity not mentioned was the Elon Musk Revocable Trust Dated July 22, 2003, which owns a majority stake in SpaceX.

The "pyramid" analogy sets the stage for the balancing act that Musk has attempted to master since the early 2000s. Each company on its own aspired toward an audacious goal: dramatically reducing the expense and complexity of space travel (and colonizing Mars) for SpaceX; making electric vehicles fun and affordable for Tesla; and enabling a long-overdue shift to renewable energy for SolarCity. On the surface, raw ambition aside, these goals are laudable, and with the possible exception of colonizing Mars, involve a clear societal benefit. But the devil, as is often said, is in the details.

The truth is that to fully describe Elon Musk's financial arrangements, a pyramid (whether its base is triangular or square) hardly has enough sides. Musk is associated with on the order of 20 additional LLCs, set up to manage and shield from public scrutiny his various assets: real estate, private jets, and new business ventures.[19]

In the *Vernon Unsworth v. Elon Musk* federal court case concerning Musk's alleged libel of a British cave diver who assisted with the rescue of boys trapped in a cave in Thailand, it was revealed that Musk's "family office" limited liability company is called Excession, LLC.[20,21] *Excession* is also a 1997 science fiction novel by Iain M. Banks. This complex proliferation of shell companies, managed by a former wealth management advisor named Jared Birchall from a law firm office in Burlingame, California, has given Musk a convenient way to plausibly deny that any of his companies has ever paid for or been connected to any kind of suspicious or untoward activity. To pin down what Musk has been up to, one must learn to play his shell game.

18 *The Wall Street Journal*, April 27, 2016, "Elon Musk Supports His Business Empire With Unusual Financial Moves." https://www.wsj.com/articles/elon-musk-supports-his-business-empire-with-unusual-financial-moves-1461781962

19 PlainSite. https://www.plainsite.org/tags/elon-musk-companies/

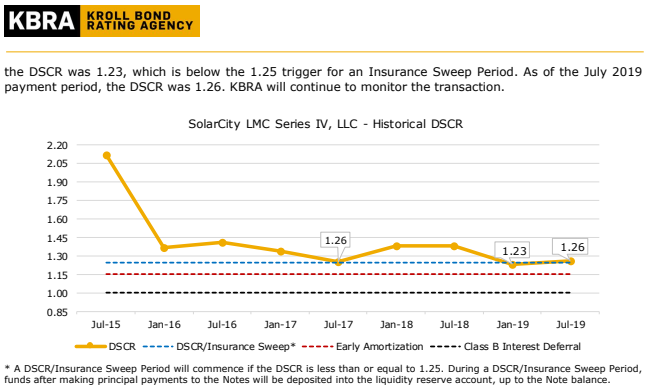
20 *Vernon Unsworth v. Elon Musk*, California Central District Court, Case No. 2:18-cv-08048-SVW-JC. https://www.plainsite.org/dockets/3cddrxs4o/california-central-district-court/vernon-unsworth-v-elon-musk/

21 *Vernon Unsworth v. Elon Musk*, California Central District Court, Case No. 2:18-cv-08048-SVW-JC, Document 77. https://www.plainsite.org/dockets/download.html?id=285067557&z=9927c50f

The SolarCity Bailout

SolarCity was founded in 2006 by Lyndon and Peter Rive, Elon Musk's cousins. Musk himself was the Chairman of the Board of Directors, having reportedly provided the initial impetus to start the company by suggesting that there might be opportunities in the clean energy space. By that point, Musk had been an investor in Tesla Motors for three years, and had been leading SpaceX for four.

To keep the companies afloat, and because on rare occasion it may have actually made sense, Tesla, SolarCity and SpaceX sometimes engaged in undisclosed related-party transactions, such as SolarCity buying cars from Tesla, or SpaceX purchasing solar panels from SolarCity. These transactions were alluded to but not fully described by Tesla Directors during depositions. In the words of former Tesla Director Brad Buss, "We would just—you know, we might buy solar panels for something. They may be buying batteries and stuff from our perspective. You know, I think they bought some cars."[22] But by 2015, these cozy transactions were not enough to make up for what was fundamentally a failing business for SolarCity.



An August 2019 Kroll ABS surveillance report for SolarCity LMC Series IV, LLC, Series 2015-1 showed that SolarCity is still in rocky terrain, having just missed an early amortization trigger level in January. SolarCity's successor began suing a number of Arizona customers for non-payment later in 2019.

SolarCity's business model was more complex than simply earning cash to install or manufacture solar panels. Instead, the company leased its solar panels to customers, who would pay for them in monthly installments. The revenue streams from the leases were then securitized, allowing third-party investors to buy up the opportunity to profit from financing America's transition to "green energy."

SolarCity was not the only company employing this "solar-as-a-service" model.[23] It was, however, one of the largest players. With names like SolarCity LMC Series V, LLC, Series 2016-1 and SolarCity FTE Series 2, LLC, Series 2017-A, the company securitized tens of thousands of solar panel arrays installed on homes and businesses across the United States. Unfortunately, by 2016, these securitization vehicles were starting to run into serious financial trouble.

To make matters more complex, by 2016 SolarCity had disclosed 212 subsidiary companies to the SEC—mostly headquartered in Delaware, but also in Mexico, Aus-

22 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS, Document 328, Attachment 1, Exhibit 3, Transcript Page 42. https://www.plainsite.org/dockets/download.html?id=285647386&a=1&z=fd4ffdbe

23 Massachusetts Institute of Technology, July 2016, "Solar Securitization: An Innovation in Renewable Energy Finance." https://energy.mit.edu/wp-content/uploads/2016/07/MITEI-WP-2016-05.pdf

tralia, the Cayman Islands, and Hong Kong.[24] One of those subsidiaries, Megalodon Solar, LLC, was involved in a 2015 loan agreement referred to as the "Kronor Facility," which would later become key to SolarCity's fate.[25]

By 2016, SolarCity's CEO, Lyndon Rive, was starting to panic. The company required a bridge loan to avoid defaulting on its revolving debt, and no one was willing to provide it.[26] The cousins had strategized a buyout over a conversation at Lyndon Rive's second home at Lake Tahoe in February 2016.[27] He attempted to tell his cousin and Board Chairman, Musk, how dire the situation was, but Musk seemed distracted by other issues. When discussing whether SolarCity should raise equity by May 2016, Musk asked, "Can it wait a month?"[28] Any buyout would need to be approved by shareholders, and given the horrific financials and the conflicts of interest between the Board members, that was going to be tricky.

For Elon Musk, failure was not an option. Because SpaceX owned 77% of SolarCity's bonds, a SolarCity bankruptcy would potentially have catastrophic consequences for SpaceX, and in turn, the Elon Musk Revocable Trust. The damage to his reputation alone could spell serious trouble for cash-strapped Tesla, as well, causing a cascade of events that could plausibly lead to Musk's personal bankruptcy and long-term alienation from banks and capital markets. He was therefore motivated to take extreme—even illegal—measures to prevent such an occurrence from taking place.

Here, a majority of the Tesla Board received personal benefits because they owned SolarCity stock. The Acquisition diluted Tesla stockholders who did not also own SolarCity stock. Elon Musk, Kimbal Musk, Gracias, Jurvetson, and Buss were able to offset that dilutive effect by virtue of their substantial holdings in SolarCity:

Defendant	SolarCity Shares	Value in Tesla Conversion[44]
Elon Musk[45]	22,162,870	$451,063,162.81
Kimbal Musk[46]	147,541	$3,002,783.94
Antonio Gracias[47]	211,854	$4,311,694.98
Steve Jurvetson[48]	1,672,381	$34,036,632.59
Brad Buss[49]	37,277	$758,668.96

Defendants do not dispute these facts. Instead, Defendants argue that these benefits did not pose a conflict of interest because of their high "net worth."[50] However, there is no exception to directors' "uncompromising duty of loyalty"[51] that would permit directors to pursue self-interested transactions so long as they are independently wealthy.

An excerpt from the plaintiffs' Reply Brief in Further Support of Their Motion for Partial Summary Judgment, indicating that Elon Musk stood to gain almost half a billion dollars from pushing the Tesla-SolarCity merger through. Directors stood to gain millions.

Musk schemed with his cousins and both Boards of Directors to make it appear as though his plan for a vertically integrated energy company was widely supported and had made perfect sense all along. In reality, the Tesla, SolarCity, and even SpaceX Boards were all against the deal. Tesla stood to acquire a massive amount of debt from SolarCity, and there was little realistic overlap between manufacturing, selling and financing solar panels and manufacturing and selling cars.

That the deal made absolutely no sense was widely known. As Linette Lopez wrote in *Business Insider*, "[T]he merger that Musk called a 'no-

24 SolarCity Corporation SEC Form 10-K, December 31, 2015, Exhibit 21.1, List of Subsidiaries of SolarCity Corporation (as of February 10, 2016). https://www.sec.gov/Archives/edgar/data/1408356/000156459016012549/scty-ex211_9.htm

25 SolarCity Corporation SEC Form 10-K, December 31, 2016, Exhibit 10.22, Credit Agreement dated as of March 31, 2016. https://www.sec.gov/Archives/edgar/data/1408356/000156459016018711/scty-ex1022_620.htm

26 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS, Document 335, Attachment 1, Exhibit 152, Page 30. https://www.plainsite.org/dockets/download.html?id=285647394&a=1&z=e01b3d84

27 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS, Document 328, Attachment 2, Exhibit 12, Transcript Pages 98-106. https://www.plainsite.org/dockets/download.html?id=285647386&a=2&z=fd4ffdbe

28 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS, Document 328, Attachment 2, Exhibit 11, Transcript Page 103. https://www.plainsite.org/dockets/download.html?id=285647386&a=2&z=fd4ffdbe

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Q. And for Goldman, you'll see that this document has the same -- it does have the same entry -- makes the same reference, "Failed credit approval for same reasons as MS," Morgan Stanley. You don't remember Goldman refused to lend to you because they also had an issue that you failed the credit approval?
A. I don't remember what Goldman's was. One of the two had the stock voting issue.
Q. One of the two what?
A. Had the stock voting issue.
Q. One of the two had a stock voting issue.
A. Yes.
Q. Did one of the two have an issue that SolarCity failed credit approval?
A. I can't remember what the reasons why we could not get the deal done.
Q. Okay. Thank you. I'm done with that document.
So I think that you told us that, unable to get 200, $300 million in financing anywhere else, you turned as a last resort to solar bonds; is that right?
A. Correct.
MR. SORRELS: Object to form.

Page 144

THE WITNESS: No.
BY MR. BERGER:
Q. Why not?
Did SpaceX's board refuse to do it?
A. I don't know what the -- who refused to do it. And I was told no. So maybe it was SpaceX's board that said no.
Q. How much were you trying to raise from the solar bonds?
A. 100 million, but we would like to raise more. But a minimum of 100 million.
Q. You ended up raising 100 million. Originally, you wanted to raise more than 100 million in the solar bonds. Originally, the idea was to raise something like 150 million from SpaceX, but SpaceX wouldn't do it; isn't that right?
A. I can't remember exactly the process and how it went through. Originally, we wanted to raise from SpaceX and they said no. I forget exactly the amount.
Q. So what you ended up doing was raising $100 million where, if I have this correct, Mr. Musk bought 65 million and you and your brother each bought $17 1/2 million of solar bonds; correct?
A. Correct.

An excerpt of the recently unredacted transcript of the deposition of Lyndon Rive, CEO of SolarCity, from Case No. 12711-VCS before the Delaware Court of Chancery.

brainer' appeared to be anything but. No other company was bidding to buy SolarCity, and according to internal emails, it was also struggling to find financing for a $200 million bridge loan that it needed immediately."[29] In the words of Lyndon Rive recorded in an e-mail about one of SolarCity's loan agreements (and then redacted), "If we breach [K]ronor, we're dead."[30]

According to Tesla's own General Counsel at the time, Todd Maron, the deal was worse than nonsensical: it would actually harm Tesla. As he wrote,

> *"[T. Rowe Price] said what Tesla is trying to accomplish in the automotive space is very complex and to add SolarCity to the mix raises the operational and financial risk profile of the company, especially given SolarCity's financial challenges as a company."*

Advisors Evercore Partners LLC and Lazard also insisted that the deal was problematic, even looking at numbers that painted an overly optimistic picture due to an enormous mathematical error. Everywhere Musk turned with proposals to save SolarCity, he heard a loud "no." Both Goldman Sachs and Morgan Stanley refused to lend money on the basis that SolarCity had failed credit checks. Even the Board of SpaceX—a company controlled by Musk—"said no" to investing, according to newly unredacted testimony by SolarCity CEO Lyndon Rive. Other than Elon Musk, the number of parties formally interested in rescuing SolarCity was precisely zero. But he couldn't pull off a deal entirely on his own.

The Tesla Board finally cracked under pressure from Musk. Virtually all of the Directors could only be described as obviously and hopelessly conflicted. Kimbal Musk—who somehow managed to claim under oath that he didn't perceive any conflict at all[31]—was Elon's brother and business partner dating back to his Zip2 days. Steve Jurvetson and/or his funds owned 1.67 million shares of SolarCity stock.[32] Ira Eh-

29 *Business Insider*, October 30, 2019, "The future of Elon Musk's empire was in peril in 2016, and new documents reveal more about the desperate plan to save it." https://www.businessinsider.com/elon-musk-tesla-solarcity-merger-frenzied-plan-new-filings-show-2019-10

30 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS, Document 358, Attachment 1, Exhibit 11, Transcript Page 28. https://www.plainsite.org/dockets/download.html?id=286421807&a=1&z=d10716fd

31 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS, Document 328, Attachment 2, Exhibit 10, Transcript Page 12. https://www.plainsite.org/dockets/download.html?id=285647386&a=2&z=fd4ffdbe

32 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS, Document 328, Attach-

renpreis was invested in SpaceX through a secret Special Purpose Vehicle—the only one of his firm's investments that apparently necessitated an SPV.[33] But old-fashioned nepotism alone still wasn't enough to push the deal through.

Message

From: Elon Musk [redacted]
Sent: 9/16/2016 12:25:10 AM
To: Peter Rive [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=89f502961be24efca78f094d61e3283d-Peter Rive]
CC: JB Straubel [redacted]; Lyndon Rive [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0e9f9a199f2e4479b7c6b65d42b78a2a-Lyndon Rive]; [redacted]
Subject: Re: Solar roof launch

Latest feedback from major investors is very negative on SolarCity. We need to show them what the integrated product looks like. They just don't get it.

Needs to happen before the vote, so maybe aim for October 28th for a joint solar roof and Powerwall 2 unveiling.

On Sep 15, 2016, at 2:41 PM, Peter Rive <prive@solarcity.com> wrote:

> Elon, just heard from Lyndon that you'd like to move up the launch event to early November. Can you confirm that? I like the adjustment and excited to do it, just want to make sure it's a final decision so that we don't expose the team to another start and stop. Thanks.

Top: *Musk e-mailed his cousin on September 16, 2016 pointing out that feedback from major investors was "very negative" on the SolarCity deal.*
Bottom: *In response, Musk lied to investors on stage, telling them that a block of useless material was actually a technological breakthrough that justified the deal. As usual, the media breathlessly reported Musk's false claims without asking too many questions. Photograph: CNBC*

Never one to back down, and completely ignoring the fact that his plan would violate numerous federal and state laws, Musk devised a solution to save himself: a fake product demonstration. He would announce and launch a "Solar Roof Tile," proving that the supposed vertical integration between SolarCity and Tesla had always been meant to be. On October 26, 2016, the demonstration took place on the set of the television show Desperate Housewives, carefully orchestrated to keep the star-struck press corps from catching onto the fact that the entire presentation was a hoax.[34] The product didn't work, didn't really exist, and it wasn't hooked up to the electric grid. It was all for show to induce shareholders to approve a multi-billion dollar securities transaction that would save Musk and his family members from likely bankruptcy. And it worked.

When Tesla and SolarCity shareholders voted on the merger deal, they were falsely told that Elon Musk had been "recused" from the decision making process—a massive lie. Court documents reveal that Musk guided the process at every step along the way, even as every other party saw the clear danger in what he proposed.[35] Investors were *not* told, however, that SolarCity was at risk of breaching key loan covenants, that it had been rejected by at least two major investment banks for credit, that the Board had been informed about cash concerns for months, that every financial advisor asked had advised against the

ment 1, Exhibit 5, Transcript Page 49. https://www.plainsite.org/dockets/download.html?id=285647386&a=1&z=fd4ffdbe

33 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS, Document 358, Attachment 1, Exhibit 13, Transcript Page 18. https://www.plainsite.org/dockets/download.html?id=286421807&a=1&z=d10716fd

34 *Vanity Fair*, August 25, 2019, "He's Full of Shit": How Elon Musk Fooled Investors, Bilked Taxpayers, and Gambled Tesla to Save SolarCity." https://www.vanityfair.com/news/2019/08/how-elon-musk-gambled-tesla-to-save-solarcity

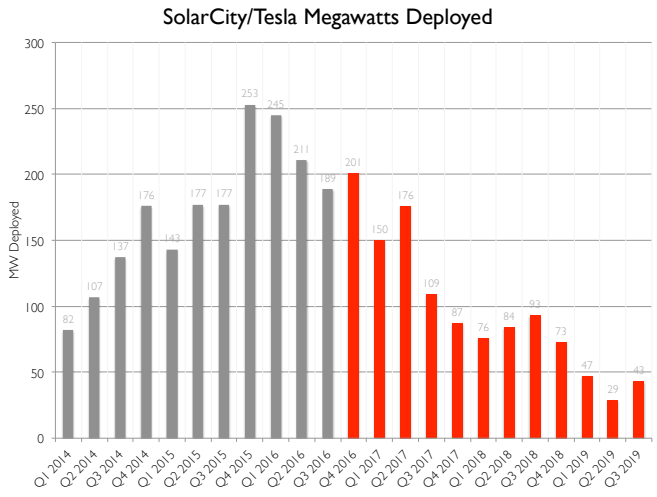
35 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS. https://www.plainsite.org/dockets/32atfyhh5/court-of-chancery-of-delaware/in-re-tesla-motors-inc-stockholder-litigation/

deal, or that SolarCity solar panels might be using defective components that ideally would need to be recalled to avoid fire risk. Despite lacking this crucial information and trying to keep it sealed, confidential, and redacted in court throughout 2019 and early 2020, Tesla's Board still maintains that shareholders were fully informed.

However one characterizes them, shareholders blindly followed their leader and voted to approve the deal. Musk got exactly what he wanted, managing to convince people he was a "visionary" as a bonus. And Tesla got saddled with billions of dollars of SolarCity's looming debt. The lesson of the SolarCity merger, only partially revealed three years after it completed, could be summarized as follows: far from the reserved, quirky engineer he once was, Elon Musk would do anything to get ahead—including committing criminal acts and trying to cover them up.

In deposition testimony regarding the merger in June 2019, Elon Musk repeatedly asserted that while "we certainly believed that the long-term growth of megawatts deployed would be very significant," he had also needed to re-allocate all of SolarCity's resources, including staff, to Model 3 production, or else Tesla's very survival would have been in jeopardy. In Musk's words,

> *"It takes time to refactor a product line. It takes time to restructure a company. And our focus last year was the Model 3 program. And so Tesla as a whole, if I did not take everyone off of solar and focus them on the Model 3 program to the detriment of solar, then Tesla would have gone bankrupt. So I took everyone from solar, and said, 'Instead of working on solar, you need to work on the Model 3 program.'"*[36]



After the merger completed in Q4 2016, Tesla's solar business declined 85% until it hit a new low in Q2 2019. Source: Tesla, Inc.

But this strange *ex post facto* rationalization—that unless Tesla acquired SolarCity for its labor pool, *Tesla* would go out of business—completely contradicts what investors were told at the time in 2016. Nor does this line of reasoning appear in discovery materials from 2016, or line up with any other person's recollection of the discussions leading up to the deal. It also strains belief that SolarCity shareholders would have willingly agreed to sacrifice their company for the good of another corporation that was already on life support. At no point did Tesla disclose that it would require thousands of additional employees to make the Model 3 program work, let alone that the only way to hire them would be to acquire a company whose

36 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS, Document 328, Attachment 2, Exhibit 9, Transcript Pages 37-38. https://www.plainsite.org/dockets/download.html?id=285647386&a=2&z=fd4ffdbe

staff had no experience whatsoever with vehicle manufacturing or sales. Effectively, Musk argued under oath that SolarCity was doomed to fail no matter what: if Tesla had not purchased SolarCity, then it would have been forced to declare bankruptcy, but because Tesla did, since Tesla was already on the verge of bankruptcy itself, SolarCity was stripped of its assets and left to rot, as was supposedly the plan all along. Yet somehow, despite the complete and deliberate decimation of the business, Musk still believed "the long-term growth of megawatts deployed would be very significant."

The striking inherent contradictions in this line of reasoning make it sound like Musk was lying under oath. Either way, the results of Musk's resource shift are visible in the numbers. SolarCity was reduced to a shadow of its former self after the merger, negating any *ex post facto* justification regarding "synergies" or "vertical integration." Given the amount of legal hassle its long-term lease agreements continued to generate for Tesla—which found itself embroiled in land trespass lawsuits,[37] mortgage cases, and foreclosure litigation galore, not to mention the expense of handling SolarCity's various Asset-Backed Securities and 200+ subsidiaries—it is a near certainty that keeping the solar business alive for the sake of appearances cost Tesla far more money than it was actually worth.

Securities Fraud, False Statements and Unfulfilled Promises

Tesla's market valuation is considerably higher than many of its competitors, despite its failure to even once sustain a profit for a full year. Some of the stock's buoyancy can be attributed to Elon Musk's star power, but beyond that, it is crucial to recognize that Musk and the company are constantly making false promises to customers and investors—many of them provably false—in an effort to (unlawfully) boost the stock price. This is possibly because Elon Musk's compensation package—a scheme called "extraordinary" by the Harvard Law School Forum on Corporate Governance—is entirely composed of stock options potentially worth billions of dollars, depending upon the share price.[38] Since the United States Securities and Exchange Commission (SEC) has largely been missing in action, these efforts to manipulate markets have, for the most part, worked, leaving 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5—the bedrock of American securities law—almost completely unenforced.

"Funding Secured"

Many people who had not been following Tesla's stock learned of it for the first time from an incident in August 2018 that is still today the single most egregious instance of securities fraud in the history of the stock market. At 9:48 A.M. on Tuesday, August 7, 2018, during trading hours, Elon Musk tweeted, "Am considering taking Tesla private at $420. Funding secured." He quickly added, "Shareholders could either to sell *[sic]*

37 *Dixon v. Tesla, Inc. et al*, Superior Court of California, County of Contra Costa, Case No. CIVMSC18-01286. https://www.plainsite.org/dockets/3gsr73jbl/superior-court-of-california-county-of-contra-costa/dixon-v-tesla-inc-et-al/

38 Harvard Law School Forum on Corporate Governance, May 22, 2018, "Elon Musk's Compensation." https://corpgov.law.harvard.edu/2018/05/22/elon-musks-compensation/

Funding was not secured.

at 420 or hold shares & go private."

This was a lie. Funding to take Tesla private was not secured, and never had been. The tweet would set in motion a series of events as markets and regulators attempted to grapple with the implications. Three days later, lawyers filed the first of fourteen resulting lawsuits in federal court and three in state courts.[39] Most of the cases were ultimately consolidated into one, which remains ongoing after a year-long detour to the Ninth Circuit Court of Appeals to resolve the question of who should serve as lead plaintiff: those with losses from both long and short positions, or those with the greatest losses overall from short selling Tesla when it skyrocketed on Musk's fake news.[40]

Two of the federal suits were filed by the United States Securities and Exchange Commission, which despite a general hands-off policy thanks to the Trump Administration's *laissez-faire*, pro-crime approach to financial regulation, still felt pressure to do something. Unable to reach an agreement with Musk and Tesla, the SEC took both cases to court in the Southern District of New York. In short order, Musk settled, with both Musk and Tesla agreeing to pay $20 million fines each, Musk agreeing to step down as Chairman of Tesla's Board of Directors, new requirements for independent directors imposed by the Commission, and pre-approval of Musk's tweets required going forward.

Musk seemingly can't stop and won't stop tweeting material, false information. These tweets, pre-approved by no one despite the 2018 SEC Consent Decree, resulted in charges of contempt of court. Ultimately, Tesla did not "deliver" 400,000 cars in 2019.

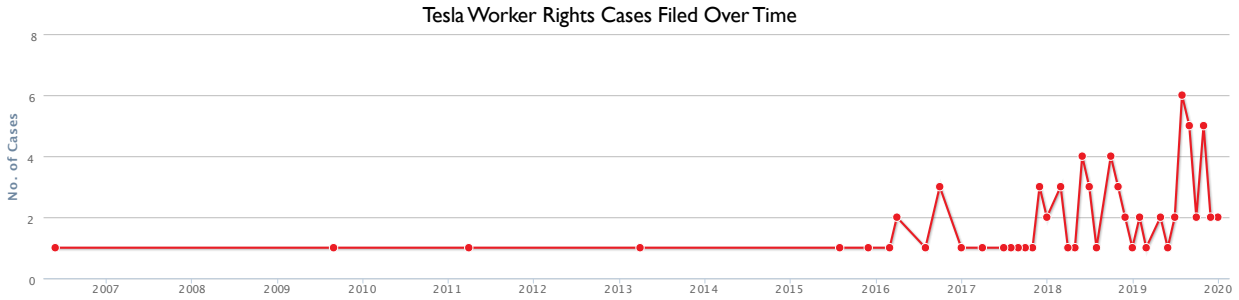
The "funding secured" incident was a landmark event in the history of financial markets for a number of reasons. For those who previously hadn't paid much attention to Elon Musk, it put him on the radar in a shocking and unflattering manner, attracting even more short interest in Tesla's stock. It also demonstrated how social media could be used to manipulate financial markets in an instant, while regulators scrambled to keep up. The settlement also showed executives a new low in what could be gotten away with.

Practically speaking, the settlement made little difference to Musk, who clearly felt emboldened. On December 9, 2018, Musk appeared on CBS News's flagship program, *60 Minutes*, stating, "I want to be clear. I do not respect the SEC. I do not respect them," directly into the camera. He also openly admitted that he had been violating the SEC's binding Consent Decree.[41] From that point forward, he was confident that he could

39 PlainSite. https://www.plainsite.org/tags/funding-secured/

40 *Bridgestone Investment Corp v. USDC-CASF*, Court of Appeals for the Ninth Circuit, Case No. 19-70031. https://www.plainsite.org/dockets/3tnszbhyq/court-of-appeals-for-the-ninth-circuit/bridgestone-investment-corp-v-usdccasf/

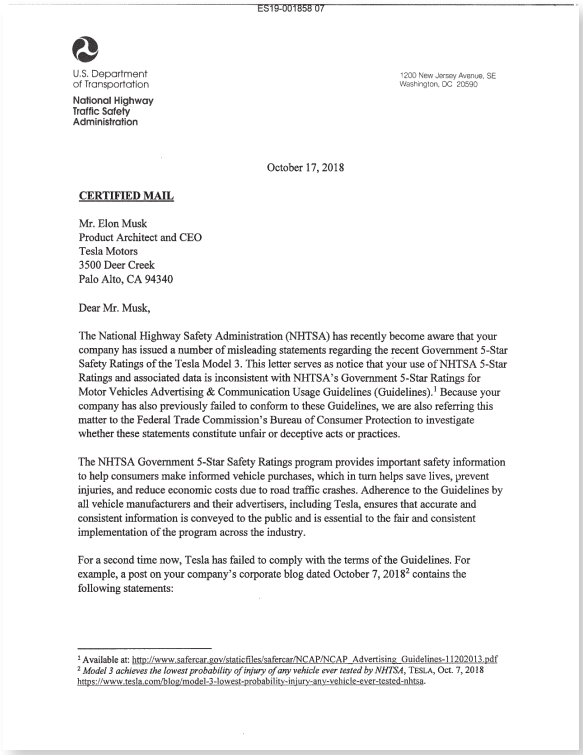
41 *CBS News 60 Minutes*, December 9, 2018, "Tesla CEO Elon Musk: The 60 Minutes Interview."



Tesla has faced an increasing number of lawsuits, many of them class-action suits, alleging unsafe and racist working conditions at Tesla's factories across the United States. There have also been several lawsuits alleging pervasive sexual harassment.

say or do anything he wanted to with zero repercussions. And he did.

On February 19, 2019 at 4:15 P.M., Musk posted new guidance on his Twitter account: Tesla would manufacture 500,000 cars in 2019. Four and a half hours later, he attempted to walk it back, but it was too late. The SEC finally dragged Musk back to court in April 2019 to subject him to contempt proceedings. But Musk still didn't need to worry. The SEC's trial lawyer, Cheryl Crumpton, made such a poor showing that Judge Alison Nathan chalked up Musk's deliberate and inexcusable antics to a mere misunderstanding. Sounding more like a kindergarten teacher coaching parents of feuding children than a federal judge, she stated, "My call to action is for everyone to take a deep breath, put your reasonableness pants on and work this out." Musk promptly walked out of the courtroom and declared victory. Two months later, the SEC attorney he had been negotiating with left the SEC to work for Tesla's lobbying partner. Despite highly questionable circumstances surrounding the amended Consent Decree that the SEC finally ironed out, Judge Nathan never bothered to follow up.



ES19-001858 07

U.S. Department of Transportation
National Highway Traffic Safety Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

October 17, 2018

CERTIFIED MAIL

Mr. Elon Musk
Product Architect and CEO
Tesla Motors
3500 Deer Creek
Palo Alto, CA 94340

Dear Mr. Musk,

The National Highway Safety Administration (NHTSA) has recently become aware that your company has issued a number of misleading statements regarding the recent Government 5-Star Safety Ratings of the Tesla Model 3. This letter serves as notice that your use of NHTSA 5-Star Ratings and associated data is inconsistent with NHTSA's Government 5-Star Ratings for Motor Vehicles Advertising & Communication Usage Guidelines (Guidelines).[1] Because your company has also previously failed to conform to these Guidelines, we are also referring this matter to the Federal Trade Commission's Bureau of Consumer Protection to investigate whether these statements constitute unfair or deceptive acts or practices.

The NHTSA Government 5-Star Safety Ratings program provides important safety information to help consumers make informed vehicle purchases, which in turn helps save lives, prevent injuries, and reduce economic costs due to road traffic crashes. Adherence to the Guidelines by all vehicle manufacturers and their advertisers, including Tesla, ensures that accurate and consistent information is conveyed to the public and is essential to the fair and consistent implementation of the program across the industry.

For a second time now, Tesla has failed to comply with the terms of the Guidelines. For example, a post on your company's corporate blog dated October 7, 2018[2] contains the following statements:

[1] Available at: http://www.safercar.gov/staticfiles/safercar/NCAP/NCAP_Advertising_Guidelines-11202013.pdf
[2] *Model 3 achieves the lowest probability of injury of any vehicle ever tested by NHTSA*, TESLA, Oct. 7, 2018 https://www.tesla.com/blog/model-3-lowest-probability-injury-any-vehicle-ever-tested-nhtsa.

The first page of NHTSA's October 17, 2018 letter to Elon Musk informing him that it had referred Tesla to the FTC Bureau of Consumer Protection.

October 24, 2018 Q3 2018 Earnings Call

During the regulated earnings call on October 24, 2018, Musk claimed, "This quarter, we started rolling out Version 9.0 of our software which is the biggest software upgrade in three years. And Model 3 received a 5-Star safety rating in every category and subcategory. And it got less probability of injury of any car that the U.S. government has ever tested."[42] In fact, according to what NHTSA told *Reuters* two weeks before, "NHTSA

https://www.cbsnews.com/news/tesla-ceo-elon-musk-the-2018-60-minutes-interview/

42 *The Motley Fool*, October 24, 2018, "Tesla Motors Inc (TSLA) Q3 2018 Earnings Conference Call Transcript." https://www.fool.com/earnings/call-transcripts/2018/10/25/tesla-motors-inc-tsla-q3-2018-earnings-conference.aspx

does not distinguish safety performance beyond the star rating with five stars being the highest safety rating a vehicle can achieve. Thus, there is no NHTSA 'safest' ranking within the five-star category."[43] By the time of the call, Musk had also received a letter addressed *directly to him* from NHTSA expressing exasperation that Tesla had repeatedly "failed to comply with the terms of [NHTSA] Guidelines." His false claims had led NHTSA to refer Tesla to the Federal Trade Commission (FTC)—a fact that Tesla did not ever disclose to shareholders. Instead, the letter was obtained by Think Computer Foundation via a FOIA request.

Musk and Laurie Shelby, Tesla Vice President, EHS, also made statements on the call regarding the manner in which Tesla provides healthcare for employees who work at its Fremont, California factory:

> *"...We've also just opened a new and improved health clinic, so when injuries do occur we get the absolute best care for our associates. And it's actually overseen by one of California's leading orthopedic surgeons. And we did that, because most of our injuries, like we said like 80%, 85% are those sprains and strains. So now they get that best care here on site. And we have 24/7 care. We are actually staffed by three full-time doctors and nurses. And I am really super happy with the care they're giving, and I think the employees are as well."*

These comments were likely in response to investigative reporting by *Reveal* reporter Will Evans, who starting in April 2018 took the company to task in a series of detailed articles and radio programs for its dismal track record taking care of injured employees, including some who suffered serious burns. Not mentioned by Ms. Shelby was the fact that Dr. Muhannad Hafi, one of the doctors hired by Tesla's medical contractor, Access Omnicare (merely a DBA name for a hand surgeon named Dr. Basil Besh), was facing revocation of his medical license at the time he was hired. His license was formally revoked by the California State Medical Board on December 21, 2018 for having sexually assaulted numerous prior patients.[44] Another doctor whose name appears on Access Omnicare medical records provided to *Reveal* worked for Access Omnicare for all of one week.

Therefore, Musk's statement that Tesla's medical care was "the absolute best" could not possibly be true, as no objective observer would consider an unlicensed sex offender and a physician absent after one week to be "the absolute best" health care providers available. Musk went on to refer to Access Omnicare as "a really immediate first-class healthcare available right on the spot, when people need it. And this is not just for workplace, this is for workplace and non-workplace." *Reveal*'s reporting suggests that this too was a lie. In fact, Tesla was sending employees to the hospital

43 *Reuters*, October 9, 2018, "U.S. agency says Tesla safety claim goes beyond its analysis." https://www.reuters.com/article/us-autos-tesla/u-s-agency-says-tesla-safety-claim-goes-beyond-its-analysis-idUSKCN1MJ2HR

44 *Ars Technica*, December 11, 2018, "Doctor, once hired by clinic that sees Tesla workers, just lost his license." https://arstechnica.com/tech-policy/2018/12/doctor-once-hired-by-clinic-that-sees-tesla-workers-just-lost-his-license/

in Lyft vehicles to avoid having to report injury statistics or pay for ambulance trips.[45] Despite these efforts to prevent negative metrics from ever surfacing, Tesla's injury rates still ballooned out of control.[46] With no sense of irony, Laurie Shelby described Tesla's care practices as "super exciting" on the call. Musk went even further, stating, "if you like become injured right off for any reason then there is healthcare immediately on site." In fact, Tesla's on-site medical facilities were and are quite limited, requiring frequent transportation to actual health care facilities.

Investors listening to these false statements might have been reassured that Tesla had its workplace injury program under control. In reality, it was fined by CalOSHA numerous times for violations, and its practices have led to no fewer than 80 employment-related lawsuits.[47]

January 30, 2019 Q4 2018 Earnings Call

By January 30, 2019, Musk knew or should have known that the pace of Model 3 sales was drastically slower in January than it had been during Q4 2018. On December 31, 2018, a federal tax incentive for electric vehicle purchases began to phase out, eroding a significant incentive for potential customers to purchase Tesla vehicles. Despite the knowledge that sales had slowed markedly, Musk still assured investors on the earnings call that future demand looked strong. On the call, with 30 days of sales data at his disposal, he nonetheless stated, "I'm optimistic about being profitable in Q1 and all quarters going forward."

Three months later, Tesla announced a $702 million loss, which would have approached $1 billion had the company not factored in one-time sales of emissions credits—a far cry from profitability.

April 24, 2019 Q1 2019 Earnings Call

On Tesla's Q1 2019 earnings call, Musk declared, "We expect to return to profitability in Q3 and significantly reduce our loss in Q2," once again reversing his previous prediction of a profit made only weeks prior. Yet again, Musk likely knew this statement to be false at the time he made it, but sought to increase Tesla's declining stock price.

Musk also made the compound false statement, "All Tesla class vehicles today have all the hardware necessary for full self-driving and over-the-air updates will enable our customers to use the Tesla ride-hailing network fleet and generate income, which as we said on Autonomy Day a few days ago we think is somewhere between $10,000 and $30,000 a year, in some cases, perhaps more." He also made the outrageous

45 *Reveal*. https://www.revealnews.org/tag/tesla/

46 *The Drive*, March 3, 2019, "Tesla Had 3 Times as Many OSHA Violations as the 10 Largest US Plants Combined." https://www.thedrive.com/news/26727/tesla-had-3-times-as-many-osha-violations-as-the-10-largest-us-plants-combined

47 PlainSite. https://www.plainsite.org/tags/tesla-worker-rights/

claim that, "…in 2020, we expect to have a million robotaxis on the road with the hardware necessary for full self-driving." Tesla vehicles do not have the hardware necessary for full self-driving, because even in the year 2020, there is no such thing.

Misleading Vehicle Pricing

Tesla's website, where customers can configure their vehicles for purchase, has long used a misleading pricing calculator to suggest that its cars cost less than they actually do. Effectively, Tesla has pioneered the deceptive advertising method of selectively including theoretical future savings in the final price of a product, even when the actual outlay of funds by the customer is far higher than the number presented. For example, if a Model 3 actually costs $40,000 up-front but could potentially lead to $3,000 in savings on gasoline in the future, Tesla would advertise the car as costing $37,000 in the present. Of course, this ignores other, less convenient future realities, such as the fact that using more electricity to power the car at home, or at a charging station, might drastically increase a customer's utility charges, or that some homes do not have the electrical wiring needed to safely charge a vehicle, necessitating the expense of hiring a contractor.[48] It also ignores a reality that has given numerous Tesla customers sticker shock: the fact that insuring Tesla vehicles is extremely expensive relative to non-Tesla vehicles.

No other company in the United States has ever been permitted to use this kind of pricing model, whether for car sales or other products, which is illegal on its face given that it is intended to deceive.

The Chinese Customs Debacle

On March 5, 2019, the Chinese English-language publication *Caixin* published an article with the headline "China is currently holding 1,600 Teslas at customs,"[49] setting off a plunge in Tesla's stock price. This news was picked up by *Reuters* and syndicated to other financial news websites such as CNBC (which later deleted the article).[50]

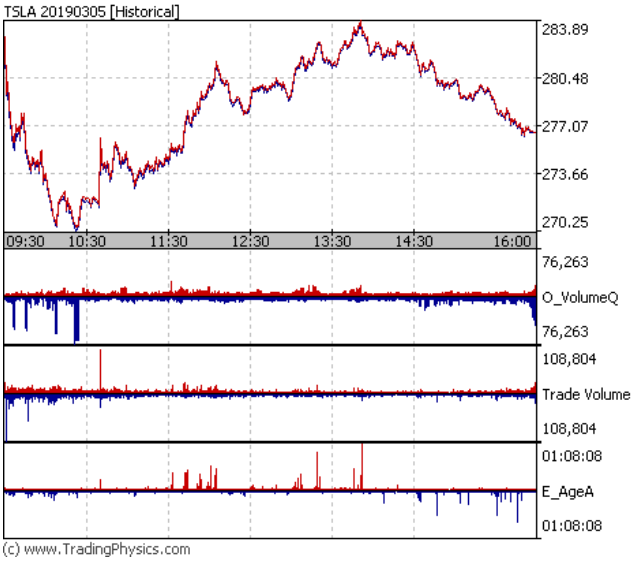
Later on March 5th, *Reuters* published a second article announcing that the issue in China had been resolved, immediately lifting Tesla's stock.[51] The *Reuters* article was based on a single source "familiar with the matter," who convinced *Reuters* that "China's customs authorities have accepted electric carmaker Tesla Inc's plan to remedy problems." An initial version of the article suggested that the source was a Tesla

48 According to HomeAdvisor, a 240V EV garage charging station costs $702 to install. https://www.homeadvisor.com/cost/garages/install-an-electric-vehicle-charging-station/

49 *Caixin*, March 5, 2019, "China Is Currently Holding 1,600 Teslas at Customs." https://www.caixinglobal.com/2019-03-05/china-is-currently-holding-1600-teslas-at-customs-101388002.html

50 CNBC, March 5, 2019, "We're sorry, the page you were looking for cannot be found." https://www.cnbc.com/2019/03/05/reuters-america-china-suspends-customs-clearance-for-tesla-model-3-imports--caixin.html

51 *Reuters*, March 5, 2019, "China agrees on solution to Tesla customs issue: source." https://www.reuters.com/article/us-china-tesla-response-idUSKCN1QM1WY



A graph of Tesla's stock price on March 5, 2019, when news about a Chinese customs problem broke, but was quickly "resolved" per an anonymous source. That source was later shown to be incorrect. Source: TradingPhysics.com

employee.

This representation, that a "plan" from Tesla had been "accepted" by the Chinese government, proved to be false. In fact, the issue with Chinese customs remained unresolved for weeks, contrary to what *Reuters* had reported on its wire service. Tesla had failed to include labels for the cars printed in the correct language for the Chinese market, and the actual number of vehicles affected was much higher than previously reported: over 4,600. On March 14th, Bloomberg published a much more detailed article explaining that China had finally cleared Tesla vehicles to proceed through customs.[52]

If in fact Tesla deliberately provided false and/or misleading information to the press, a material and significant violation of 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5 took place.

Rooftop "Money Printers"

On three occasions, either the @Tesla or @ElonMusk Twitter accounts have referred to Tesla solar panels as "money printers," presumably in reference to the expected savings on energy bills post-installation.[53,54,55] Unfortunately, for many actual customers, their solar installations have been anything but. Several lawsuits have been filed against SolarCity and Tesla alleging that solar installations actually made utility bills *increase* thanks to a proliferation of hidden fees.[56]

Phrases such as "money printer" are not subtle: they deliberately convey the sense of a risk-free product that will instantly result in profit for the owner. Given the complexity of solar financing arrangements, such a description is reckless and false, and likely violates the Federal Trade Commission (FTC) Act, as well as related state consumer protection statutes.

The money printer tweets also raise the question of who actually controls and has access to the @Tesla Twitter account, and if that person is ever Elon Musk. If so, the SEC Consent Decree from September 2018 (and the amended version thereafter) would

52 *Bloomberg News*, March 14, 2019, "China's Customs Said to Lift Tesla Model 3 Import Suspension." https://www.bloomberg.com/news/articles/2019-03-14/china-s-customs-is-said-to-lift-suspension-on-model-3-imports
53 Twitter, August 18, 2019. https://twitter.com/elonmusk/status/1163025594180726784
54 Twitter, September 7, 2019. https://twitter.com/elonmusk/status/1170431020358758401
55 Twitter, December 13, 2019. https://twitter.com/Tesla/status/1205693814024753153
56 PlainSite. https://www.plainsite.org/tags/tesla-solar/

Twitter

Elon Musk has taken to referring to Tesla solar panels as "money printers" in order to lure consumers. This phrasing is false, deceptive, and unlawful under the FTC Act and numerous state consumer protection statutes. Yet despite numerous lawsuits over Tesla's solar business, no government agency has taken action so far.

Court

4. In order to induce Sean Kolibas to enter into said agreement, Solar City promised that Sean Kolibas solar panels would be producing electricity that would be purchased by PSE&G resulting in little or no energy cost to Sean Kolibas. Said inducement was false.

5. Solar City installed more solar panels than needed. The result was Sean Kolibs was being charged for energy accumulated but not used.

6. During some months the energy bills paid by Sean Kolibas were greater than what he had been paying to PSE&G. This was contrary to Solar City's inducements.

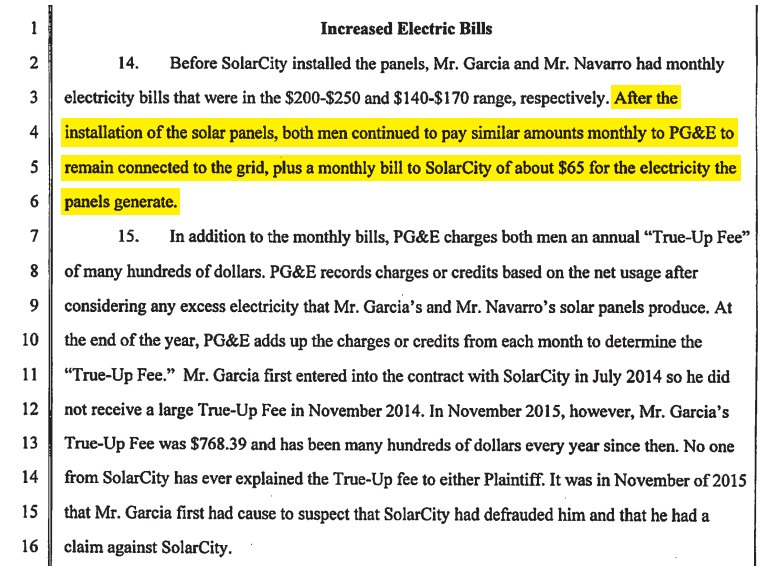
7. Solar City installed heavy and obsolete solar panels on the roof of the Iselin property. As a direct result the roof began to sag and leak. As a result the roof had to be replaced in February 2019, at a cost of approximately $17,500.00.

8. Because the roof had to be replaced due to the damage caused by Solar City, the solar panels had to be removed. Solar City charged Sean Kolibas $500.00 to remove the Solar panels even thought there is nothing in the agreement giving Solar City the right to charge to have the panels removed, especially when the panels had to be removed because of damage caused by Solar City.

9. Solar City further induced Sean Kolibas to sign the agreement by representing that if the roof had to be replaced Solar City would pay a portion of the cost. The representation was false.

In Kolibas v. SolarCity Corporation, filed in November 2019 in the Superior Court of Middlesex County, New Jersey, the plaintiffs accused Tesla of charging hidden fees and ruining their roof. As SolarCity's acquiror, Tesla has incurred significant legal liability due to roof damage from solar panel weight, fire, and snow.

presumably be binding upon Musk, whether he chooses to post from his personal account, the @Tesla account, or any other social media account. While the amendments to the Consent Decree limited the types of posts that require pre-approval, Musk hardly has a free pass to break the law by posting false and misleading statements. The characterization of Tesla products as "money printers" could conceivably violate the Securities and Exchange Act as well as the Consent Decree itself, which explicitly requires Musk to abide by the law. Furthermore, the question of who, if anyone, approved these tweets remains open. Tesla has never identified the so-called "Twitter Sitter" tasked with overseeing Musk's external communications.



Increased Electric Bills

14. Before SolarCity installed the panels, Mr. Garcia and Mr. Navarro had monthly electricity bills that were in the $200-$250 and $140-$170 range, respectively. After the installation of the solar panels, both men continued to pay similar amounts monthly to PG&E to remain connected to the grid, plus a monthly bill to SolarCity of about $65 for the electricity the panels generate.

15. In addition to the monthly bills, PG&E charges both men an annual "True-Up Fee" of many hundreds of dollars. PG&E records charges or credits based on the net usage after considering any excess electricity that Mr. Garcia's and Mr. Navarro's solar panels produce. At the end of the year, PG&E adds up the charges or credits from each month to determine the "True-Up Fee." Mr. Garcia first entered into the contract with SolarCity in July 2014 so he did not receive a large True-Up Fee in November 2014. In November 2015, however, Mr. Garcia's True-Up Fee was $768.39 and has been many hundreds of dollars every year since then. No one from SolarCity has ever explained the True-Up fee to either Plaintiff. It was in November of 2015 that Mr. Garcia first had cause to suspect that SolarCity had defrauded him and that he had a claim against SolarCity.

Even before Elon Musk started fraudulently touting Tesla's solar panels as "money printers," customers alleged in legal filings that the panels actually make their monthly utility bills higher, not lower, and come with hidden fees. Above, an excerpt from the complaint in Garcia et al v. SolarCity Corp. et al, Superior Court of California, County of San Mateo, Case No. 18CIV03640.

Vehicles as "Appreciating Assets"

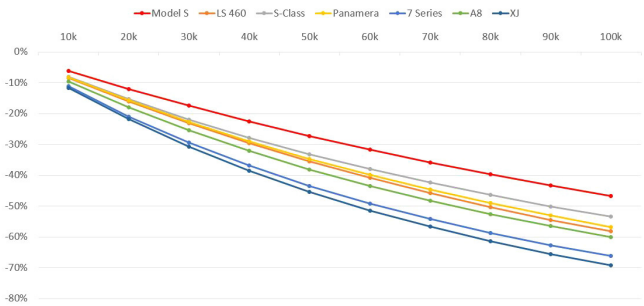
Cars depreciate in value as soon as they are driven off the dealer lot.[57] Some depreciate more than others, but this phenomenon is commonly known to apply to all cars, of all makes and models, since time immemorial. At some point well past a car's typical lifespan, scarcity may lead to appreciation in value for certain antique or collector's edition cars, but this is relatively rare.

On April 12, 2019, in an interview broadcast on YouTube with a self-described machine learning expert, Musk stated, "Buying a car today is an investment into the future. I think the most profound thing is that if you buy a Tesla today, I believe you are buying an appreciating asset—not a depreciating asset."[58] Musk is not claiming that Teslas will be valuable antiques: quite the opposite. He is asserting that their modernity will make them worth more later on. This might be true if production of all cars in the future were to suddenly cease—an extraordinarily unlikely possibility that is not Musk's implication in any way—but otherwise it is a clear lie.

Musk's outrageous claim has its roots in the fact that because Tesla vehicles are capable of receiving wireless software updates, they will supposedly appreciate in value over time because Tesla can always make the car better.[59] Three months after he first proposed the theory, in July, Musk doubled down on the claim, with *Bloomberg News* running the headline, "Musk Stands by His Tesla Appreciation Claim That Was Called 'Really Dumb.'"[60]

Perhaps the individual best positioned to disprove this nonsensical claim is Musk himself. In August 2018, in a video interview posted to YouTube,[61] Musk acknowledged the obvious fact that advances in technology lead to lower, not higher, prices. In his words, "[W]e're probably, I don't know, on the thirtieth version of, of, of a cell phone.

57 CARFAX, "Car Depreciation: How Much Value Will a New Car Lose?" https://www.carfax.com/blog/car-depreciation
58 YouTube, April 12, 2019, "Elon Musk: Tesla Autopilot | Artificial Intelligence (AI) Podcast." https://www.youtube.com/watch?v=dEv99vxKjVI
59 Electrek, April 12, 2019, "Tesla vehicles are now 'appreciating assets' due to self-driving capability, says Elon Musk." https://electrek.co/2019/04/12/tesla-vehicles-appreciating-assets-self-driving-elon-musk/
60 *Bloomberg News*, July 16, 2019, "Musk Stands by His Tesla Appreciation Claim That Was Called 'Really Dumb.'" https://www.bloomberg.com/news/articles/2019-07-16/musk-stands-by-tesla-appreciation-claim-called-really-dumb
61 YouTube, August 17, 2018, "Talking Tech with Elon Musk!" https://www.youtube.com/watch?v=MevKTPN4ozw&t=6m8s



An analysis by Autolist showed that the Tesla Model S depreciates less, but definitely in line with, various internal combustion engine vehicles. Source: https://www.autolist.com/news-and-analysis/tesla-model-x-model-s-depreciation

Or, um, and... And with each successive design iteration, uh, you can add more capability, you can design—you can integrate more things. You can figure out, uh, better ways to produce it, so it actually gets better and cheaper. But, it's like, a natural progression of any new technology" (emphasis added).

Musk's remarks are clearly self-contradictory. The key question is why within the span of eight months he changed his position on a basic economic principle for which there is ample evidence that Tesla vehicles do not appreciate, and never have. It goes without saying that making such false promises would be consistent with efforts to stimulate demand in the short term in order to satisfy Wall Street expectations and boost Tesla's stock price.

Notably, Tesla customers have reported that Tesla itself believes that its vehicles depreciate, even if the CEO suddenly does not. In the words of one customer,

> *"I contacted Tesla for a trade in value. Tesla quoted 15% below the average Kelly blue book value and 36% below the original MSRP. When I was purchasing the Tesla, they taught-ed that depreciation at 50k miles was roughly 28% and was number one in the industry, well that ship has sailed since the launch of the Model [3]. It is evident that due to the Model 3 the value on the Model S is evaporating on a monthly basis. The Model 3 is going to continue to crush the value of Model S and I would anticipate a sharp drop in MSRP, probably in the neighborhood of $15k to $20k, especially considering the tax break is about to be reduced"*[62]

It is unclear why regulators have allowed Musk to continue to claim that Tesla vehicles appreciate in value while Tesla itself continues to recognize depreciation when its own cars are traded in by repeat customers.

Autopilot

Tesla's hallmark software feature, at least as of early 2020, is the so-called Autopilot functionality that in certain, limited situations allows the car's camera sensors to guide its speed and steering with minimal driver input. Of course, the name "Autopilot" implies more, suggesting that the car is capable of driving itself. It isn't. The fine print in the Tesla owner manual instructs drivers to always keep their hands on the wheel. It's a directive that is almost universally disregarded.

62 Tesla Motors Club Forums, December 19, 2018, "Depreciation on Model S is Horrible." https://teslamotorsclub.com/tmc/threads/depreciation-on-model-s-is-horrible.138350/

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The data contained a chronological time history of multiple operational parameters including: vehicle speed, accelerator pedal position, brake status, steering wheel angle, cruise control state, autosteer state and warnings, lead vehicle presence and distance, front and rear motor torque, vehicle odometer, and diagnostics trouble codes.

The data log was approximately 23 hours-50 minutes in length and was recorded over a two day time period. During a portion of that duration, the vehicle was stationary. The subset of the data leading up to the crash was approximately 45-minutes long. (b)(4)

(b)(4)

(b)(4) Over the majority of the reported time, the Tesla was traveling with the cruise control engaged at 105 km/h (65 mph). The "autopilot" features were active for approximately 44 minutes in the drive cycle leading up to the crash.

The vehicle's manufacturer reported that this Tesla was utilizing firmware version 2.24.78 at the time of the crash.

DRAFT

	DRC1	DRC2	DRC3	Total
Autopilot activations	24	25	6	55
Driving time, hh:mm:ss	2:00:31	1:29:29	0:48:14	4:12:04
Autopilot time, hh:mm:ss	1:34:55	1:01:49	0:44:36	3:21:14
% of time in Autopilot	79%	74%	92%	80%
Trip distance, miles	107.0	85.2	50.8	242.9
Autopilot distance, miles	98.6	72.7	48.2	219.5
% miles in Autopilot	92%	85%	95%	90%
Hands On Wheel Visual alerts	14	20	14	48
Hands On Wheel First Chime alerts	12	19	14	45
Hands On Wheel Enhanced Chime alerts	12	12	13	37
Hands On Wheel Slowing alerts	9	6	12	27
TOTAL HANDS ON WHEEL ALERTS	47	57	53	157
Average response time to initial HOW alerts: sec	31.7	26.0	33.3	29.8
Hands On Wheel Detections	138	135	38	311
Autopilot time with hands on wheel, h:mm:ss	0:00:41	0:00:48	0:00:07	0:01:36
Autopilot time with hands off wheel, h:mm:ss	1:30:36	0:59:49	0:44:29	3:14:55
% Autopilot time with hands on wheel	0.7%	1.3%	0.3%	0.8%
Brake applies	73	39	4	116
Steering overrides	17	20	5	42

Tesla's disclosures revealing "% Autopilot time with hands on wheel" frequently under 1% prior to a car accident.

Elon Musk demonstrated Autopilot for 60 Minutes correspondent Leslie Stahl in a deceptive and dangerous manner with his hands far from the steering wheel, prompting the "iPiloto Automático!" meme on Twitter. Source: Twitter User @Keubiko

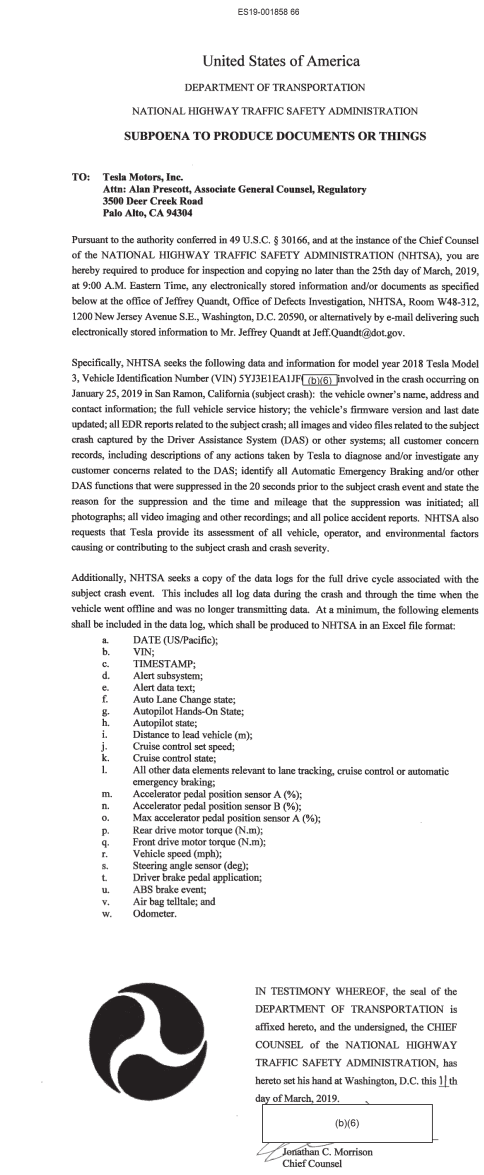
It's not just the company's customers who feel comfortable risking their lives and the lives of others on the roads and highways they drive on. During a *60 Minutes* interview with Leslie Stahl, Musk infamously drove Stahl and a cameraman in a Tesla vehicle on U.S. Interstate 101-N, using Autopilot with his hands clearly off the wheel, in what might have been the most reckless bit of technology showmanship ever broadcast. The stunt led to an internet meme poking fun at Tesla's Autopilot claims, involving Musk, a pair of maracas, and a colorful sombrero.[63]

Some Autopilot customers have engaged in predictable abuse of the technology to work around the limited warning chimes and automatic shut-off features that Tesla has built in. Photographs abound on Twitter of car owners using water bottles, fruit, and other small items to trick the vehicle hardware into thinking that hands are on the steering wheel. It goes without saying that this is insanely dangerous, completely reckless, and likely illegal.

Aside from Tesla's outright lies about the technology (starting with its name), simply due to the nature of what it is designed to do, Autopilot is deceptive in the sense that it appears to the casual observer to be more capable than it really is, until it suddenly isn't. The danger lies in these so-called "corner cases," as they are referred to in the world of software development—untested situations where Autopilot suddenly, and without warning, fails—because while corner cases for many computer programs might only result in a window disappearing from a screen, a crash on an interstate at 65 miles per hour can easily result in the loss of life.[64] That has already begun to happen

63 There is a rich tradition of memes ridiculing Musk, including one from Russia in which posters jokingly attempt to one-up Musk with elaborate-looking but fundamentally stupid inventions. *BuzzFeed News*, August 22, 2018, "Russians Are Trolling Elon Musk By Tweeting Terrible Inventions At Him And People Love It." https://www.buzzfeednews.com/article/krishrach/russian-trolling-elon-musk-memes-invention-twitter

64 YouTube, September 15, 2016, "Tesla autopilot crash in China." https://www.youtube.com/watch?v=fc0yYJ8-Dyo



ES19-001858 66

United States of America

DEPARTMENT OF TRANSPORTATION

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS

TO: Tesla Motors, Inc.
Attn: Alan Prescott, Associate General Counsel, Regulatory
3500 Deer Creek Road
Palo Alto, CA 94304

Pursuant to the authority conferred in 49 U.S.C. § 30166, and at the instance of the Chief Counsel of the NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA), you are hereby required to produce for inspection and copying no later than the 25th day of March, 2019, at 9:00 A.M. Eastern Time, any electronically stored information and/or documents as specified below at the office of Jeffrey Quandt, Office of Defects Investigation, NHTSA, Room W48-312, 1200 New Jersey Avenue S.E., Washington, D.C. 20590, or alternatively by e-mail delivering such electronically stored information to Mr. Jeffrey Quandt at Jeff.Quandt@dot.gov.

Specifically, NHTSA seeks the following data and information for model year 2018 Tesla Model 3, Vehicle Identification Number (VIN) 5YJ3E1EA1JF(b)(6) involved in the crash occurring on January 25, 2019 in San Ramon, California (subject crash): the vehicle owner's name, address and contact information; the full vehicle service history; the vehicle's firmware version and last date updated; all EDR reports related to the subject crash; all images and video files related to the subject crash captured by the Driver Assistance System (DAS) or other systems; all customer concern records, including descriptions of any actions taken by Tesla to diagnose and/or investigate any customer concerns related to the DAS; identify all Automatic Emergency Braking and/or other DAS functions that were suppressed in the 20 seconds prior to the subject crash event and state the reason for the suppression and the time and mileage that the suppression was initiated; all photographs; all video imaging and other recordings; and all police accident reports. NHTSA also requests that Tesla provide its assessment of all vehicle, operator, and environmental factors causing or contributing to the subject crash and crash severity.

Additionally, NHTSA seeks a copy of the data logs for the full drive cycle associated with the subject crash event. This includes all log data during the crash and through the time when the vehicle went offline and was no longer transmitting data. At a minimum, the following elements shall be included in the data log, which shall be produced to NHTSA in an Excel file format:

a. DATE (US/Pacific);
b. VIN;
c. TIMESTAMP;
d. Alert subsystem;
e. Alert data text;
f. Auto Lane Change state;
g. Autopilot Hands-On State;
h. Autopilot state;
i. Distance to lead vehicle (m);
j. Cruise control set speed;
k. Cruise control state;
l. All other data elements relevant to lane tracking, cruise control or automatic emergency braking;
m. Accelerator pedal position sensor A (%);
n. Accelerator pedal position sensor B (%);
o. Max accelerator pedal position sensor A (%);
p. Rear drive motor torque (N.m);
q. Front drive motor torque (N.m);
r. Vehicle speed (mph);
s. Steering angle sensor (deg);
t. Driver brake pedal application;
u. ABS brake event;
v. Air bag telltale; and
w. Odometer.

IN TESTIMONY WHEREOF, the seal of the DEPARTMENT OF TRANSPORTATION is affixed hereto, and the undersigned, the CHIEF COUNSEL of the NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, has hereto set his hand at Washington, D.C. this 11th day of March, 2019.

(b)(6)

Jonathan C. Morrison
Chief Counsel

A Think Computer Foundation FOIA request response revealed that NHTSA reguarly subpoenas Tesla, Inc. for informaton regarding crashes involving Autopilot. What NHTSA actually does with the information it obtains is unclear.

when Autopilot has been involved.

To date, Tesla has been sued at least 20 times in cases involving Autopilot.[65] Many of those lawsuits have involved accidents where fatalities were directly caused by the driver's reliance on Autopilot—the tragic and predictable consequence of the technology being released without sufficiently testing.[66] Separate from litigation, an anonymously-run website called tesladeaths.com has begun to track the number of deaths linked to Tesla vehicles.[67]

Concern is warranted. In Mountain View, not far from Tesla's headquarters, an Apple engineer named Wei Lun "Walter" Huang died when his Tesla Model X collided head-on with a concrete divider separating the highway from a ramp for an elevated express lane on CA 85-S. Huang's Model X was set to use Autopilot at the time of the crash, and the software had followed what it believed was a lane marker painted on the highway directly into the barrier without slowing down at all. In fact, before he was killed, Huang had noticed Autopilot's tendency to deviate from the correct path at that spot, and had brought it to Tesla's attention repeatedly. After his death, his family sued; the lawsuit is ongoing.[68]

A response to a Freedom of Information Act request by Think Computer Foundation revealed that the National Highway Transit Safety Administration (NHTSA) regularly subpoenas Tesla for information regarding collisions that involve Autopilot.[69] Tesla and NHTSA have also held regularly scheduled meetings to discuss Tesla's self-driving technology, and to provide in-person demonstrations for federal regulators.

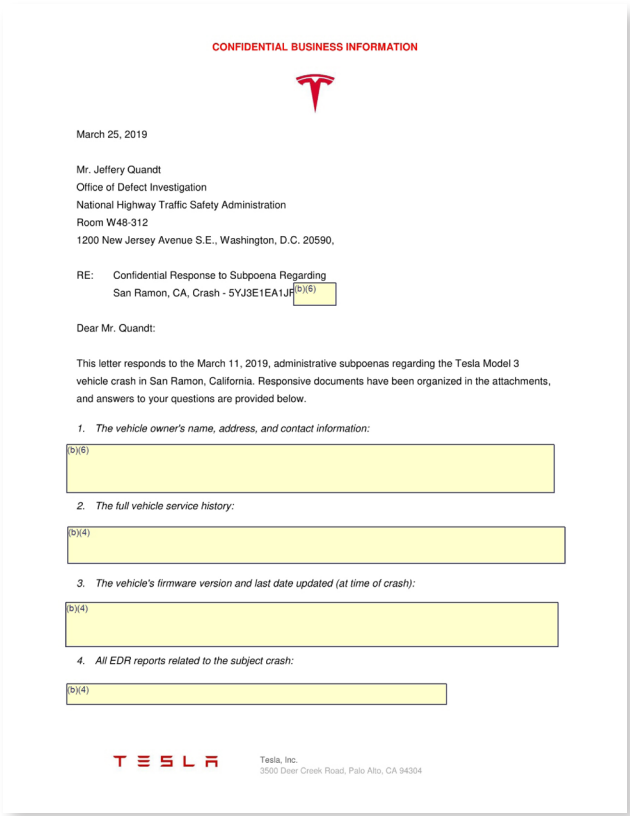
65 PlainSite. https://www.plainsite.org/tags/tesla-autopilot/

66 Tesla tests many of its cars on a short loop near its Palo Alto headquarters that extends from Page Mill Road to Interstate 280-S, Sand Hill Road, and back again on El Camino Real. On an average day, the weather conditions on this loop are considerably more pleasant than, for example, typical winter conditions in Boston, Massachusetts. This is perhaps why many Model 3 owners in colder climates were surprised to find that the "innovative" Model 3 door handles had a propensity to freeze shut, locking them out of their cars, often in unforgiving weather.

67 Since Autopilot is deactivated as soon as the driver presses the brake pedal, and it's common to press on the brakes just before a collision, it is possible that the number of Autopilot-related accidents has been under-reported.

68 *Sz Huang et al v. Tesla Inc. dba Tesla Motors, Inc. et al*, Superior Court of California, County of Santa Clara, Case No. 19CV346663. https://www.plainsite.org/dockets/3y1d4wlms/superior-court-of-california-county-of-santa-clara/sz-huang-et-al-v-tesla-inc-dba-tesla-motors-inc-et-al/

69 PlainSite, August 6, 2019, "Tesla NHTSA FOIA Response." https://www.plainsite.org/documents/fnrhg/tesla-nhtsa-foia-response/



CONFIDENTIAL BUSINESS INFORMATION

March 25, 2019

Mr. Jeffery Quandt
Office of Defect Investigation
National Highway Traffic Safety Administration
Room W48-312
1200 New Jersey Avenue S.E., Washington, D.C. 20590,

RE: Confidential Response to Subpoena Regarding
San Ramon, CA, Crash - 5YJ3E1EA1JF (b)(6)

Dear Mr. Quandt:

This letter responds to the March 11, 2019, administrative subpoenas regarding the Tesla Model 3 vehicle crash in San Ramon, California. Responsive documents have been organized in the attachments, and answers to your questions are provided below.

1. *The vehicle owner's name, address, and contact information:*

(b)(6)

2. *The full vehicle service history:*

(b)(4)

3. *The vehicle's firmware version and last date updated (at time of crash):*

(b)(4)

4. *All EDR reports related to the subject crash:*

(b)(4)

TESLA

Tesla, Inc.
3500 Deer Creek Road, Palo Alto, CA 94304

On August 7, 2019, Elon Musk wrote to the author of this report stating, "The data is unequivocal that Autopilot is safer than human driving by a significant margin. It is unethical and false of you to claim otherwise. In doing so, you are endangering the public." Above, the result of Tesla's request to NHTSA that all information concerning an Autopilot collision be redacted as "Confidential Business Information"—one of many such requests by Tesla, all granted.

An appeal of NHTSA's FOIA response, attempting to wrangle the release of over 400 pages of documents that NHTSA had withheld, yielded a few more pages, but with redactions in key places.[70] For example, Tesla insisted that the version of its software vehicles were running when they were involved in Autopilot-related accidents was a trade secret, even though this information is crucial to determining whether a flaw in a particular version of Tesla's software may have been at least partially responsible. Several court cases have addressed a related problem involving the fact that after a collision, Tesla retains ownership of the vehicle's data, making it nearly impossible for drivers, passengers, or affected victims to figure out what went wrong without issuing a subpoena to Tesla for their own car's data first.[71]

Incredibly, Tesla's form letter in response to those who threaten legal claims due to Autopilot includes the warning that, "To the extent your client intends to pursue a product claim against Tesla, we reserve the right to claim the physical evidence from the vehicle has been spoilated if it is not being preserved in its post-incident condition." In other words, Tesla expects victims of its design flaws to keep severely damaged vehicles in storage indefinitely while it withholds the digital evidence necessary to move forward with a case. Then again, considering that Elon Musk reportedly hung up on the Chairman of the National Transportation Safety Board (NTSB), Robert Sumwalt, during a probe into a Tesla crash, this is hardly surprising.[72]

On December 18, 2019, European Union regulators forced Tesla to disable key portions of Autopilot across Europe, causing the company to notify customers in multiple languages that they would no longer be able to use features that they had already paid for (in some cases thousands of Euros extra).[73] Meanwhile, there is evidence

70 PlainSite, September 26, 2019, "Supplemental NHTSA FOIA Response." https://www.plainsite.org/documents/xk2bo/supplemental-nhtsa-foia-response/

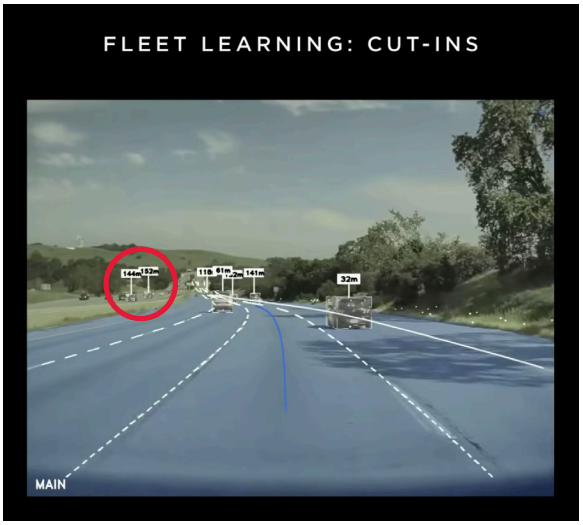
71 *Michael Casuga v. Tesla Inc.*, Superior Court of California, County of Santa Clara, Case No. 19CV360013. https://www.plainsite.org/dockets/45a61pihc/superior-court-of-california-county-of-santa-clara/michael-casuga-v-tesla-inc/

72 *Ars Technica*, May 5, 2018, "Elon Musk hung up on NTSB chief during call about Tesla crash probe." https://arstechnica.com/tech-policy/2018/05/elon-musk-hung-up-on-ntsb-chief-during-call-about-tesla-crash-probe/

73 *CNet*, December 18, 2019, "Tesla Autopilot neutered in Europe to meet new regulations." https://www.cnet.com/roadshow/news/tesla-model-s-model-x-autopilot-europe-regulations/

that NHTSA has actively tried to cover up devastating statistics on Tesla's behalf. A FOIA lawsuit lodged by Quality Control Systems Corporation[74] forced NHTSA to divulge documents indicating that "actual mileage at the time the Autosteer software was installed appears to have been reported for fewer than half the vehicles NHTSA studied. For those vehicles that do have apparently exact measurements of exposure mileage both before and after the software's installation, the change in crash rates associated with Autosteer is the opposite of that claimed by NHTSA."[75] In other words, by using flawed data analysis, NHTSA whitewashed the fact that Autopilot actually makes driving more dangerous.

As of the end of 2019, despite obvious warning signs and an outcry from public watchdog groups and even Senator Markey of Massachusetts, Autopilot was still causing crashes on American roads.[76]



On Autonomy Investor Day, a presentation by Andrej Karpathy of Tesla's LIDAR-free object recognition engine involved strange, flickering boxes around some—but not all—cars on the opposite side of a major highway separated by a wide, grassy median. The video makes it appear that the software is uncertain which side of the road the cars are on, or which direction they are headed. Source: https://www.youtube.com/watch?v=Ucp0TTmvqOE&t=2h10m20s

Full Self-Driving (FSD)

While Autopilot might fairly be described as a driver assistance technology, Elon Musk is not the kind of person who would merely be satisfied with "driver assistance," even assuming that such assistance worked in 100% of scenarios and wasn't already responsible for numerous driver deaths, injuries, and millions of dollars in property damage and health care expenditures. To stay ahead of the competition, Musk has additionally promised "Full Self Driving" at Level 5 on the Society of Automotive Engineers scale by 2020[77]—a technology that does not exist at present.[78] Musk has not hesitated to conflate the two technologies.

To be clear, Tesla vehicles equipped with the company's "Autopilot" feature cannot, in fact, drive themselves. Nor has Tesla achieved anything close to Level 5 autonomy now that 2019 has drawn to a close, despite Musk's promises to the contrary.[79]

74 *QUALITY CONTROL SYSTEMS CORP. v. U.S. DEPARTMENT OF TRANSPORTATION*, District Of Columbia District Court, Case No. 1:17-cv-01266-DLF. https://www.plainsite.org/dockets/35tgfcw4v/district-of-columbia-district-court/quality-control-systems-corp-v-us-department-of-transportation/

75 Quality Control Systems Corporation, February 8, 2019, "NHTSA's Implausible Safety Claim for Tesla's Autosteer Driver Assistance System." http://www.safetyresearch.net/Library/NHTSA_Autosteer_Safety_Claim.pdf

76 YouTube, December 30, 2019. https://www.youtube.com/watch?v=i9r4nS5EjjQ

77 *The Verge*, April 22, 2019, "Here are Elon Musk's wildest predictions about Tesla's self-driving cars." https://www.theverge.com/2019/4/22/18510828/tesla-elon-musk-autonomy-day-investor-comments-self-driving-cars-predictions

78 Synopsys, "Dude, Where's My Autonomous Car? The 6 Levels of Vehicle Autonomy." https://www.synopsys.com/automotive/autonomous-driving-levels.html

79 *Automobile Magazine*, April 23, 2019, "Tesla Promises Full Level 5 Autonomy by End of 2019, Model 3 Robotaxis by 2020." https://www.automobilemag.com/news/tesla-autonomous-driving-level-5-model-3-robotaxi/

On April 22, 2019, Tesla held an "Autonomy Investor Day" where Musk and several engineers demonstrated the company's progress on software and hardware in the domain of autonomous driving. The audience of uniformly Tesla-friendly investment analysts, mostly lacking the computer science background necessary to understand what they were being told, managed not to ask too many probing questions. But even with an audience of faithful cheerleaders, there were a few hitches.

First, a demonstration video of how Tesla's autonomous driving software works revealed that it appeared incapable of distinguishing between traffic on one side of a highway versus the other side, where cars were traveling in the opposite direction, even when separated by a wide median.

Second, Tesla's software could not at the time recognize construction markers, such as large orange reflective barrels. A video posted to YouTube months later on July 15, 2019 by a Tesla owner showed how his vehicle plowed head-on into ten orange barrels in a row before he took control and stopped the car.[80] Finally, in early December 2019, years after Tesla began deploying Autopilot while marketing it as safe—and long after Elon Musk's promises that Level 5 autonomy was merely months away—Tesla added in recognition for orange barrels. Except that didn't quite work, either.

Tesla's "fix" for the orange barrel problem caused a new problem: the recognition of children wearing orange shirts as traffic cones.

On December 16, 2019, a news story began circulating about a boy wearing an orange shirt in Brazil who had been mistaken for a cone by Tesla's software.[81] While the boy was not hurt, the story continued to raise serious questions about Autopilot's true abilities, the safety concerns associated with using it, and the veracity of Musk's claims about FSD technology being just around the corner.

The abuse of language by Tesla and Musk has been so shocking that consumer watchdog group Consumer Reports issued a press release immediately after Tesla's Autonomy Investor Day entitled, "Consumer Reports: Tesla Must Prove Safety Before Claiming 'Self-Driving' Ability."[82,83]

80 YouTube, July 15, 2019, "AReallyBadDay: Tesla Crash into Construction Barrels." https://www.youtube.com/watch?v=i9r4nS5EjjQ

81 InsideEVs, December 16, 2019, "Tesla Autopilot Confuses Boy In Orange Shirt For A Cone In Brazil." https://insideevs.com/news/388253/tesla-autopilot-confuses-boy-for-cone/

82 Consumer Reports, April 22, 2019, "Consumer Reports: Tesla Must Prove Safety Before Claiming 'Self-Driving' Ability." https://advocacy.consumerreports.org/press_release/consumer-reports-tesla-must-prove-safety-before-claiming-self-driving-ability/

83 On May 8, 2019 a video inside a Tesla Model S was posted displaying the risks Tesla owners take by using Autopilot. Toward the end, the vehicle almost swerves into a stationary school bus parked outside an elementary school—but thanks

Musk has ignored these worrisome signs, instead pressuring his staff to work faster. That pressure has had consequences, with mass departures from the Autopilot team within Tesla making headlines in July 2019.[84] The pressure was particularly acute on the team because of Musk's habit of making grandiose-yet-maybe-possible, baseless-yet-aggressive public pronouncements. For example, on March 24, 2017, Musk wrote on Twitter, "All Tesla cars built since Oct last year will be capable of self-driving as software improves."[85] Musk repeated this claim on April 22, 2019 by stating on Twitter, "All cars made since Oct 2016 either have the hardware needed for FSD or are trivially upgradeable."[86]

Since then, numerous customers have grown upset over promises that their vehicles would be upgraded to "Hardware 3.0," which Musk has claimed is necessary for FSD capabilities. Yet no one seems to be able to get their hands on Hardware 3.0, whatever it is, and accordingly, pre-paid upgrade fees for FSD functionality, typically ranging from $5,000 to $6,000, have thus far paid for nothing save for an engorged "Customer deposits" line item on Tesla's balance sheet.

That Musk would even be focused on far-afield, risky gambits when it comes to passenger safety is remarkable given data from Norway showing that electric vehicles are already more dangerous on average than internal combustion engine vehicles. In 2018, 9% of internal combustion vehicles in Norway suffered some kind of accident damage, while the rate was 13.5% for electric vehicles overall. But for Teslas, that figure was the highest in the country: 20.4%. In other words, more than one in five Tesla vehicles in Norway was involved in an accident in 2018.[87] The main feature that separates Teslas from other electric vehicles is assisted autonomous driving.

Robotaxis

Still not content with the fanciful notion that Tesla would achieve Level 5 autonomy by year-end 2019, Musk decided to make an even bolder, more audacious prediction: that by 2020 Tesla would deploy a "fleet" of one million self-driving "robotaxis"—essentially, the same cars that customers had already purchased and put on the road, but with software updated wirelessly to turn these vehicles into autonomous self-driving taxis for commercial, as opposed to personal, use. The notion, seemingly targeted at Wall Street analysts in an over-extended bull market hungry for hype, was that in addition to its revenue streams from selling cars and solar panels, Tesla would also soon compete with sharing economy heavyweights Uber and Lyft.

Some media outlets have called the idea questionable.[88] Truly, it can only be fairly

to driver intervention, does not—even with the bus's lights flashing. https://www.youtube.com/watch?v=c6YMY2m7GKI

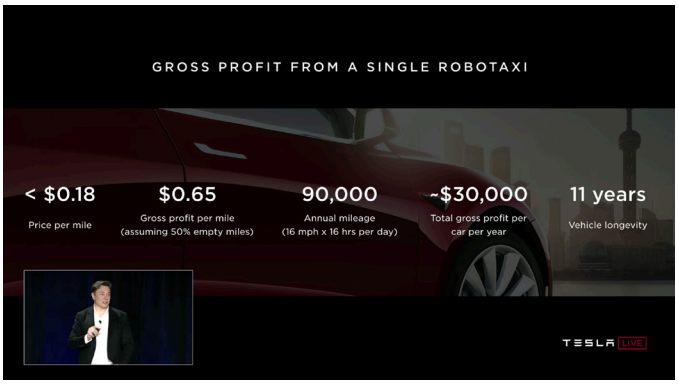
84 *ArsTechnica*, July 9, 2019, "'Close to 10%' of Autopilot software team reportedly departs after shakeup." https://arstechnica.com/cars/2019/07/close-to-10-of-autopilot-software-team-reportedly-quits-after-shakeup/

85 Twitter, March 24, 2017. https://twitter.com/elonmusk/status/845281211626864641

86 Twitter, April 22, 2019. https://twitter.com/elonmusk/status/1120483430515585024

87 *Bilbransje24*, August 16, 2019, "Disse elbilene bulker mest." https://bilbransje24.no/artikler/disse-elbilene-bulker-mest/471706

88 *Engadget*, April 22, 2019, "Tesla promises 'one million robo-taxis' in 2020."



Uber-like "robotaxis" were a major focus of Autonomy Investor Day, but the topic was quickly abandoned in public statements thereafter.
Source: https://www.youtube.com/watch?v=Ucp0TTmvqOE&t=3h12m56s

described as bonkers.

When questioned about how the company reached its conclusions at Autonomy Investor Day, Musk responded, "We just randomly threw some numbers on there." That sounds about right: Tesla, Uber, and Lyft are all fundamentally unprofitable companies, with Uber losing over $5 billion in the single quarter of Q2 2019. Why any CEO would want to emulate such a business is an open question subject to debate. But for Elon Musk to both have that desire, and to condition it upon the provably false promise of deploying a technology that does not exist, suggests some actual motive for making the claim other than sheer delusion. Keeping Telsa's stock price up is one possible motive.

Strangely, no reference to robotaxis ultimately appeared in the company's secondary offering prospectus in early 2019. Like Tesla's securities lawyers, experts at MIT also doubt that such a service would be cost effective.[89] On the other hand, it's still possible that Silicon Valley startups (as well as Valley-based divisions of large automotive manufacturers) will pilot autonomous taxi services in the near future. Computer vision engineer Anton Troynikov wrote about how such a competitive landscape might unfold in March 2018.[90] As of January 2020, no services have launched thus far.

"Unusually High [Order] Volume"

On March 19, 2019, the official @Tesla Twitter account claimed, "Due to unusually high volume, Tesla was unable to process all orders by midnight on Monday, so the slight price rise on vehicles is postponed to midnight Wednesday."[91] (This post was also re-tweeted by Musk's personal @ElonMusk account.) There was no evidence for this suspicious claim at the time, and the company's Q1 2019 financial report confirmed it to be a two-part lie: Tesla's servers were fine, and there was no spike in order activity that caused them to experience any problems.

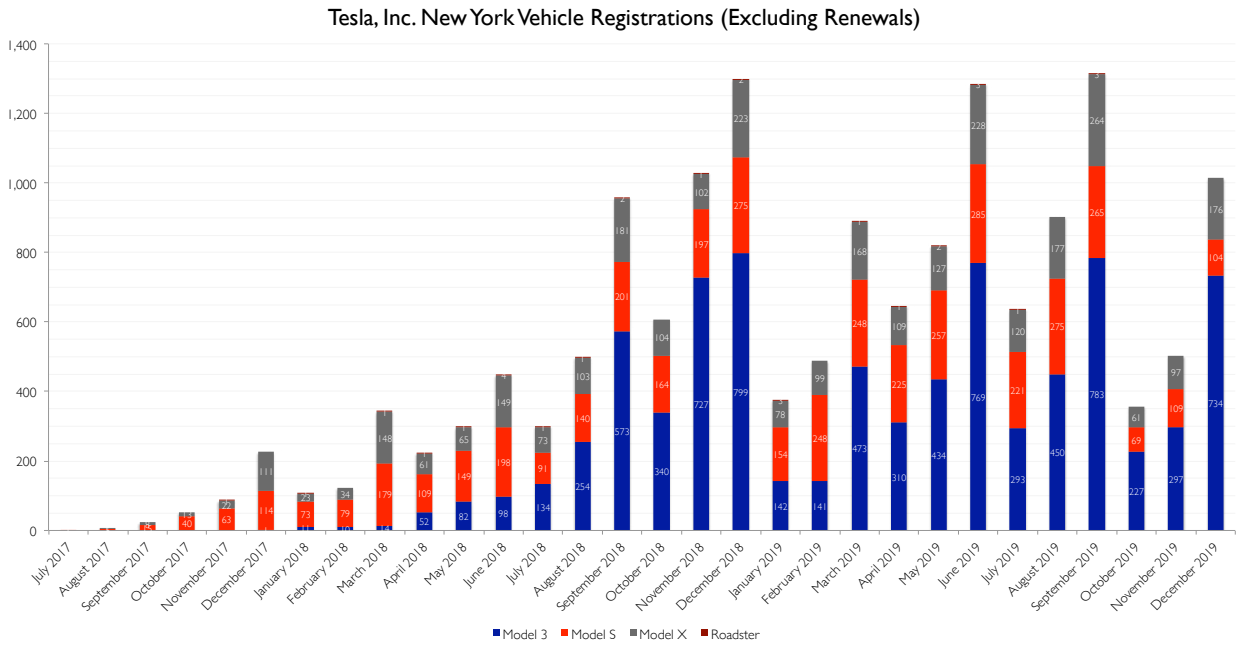
Fundamentally, Tesla's rosy narrative about being a "growth" company, still believed by much of Wall Street, is misleading given that its sales have plateaued or decreased in the United States since 2018. Data from New York State, which publishes VIN-level information monthly, indicates that new registration of Tesla vehicles just barely

https://www.engadget.com/2019/04/22/tesla-elon-musk-self-driving-robo-taxi/

89 *FT Alphaville*, April 29, 2019, "The questionable economics of autonomous taxi fleets." https://ftalphaville.ft.com/2019/04/29/1556557142000/Scoop--the-questionable-economics-of-autonomous-taxi-fleets/

90 Troynikov, Anton, March 28, 2018, "Thoughts on the Autonomous Vehicle Industry." http://troynikov.io/thoughts-on-autonomy/

91 Twitter, March 19, 2019. https://twitter.com/Tesla/status/1108007729170255875



Data compiled from New York State vehicle registrations as of January 3, 2020 demonstrates that Tesla's growth in one of its key states has plateaued, and sales may in fact be falling. The periodic wedge pattern is consistent with big end-of-quarter sales pushes in March, June, September and December. As of December 31, 2019, federal electric vehicle tax credits are no longer available to Tesla buyers.

peaked in September 2019, scraping by levels from December 2018. The company's efforts to meet quarterly delivery targets have historically brought demand forward at the end of each quarter, causing significant drop-offs in the following month.

Selective and Misleading Pre-Order and Reservation Disclosures

For a time, Musk was pleased to boast about the number of reservations for the Model 3, each of which involved a deposit. By April 24, 2019, on the Q1 2019 Tesla earnings call, his attitude had completely shifted and he stopped disclosing anything about reservations, claiming that they no longer mattered. In Musk's words,

> *"I think we don't want to comment on the granularity of deposits. Again, people read too much into this. We're not playing off the Model Y because we're just not in production so you can't really read anything into Model Y orders at this point."*

His mind changed again when it came to the Cybertruck, a product whose launch turned into a spectacle when Musk launched a steel ball at not one, but two windows, breaking both.[92] Musk broadcast the number of Cybertruck reservations on his Twitter account almost immediately, posting one number after another despite

92 A video Musk posted of the backstage prep for the launch revealed why the truck's windows broke. In practice runs, the car doors were left slightly ajar and covered by padding, making it difficult to see that they had room to give when the ball hit each window. On stage, the doors were firmly shut. The sledgehammer used to "prove" the toughness of the truck appeared to be a dead blow hammer, designed to minimize direct striking force. The hammer was rotated 90° when used to strike the competing truck, maximizing its effectiveness. In other words, the demonstration was a sham.

In Case of Emergency, Break Glass. Musk collected (in some cases, multiple) deposits from those willing to pay for the show. Photograph: NBC News

widespread reports of depositors complaining about multiple, unintended pre-orders and payment card charges.

Musk clearly uses transparency to his advantage, preaching the value of openness when it is convenient and secrecy when it is not. He is hardly the only Silicon Valley CEO to do so. This is exactly why regulators such as the SEC and FTC should take a close look at regulations that require companies to disclose key metrics on a *consistent* basis, since otherwise investors are left in the dark when transparency is needed most.

A Tale of Two Morgan Stanleys

Morgan Stanley sell-side analyst Adam Jonas covers a number of companies in the automotive industry, including Ferrari, Ford, General Motors, Hertz, and Tesla. Like many sell-side analysts, he publishes periodic "research" that summarizes the bank's views on a company's prospects, and he also speaks with institutional investors about risk factors that might affect relevant investments.

Even armed with the knowledge that sell-side analysts such as Jonas are, on average, "useless,"[93] many investors were nonetheless surprised to learn that the story Jonas has been telling publicly about Tesla was considerably different than the one he whispered in private. Specifically, in May 2019, a conference call recording of Jonas speaking to favored Morgan Stanley clients leaked out.[94,95] In the call, Jonas told his clients that Tesla had transformed "from a growth story to a distress credit and restructuring story." He further argued, consistent with his public March 2019 report, that demand for Tesla's products was lacking. On the matter of Tesla's debt, Jonas stated, "No one really cares about debt. No one cares about the [credit default swaps] as long as you're growing. When questions are called into your growth these numbers start to be noticed."

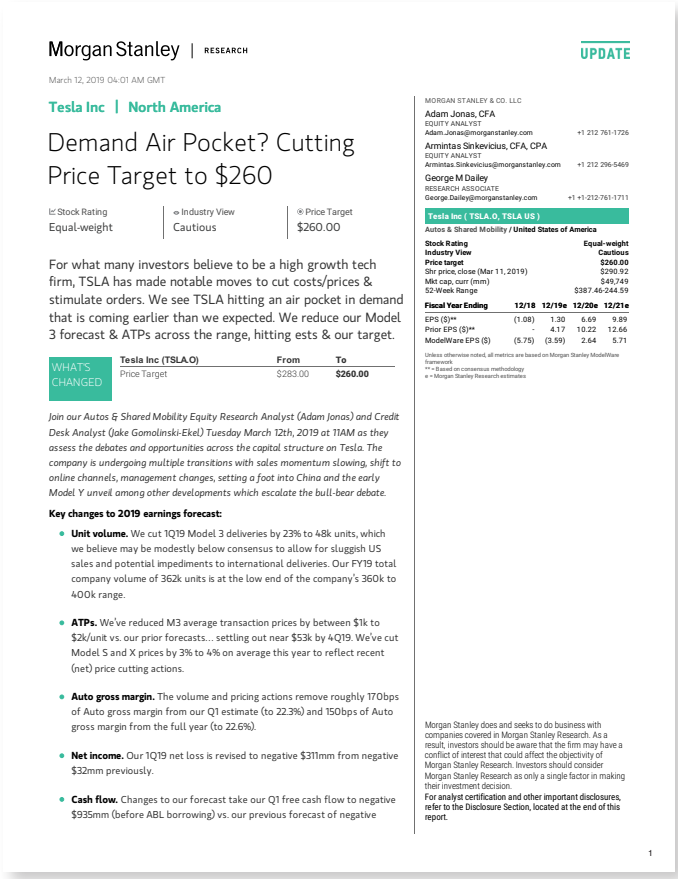
A few days after the call leak, the market largely forgot that it had ever happened. Morgan Stanley never amended its public disclosures to reflect the direct sentiments expressed by Jonas on the call. Instead, in December 2019, Jonas expanded his target range from $10 to $500,[96] calling the stock, "fundamentally overvalued, but potentially

93 *FT Alphaville*, December 12, 2018, "How accurate are sell-side analysts?" https://ftalphaville.ft.com/2018/11/13/1542091438000/How-accurate-are-sell-side-analysts-/

94 Paul M. Huettner via Dropbox, May 22, 2019. https://www.dropbox.com/s/q1v1qew51xrquwj/Morgan_Stanley_Tesla_Call_2019_05_22.pdf?dl=0

95 *Bloomberg News*, May 22, 2019, "Tesla Woes Make It a 'Restructuring Story,' Morgan Stanley Says." https://www.bloomberg.com/news/articles/2019-05-22/tesla-called-a-restructuring-story-by-morgan-stanley-analyst

96 *FT Alphaville*, December 6, 2019, "Tesla is worth $10, $250 or $500."



Morgan Stanley | RESEARCH

UPDATE

March 12, 2019 04:01 AM GMT

Tesla Inc | North America

Demand Air Pocket? Cutting Price Target to $260

Stock Rating	Industry View	Price Target
Equal-weight	Cautious	$260.00

For what many investors believe to be a high growth tech firm, TSLA has made notable moves to cut costs/prices & stimulate orders. We see TSLA hitting an air pocket in demand that is coming earlier than we expected. We reduce our Model 3 forecast & ATPs across the range, hitting ests & our target.

WHAT'S CHANGED	Tesla Inc (TSLA.O)	From	To
	Price Target	$283.00	**$260.00**

Join our Autos & Shared Mobility Equity Research Analyst (Adam Jonas) and Credit Desk Analyst (Jake Gomolinski-Ekel) Tuesday March 12th, 2019 at 11AM as they assess the debates and opportunities across the capital structure on Tesla. The company is undergoing multiple transitions with sales momentum slowing, shift to online channels, management changes, setting a foot into China and the early Model Y unveil among other developments which escalate the bull-bear debate.

Key changes to 2019 earnings forecast:

- **Unit volume.** We cut 1Q19 Model 3 deliveries by 23% to 48k units, which we believe may be modestly below consensus to allow for sluggish US sales and potential impediments to international deliveries. Our FY19 total company volume of 362k units is at the low end of the company's 360k to 400k range.
- **ATPs.** We've reduced M3 average transaction prices by between $1k to $2k/unit vs. our prior forecasts… settling out near $53k by 4Q19. We've cut Model S and X prices by 3% to 4% on average this year to reflect recent (net) price cutting actions.
- **Auto gross margin.** The volume and pricing actions remove roughly 170bps of Auto gross margin from our Q1 estimate (to 22.3%) and 150bps of Auto gross margin from the full year (to 22.6%).
- **Net income.** Our 1Q19 net loss is revised to negative $311mm from negative $32mm previously.
- **Cash flow.** Changes to our forecast take our Q1 free cash flow to negative $935mm (before ABL borrowing) vs. our previous forecast of negative

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Tesla Inc (TSLA.O, TSLA US)

Autos & Shared Mobility / United States of America

Stock Rating	**Equal-weight**
Industry View	**Cautious**
Price target	**$260.00**
Shr price, close (Mar 11, 2019)	$290.92
Mkt cap, curr (mm)	$49,749
52-Week Range	$387.46-244.59

Fiscal Year Ending	12/18	12/19e	12/20e	12/21e
EPS ($)**	(1.08)	1.30	6.69	9.89
Prior EPS ($)**	-	4.17	10.22	12.66
ModelWare EPS ($)	(5.75)	(3.59)	2.64	5.71

Unless otherwise noted, all metrics are based on Morgan Stanley ModelWare framework
** = Based on consensus methodology
e = Morgan Stanley Research estimates

Morgan Stanley analyst Adam Jonas issued a price target of $260.00 for Tesla's stock on March 12, 2019, approximately two months before he told select investors that he believed Tesla was destined for "restructuring," i.e. bankruptcy. Morgan Stanley was also one of the underwriters on Tesla's $2.5 billion May 2019 raise.

strategically undervalued."[97] This kind of squishy, ridiculous nonsense would hardly pass for analysis in any graduate-level statistics course, but on Wall Street, it's incredibly common. As observed by Lawrence Fossi,

"It never fails. It's like the swallows returning to Capistrano. The analysts whose collective 'analysis' is factored into the consensus figure, must each year reduce what begins as a profitable future earnings forecast until the forecast finally converges with reality, which is negative."[98]

Jonas is one of those very analysts with the curious trait of cyclical optimism who has had to repeatedly temper his expectations for Tesla's earnings per share. In March 2019, Jonas lowered his EPS estimate from $4.17 to $1.30.[99] And he'd done it before: "Jonas cut his 2016 EPS estimate from $1.28 to $0.43."[100] And before that: "Jonas lowered his 2015 earnings per share estimate for Tesla to $2.45 from $4.39."[101] In baseball, the rule is "three strikes and you're out." Even these reduced estimates always proved far too optimistic. But unlike baseball teams, sell-side investment banking analysts appear to never lose.

Other False Statements

Whether it has been Tesla speaking for Musk, or Musk speaking for Tesla, the company has literally issued too many false statements to count. In September 2018, Tesla posted a public update based on an "internal" e-mail message to employees.[102]

https://ftalphaville.ft.com/2019/12/06/1575627500000/Tesla-is-worth--checks-notes---10---250-or--500/

97 CNBC, June 19, 2019, "Morgan Stanley isn't sure how to value Tesla anymore." https://www.cnbc.com/2019/06/19/morgan-stanley-isnt-sure-how-to-value-tesla-anymore.html

98 Seeking Alpha, January 3, 2020, "My Fearless Forecasts For Tesla's 2020." https://seekingalpha.com/article/4315085-fearless-forecasts-for-teslas-2020

99 CNBC, March 12, 2019, "Morgan Stanley's Jonas: Tesla stock to drop because price cuts reveal demand 'air pocket.'" https://www.cnbc.com/2019/03/12/tesla-headed-for-demand-air-pocket-morgan-stanley-sees-10percent-downside.html

100 *Forbes*, February 3, 2016, "What Is Going On With Tesla's Stock?" https://www.forbes.com/sites/chuckjones/2016/02/03/what-is-going-on-with-teslas-stock/#5355b1682589

101 *TheStreet*, November 19, 2014, "Tesla retreats after analyst lowers Model X delivery forecast." https://www.thestreet.com/investing/tesla-retreats-after-analyst-lowers-model-x-delivery-forecast-12960112

102 Tesla, Inc. https://www.tesla.com/blog/company-update

Referring to Q3 2018, this update claimed that, "We are about to have the most amazing quarter in our history, building and delivering more than twice as many cars as we did last quarter." This proved to be false: according to *Bloomberg News*, Tesla produced 28,578 Model 3 vehicles in Q2 2018, and 53,239 Model 3 vehicles in Q3 2018.[103] Twice the Q2 2018 production figure would have been 57,156 vehicles, or 7.35% more than were actually produced. The post also made unsubstantiated claims about the electric vehicle battery market share of Tesla's Nevada-based factory. Then, on December 26, 2018, Musk wrote on Twitter, "Brake pads on a Tesla literally never need to be replaced for lifetime of the car."[104] That's simply not true; Tesla's own user manual states, "Neglecting to replace worn brake pads damages the braking system and can result in a braking hazard."[105]

But Elon Musk's most outrageous lie ever came on a November 12, 2019 podcast with alternative media personality Lex Fridman in which Musk commented on his vague idea for a brain-implantable microchip, Neuralink. Musk stated, "Neuralink, I think, will at first solve a lot of brain-related diseases."[106]

Taken alone, this immensely arrogant, ignorant claim is totally senseless. Musk then went on to actually specify, "So, uh, could be like anything from autism, schizophrenia, memory loss, like everyone experiences memory loss at certain points in age... So, there's a tremendous amount of good that Neuralink can do in solving critical—critical damage to brain or the spinal cord..." Presumably, these baseless, false statements were not run past the United States Food and Drug Administration (FDA) before being made in public.

To be clear, Elon Musk does not have a medical degree or background, and so far, Neuralink is a non-peer reviewed, non-FDA approved, non-human tested, science fiction-based, deeply uninformed idea of what medical treatment should look like for those suffering from neurological diseases. Musk is so obsessed with his own mythology, in fact, that he demanded that his name be the *only* one listed on the solitary paper Neuralink has published.[107] While measuring brain activity can be useful—and is already done using a variety of FDA-approved medical devices—there is zero chance that Musk's whimsical, evidence-free notions about how the brain works could provide any useful treatment for "autism, schizophrenia, [or] memory loss," ever. Neuralink would also carry enormous risk of surgical complications, including infection. Musk's statements are completely false and misleading,[108] likely to be misinterpreted by many patients or families in desperate straits, and should be fully retracted if

103 *Bloomberg News*, 2018, "Tesla Tracker." https://www.bloomberg.com/graphics/2018-tesla-tracker/.
104 Twitter, December 26, 2018. https://twitter.com/elonmusk/status/1078010341651492865
105 *Jalopnik*, January 9, 2019, "The Truth About Brake Pad Replacement in Teslas And Other EVs." https://jalopnik.com/the-truth-about-brake-pad-replacement-in-teslas-and-oth-1831591519
106 YouTube, November 12, 2019, "Elon Musk: Neuralink, AI, Autopilot, and the Pale Blue Dot | Artificial Intelligence (AI) Podcast." https://www.youtube.com/watch?v=smK9dgdTI40
107 Musk, Elon, July 16, 2019, "An integrated brain-machine interface platform with thousands of channels." https://www.biorxiv.org/content/10.1101/703801v1.full.pdf
108 *Insider*, November 21, 2019, "Elon Musk said his brain chips might 'solve' autism and schizophrenia. A neuroscientist who implants brain chips has doubts." https://www.insider.com/elon-musk-neuralink-wont-solve-autism-schizophrenia-2019-11

not sanctioned in some manner by the United States Food and Drug Administration.

Families of individuals suffering from mental illness are routinely buffeted with news of hoax cures and hoax risks. Here, Musk has added fuel to the fire of medical misinformation. Investors should be concerned about placing their trust in a chief executive willing to say absolutely anything, no matter how false or dangerous, just to prop up his own frail ego.

Product Defects

A Facebook user from Australia named Leonie Campbell asked whether it is normal for her Tesla Model 3 car doors to reflect different VIN numbers. It is not. Photograph: Leonie Campbell

VIN Mismatch Issues

There have been numerous reports of Tesla manufacturing vehicles where Vehicle Identification Numbers (VINs) are mismatched on different parts or missing altogether. This is shocking, because for most major vehicle manufacturers it simply does not happen. In the world of auto manufacturing, the VIN is somewhat sacrosanct: all sorts of quality control, legal, insurance and sales processes depend upon it being correct. Tesla's factories, for whatever reason, have had repeated difficulty getting VINs right.[109,110] Given the seriousness of the problem, Tesla's response to an inquiry by *The Drive* was rather understated: "A mistake was made." Some owners have also reported finding blank VIN plates on their vehicles.

Fires

Worldwide, a number of Tesla vehicles have spontaneously caught fire, including numerous cases in the United States.[111] Sadly, in some cases, vehicle fires have led to deaths, as Tesla failed to design a door locking system that would always make it possible to unlock doors from the inside in the event of an emergency.[112,113] In the United Kingdom, an entire Tesla dealership ignited.[114] Other Tesla vehicle fires have been reported in Shanghai, California,

109 *The Drive*, August 17, 2018, "New Tesla Model 3 Delivered to Customer With Mismatched Door Panels." https://www.thedrive.com/news/22951/new-tesla-model-3-with-mismatched-door-panels-is-a-new-kind-of-bespoke-build

110 Tesla Forums, November 20, 2018, "Tesla Installed Mismatched Glass in my Car and I Am Angry." https://forums.tesla.com/forum/forums/tesla-installed-mismatched-glass-my-car-and-i-am-angry

111 Various articles concerning Tesla fires can be found at https://www.kron4.com/news/national/tesla-catches-fire-inside-garage-of-san-francisco-home/1975931200, https://futurism.com/the-byte/tesla-fire-shanghai-parking-garage, https://www.sun-sentinel.com/local/broward/davie/fl-ne-electric-vehicle-battery-fires-20190225-story.html, and https://abc30.com/video-tesla-model-s-bursts-into-flames-twice-in-1-day-in-ca/4935547/.

112 *Engadget*, April 9, 2019, "Jeweler who made Tesla ring for Elon Musk gets locked inside Model X." https://www.engadget.com/2019/04/09/ben-baller-tesla-model-x/

113 *The Miami Herald*, October 25, 2019, "Broward man's Tesla turned into burning 'death trap,' lawsuit claims. Door wouldn't open." https://www.miamiherald.com/news/local/article236605723.html

114 *BBC News*, March 2, 2019, "Crawley Tesla fire: Half of site damaged in fire." https://www.bbc.com/news/uk-england-sussex-47427311

Inspection Team at Site of Indio Fire

Top: *An excerpt from a lawsuit against Tesla filed by Walmart, Inc. in August 2019. Walmart alleged that Tesla knowingly failed to resolve issues that led to rooftop solar panel fires at several of its stores. After the lawsuit was filed, news of "Project Titan" leaked, involving a coverup of known defects in SolarCity and Tesla solar panels.*

Left: *From top, a Tesla Model 3 caught fire on August 11, 2019 in Moscow, Russia after slamming into a parked tow truck. Autopilot has had trouble with parked vehicles. Photograph: The Sun*

Next, the Crawley service center in the United Kingdom on March 2, 2019. Although the cause of the fire was not initially believed to be linked to Tesla vehicles or products and originated in the service area of the building, the final report of the West Sussex Fire and Rescue Service has not been published publicly. Photograph: Harry Bullmore, The Argus

Next, the site of the fatal accident in Mountain View, California on CA 85-S where a Model X on Autopilot collided with a concrete divider. The collision resulted in a fire that consumed most of the car. Photograph: KTVU Fox 2

Next, a Tesla Model S at a tire shop in Los Gatos, California caught on fire twice in one day, first after sitting in the parking lot, and again after it was towed to Campbell. Photograph: KRON 4

Finally, a still frame of a video from Shanghai, China, where a Tesla Model S exploded into flame after sitting parked in a parking garage. Photograph: Bloomberg News / Twitter User @ShanghaiJayin

Florida, New Hampshire, and Nevada, where an entire car carrier ignited.[115] In April 2019, Linette Lopez of *Business Insider* reported that she had "counted at least 20 reported incidents of Teslas catching on fire since 2013 and five deaths in the past 14 months."[116]

Electric vehicle fires present unique challenges for firefighters because of the way that lithium (the main element present in lithium-ion batteries) reacts with water. by producing hydrogen gas and lithium hydroxide in a rapid single displacement reaction. Hydrogen is extremely flammable. Consequently, putting out a lithium fire can take hours on end, after which the fire sometimes re-ignites hours later. For this reason, some fire departments have begun to use enormous water tanks to hold and submerge entire electric vehicles in water once they are damaged.

On November 1, 2019, NHTSA announced that it would launch a formal investigation of Tesla battery fires after an attorney for the plaintiff in a related lawsuit filed a formal complaint.[117] David Rasmussen sued Tesla on August 7, 2019 over Tesla's response to the fire problem: a wireless software update that reduced battery performance across the board for its cars, regardless of what had been advertised to customers at the time of purchase. The suit is ongoing.[118]

Tesla has also had highly publicized problems with its solar panels catching fire. On August 20, 2019, Walmart, Inc. sued Tesla in the Supreme Court of the State of New York for New York County over several solar panel arrays installed on Walmart stores that had spontaneously erupted into flames. The lawsuit was a major news story, and Tesla went to great lengths to placate its customer once the suit was filed. It was settled soon after on November 4, 2019, but not before images from the lawsuit made their way into the mainstream press.[119] In addition, SolarCity and Tesla have been sued several times by homeowners who have faced massive repair bills after their solar panels or associated equipment caught on fire.

It should be noted that internal combustion engine vehicles also catch fire on a regular basis, though rarely without cause (such as when sitting parked in a parking lot) as some Teslas have. NHTSA studied the issue in 2017 and found a comparable fire risk between electric and traditional vehicles.[120]

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115 *Autoblog*, October 2, 2019, "Trailer-load of Teslas burns in Nevada." https://www.autoblog.com/2019/10/02/trailer-loaded-with-teslas-burns/

116 *Business Insider*, April 26, 2019, "Life, death, and spontaneous combustion — here's why the debate about Tesla fires just got more fierce." https://www.businessinsider.com/why-tesla-cars-catch-on-fire-2019-4

117 *The Los Angeles Times*, November 1, 2019, "Federal safety agency launches probe of Tesla battery fires." https://www.latimes.com/business/story/2019-11-01/federal-safety-agency-launches-investigation-of-tesla-battery-fires

118 *Rasmussen v. Tesla, Inc.*, California Northern District Court, Case No. 5:19-cv-04596-BLF. https://www.plainsite.org/dockets/40gtzb2vd/california-northern-district-court/rasmussen-v-tesla-inc/

119 Walmart Inc. (f/k/a Wal-Mart Stores, Inc.) v. Tesla Energy Operations, Inc. (f/k/a SolarCity Corporation), Supreme Court of the State of New York, New York County, Case No. 654765/2019. https://www.plainsite.org/dockets/40v40ia2y/supreme-court-of-the-state-of-new-york-new-york-county/walmart-inc-fka-walmart-stores-inc-v-tesla-energy-operations-inc-fka-solarcity-cor/

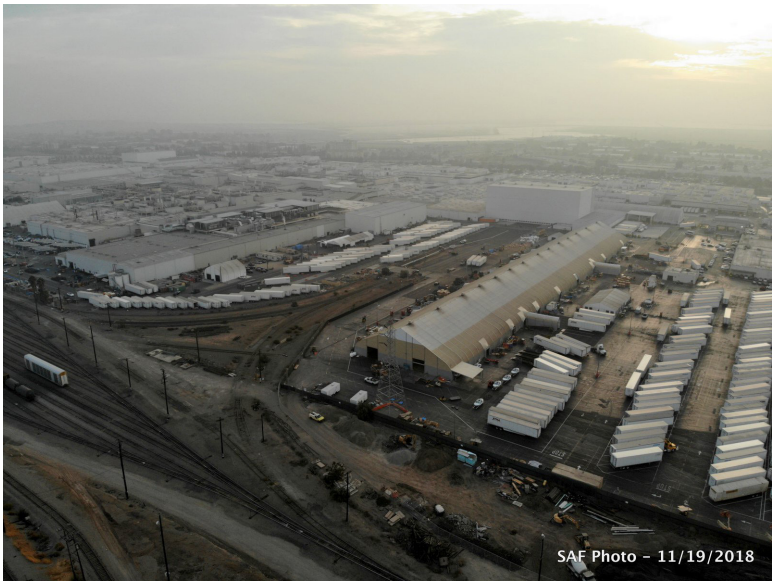
120 *Business Insider*, May 21, 2019, "Tesla is facing scrutiny for its cars catching on fire, but electric cars could actually end up being safer than gas-powered cars." https://www.businessinsider.com/tesla-facing-scrutiny-for-car-fires-but-more-ice-fires-2019-5

Project Titan

Internally, Tesla was aware that its solar panels posed a fire risk due to defective components manufactured by Amphenol Corporation. Rather than inform its customers—many of whom had placed these panels above the bedrooms where they and their children slept—Tesla decided to undertake a stealth recall and repair program it referred to as "Project Titan." Strangely, this is the same name that Apple had given its self-driving car program internally, which was surely not lost on management at Tesla. The name may have been deliberately chosen to avoid search results pointing back to Tesla if its existence were leaked to the press. Project Titan's status is unknown.

Vehicle Quality Problems

As described by Edward W. Niedermeyer in *Ludicrous*, by May 2010, Tesla had defied long odds to emerge as a company with a real path forward to long-term profitability. It had managed to convince major, established players in the automotive industry to invest; it had announced the Model S, even if doing so required a bit of stage magic; and it had acquired the old New United Motor Manufacturing, Inc. (NUMMI) plant in Fremont, California from Toyota at the bargain price of $42 million. It seemed as though things could finally proceed smoothly from there.



Tesla's GA4 production line-in-a-tent, at a time when air quality in Fremont rivaled Beijing for the worst on Earth, leaving workers exposed. Photograph: "Shorty Air Force" / Twitter User @Paul91701736

Almost a decade later, Tesla is plagued by persistent quality problems, even after the company has assured customers and the media repeatedly that it has everything under control. Each stage of grief has yielded a pronouncement from Elon Musk regarding a different kind of "hell." Musk is expert at evoking pity for his lamentable role as CEO of a multi-billion dollar company, and has accordingly complained bitterly of "production hell," "delivery logistics hell,"[121] and at one point, "traffic hell."[122]

For much of this, Musk has no one to blame but himself. His overly aggressive production targets led to the questionable decision to build a tent spanning approximately 920 feet in the parking lot of Tesla's Fremont factory to house an extra production line for the Model

121 Twitter, September 16, 2018, https://twitter.com/elonmusk/status/1041500594467270656
122 Twitter, June 7, 2017, https://twitter.com/elonmusk/status/872645445742231553

Tesla owners should take care to avoid heavy rain and carwashes. Water has been an issue with the Model 3. Photograph:Twitter User @Rvanleerdam

3, ultimately referred to as General Assembly line 4, or GA4. The GA4 tent solution to Tesla's problem of overpromising quickly caused new problems of its own. As CNBC journalist Lora Kolodny reported, employees working in the tent could not produce cars of the same quality as the ones built in the factory proper. They sometimes skipped steps or failed to properly torque bolts to keep the line moving, and would often resort to using electrical tape to cover for errors.[123] In November 2018, the tent also exposed the employees themselves to the elements at a time when California wildfires north of the San Francisco Bay Area made merely breathing the outside air a health hazard.[124]

Overall, the Model 3 has suffered from numerous defects, including a propensity for rear bumpers to fall off in the rain; trunks to grow mold due to poor insulation; soft undercarriage materials to droop, inadvertently turning into snow and mud plows; and center consoles to reboot seemingly at random. In addition, the Fremont factory's paint shop has never quite managed to achieve the type of quality customers expect, yielding thousands of cars with sub-standard, thin paint coats that are more likely to erode away or peel simply due to normal wear and tear.[125,126] Customers also frequently complain of creaking sounds at high speeds, missing bolts, and problems with the Bluetooth audio system.[127]

Some of these problems are attributable to Tesla's relative youth in the industry, but others can be traced directly to decisions made by Musk. The Model X, with its sensor-laden falcon-wing doors, has attracted more litigation than any other Tesla model. One lawsuit[128] involving an allegedly defective Model X listed problems starting with (a) and ending with (uu), for a total of 47 reported "issues," and 70 "incidents."[129] It is hardly the only one.

As of late 2019, according to litigation records compiled by PlainSite, Tesla had been sued over issues involving the Model X 93 times; involving the Model S, 89 times; and involving the relatively newer Model 3, 35 times. It is likely that these rough tallies underestimate the amount of litigation, however, because many court documents could not be easily obtained. These figures also do not include arbitration disputes

123 A former Tesla employee confirmed, "I had to remove the tape!" YouTube, August 1, 2019, "Ex-Tesla Employee Tells All; What It's Really Like to Work For Elon Musk!" https://www.youtube.com/watch?v=B7PQMTZLyko

124 CNBC, July 15, 2019, "Tesla employees say they took shortcuts, worked through harsh conditions to meet Model 3 production goals." https://www.cnbc.com/2019/07/15/tesla-workers-in-ga4-tent-describe-pressure-to-make-model-3-goals.html

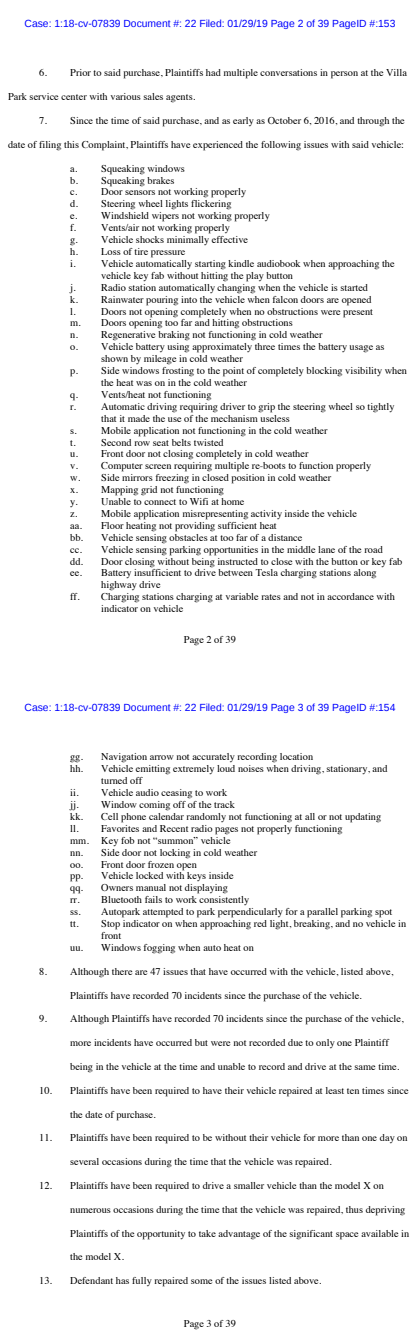
125 PlainSite, July 2, 2019, "Tavarantarkastuskertomus (Finnish Model 3 Paint Assessment)." https://www.plainsite.org/documents/f3mn9/tavarantarkastuskertomus-finnish-model-3-paint-assessment/

126 *The Drive*, August 2, 2019, "Finnish Tesla Model 3 Inspection Reveals Soft, Thin, Under-Spec Paint." https://www.thedrive.com/tech/29257/finnish-tesla-model-3-inspection-reveals-soft-thin-under-spec-paint

127 PlainSite. https://www.plainsite.org/tags/tesla-model-3/

128 *Thomas v. Tesla, Inc.*, Illinois Northern District Court, Case No. 1:18-cv-07839. https://www.plainsite.org/dockets/3mz1vndk9/illinois-northern-district-court/thomas-v-tesla-inc/

129 *Thomas v. Tesla, Inc.*, Illinois Northern District Court, Case No. 1:18-cv-07839, Document 22. https://www.plainsite.org/dockets/download.html?id=277907556&z=e5026f13



Case: 1:18-cv-07839 Document #: 22 Filed: 01/29/19 Page 2 of 39 PageID #:153

6. Prior to said purchase, Plaintiffs had multiple conversations in person at the Villa Park service center with various sales agents.

7. Since the time of said purchase, and as early as October 6, 2016, and through the date of filing this Complaint, Plaintiffs have experienced the following issues with said vehicle:

a. Squeaking windows
b. Squeaking brakes
c. Door sensors not working properly
d. Steering wheel lights flickering
e. Windshield wipers not working properly
f. Vents/air not working properly
g. Vehicle shocks minimally effective
h. Loss of tire pressure
i. Vehicle automatically starting kindle audiobook when approaching the vehicle key fab without hitting the play button
j. Radio station automatically changing when the vehicle is started
k. Rainwater pouring into the vehicle when falcon doors are opened
l. Doors not opening completely when no obstructions were present
m. Doors opening too far and hitting obstructions
n. Regenerative braking not functioning in cold weather
o. Vehicle battery using approximately three times the battery usage as shown by mileage in cold weather
p. Side windows frosting to the point of completely blocking visibility when the heat was on in the cold weather
q. Vents/heat not functioning
r. Automatic driving requiring driver to grip the steering wheel so tightly that it made the use of the mechanism useless
s. Mobile application not functioning in the cold weather
t. Second row seat belts twisted
u. Front door not closing completely in cold weather
v. Computer screen requiring multiple re-boots to function properly
w. Side mirrors freezing in closed position in cold weather
x. Mapping grid not functioning
y. Unable to connect to Wifi at home
z. Mobile application misrepresenting activity inside the vehicle
aa. Floor heating not providing sufficient heat
bb. Vehicle sensing obstacles at too far of a distance
cc. Vehicle sensing parking opportunities in the middle lane of the road
dd. Door closing without being instructed to close with the button or key fab
ee. Battery insufficient to drive between Tesla charging stations along highway drive
ff. Charging stations charging at variable rates and not in accordance with indicator on vehicle

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gg. Navigation arrow not accurately recording location
hh. Vehicle emitting extremely loud noises when driving, stationary, and turned off
ii. Vehicle audio ceasing to work
jj. Window coming off of the track
kk. Cell phone calendar randomly not functioning at all or not updating
ll. Favorites and Recent radio pages not properly functioning
mm. Key fob not "summon" vehicle
nn. Side door not locking in cold weather
oo. Front door frozen open
pp. Vehicle locked with keys inside
qq. Owners manual not displaying
rr. Bluetooth fails to work consistently
ss. Autopark attempted to park perpendicularly for a parallel parking spot
tt. Stop indicator on when approaching red light, breaking, and no vehicle in front
uu. Windows fogging when auto heat on

8. Although there are 47 issues that have occurred with the vehicle, listed above, Plaintiffs have recorded 70 incidents since the purchase of the vehicle.

9. Although Plaintiffs have recorded 70 incidents since the purchase of the vehicle, more incidents have occurred but were not recorded due to only one Plaintiff being in the vehicle at the time and unable to record and drive at the same time.

10. Plaintiffs have been required to have their vehicle repaired at least ten times since the date of purchase.

11. Plaintiffs have been required to be without their vehicle for more than one day on several occasions during the time that the vehicle was repaired.

12. Plaintiffs have been required to drive a smaller vehicle than the model X on numerous occasions during the time that the vehicle was repaired, thus depriving Plaintiffs of the opportunity to take advantage of the significant space available in the model X.

13. Defendant has fully repaired some of the issues listed above.

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One Model X owner filed suit against Tesla and included a list of 47 discrete problems with the car.

and confidential settlements. Some lawsuits have included copies of contractual agreements that Tesla has encouraged dissatisfied customers to sign, and these agreements contain confidentiality clauses designed to keep negative news from getting out.

On May 30, 2019, "Aladdin" live star Mena Massoud sued Tesla in Los Angeles County Superior Court when one of his Model 3's wheels allegedly spun off spontaneously due to a broken suspension.[130] Tesla argued that the wheel had detached as the result of a collision with a tree, but for those who had been monitoring the company, the complaint looked familiar.[131] Referred to as "whompy wheels" by on-line critics, the problem had been reported for years in connection with suspensions snapping due to weak metal alloys. Photographs[132] and video footage appear to confirm the existence of a problem.

On November 14, 2019, the Model 3 lost its endorsement from Consumer Reports because of the numerous defects associated with the vehicle.[133] According to Consumer Reports, "reliability has been a weak spot for Tesla."

Sudden Unintended Acceleration

More times than one might expect, Tesla vehicles have been profiled on local news stations nationwide on account of their tendency to drive into buildings at full speed. This phenomenon has been given the self-explanatory name Sudden Unintended Acceleration, or SUA, and it is the subject of at least 12 lawsuits and 122 formal complaints to NHTSA.[134]

Like Autopilot defects and some software bugs in general, SUA is a difficult problem to pin down because the vehicle appears to work properly until it suddenly

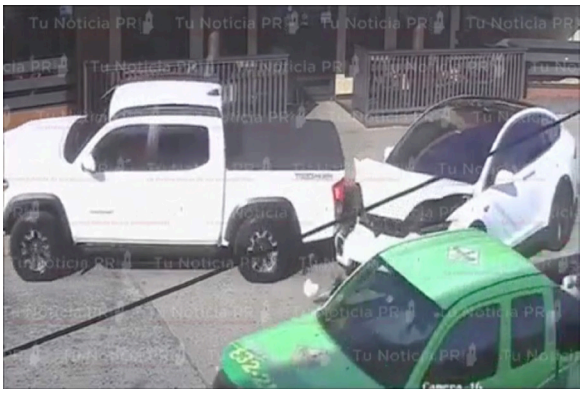
130 *Mena Massoud v. Tesla Motors. Inc., A Delaware Corporation*, Superior Court of California, County of Los Angeles, Case No. 19STCV18879. https://www.plainsite.org/dockets/3z2zftgn3/superior-court-of-california-county-of-los-angeles/mena-massoud-v-tesla-motors-inc-a-delaware-corporation/

131 https://www.businessinsider.com/aladdin-stars-problem-with-tesla-known-as-whompy-wheels-2019-6

132 Flickr, "Tesla -Whompy Wheels." https://www.flickr.com/photos/136377865@N05/sets/72157658490111523/

133 Consumer Reports, November 14, 2019, "Tesla Model 3 Loses CR Recommendation Over Reliability Issues." https://www.consumerreports.org/car-reliability-owner-satisfaction/tesla-model-3-loses-cr-recommendation-over-reliability-issues/

134 https://www.tesladeaths.com/suddenacceleration.html



A video camera in Puerto Rico captured the white Model X shown here on the right accelerating uncontrollably for a prolonged time, making an incorrect pedal choice unlikely. The incident caused damage and nearly hit a bystander. Photograph: Tu Noticia PR

There have been numerous news alerts about Teslas crashing into buildings. Photograph: Victor Valley News / LLN

does not. The frequency of complaints, however, suggests that the problem is real, and not merely a case of one or two drivers pressing the accelerator when they meant to press the brake.

In addition to the steadily growing number of photographs of Teslas inside buildings surrounded by shattered glass and broken walls, a video from *Tu Noticia PR* in Puerto Rico illustrated the SUA phenomenon better than perhaps any evidence so far. In the video, a white Model X appears to be preparing to parallel park when it immediately accelerates and begins careening uncontrollably, crashing into several vehicles and almost running over a pedestrian standing across the street.[135]

As numerous social media users have pointed out,[136] Tesla is not the only company to have experienced problems with unintended acceleration. Some are convinced that no matter the car brand, the problem is merely an excuse for confused drivers who jammed the accelerator pedal instead of the brake, which in an electric vehicle can, in fact, lead to very rapid acceleration. However, the video footage from Puerto Rico showing a Model X in a completely uncontrollable state for a long duration strongly suggests against a pedal mix-up, at least in that particular situation.

For Toyota, the SUA problem resulted in congressional hearings, litigation, recalls, and NHTSA investigations.[137] Sticky pedals and defective floor mats were eventually blamed, as opposed to Toyota's controller software (which is far simpler than the software that powers a Tesla today). The financial and reputational hit to Toyota was significant, and ended up costing billions of dollars. It is unclear that Tesla could afford a similar debacle in financial terms. At present, it is accumulating more SUA complaints than Toyota despite selling a small fraction of the number of vehicles per year.

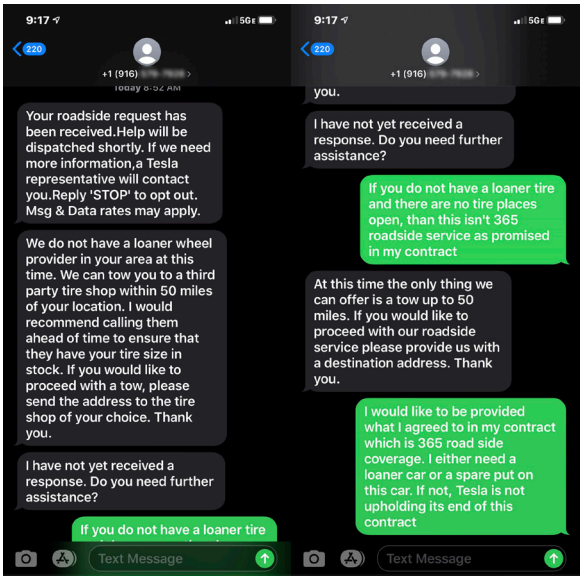
Service Problems

In late 2019, the Twitter hashtag #TeslaServiceIssues began to appear with increas-

135 *Tu Noticia PR*, August 13, 2019, "Video muestra vehículo Tesla descontrolado en Mayagüez punto de atropellar a una persona." https://www.tuvideopr.com/video/922212137-VideomuestravehC3ADculoTesladescontroladoenMayagüezpuntodeatropellaraunapersona

136 Twitter, December 31, 2019. https://twitter.com/StrangerPensive/status/1212085892720017409

137 Safety Research & Strategies, Inc., "Toyota Sudden Unintended Acceleration." http://www.safetyresearch.net/toyota-sudden-unintended-acceleration



A typical Tesla service interaction as described by an upset customer addressing the complaint directly to Elon Musk on Twitter. Source: Twitter User @roryallen

ing frequency on social media posts.[138] While Tesla used to be known for its customer-friendly, Model S mobile service cars, the company has cut back on service options to save on costs, and now routes virtually all requests through its mobile app. Car owners report difficulty reaching actual human beings and extreme levels of frustration.

One customer, Todd Randall, wrote on Twitter:

"@elonmusk @Tesla I took delivery of my M3 Saturday and need to schedule service but the app gives me an error message. The Sales and Support experience has been horrible. How do I schedule service with no phone numbers and an error message in your app?"[139]

Like many Tesla customers, his query was addressed directly to Musk on Twitter, perhaps unaware that Tesla's CEO tends to respond to Twitter accounts with blue identity verification checkmarks more often than others. It's a reasonable strategy: by helping the highest-profile customers with the most followers on average, Musk appears responsive in a very visible way. But Musk can't help everyone. Another customer with the name "Mr. Churro" expressed their ire only a few minutes before:

> *"@Tesla @elonmusk why does it take longer to fix a Tesla than it does to order a brand new one? Wish my insurance would just consider my model 3 totaled and order a new one."*[140]

The answer to this question is that spare parts for Tesla vehicles are hard to come by, and due to design and manufacturing flaws, they are in high demand, especially as the Model 3 starts to age. In August 2019, a German car rental company called nextmove cancelled a $5 million order with Tesla for Model 3 vehicles because its management was so upset with Tesla's service history. Managing Director Stefan Moeller reportedly stated, "We had to insist on compliance with general quality standards and processes in order to protect our renters and our business model."[141]

138 Twitter. https://twitter.com/search?q=%23TeslaServiceIssues&src=typeahead_click&f=live
139 Twitter, December 30, 2019. https://twitter.com/ToddWRandall/status/1211822451677491200
140 Twitter, December 30, 2019. https://twitter.com/luiscastro383/status/1211781724490944512
141 *Electrek*, August 16, 2019, "Tesla loses major $5 million Model 3 order from rental company over service and quality issues." https://electrek.co/2019/08/16/tesla-loses-model-3-order-rental-company-service-quality-issues/

"I love the car, but..." has become a familiar refrain. Social pressure amongst Tesla owners, who often wear their environmental consciousness as a badge of pride, seems to force customers to condition legitimate concerns with those five words (here, four). Source: Twitter User @NathalieVeraTV

As chargers break down, charging queues are more common. Photograph: Twitter User @Undertrader

Charging Station Wait Times and Breakdowns

As Tesla's so-called electric "fleet" has grown, the demand for charging stations away from home has grown with it. To keep up, Tesla has contracted with shopping malls, gas stations, restaurants, and other locales around the world, installing its electric chargers wherever Tesla customers might routinely drive. But even its substantial efforts at building out a proprietary charging network haven't been enough. Now, new regulations may force Tesla to upgrade many of those chargers so that customers can read pricing and status information on digital displays outside of their cars.

On social media, Tesla owners report excessively long wait times in order to charge their vehicles, and pictures abound of long lines of Teslas that evoke memories for some of the Carter-era oil crisis—the last time in modern memory significant numbers of Americans had to queue for energy necessary for transportation. Tesla has made weak attempts to turn these waits into opportunities for fun and entertainment, but as its own customers have pointed out (usually directly to Elon Musk on Twitter), it's objectively absurd to spend longer waiting in line for a charger than actually driving to get somewhere.

The problem with limited supply for charging infrastructure has been exacerbated in some cases by chargers that are non-functional, sometimes because they or nearby equipment upstream has caught on fire. In November 2019, CNBC reported on one such charger fire at a Wawa store in New Jersey.[142]

A Culture of Secrets, Fear, and Abuse

Preventing Disclosures

Secrecy culture is nothing new in Silicon Valley, but there is a notable difference between keeping secrets to promote customer anticipation of new products, and keeping secrets to avoid disclosure of fraud and criminal wrongdoing. Companies like

142 CNBC, November 18, 2019, "Tesla Supercharger catches fire at a Wawa store in New Jersey." https://www.cnbc.com/2019/11/18/tesla-supercharger-fire-at-wawa-store-in-new-jersey.html

Apple Computer pioneered the former. Tesla excels at the latter.

In the SolarCity case before the Delaware Court of Chancery, Tesla went so far as to cite Theranos to justify its preference of not disclosing the videotape of Elon Musk's deposition.[143] It couldn't have picked a worse precedent. The CEO of Theranos, Elizabeth Holmes, is now facing criminal charges in the Northern District of California.[144] (Tesla's headquarters is a short drive from Theranos's former building on Page Mill Road in Palo Alto.)

Tesla's lawyers routinely make requests to federal and state government agencies to keep information as secret as possible, whether it involves public safety (Autopilot) or details that might conflict with Elon Musk's promises to the public. In one case, Tesla opted to disregard a court order that required it to turn over video evidence of citizen journalist Randeep Hothi's supposedly reckless driving as he sought to film a demo vehicle being used to prepare for Autonomy Investor Day. Rather than disclose the supposed evidence, Tesla dropped its case against Hothi.

When PlainSite affiliate Think Computer Foundation filed two Rule 5.1(f) requests with the Delaware Court of Chancery, Tesla's Board of Directors and even SpaceX fought to maintain the veil of secrecy protecting Elon Musk and his colleagues. Musk even went so far as to schedule an announcement for "Version 3.0" of the infamous Solar Roof Tile on the day documents were scheduled to be released. When the release was delayed by a day, suddenly, so too was the announcement. When it finally took place, there was no live demo, no video, and no real-world photography to accompany it. Elon Musk was reduced to mumbling fantastic promises to his followers—appearing 35 minutes late—in the hope that they would at least be temporarily distracted.[145]

Regulation FD Violations

Tesla has now held several conference calls for the purpose of distributing information material to shareholders that has not been made available to the public as required by Regulation FD, 17 C.F.R. § 243.

February 28, 2019 "Media Call": Immediately following the SEC's February 25, 2019 motion to hold Elon Musk in contempt of court, Musk posted a series of tweets on February 26th designed to intentionally mislead shareholders into believing that there was some potentially positive new announcement coming at 5:00 P.M. EDT on February 28, 2019. In his words, across three separate posts, "Thursday 2pm / California /

143 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS. https://www.plainsite.org/dockets/download.html?id=286913109&z=73289dbe

144 *USA v. Holmes et al*, California Northern District Court, Case No. 5:18-cr-00258-EJD. https://www.plainsite.org/dockets/3tav6pn0w/california-northern-district-court/usa-v-holmes-et-al/

145 YouTube, October 25, 2019, "Tesla Solar Roof V3 Announcement." https://www.youtube.com/watch?v=GO4kVusg_FE&t=34m50s

Some Tesla news."[146]

Tesla shares rose approximately 7% over the next two trading days. At 5:00 P.M. on the 28th, Musk led an invite-only conference call for certain reporters. *The Los Angeles Times* later described the call in the following manner in an article entitled, "Tesla's Elon Musk, facing contempt charges, says semi-secret meeting was a mistake:"[147]

> *"During the call, in which a cheaper version of the Model 3 electric sedan was announced, Musk said the company would be closing its retail stores and that it would not, as originally forecast, post a profit for the current quarter. Participants were told not to post recordings of the proceedings, and after the meeting Tesla said a recording or transcript of the meeting would not be made available to the media or the general public."*

Tesla's initial refusal to make a recording or transcript of the call available was a clear violation of 17 C.F.R. § 243.100(a) ("...the issuer shall make public disclosure of that information as provided in § 243.101(e): (1) Simultaneously, in the case of an intentional disclosure; and (2) Promptly, in the case of a non-intentional disclosure.") This intentional disclosure was neither simultaneous nor prompt.

Despite widespread publicity about this state of affairs, the SEC took no visible action to follow up. Later, Tesla did post a recording and transcript of the call, but was not reportedly required to pay any sort of penalty. The transcript includes the quote, attributed to Musk, "We do not expect to be profitable in Q1. But we do think that profitability in Q2 is likely." This came only a month after he had expressed his optimism about a Q1 profit. By the time of this statement Musk had enough data about demand for Tesla vehicles to know that a Q2 2019 profit would be nearly impossible. He was forced to walk this statement back only a few weeks later.

Musk also stated, "I'm certain we'll be feature complete with full self-driving this year." Musk knew or should have known that this statement was false.

May 2, 2019 Tesla, Inc. Secondary Offering Call: On May 2, 2019, Tesla held a conference call regarding its imminent issuance of common shares via a secondary offering, which also included the issuance of convertible bond notes. This conference call was similarly "secret" in violation of Regulation FD. Based on leaked information, on this call, Musk projected that Tesla would soon achieve a market capitalization of $500 billion;[148] that as discussed previously, based on no evidence, Tesla vehicles "appreci-

146 Twitter, February 26, 2019. https://twitter.com/elonmusk/status/1100646870601220098.

147 *The Los Angeles Times*, March 5, 2019, "Tesla's Elon Musk, facing contempt charges, says semi-secret meeting was a mistake." https://www.latimes.com/business/autos/la-fi-hy-tesla-musk-mistake-20190305-story.html

148 CNBC, May 2, 2019, "Elon Musk to investors: Self-driving will make Tesla a $500 billion company." https://www.cnbc.com/2019/05/02/elon-musk-on-investor-call-autonomy-will-make-tesla-a-500b-company.html

ate" in value over time to the tune of $150,000 to $200,000 in three years;[149] and that Tesla would achieve collision repairs "in a matter of hours" despite the fact that reports of missing Tesla spare parts are widespread.[150]

The Secret Twitter Sitter

When crafting its settlement agreement with Musk in the aforementioned "funding secured" action, the SEC appears to have gone to great lengths to center its corrective action around the idea of pre-approval. Specifically, Musk was supposed to pre-approve any public communications on Twitter that could potentially contain material information. What the SEC did not specify, and which later led to considerable friction (including but not limited to the February 25, 2019 motion to hold Musk in contempt of court), was *who exactly* was supposed to pre-approve Musk's communications. Musk interpreted his settlement agreement to mean that he could "pre-approve" his own messages so long as they were "within Tesla corporate policy," while the SEC expected a "experienced securities attorney" to fill that role.

The SEC never specified publicly who the so-called Twitter Sitter would be, and neither did Tesla. Even in court filings concerning this issue, the specific identity of the "experienced securities attorney" was never disclosed.

If the SEC's true goal is to hold Musk accountable, it is clearly necessary to specify who is part of the chain of accountability. At the moment, only an anonymous lawyer can theoretically be held accountable. From the public's perspective, there is no guarantee that such a lawyer even exists, or that if he or she does, that person could be brought before a judge to explain the actions on any given day. There's also no guarantee that the Twitter Sitter even still works for Tesla, if he or she ever did.

Executive Departures

Since 2016, Tesla has inspired a steady exodus of mid- to high-level executives from the company. Presently, the number of notable departures is over 200, including two Chief Financial Officers, two Chief Accounting Officers, and three General Counsels. "Unusual" does not even begin to describe how incredibly strange such a tidal wave of departures is for an $80 billion company. The General Counsel role remains vacant.

Table 1: Known Tesla Executive Departures

	Departure Month	Name	Title	Next Position (If Known)
1	January 2016	Jay Vijayan	CIO and VP, IT & Business Applications	
2	February 2016	Paolo Cerruti	VP, Global Supply Chain and Operations Planning	
3	March 2016	Guru Sankararaman	VP, Information Technology	

149 CNBC, May 6, 2019, "David Einhorn calls Elon Musk's Tesla promises 'a lot of horse---t.'" https://www.cnbc.com/2019/05/06/david-einhorn-elon-musk-tesla-promises-a-lot-of-horse---t.html

150 Twitter, May 3, 2019. https://twitter.com/Paul_M_Huettner/status/1124340593440829448

	Departure Month	Name	Title	Next Position (If Known)
4	March 2016	Michael Zanoni	VP, Finance & Worldwide Controller	
5	March 2016	Ricardo Reyes	VP, Global Communications	
6	April 2016	James Chen	VP, Regulatory Affairs & Deputy General Counsel	
7	April 2016	Omar Riviera	Director, Global Service Operations	
8	April 2016	Stephen Ivsan	Director, Vehicle Purchasing	
9	May 2016	Chris Van Wert	Director of Product Excellence	
10	May 2016	Ganesh Iyer	VP, IT (Acting CIO)	
11	May 2016	Greg Reichow	VP, Vehicle Production	
12	June 2016	Rich Schmidt	Director, Manufacturing, Paint, Plastic & Coatings Operations	
13	July 2016	Rich Heley	VP, Products	
14	August 2016	Bill Chen	Senior Engineering Manager, Maps & Navigation	
15	August 2016	Gregory Ryslik	Head of Data Science, Service	
16	September 2016	Georg Bauer	VP, Financial Services EU, APAC	
17	September 2016	Josh Ensign	VP, Manufacturing	
18	September 2016	Khobi Brooklyn	Head of Global Communications	
19	October 2016	Mike Taylor	VP, Finance & Treasurer, New Markets	
20	November 2016	Fedor Artiles	Director, EMEA Financial Services	
21	November 2016	Gregg Hurley	VP, Real Estate, Store Design & Retail Development	
22	December 2016	Alexandre Haag	Senior Manager, Autopilot	
23	December 2016	Mateo Jaramillo	VP of Products & Programs (Tesla Energy)	
24	December 2016	Mornie Robertson	VP, Human Resources	
25	December 2016	Sterling Anderson	Director of Autopilot Programs	
26	January 2017	Ardes Johnson	Sales Director of Tesla Energy	
27	January 2017	Georgios Sarakakis	Senior Manager, Reliability Engineering	
28	February 2017	Jinnah Hosein	Interim VP, Autopilot Software	
29	February 2017	Mark Lipscomb	VP of HR	
30	February 2017	Olivier Loedel	Country Director, France	
31	February 2017	Satish Jeyachandran	Director of Hardware Engineering	
32	March 2017	David Nistér	VP, Head of Autopilot	
33	March 2017	Klaus Grohmann	Founded Grohmann Engineering (purchased by Tesla in November 2016)	
34	April 2017	Jason Wheeler	CFO	
35	April 2017	Jennifer Kim	Director of HR, Engineering	
36	May 2017	Alison Armstrong	Director, Powertrain Manufacturing	
37	May 2017	Jack West	Co-Founder/CTO of Zep Solar (acquired by SCTY)	
38	June 2017	Chester Chipperfield	Global Creative Director	
39	June 2017	Chris Lattner	Head of Autopilot Software Team	
40	June 2017	Fred Norton	Associate General Counsel (VP, Deputy General Counsel & Head of Litigation at SCTY)	
41	June 2017	Lyndon Rive	CEO/Founder of SCTY/Tesla Energy Head of Sales & Service	
42	June 2017	Rene LeBlanc	Staff Process Development Engineer	
43	July 2017	Kenny Handkammer	Global Director, Service Innovation	
44	July 2017	Peter Rive	Co-founder/CTO of SCTY	
45	July 2017	Raj Dev	VP, Talent Acquisition & Analytics	
46	July 2017	Raj Singh	Director, Hardware Engineering	
47	August 2017	Arnnon Geshuri	Head of HR	
48	August 2017	Carlos Ramirez	Senior Director of EHS	
49	August 2017	Kurt Kelty	Senior Director of Battery Technology	

	Departure Month	Name	Title	Next Position (If Known)
50	August 2017	Zean Nielsen	VP, Global Sales Operations & VP, EMEA Sales	
51	September 2017	Andrea James	IR Associate/Consultant	
52	September 2017	Beth Loeb Davies	Director, Learning & Development	
53	September 2017	Diarmuid O'Connell	Head of Business Development	
54	September 2017	Jon Wagner	Senior Director, Battery Engineering	
55	September 2017	Phuong Phillips	Associate General Counsel (VP, Deputy General Counsel & Head of Corporate Securities at SCTY)	
56	September 2017	Ryan Hanley	Director, Grid Services	
57	October 2017	Ben Hill	VP, EMEA	
58	October 2017	Collette Bridgman	Senior Director, Global Marketing	
59	October 2017	John Vardaman	Director, Construction Management	
60	October 2017	Landon Mossburg	Director, Supply Chain Automation	
61	October 2017	Robert Harmon Jr.	Director, Real Estate & Deputy General Counsel	
62	October 2017	William J. Donnelly	President of Tesla Finance, LLC	
63	November 2017	Jeff Evanson	Head of IR	
64	December 2017	Erik Fogelberg	VP, Tesla Energy Commercial Sales (Americas)	
65	December 2017	Ernest Villanueva	Senior Manager of Battery Module Design	
66	January 2018	Alan Schoen	Director, Gigafactory Manufacturing Engineering	
67	January 2018	Celina Mikolajczak	Senior Manager, Battery Tech, Cell Quality, and Materials Analysis	
68	January 2018	Jason Mendez	Senior Director, Manufacturing Engineering	
69	January 2018	Will McColl	Senior Manager, Equipment Engineering	Founded WaveForm Design
70	February 2018	Jon McNeill	President, Global Sales & Service	COO, Lyft
71	March 2018	Charlotte Beard	Director, Energy Products Finance	
72	March 2018	Eric Branderiz	Chief Accounting Officer & Controller	CFO of Enphase Energy
73	March 2018	James Radford Small	VP, Global Capital Markets	
74	March 2018	Jimmy Knauf	Senior Director, Global Facilities	
75	March 2018	Susan Repo	Treasurer and VP of Finance	CFO, Topia
76	April 2018	Eric Larkin	Director, Factory Software	
77	April 2018	Georg Ell	Director, Western Europe	CEO, Smoothwall
78	April 2018	Jim Dunlay	VP, Powertrain Engineering	
79	April 2018	Jim Keller	VP, Autopilot	Head of Silicon Engineering, Intel
80	April 2018	John Walker	VP, North America Sales	
81	April 2018	Kanwal Safdar	Global Head of People Analytics	
82	April 2018	Matthew Renna	Model S and X Program Manager	
83	April 2018	Paul Durkee	Senior Mechanical Design Engineer, Battery	
84	April 2018	William Drewery	Global Head of Capex Supply Management	
85	May 2018	Archan Padmanabhan Rao	Product Director, Stationary Storage	
86	May 2018	Cal Lankton	VP, Energy Sales & Operations	
87	May 2018	Doug Field	Senior VP of Engineering	
88	May 2018	Matthew Schwall	Director of Field Performance Engineering & Primary Contact for NTSB and NHTSA	Head of Field Safety, Waymo
89	May 2018	Robert Rudd	Director, Utility Sales	
90	May 2018	Sameer Qureshi	Senior Manager, Autopilot Programs (Product)	
91	June 2018	Brijesh Tripathi	Leader, Hardware Engineering (Autopilot)	
92	June 2018	David Apps	Director, Auto Press Center	
93	June 2018	David Erhart	Sr. Director of Quality, Reliability & Test	
94	June 2018	David Schonberg	Director, Engineering – Energy	
95	June 2018	Ganesh Srivats	VP Sales in North America	

	Departure Month	Name	Title	Next Position (If Known)
96	June 2018	Gary Clark	Chief Information Officer	
97	June 2018	George Ku	Head, Advanced Manufacturing & Battery Enclosure Manufacturing	
98	June 2018	Greg Callman	Global Director, Business Development & Market Entry	
99	June 2018	Jun Shin	Senior Project Manager, Battery Tech & Cell Supply Chain	
100	June 2018	Karim Bousta	VP, Worldwide Service and Customer Experience	
101	June 2018	Nick Kalayjian	VP, Engineering	
102	June 2018	Pål Simonsen	Regional Director, Northern Europe (Previously Head of Norway)	
103	June 2018	Paul Lomangino	Director, Engineering Tools	
104	June 2018	Ryan Anderson	Senior Group Manager, Supply Chain	
105	June 2018	Yannick Roux	Director, Manufacturing Engineering	
106	July 2018	Bryan Ellis	VP, US Energy Sales	
107	July 2018	Chris Wahl	Senior Regional Sales Director (AZ & NV)	
108	July 2018	Ganesh Srivats	VP Overseeing Retail, Delivery, and Marketing	CEO, Moda Operandi
109	July 2018	James Bellis	Senior Manager, Vehicle Exterior & Plastics Engineering	
110	July 2018	Jeff Risher	Deputy General Counsel, Chief IP & Litigation Counsel	
111	July 2018	Jonathan Sive	Senior Manager, Vehicle Integration & Dimensional Engineering	
112	July 2018	Lenny Louis	Director & GM, Canada	
113	July 2018	Leon Keshishian	Regional VP, Energy Operations (D.C.)	
114	July 2018	Martin Wylie	Senior Regional Sales Manager, Energy	
115	July 2018	Nate Walker	Director, HQ Business Operations (Energy)	
116	July 2018	Yangyang Chen	Director, APAC Tax	
117	August 2018	Aaron Gillmore	Director, Solar City Business Development & Sales	
118	August 2018	Dan Bailey	System Circuit Design Lead, Autopilot	
119	August 2018	David Glasco	System Architecture Lead, Autopilot	
120	August 2018	Jim Farley	Chief Platform Architect	
121	August 2018	Lawrence Freeman	General Counsel, Europe	
122	September 2018	Adam Happel	VP, Solar Marketing	
123	September 2018	Albert Luu	Principal, Global Capital Markets	
124	September 2018	Andrew Wilhelms	Head of Global Leadership Development	
125	September 2018	Angelo Menotti	Senior Quality Engineering Manager S/X	
126	September 2018	Antoin Abou-Haydar	Senior Director, Production & Quality	VP, Global Quality, Byton
127	September 2018	Ben Putterman	Global Leader, Learning & Talent Development	
128	September 2018	Chris Lillywhite	Senior Manager, Manufacturing Engineering	
129	September 2018	Dane Conklin	Senior Manager & Founder, Remanufacturing Operations	
130	September 2018	Dave Morton	Chief Accounting Officer	
131	September 2018	David Hamm	Senior VP, Supply Chain (Solar)	
132	September 2018	Dustin Krause	Head of Global Sales Improvement & Sales Operations	
133	September 2018	Flemming Frost	Director, Logistics, Commercial & Outbound Finished Vehicles	
134	September 2018	Gabrielle Toledano	Chief People Officer	Executive-in-Residence, Comcast Ventures
135	September 2018	Gary Gaines	General Manager, Northeast	
136	September 2018	Gilbert Passin	VP, Manufacturing	
137	September 2018	Heather Henry	Director, Global Mobility (HR)	

	Departure Month	Name	Title	Next Position (If Known)
138	September 2018	Izabelle Back	Senior Engineering Program Manager, Thermal/ Aero	
139	September 2018	James Cahill	Director Operations, Tesla Energy (Prev. Regional VP @ SCTY)	
140	September 2018	Jennifer Schonher	Director, Digital Products Engineering	
141	September 2018	Jens Peter Clausen	VP, Gigafactory	
142	September 2018	Jeremy Snyder	Head of Global Business Development & Special Projects	
143	September 2018	Jimmy Bergeron	Senior Manager, Residential Field Services	
144	September 2018	John Conley	Director, Commercial Project Development, Americas	
145	September 2018	John Sweigart	Global Director, Service	
146	September 2018	Josh Hedges	Senior Director, HR	
147	September 2018	Justin McAnear	VP, Worldwide Finance & Operations	
148	September 2018	Keith Witek	Director Engineering Operations, Business Development, & Associate General Counsel	
149	September 2018	Liam O'Connor	VP, Global Supply Management	Chief Procurement Officer / Head of Bikes & Scooters, Lyft
150	September 2018	Lynn Yeager	Director, Sales for California & Hawaii	
151	September 2018	Mandy Yang	Senior Director & Worldwide Controller, Revenue Accounting and APAC & EMEA Regional Controllership	
152	September 2018	Marc Kolb	Director, Policy & Business Development	
153	September 2018	Mark Mastandrea	Director, Outbound Logistics & Global Delivery Operations	
154	September 2018	Matthew Parker	Senior Director, World Wide Field Service Operations	
155	September 2018	Michael Rossiter	Director, Global Planning & Business Operations	
156	September 2018	Minesh Shah	Senior Director, North America Operations	
157	September 2018	Sarah O'Brien	VP, Communications	VP, Executive Communications, Facebook, Inc.
158	September 2018	Seema Gupta	Global Planning Development Head	
159	September 2018	Shen Jackson	Director, Manufacturing Engineering	
160	September 2018	Stephan Graminger	Director, Body Manufacturing	
161	September 2018	Tom Baroch	Team Lead – Global Supply Management & Supplier Industrialization	
162	October 2018	Alex Buhr	Senior Manager, Finance & Operations EMEA	
163	October 2018	JJ Kim	Country Director, South Korea	
164	October 2018	Josh Tech	Senior Manager, New Product Introduction, Vehicle Manufacturing	
165	October 2018	Justin McAnear	VP, Worldwide Finance and Operations	CFO, 10X Genomics
166	October 2018	Laerte Zatta	Director, Global Body Repair Program	
167	October 2018	Mariel Kelley	Senior Director, HR, Energy	
168	October 2018	Tobias Duschl	Senior Director, Global Business Operations	
169	November 2018	Andrew Kim	Senior Manager, Design	
170	November 2018	Dan Kim	Senior Director, Global Sales, Marketing, and Delivery	Director, Airbnb Plus, Airbnb
171	November 2018	Jeff Jones	Head of Global Security	
172	November 2018	Matt Casebolt	Senior Director, Engineering, Body, Exteriors, Lighting, & Closures	
173	November 2018	Phil Rothenberg	VP, Legal	General Counsel, Sonder
174	December 2018	Aaron Chew	Director, Investor Relations	VP, Investor Relations, Proterra
175	December 2018	Alexandra Valasek	Consumer & Retail Communications	

	Departure Month	Name	Title	Next Position (If Known)
176	December 2018	Chris Guenther	Senior Manager, Production Engineering	
177	December 2018	Eric Weingarten	Associate General Counsel	
178	December 2018	Fiona Taylor	SVP / Senior Director, Customer Support & Business Operations	
179	December 2018	Françoise Lavertu Stevens	Country Director & GM, Latin America and Southeast U.S.	
180	December 2018	Heidi Brandow	Head, Global Learning & Talent Development	
181	December 2018	Marco Batra	Senior Manager, Global Sales & Delivery Operations	
182	December 2018	Parag Vaish	Head, Digital Product, Design, & Content	
183	January 2019	Charles Mwangi	Senior Director, Engineering	[Unnamed Startup]
184	January 2019	Luis Solana	Senior Transaction Lead, Global Capital Markets	
185	**January 2019**	**Todd Maron**	**General Counsel**	
186	February 2019	Cindy Nicola	VP, Global Recruiting	
187	**February 2019**	**Dane Butswinkas**	**General Counsel**	**Williams & Connolly**
188	**March 2019**	**Deepak Ahuja**	**CFO**	**[Retired]**
189	March 2019	Praveen Arichandran	Director, Growth	Citizen in April to lead growth
190	March 2019	Michael Schwekutsch	VP, Engineering	Senior Director of Engineering, SPG, Apple, Inc.
191	April 2019	Karl Wagner	Senior Director, Global Security	PTSD & Suicide-Prevention Advocacy
192	June 2019	Dave Arnold	Senior Director, Global Communications	
193	June 2019	Felicia Mayo	VP, Human Resources and Head of Diversity	
194	June 2019	Peter Hochholdinger	VP, Production	Vice President of Manufacturing, Lucid Motors
195	June 2019	Steve MacManus	VP, Interior & Exterior Engineering	Senior Director, Apple, Inc.
196	July 2019	Jan Oehmicke	VP, Tesla Europe	
197	**July 2019**	**JB Straubel**	**Co-Founder / CTO**	**Co-Founder, Redwood Materials, Inc.**
198	August 2019	J. Eric Purcell	Director of Manufacturing, Quality	Director, Global Quality, Gibson Guitar Corporation
199	August 2019	Stuart Bowers	VP, Engineering	Executive-in-Residence, Greylock Partners
200	September 2019	Sanjay Shah	Senior VP, Energy Operations	COO, Beyond Meat
201	**December 2019**	**Jonathan Chang**	**General Counsel**	**SambaNova**
202	December 2019	Bert Bruggeman	VP, Production	

Sources: tslaq.org, Paul Huettner, Business Insider

Retaliation Against Critics and Whistleblowers

While the SEC is a civil enforcement agency and does not have the authority to prosecute criminal violations, some of the issues that Tesla whistleblowers have raised do involve potentially criminal acts, and others would have had a material impact on Tesla shares had their disclosures been properly made by the company. The fact that Tesla has a documented history both of fierce secrecy and of retaliating against whistleblowers is therefore significant.

1. Lawrence Fossi ("Montana Skeptic"): Writing on the popular stock market website Seeking Alpha in his personal capacity under the pseudonym "Mon-

tana Skeptic,"[151] Lawrence Fossi was formerly a fund manager for the Stewart J. Rahr Foundation, where he managed over $1 billion in assets. He evoked Elon Musk's ire by writing over 100 detailed articles justifiably skeptical of Tesla's and Musk's claims starting in June 2017. Over time, he gained a following, but his notoriety exploded when Musk determined his identity, publicly broadcast it, called his boss (Rahr) and demanded that Fossi stop writing. Not wanting to provoke a battle with his own employer, Fossi agreed—at least for a time.

Months later, Musk attempted to smear Fossi a second time as someone who had been an Enron lawyer in the early 2000s. In fact, Fossi is a Yale Law School graduate whose prior law firm, Vinson & Elkins, has employed hundreds of attorneys. According to Fossi, he personally had "zero involvement in any Enron matter" at Vinson & Elkins.

Afterward, Fossi founded his own firm, Fossi & Crain, where he filed a mechanic's lien for a contractor that Enron had refused to pay. Enron's bankruptcy trustee ultimately tapped Fossi as an experienced litigator who was qualified to represent the Enron bankruptcy estate, and after being advised about his client's existing lien, paid the claim and engaged Fossi's firm. From that point forward, Fossi's connection to Enron was recovering letter of credit proceeds wrongfully drawn in connection with gas plant projects. On behalf of the bankruptcy estate, he helped recover several hundred million dollars, cleaning up the mess Enron had left.

2. Martin Tripp: Martin Tripp was formerly an engineer working in Tesla's Nevada factory who was disturbed by company practices that he directly witnessed and viewed as unethical and wasteful. He noticed that large amounts of scrap material, potentially worth what he believed were "hundreds of millions" of dollars, were being generated by inefficient and problematic manufacturing processes—information not disclosed to Tesla shareholders. He also noticed that certain battery cells had been inadvertently punctured at the factory, but were nonetheless shipped out in new vehicles for sale despite the risk of "thermal runaway," the rapid precursor to a fire. To substantiate his claims, he accessed Tesla's internal database using his employee credentials and provided raw data as well as photographs to veteran journalist Linette Lopez at *Business Insider*. Tesla's internal security team in Nevada, partially comprised of recently fired members of Uber's infamous security team,[152] detected Tripp's access to Tesla's systems and confronted him about his activity. Though they noted his concerns, their first priority was containing any possible reputational harm to the company, and Tripp was fired after a lengthy exit interview. After he was fired,

In late June 2018, the Storey County, Nevada Sheriff's Office was informed that Tesla engineer and whistleblower Martin Tripp was armed and dangerous. They found him completely unarmed and sobbing. Fortunately, no one was hurt. Photograph: Storey County, Nevada Sheriff's Office Bodycam Footage

151 Seeking Alpha. https://seekingalpha.com/author/montana-skeptic#regular_articles
152 *Engadget*, December, 15 2017, "'Jacobs letter' unsealed, accuses Uber of spying, hacking." https://www.engadget.com/2017/12/15/jacobs-letter-unsealed-accuses-uber-of-spying-hacking/

a call placed from an unknown individual claiming to be Tripp's "friend" to a Tesla call center suggested that he had plans to return to the Tesla factory with firearms and kill as many people as possible in a violent act of retribution. Tesla Security sent out a "be on the lookout" (BOLO) notice accordingly and asked law enforcement for assistance locating Tripp, who was considered to be armed and dangerous.

When the Storey County, Nevada Sheriff's Office went looking for Tripp, they found him at a nearby casino, unarmed and in tears due to the stress of the situation.[153] Police body camera video released from that encounter shows that Tripp suspected that he had been set up, possibly by Elon Musk himself, who had e-mailed him earlier that day suggesting that he was an evil person for having blown the whistle. When Tripp responded, Musk interpreted Tripp's idle comment that Musk "would get what's coming to him" as a threat.

In a detailed March 13, 2019 *Bloomberg Businessweek* article entitled, "When Elon Musk Tried to Destroy a Tesla Whistleblower," the article's authors describe how Tesla falsified the threat of gun violence by Tripp in order to discredit him.[154] Tesla also sued Tripp for $150 million, on the supposed basis of the damage his disclosures caused to Tesla's market capitalization. The case—in which the magistrate judge did not disclose that she is a Tesla owner[155]—is ongoing.[156]

As securities fraud can be a federal crime pursuant to 18 U.S.C. § 1348, falsifying a threat of gun violence related to whistleblowing activity would likely also be a crime in violation of 18 U.S.C. § 1513, among other possible statutes.[157]

3. Linette Lopez: Linette Lopez is Senior Finance Columnist for *Business Insider* with a degree from the Columbia School of Journalism, where she is now an adjunct professor. After reporting on the situation involving Martin Tripp, Musk used his platform on Twitter to falsely insinuate that Lopez had received financial compensation from short sellers in exchange for writing negative stories about Tesla.[158] Lopez has continued reporting on Tesla since despite a constant stream of racist, harassing and abusive messages directed at her because of Musk's actions.

4. Vernon Unsworth: Vernon Unsworth, MBE, is a former financial broker from St. Albans, England who now lives in Thailand with his girlfriend.[159] Unsworth is also an experienced cave diver who became a vital hub for the impromptu rescue

153 YouTube, December 18, 2019, "Storey County, Nevada Sheriff's Office Bodycam Footage: Tesla Inc. v. Martin Tripp." https://www.youtube.com/watch?v=InRASz5oVKM

154 *Bloomberg Businessweek*, March 13, 2019, "When Elon Musk Tried to Destroy a Tesla Whistleblower." https://www.bloomberg.com/news/features/2019-03-13/when-elon-musk-tried-to-destroy-tesla-whistleblower-martin-tripp

155 *Reno Gazette Journal*, July 15, 2019, "Ex-judge: Washoe deputy, married to two women, investigated for breaking into office, falsifying divorce papers." https://www.rgj.com/story/news/politics/2019/07/15/investigating-washoe-deputy-breaking-into-ex-judges-office-reno-police-dennis-carry-humke-sheriff/1736526001/

156 *Tesla, Inc. v. Tripp*, Nevada District Court, Case No. 3:18-cv-00296-LRH-CBC. https://www.plainsite.org/dockets/3br5tkwuj/nevada-district-court/tesla-inc-v-tripp/

157 18 U.S.C. § 1513. https://www.law.cornell.edu/uscode/text/18/1513

158 *Slate*, July 6, 2018, "Elon Musk Needs to Stop Tweeting Things He Can't Prove." https://slate.com/business/2018/07/elon-musks-attacks-on-reporter-linette-lopez-need-to-stop.html

159 *The Sun*, December 7, 2019, "Who is Vernon Unsworth? Thailand cave diver dubbed 'paedo guy' by Elon Musk" https://www.thesun.co.uk/news/6792661/who-vernon-unsworth-thai-cave-paedo-guy-elon-musk/

mission set up in the Tham Luang Nang Non cave complex in Chang Rai, Thailand.[160] When Elon Musk branded him "pedo guy" on Twitter, Unsworth sued, and ultimately lost at trial when jurors, confused about the way Twitter works, incorrectly determined that Musk's tweets had not referred to him. In a bizarre twist, post-trial, Unsworth's lawyer L. Lin Wood made the stunning claim that Musk had been right all along and that "justice worked," suggesting some sort of settlement to perhaps avoid an appeal, which Wood denied.[161]

5. Ryan Mac: Ryan Mac is a journalist for *BuzzFeed* who covers technology companies in Silicon Valley. When Mac refused to allow Musk to unilaterally dictate which of his comments about Unsworth would or would not be "off the record," Musk responded by calling him an "asshole." Later, Musk attempted to subpoena Mac in the Unsworth litigation, which resulted in a federal judge calling Musk's tactics "harassing."[162]

6. Anna Watson: *Reveal* source Anna Watson was previously employed by Provider Healthcare, LLC as a contractor for Access Omnicare, which in turn was and is a contractor for Tesla. Ms. Watson worked briefly as a Physician's Assistant at the Tesla Fremont factory, until she was terminated in retaliation for disagreeing with the treatment plan for a patient who reported to the Tesla Medical Center, which she felt was inappropriate. Not long after she was fired, Child Protective Services responded to an anonymous complaint falsely alleging that she was a drug addict who was endangering her children. She has pursued a claim against Tesla with the California Department of Industrial Relations, which is on appeal.

7. Unknown Employee: On April 5, 2019, Bloomberg reported that Elon Musk had allegedly pushed an employee in the Tesla parking lot, telling him, "I will nuke you" as he followed him from the inside of the factory to the parking lot.[163] This outburst caused the Tesla Board of Directors to open an "investigation."[164] The Board found no evidence of wrongdoing, though it also did not release its written findings publicly. The allegations against Musk were nonetheless supported by several eye witnesses.

8. Randeep Hothi ("Skabooshka"): On April 19, 2019, Tesla obtained a temporary restraining order against Randeep Hothi, one of its vocal critics, who used Twitter to share his concerns about the company's false and misleading statements.[165] Mr. Hothi had used his observations of Tesla's factory conditions and vehicles to make relatively accurate predictions about the company's future plans on a number of

160 Wikipedia, "Tham Luang cave rescue." https://en.wikipedia.org/wiki/Tham_Luang_cave_rescue

161 L. Lin Wood, P.C., December 10, 2019, "Letter to the Editor: Lawyer for Man Who Sued Musk Claims 'Justice Worked' Despite Defense Verdict." http://www.linwoodlaw.com/news/letter-to-the-editor-lawyer-for-man-who-sued-musk-claims-justice-worked-despite-defense-verdict/

162 *Unsworth v. Musk*, California Northern District Court, Case No. 3:19-mc-80224-JSC. https://www.plainsite.org/dockets/41tjjy9cw/california-northern-district-court/unsworth-v-musk/

163 *Gizmodo*, April 5, 2019, "'I Will Nuke You', Elon Musk Allegedly Tells Former Employee." https://gizmodo.com/i-will-nuke-you-elon-musk-allegedly-tells-former-emplo-1833848795

164 *Bloomberg News*, April 5, 2019, "Tesla Board Probed Allegation That Elon Musk Pushed Employee." https://www.bloomberg.com/news/articles/2019-04-05/tesla-board-probed-allegation-that-elon-musk-pushed-employee

165 *Tesla, Inc. v. Hothi*, Superior Court of California, County of Alameda, Case No. RG19015770. https://www.plainsite.org/dockets/3xt7dv6u8/superior-court-of-california-county-of-alameda/tesla-inc-v-hothi/

occasions. Tesla painted Hothi, a mild-mannered Ph.D. student, as someone who had attempted to physically harm its employees, without providing any direct evidence at all. Hothi denied Tesla's allegations, which were also refuted by the Fremont Police report in the case. Ultimately, Tesla dropped its case entirely.

9. Cristina Balan: Cristina Balan is a former Tesla employee who worked on the battery design for the Model S. When she believed she had been wrongfully terminated by Tesla, the company attempted to shunt her case to confidential arbitration. Balan sued in federal court after the company publicly smeared her in an article in the *Huffington Post*. Judge Marsha J. Pechman ruled that Tesla was required to tell Balan who had been responsible for the remarks.[166] That person turned out to be Tesla Vice President of Communications David Arnold, who immediately resigned. Balan was also successful in convincing the judge that Tesla's lawyers had acted in bad faith. Her case is on appeal before the Ninth Circuit.[167]

10. Karl Hansen: Karl Hansen is a military veteran and former Tesla Security employee who filed a whistleblower complaint with the SEC in 2019 after being fired from his position. Hansen's complaint alleges that he was told to "investigate criminal activity occurring at the Gigafactory," including "(1) thefts occurring at TESLA's Gigafactory, costing TESLA and their investors somewhere between $37 to $150 million dollars; and (2) the association of Mexican Drug Cartel members and their alleged narcotic trafficking at TESLA's Gigafactory." He is suing Tesla in federal court in the District of Nevada.[168]

11. A.J. Vandermeyden: A.J. Vandermeyden sued Tesla in 2017 after she was fired for speaking out about the company's culture of sexual harassment.[169] Her case appears to have settled as of early 2019, but dozens of other similar cases involving worker rights are ongoing, including many containing similar allegations.[170]

12. Russ Mitchell: Russ Mitchell is a journalist for *The Los Angeles Times*, having previously worked as an editor at *BusinessWeek*.[171] On October 12, 2019, Elon Musk tweeted, ".@DrPatSoonShiong, are you aware that one of your senior journalists (Russ Mitchell) is openly funding a fake charity run by an online bully?" (Patrick Soon-Shiong is the billionaire owner of *The Los Angeles Times*.) Mitchell had, in fact, donated $50 to a GoFundMe campaign run by Think Computer Foundation seeking funds to challenge the California Courts' public access fee schedules, which had nothing directly to do with Tesla (although like many companies in Silicon Valley, Tesla has been sued frequently in California state courts). Musk's

166 *Balan v. Tesla Motors Inc*, Washington Western District Court, Case No. 2:19-cv-00067-MJP, Document 35. https://www.plainsite.org/dockets/download.html?id=282640974&z=715cc5d3

167 *Cristina Balan v. Tesla, Inc.*, Court of Appeals for the Ninth Circuit, Case No. 19-35637. https://www.plainsite.org/dockets/405kwymjm/court-of-appeals-for-the-ninth-circuit/cristina-balan-v-tesla-inc/

168 *Hansen v. Musk et al*, Nevada District Court, Case No. 3:19-cv-00413-LRH-WGC. https://www.plainsite.org/dockets/3zq7utsfl/nevada-district-court/hansen-v-musk-et-al/

169 *The Guardian*, July 5, 2017, "She took on Tesla for discrimination. Now others are speaking up. 'It's too big to deny.'" https://www.theguardian.com/technology/2017/jul/05/tesla-sexual-harassment-discrimination-engineer-fired

170 *Vandermeyden v. Tesla Motors*, Superior Court of California, County of Alameda, Case No. RG16831835. https://www.plainsite.org/dockets/38nmg9mcm/superior-court-of-california-county-of-alameda/vandermeyden-v-tesla-motors/

171 *The Los Angeles Times*. https://www.latimes.com/people/russ-mitchell

false and totally unfounded criticism ultimately backfired, with additional donations finding their way to Think Computer Foundation as a result.

13. Think Computer Foundation: Think Computer Foundation is a small 501(c)(3) non-profit organization incorporated in 2000 by the author of this report. (Some of the documents that are sources for this report were paid for by Think Computer Foundation.) When Musk attacked Russ Mitchell for donating to a "fake charity run by an online bully," he was referring to Think Computer Foundation. In December, as promised—and without even raising its full $5,000 goal—Think Computer Foundation filed suit against the Superior Court of Santa Clara County, challenging the public access policy, which could set a statewide precedent.[172]

14. Aaron Greenspan: As the creator of PlainSite, President of Think Computer Foundation, and author of this report, Aaron Greenspan first became interested in Tesla around August 2018. Eventually, after several e-mail exchanges with Elon Musk, inquiries to the Tesla Board of Directors about issues in this report, and a threat to sue, Musk responded by e-mailing Greenspan, "Does the psych ward know you have a cell phone? Just curious." Musk then followed up in a separate e-mail with, "🤣🤣." Since Musk chose to use the Reply All feature, the libelous messages were CCed to Tesla social media influencer Omar Qazi, who promptly posted them publicly on Twitter.

    Greenspan was also one of several Tesla critics targeted by "Maisy Kinsley," a fake account posing as a Bloomberg "Senior Journalist" with a personal website, LinkedIn profile, Twitter account, and artificial intelligence-generated composite photograph.[173] Once it was clear that Kinsley was fake, her accounts quickly disappeared.

The Greek Chorus

If Tesla were a stage drama, it would undoubtedly require a Greek chorus: "a homogeneous, non-individualized group of performers, who comment with a collective voice on the dramatic action," per Wikipedia's current definition.[174] Historically, chorus members have often worn masks. In real life, that chorus already exists, and it's made up of Elon Musk's loudest, most zealous supporters, all of whom sound roughly alike thanks to their captivated adulation for Musk and Tesla, what the company "stands for," and to a certain, very selective extent, what it actually does.

Tesla, Inc. has knowingly benefitted from the corporate propaganda spewed by fake social media accounts for years.[175] Just as state actors such as Russia and China seek to convince average Americans that they are engaging on-line with authentic and passionate citizens nearby, so too has Tesla sought to portray the false narrative that the

172 *Think Computer Foundation v. Rebecca Fleming et al*, Superior Court of California, County of Santa Clara, Case No. 19CV359896. https://www.plainsite.org/dockets/4576g2lem/superior-court-of-california-county-of-santa-clara/think-computer-foundation-v-rebecca-fleming-et-al/

173 Global Investigative Journalism Network, June 7, 2019, "With the Proliferation of Fake Profiles, Old School Vetting Signals Don't Work." https://gijn.org/2019/06/07/with-proliferation-of-fake-profiles-old-school-vetting-signals-dont-work/

174 Wikipedia, "Greek chorus." https://en.wikipedia.org/wiki/Greek_chorus

175 For a fuller discussion of fake accounts on social media, see PlainSite's Reality Check report on Facebook, Inc. https://www.plainsite.org/realitycheck/facebook.html

company has the support of a upswell of average people who are beyond excited about saving the environment and all that their amazing electric cars can do to improve their lives and the world around them.

Undoubtedly, there are many such enthusiasts, and it is also true that thousands of them already work for Tesla because they believe in the company's mission so strongly and want to devote their career to the most productive aim they can think of: effectively, saving the world. But, sadly, not every tweet, Facebook post, Instagram photograph, or YouTube video is the result of a person's authentic, unbiased desire to make the world a better place. Tesla's influence operations are both sophisticated and subtle—but there are still telltale signs when something is amiss.

There are dozens of members of the Greek chorus, but a few key actors stand out. Some of Tesla's most vociferous supporters, or those Tesla relies on to bolster its viewpoint, have been criminally charged or convicted, sometimes in relation to driving:

1. Omar Qazi: A resident of Torrance, California in the Los Angeles area, Omar Qazi was for a time the most aggressive and well-known Tesla enthusiast on Twitter. Posting mostly, but not exclusively, as "Steve Jobs" (and later, "Steve Jobs *[sic]* Ghost") with the Twitter handle @tesla_truth, Qazi went to great lengths to highlight every conceivable feature, attribute, plan, idea, and possibility involving Tesla at virtually every hour of the day. Some of his Tesla advertisements ran afoul of the law and Tesla's own recommendations, such as when he videotaped himself demonstrating Autopilot by running a red light with no hands on the steering wheel.[176]

   Qazi did not limit himself to adulation of Tesla and its co-founder. He also devoted considerable energy to harassing Tesla's critics, including the author of this report. A series of events constituting escalating harassment via telephone, SMS, fax, e-mail, and Twitter led this report's author to request in November 2019 that criminal charges be filed against Qazi for violations of California Penal Code Sections 166(a)(4), 166(a)(7), 422.4, 653m(b), and 528.5. Qazi either sent or caused to be sent a fax and text messages falsely alleging that PlainSite founder Aaron Greenspan possessed child pornography—an odd coincidence given Elon Musk's use of "pedo guy" to smear Vernon Unsworth. The electronic fax service and phone number used was identical to the service and phone number used to send another Tesla critic, Paul Huettner, a death threat. Qazi also repeatedly targeted a disabled individual for harassment while knowing full well about his disability.[177]

   Qazi was banned from Twitter for life in late October 2019. At the time of the ban, he controlled numerous accounts linked to his company, Smick Enterprises, Inc., which is not and never has been registered with the California Secretary of

176 YouTube, August 7, 2019, "Tesla Influencer Omar Qazi Runs a Red Light While Ignoring No Hands Autopilot Warning." https://www.youtube.com/watch?v=BkXd97kOuPs

177 PlainSite, November 10, 2019, "Letter to California State Senator Scott Wiener Regarding Oversight of CAEATFA." https://www.plainsite.org/documents/1azagc/letter-to-california-state-senator-scott-wiener-regarding-oversight-of-caeatfa/

Top: *A still frame from the "Third Row Tesla" podcast, with special guest "Now You Know," a Tesla promotional YouTube channel. Clockwise from left, Raj Balwani, Galileo Russell, Sofiaan Fraval, Omar Qazi, Vivien Hantusch, Zac Cataldo, Jesse Cataldo, and Kristen Netten. These individuals, along with financial advisor Eric Steiman, attorney David Tayar, and Vincent Yu, form the core of Tesla's "organic" marketing efforts on social media. Omar Qazi was banned from Twitter for life for his harassing behavior, which was explicitly endorsed by Elon Musk. The Cataldos formed their channel, which has regularly promoted Tesla stock, with the assistance of a Tesla employee whose involvement has not been formally disclosed to viewers. Neither podcast has disclaimers of any sort concerning investment advice; most are Tesla shareholders.*

Bottom: *Elon Musk's personal proxies on financial media networks have long been Cathie Wood of ARK Investment Management and Ross Gerber of Gerber Kawasaki. Both are little-known investment management firms that have shilled for Tesla and Musk through good times and bad. Wood, who has famously touted her $4,000-per-share price target for Tesla's stock, recently sold off a significant portion of ARK's Tesla holdings at around $320 per share, less than 10% of her target price. Gerber claims to have a degree from Musk's alma mater, the Wharton School of Business at the University of Pennsylvania, in "Business Law," but according to the University of Pennsylvania, Gerber never received such a degree. Photographs: CNBC, ARK Investment Management, Bloomberg Television*

State or Franchise Tax Board despite operating in California since its inception.[178] Qazi was also arrested in 2018 for felony possession of a controlled substance (LSD) without a prescription, and marijuana possession, in Port Canaveral, Florida as he planned to board a party boat.[179] Although those charges were ultimately dropped, he was also arrested in 2012 for possession of marijuana while driving and possession of two fake identification cards; charges which were also eventually dismissed.[180] Since having been de-platformed from Twitter and Amazon Web Services, Qazi has taken his advocacy to Tesla's "Third Row Tesla" podcast.

2. Katheryn Edwards: Another prolific voice on Twitter and frequent collaborator with Omar Qazi, Katheryn Edwards has managed a number of harassing pro-Musk and pro-Tesla accounts: @Pravduh15 and @TeslaV6. In 2002, she was arrested for a 2nd degree felony, intoxication manslaughter, as she traveled from Austin to San Marcos, Texas, where she attended Texas State University.[181] She has since worked as a paralegal, as office staff for a Subaru dealership, at a window and door company, and as a self-published children's author.

3. Shawn Anthony Joyce: Also known as Shawn Wylde, or @AFMusk on Twitter, Joyce is a veteran and felon convicted of defrauding the Department of Veterans Affairs who was imprisoned for four months in 2014, after which he was released on parole for three years. Joyce was featured in *The New York Times* for his subsequent work fighting on-line harassment, after which he began harassing critics of Tesla.

4. James Howard-Higgins: Operating exclusively behind the scenes and not on social media, Howard-Higgins is a British convicted felon presently serving time in prison who contacted Elon Musk in 2018 with the hope of selling him false information about Thailand-based cave diver Vernon Unsworth. Unsworth sued Musk for libel in the United States and the United Kingdom. Howard-Higgins was successful at convincing Musk to pay $50,000 for the false information via Excession LLC, managed by Jared Birchall, who had attempted to pose as "James Brickhouse."[182]

5. [Name Redacted]: When the author of this report asked Elon Musk to justify some of his statements via e-mail, Musk initially seemed cooperative. In the end, he declined to respond to more specific questions, instead e-mailing a screenshot of a Latvian extortion website, where a convicted felon who is the subject of a restraining order had posted thousands of false and libelous tirades about PlainSite, some of which concerned Tesla. Above the screenshot was Musk's final answer, referencing these rants: "Your true colors." The exchange demonstrated

178 California Secretary of State. https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=&SearchType=CORP&SearchCriteria=smick&SearchSubType=Keyword

179 *State of Florida v. Omar Qazi*, County Court in and for Brevard County, Florida, Case No. 05-2018-CF-010519-AXXX-XX. https://www.plainsite.org/dockets/40ngkb7bg/county-court-in-and-for-brevard-county-florida/state-of-florida-v-omar-qazi/

180 *State of California v. Omar Qazi*, Superior Court of California, County of Los Angeles, Case No. SBA2SY05356-01. https://www.plainsite.org/dockets/40ngs5326/superior-court-of-california-county-of-los-angeles/state-of-california-v-omar-qazi/

181 *State v. Edwards, Katheryn*, District Court of Travis County, Texas, Case No. D-1-DC-02-300885. https://www.plainsite.org/dockets/45vaefrtu/district-court-of-travis-county-texas/state-v-edwards-katheryn/

182 *BuzzFeed News*, October 3, 2019, "Elon Musk Hired A Convicted Felon To Investigate The Cave Rescuer Who Is Now Suing Him." https://www.buzzfeednews.com/article/ryanmac/elon-musk-hired-felon-james-howard-higgins-dirt-pedo-guy

that Musk was willing to rely on even the most obviously unstable and untrustworthy information sources so long as they fit his pre-conceived narrative.

Various career professionals have profited from supporting Tesla and its co-founder:

6. Bonnie Norman: A medical device specialist and former Intel Director of Quality & Regulatory Affairs for Digital Health, Bonnie Norman prides herself on being an early Tesla investor and adopter. Her history with the company has given her access to top-level executives, including Elon Musk. According to references to court documents in the Tripp litigation that remain sealed, Norman conspired with Musk to identify Lawrence Fossi as the individual behind the Montana Skeptic Seeking Alpha account.[183,184]

7. Eric Steiman: Eric Steiman runs Clearbrook Capital Advisors, an investment advisory firm registered to a multi-family home in Brighton, Massachusetts. Steiman, who placed a bet on Tesla in its early days and found it to be one of his best trades ever, has run at least one Twitter count known to routinely harass and threaten journalists and Tesla's critics, likely in violation of federal law.

8. David Tayar: An attorney in New York, Tayar has long been an enthusiastic supporter of Elon Musk. His Twitter account appears as an early follower for several other pro-Tesla accounts.

9. Paul J. Hornak: A former Senior Controller for Delta Airlines who attended The College of New Jersey (TCNJ) to study for an economics degree as an adult, Hornak has been known to harass anyone who dares slight Tesla or Elon Musk. As a student, he authored a paper at TCNJ entitled, "Examining the Relationship Between Dividend Yield and Volatility Through the Use of ARCH and GARH Modeling," focused on stock market volatility. Hornak's pro-Tesla posts through his @PJHORNAK account have been mirrored by what appear to be several other fake accounts.

Some chorus members have turned their enthusiasm into a business, raising questions about payment from Tesla or other Musk entities:

10. Zac and Jesse Cataldo: The Cataldos are a Massachusetts-based father-son pair who set up a YouTube channel called "Now You Know" initially intended to post educational videos. Their channel soon became exclusively Tesla focused, with Now You Know not-so-subtlely encouraging viewers to buy Tesla stock in several episodes. The Cataldos did not bother to inform their viewers that Tesla Regional Manager Steven Mark Salowsky, one of their first guests, had signed on as Now You Know's Creative Director. In July 2019, Zac Cataldo incorporated Now You Know Productions LLC in Massachusetts.

11. Vincent Yu: With a background working in the auto parts industry in Southern

183 *Tesla, Inc. v. Tripp*, Nevada District Court, Case No. 3:18-cv-00296-LRH-CLB, Documents 120. https://www.plainsite.org/dockets/download.html?id=286822304&z=e63d1c6c

184 *Tesla, Inc. v. Tripp*, Nevada District Court, Case No. 3:18-cv-00296-LRH-CLB, Documents 125. https://www.plainsite.org/dockets/download.html?id=287033906&z=40da68c0

California, Vincent Yu has been an enthusiastic supporter of Tesla, and the proprietor of the "Tesmanian" brand of Model 3 accessories, such as coolers and floor mats.[185]

12. Major Earl Banning: Major Earl Banning, PsyD, ABPP is an active duty neuropsychologist at Wright Patterson Air Force Medical Center in Dayton, Ohio, home to the 88th Medical Group. Banning is also the co-founder of Frunkpuppy LLC along with Julissa Bonilla, a Morgan Stanley Digital Marketing Assistant Vice President (and talented artist). Frunkpuppy operates an eponymous YouTube channel that combines cuteness, puppies, and Tesla vehicles in what appears to be a highly coordinated "grassroots" marketing campaign. Banning has both personally harassed and supported the harassment of Tesla critics and professional journalists on Twitter for some time via his @28delayslater account. When pressed about his social media activity, he claimed, "I don't bother you."

    But journalists have stated that Banning does bother them. Despite serving as a mental health professional in the United States Military, he was one of the first followers of a harassing account specifically intended to ridicule Linette Lopez—who was previously attacked by Elon Musk—on the basis of her appearance. And other harassing Tesla-related accounts have always been quick to follow Banning.

13. Galileo "Gali" Russell: A 2015 graduate of the NYU Stern School of Business and Founder of HyperChange LLC, Russell also operates a YouTube channel, Twitter account @Gfilche, and appears on Tesla promotional videos. On December 17, 2019, Russell posted an episode of his HyperChange series on YouTube in which it took no more than thirty seconds before he made a material, false statement in likely violation of federal securities law. "Tesla does zero marketing. Literally zero marketing, but they're one of the best selling cars in the world," he claimed.[186] In fact, Tesla spent $184.5 million on marketing from 2016-2018 according to page 88 of its 2018 SEC Form 10-K.

There are other members who are from the younger generation:

14. Johnna Crider: A contributing writer at CleanTechnica, Crider is an independent artist who makes wire art involving gems and minerals and refers to herself as "The Gem Diva."[187] She credits Elon Musk with saving her life.[188] On December 11, 2019, she started an on-line fundraiser to encourage members of the public to donate $50,000 so that she can purchase a Tesla pickup truck.[189]

15. Shamindra "Shami" De Zylva: A graduate student in the United Kingdom who has done work on predicting the price of gold using computer algorithms and is fas-

185 Tesmanian. https://www.tesmanian.com
186 YouTube, December 17, 2019, "Creating Tesla Enthusiasts One Ride At a Time w/ Sofiaan Fraval." https://www.youtube.com/watch?v=F_X-Fr6ULi4&t=0m29s
187 "Johnna Crider: The Gem Diva." https://johnnacrider.com
188 Crider, Johnna, August 9, 2018, "I Was 1 Of Millions Of American Women Used For A Green Card." https://medium.com/@JohnnaCrider/i-was-1-of-millions-of-american-women-used-for-a-green-card-elon-musk-literally-saved-my-life-8846060da5f2
189 GoFundMe, December 11, 2019, "Johnna's Tesla Fund." https://www.gofundme.com/f/1u7n63c6io

cinated by cryptocurrency, "Shami" De Zylva appears to have posted on Twitter as @TeslaOpinion and as @DisruptResearch, as well as from his personal account, @shamziboy. "Disruption Research" is an unincorporated, seemingly anonymous investment research "firm" with no contact information that claims to be "[c]urrently focused on Tesla, SoftBank, Shopify, Zillow, and Slack." Its website has been under construction for nearly a year. De Zylva's accounts have pumped out a stream of positive spin for Tesla and Musk.

16. Vivien Hantusch: A design student and public relations intern[190] in Germany, Vivien Hantusch is an incredibly enthusiastic supporter of SpaceX, Tesla, and Elon Musk. She prototyped a user interface for "Pravduh," Musk's idea for a mobile app (named after the infamous Soviet newspaper, *Pravda*, meaning "truth" in Russian) that would rate the journalists with whom Musk so often seems to disagree.[191] Hantusch has also made a number of professional-quality spec advertisements for Tesla products. Hantusch's on-line identity is literally intertwined with Elon Musk's work—her Twitter handle, @flcnhvy, refers to the SpaceX Falcon Heavy rocket.

Finally, there is the mystery account:

17. @ThemeTeamWP: An anonymous account named for a WordPress blogging template designer whose generic icon avatar reveals very little, @ThemeTeamWP is the most ardent supporter of Elon Musk on the internet. Its associated e-mail address resembles, but does not match, Musk's primary Tesla e-mail address. It defends not only every single one of Musk's business decisions, but his dating choices as well. It attacks critics, and especially short sellers. It even blames victims, such as a girl whose finger was caught in a poorly-designed Model X door. In addition, the account deletes its tweets, which are only in response to others. While its word choice sometimes matches language Musk is known to have used, this is not always the case. The account's owner has denied being Musk or anyone Musk knows, but the ferocity of its positions makes that difficult to believe.

Many of these accounts would not be notable at all were it not for several important factors. First, many (but not all) of them have been involved in aggressive harassment of Tesla critics, Musk critics, and journalists. Lora Kolodny (CNBC), Dana Hull[192] (*Bloomberg News*), Linette Lopez (*Business Insider*), Charley Grant (*The Wall Street Journal*), Neal Boudette (*The New York Times*), and Russ Mitchell[193] (*The Los Angeles Times*) have all publicly commented on the harassment they have received from Tesla supporters at one point or another. The degree of vitriol is atypical relative to most beats.

Second, many of the individuals have been given special treatment by Tesla. The individuals running these specific accounts have been far more likely to receive a direct, almost instantaneous response from Elon Musk on Twitter than any of Musk's 30 mil-

190 Hantusch has denied having ever worked in public relations, but "PR" and "Marketing" appear on multiple versions of her résumé, as well as a specialty in "Social Media Content Creation."
191 Hantusch, Vivien. https://www.vivien.space/portfolio
192 Twitter, December 7, 2019. https://twitter.com/NeilBoltonRSPL/status/1203276465594200067
193 Twitter, December 26, 2019. https://twitter.com/russ1mitchell/status/1210277211883753472

Having been de-platformed twice due to his criminal harassment on Tesla's behalf, Omar Qazi was rewarded for his loyalty with a seat at the same table as Elon and Kimbal Musk, as well as other members of the propaganda machine. Photograph: Maye Musk

Members of Tesla's Greek chorus at the Tesla annual shareholder meeting on June 11, 2019. Photograph: Twitter User @teslaownersSV

lion other followers. Musk explicitly endorsed Qazi's conduct on Twitter prior to his being banned.[194] In addition, Omar Qazi revealed that he had been invited to the Tesla Model Y launch, an exclusive event.[195] Similarly, Vivien Hantusch flew from Germany to Los Angeles for the invite-only "Cybertruck" launch. Notably, Tesla has not enforced its trademark rights against these holders of social media accounts making use of the trademarked Tesla brand, suggesting that they may be parties to brand licensing agreements. In fact, it has welcomed them as family. On January 4, 2020, Elon Musk's mother posted a photograph of her son and several members of the Third Row Tesla podcast crew at a round table equipped for recording.

Third, most of these individuals are not merely enthusiastic car owners. They are also Tesla shareholders, directly in touch with employees at the company itself,[196] who want to see the value of their investment increase.

The Talking Heads

The remarks of two individuals with close connections to Musk have been notable for their content, which has often suggested that they speak on behalf of Tesla, Inc. and Musk himself. Ross Gerber of Gerber Kawasaki Investments and Cathie Wood of ARK Investment Management have each presented themselves to the public as objective observers, yet with an unflaggingly hyper-optimistic outlook.

Mr. Gerber, who often appears not to know the basics of the financial industry he purports to work in,[197] has been a Tesla cheerleader for years, despite admitting on video that he owns relatively few shares in the company. On April 18, 2019, he repeated one of Elon Musk's false talking points, writing, "Actually zero depreciation in teslas. They are gaining value."[198] Gerber's biography on his firm's website states, "Ross received his BA in Communica-

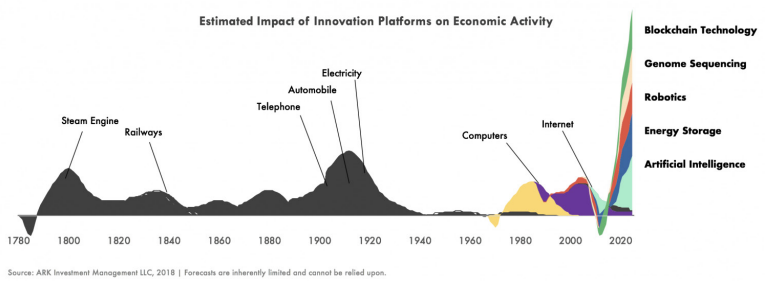
194 *Bloomberg News*, October 9, 2019, "Tesla's Autopilot Could Save the Lives of Millions, But It Will Kill Some People First." https://www.bloomberg.com/news/features/2019-10-09/tesla-s-autopilot-could-save-the-lives-of-millions-but-it-will-kill-some-people-first

195 Twitter, March 20, 2019. https://twitter.com/PlainSite/status/1108585701736513536

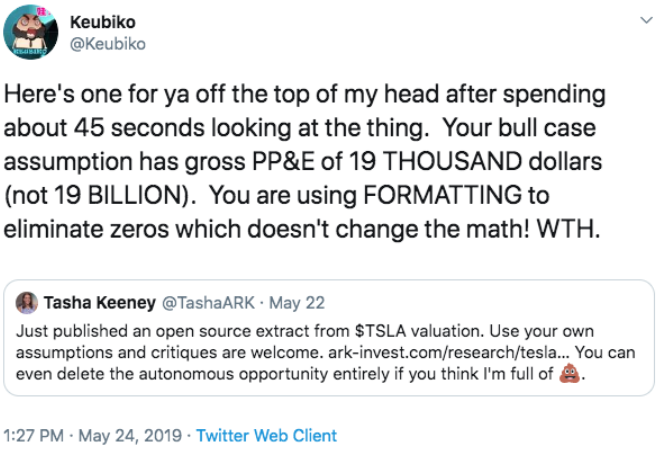
196 In a private conversation provided to PlainSite, Omar Qazi referred to a "Jim" in the context of someone who may have had access to his @tesla_truth Twitter account. While it is unclear who he was referring to, SpaceX's Communications Director is named James Gleeson.

197 Twitter, March 22, 2019. https://twitter.com/GerberKawasaki/status/1109194217480310784

198 Twitter, April 18, 2019. https://twitter.com/GerberKawasaki/status/1118853779393171457



A typical ARK Investment Management graph, complete with wild generalizations, unlabeled axes, the word "estimated" in the title, a "blockchain" reference, and a disclaimer that it is a forecast that "cannot be relied upon." The Financial Times referred to this graph as "chartcrime." Source: https://ftalphaville.ft.com/2019/02/22/1550850028000/Why-chartcrime-has-destroyed-the-blockchain-/



Twitter user @Keubiko responded to ARK Investment Management analyst Tasha Keeney's emoticon with news of a devastating error—one of many.

tions from the Annenberg School at the University of Pennsylvania concentrating in Business Law at the Wharton School of Business, graduating class of 1993."[199] Yet Ron Ozio, Director of Media Relations at the University of Pennsylvania, could only confirm that Gerber had received a B.A. in Communications. In addition to there being no record of Gerber's "Business Law" concentration, the claim is inconsistent with the University's policies. The Wharton undergraduate program awards a B.S. in Economics, but since Gerber received a B.A., he did not graduate from Wharton, which would make a "concentration" awarded by Wharton (i.e. four courses) impossible. While Wharton does have dual-degree programs, Gerber reportedly only has one Penn degree. It therefore seems almost certain that Gerber has been lying on his résumé for years. Gerber himself has refused to explain the discrepancy.[200]

Ms. Wood is best known for her $4,000 price target for Tesla common shares on the basis of amorphous graphs that tend to lack any labels on their axes, or any rational fundamentals whatsoever. Though she carries herself with a poised demeanor, Wood has a tendency to wax poetic on the potential of technology, making comparisons between successful companies and whatever she happens to be promoting. She is fond of comparing Tesla to Apple and Amazon, even though those companies have completely different business models, as well as track records of earning profit.

To deflect frequent criticism that her uniquely stratospheric $4,000 price target was a form of manipulation tantamount to securities fraud, on May 22, 2019, Wood "open-sourced" her firm's model for Tesla's stock price on the popular coding site GitHub.[201] The move immediately backfired. Within two days, pseudonymous Twitter user and Seeking Alpha contributor @Keubiko[202] identified crucial errors in the model, including one instance where ARK analyst Tasha Keeney had used a Microsoft Excel value

199 Gerber Kawasaki. https://gerberkawasaki.com/team/ross-gerber
200 Twitter, March 14, 2019. https://twitter.com/PlainSite/status/1106209355504840704
201 GitHub, May 22, 2019. https://github.com/ARKInvest/ARK-Invest-Tesla-Valuation-Model
202 Seeking Alpha. https://seekingalpha.com/author/keubiko#regular_articles

Table 2: Known Q4 2019 ARK Investment Management Tesla, Inc. Stock Trades

Date	Shares Purchased	Shares Sold	Closing Price	% of Price Target	% Away from Price Target	Approximate Purchases	Approximate Sales
October 11, 2019		1,180	$247.89	4.13%	95.87%		$292,510.20
October 14, 2019		563	256.96	4.28%	95.72%		144,668.48
		14,894	256.96	4.28%	95.72%		3,827,162.24
		14,773	256.96	4.28%	95.72%		3,796,070.08
October 15, 2019		3,314	257.89	4.30%	95.70%		854,647.46
		16,142	257.89	4.30%	95.70%		4,162,860.38
October 17, 2019		9,229	261.97	4.37%	95.63%		2,417,721.13
October 18, 2019		13,872	256.95	4.28%	95.72%		3,564,410.40
		1,760	256.95	4.28%	95.72%		452,232.00
		77,486	256.95	4.28%	95.72%		19,910,027.70
October 22, 2019		14,850	255.58	4.26%	95.74%		3,795,363.00
		3,481	255.58	4.26%	95.74%		889,673.98
October 24, 2019		26,661	299.68	4.99%	95.01%		7,989,768.48
		4,177	299.68	4.99%	95.01%		1,251,763.36
		4,927	299.68	4.99%	95.01%		1,476,523.36
October 25, 2019		43,337	328.13	5.47%	94.53%		14,220,169.81
November 7, 2019		39,560	335.54	5.59%	94.41%		13,273,962.40
November 11, 2019		3,245	345.09	5.75%	94.25%		1,119,817.05
November 14, 2019		14,809	349.35	5.82%	94.18%		5,173,524.15
		1,374	349.35	5.82%	94.18%		480,006.90
November 22, 2019	13,109		333.04	5.55%	94.45%	4,365,821.36	
December 4, 2019		5,840	333.03	5.55%	94.45%		1,944,895.20
December 11, 2019		2,680	352.70	5.88%	94.12%		945,236.00
		17,947	352.70	5.88%	94.12%		6,329,906.90
December 12, 2019		1,830	359.68	5.99%	94.01%		658,214.40
		7,438	359.68	5.99%	94.01%		2,675,299.84
December 23, 2019		17,766	419.22	6.99%	93.01%		7,447,862.52
		5,567	419.22	6.99%	93.01%		2,333,797.74
		20,585	419.22	6.99%	93.01%		8,629,643.70
December 30, 2019		18,241	414.70	6.91%	93.09%		7,564,542.70
TOTAL	**13,109**	**407,528**				**$4,365,821.36**	**$127,622,281.56**

off by a factor of *one million*, which she had either covered up or ignored due to spreadsheet formatting choices. @Keubiko also revealed that the model clearly had not been tested to account for anything remotely close to real-world circumstances. According to Cathie Wood's analysts at ARK, "if Tesla sold zero cars and generated zero dollars in revenues, the company would be worth $46 [billion dollars]."[203] Such logic is impossible to justify.

Cathie Wood upped ARK's price target for Tesla to $6,000 per share at the start of August 2019. Beginning in mid-October, without again changing its price target or its laughably broken "model," ARK began selling large quantities of Tesla shares. This

203 The Market Plunger, May 26, 2019, "When Models Fail: How Financial Models Subsidize Poor Valuation Work (TSLA & Ark Invest)." https://themarketplunger.com/2019/05/26/when-models-fail/

selling activity was not touted on Cathie Wood's media appearances where she continued to exude optimism about Tesla and technology generally. In Q4 2019, ARK offloaded about $127.6 million worth of Tesla stock and purchased just over $4 million worth, according to trading reports posted on Twitter by a pseudonymous account. In other words, while Cathie Wood insisted that Tesla was a screaming "buy" destined to soar, her funds disposed of around $123 million worth of shares, net.

According to ARK Investment Management's SEC Form 13F-HR filed November 12, 2019 for the period ending September 30, 2019, Tesla was ARK's second largest holding across all of its funds in dollar terms, valued at approximately $282.4 million at the end of Q3 2019, or 6.16% of ARK's $4.5815 billion in assets under management.[204,205] Tesla has also historically been the top holding in several of ARK's individual funds. The net sale of Tesla shares in Q4 2019 would have brought Tesla's share of ARK's entire cross-fund portfolio closer to 3-4%.

But according to a video message posted by Cathie Wood on ARK's Twitter account on October 23, 2019 in response to queries about the firm's Tesla trades,

> *"When a stock reaches 10% of our portfolio, we cannot buy it any longer. We can let it run, up to 12, 13... Sometimes we let it go a little above that—but typically, because by that time, the stock has run 30%—has done 30% better than all of the other stocks in our portfolio, we will take profits. This is simply portfolio management. Now in the case of Tesla, as you know, we bought it down into the 180 range. And as it approached 240, -50, it had crossed over 12, 13% of the portfolio. We were taking profits because we were getting opportunities elsewhere in the portfolio, particularly in the genomics stocks. Uh, that, uh, we felt, uh, we should take profits and re-allocate the funds. Uh, that's simply what has happened here with Tesla."*[206]

A written explanation e-mailed to ARK mailing list subscribers similarly stated:

> *"As the stock dropped below $200, we increased our position in our flagship strategy to 10%, a level beyond which we could not buy based on our investment guidelines. Subsequently TSLA appreciated more than 30% relative to the rest of the names in our flagship portfolio, pushing its position size beyond 13%, at which point—again based on guidelines—we started taking profits."*

This explanation simply does not pass muster. According to ARK's own SEC filings, its overall holdings in Tesla did not come close to the firm's supposed (but flexible) 10% overall portfolio threshold at the beginning of Q4 2019, and given that the entire stock market—and especially other technology stocks held by ARK funds—went straight up in November and December 2019, Tesla's price advanced at roughly the

204 SEC Form 13F-HR Filed November 112 2019. https://fintel.io/i13f/ark-investment-management/2019-09-30-0
205 At a closing price of $240.87 on September 30, 2019, ARK therefore held about 1,172,417 TSLA shares total.
206 Twitter, October 23, 2019. https://twitter.com/ARKInvest/status/1187144704103718912

same pace as many other technology stocks that ARK holds. While Wood may have been referring to Tesla's weight in specific funds where its weight is closer to 10%, there was still no need to sell shares to reduce Tesla's weighting; a decision to sell is not the same as a decision to "not buy." Nor did ARK need to sell roughly 35% of its holdings to offset a 30% price gain. If Tesla were as destined for greatness as advertised, ARK should have purchased other stocks to reduce its relative reliance on Tesla, which would have enabled it to hold onto its valuable Tesla shares. And in fact, ARK did purchase considerable holdings in non-Tesla stocks during Q4 2019, lowering its overall percentage allocation in Tesla with each purchase. Also odd is that from October 11, 2019 forward, Wood's supposed re-allocation took place all quarter long, even when the price of Tesla stock went *down*. Finally, it's difficult to imagine a more compelling investment than a stock projected to rise to $6,000 per share from $300—even in the field of genomics. 20X gains in mature company stocks are rare, especially when starting from the peak of the longest bull market in history.

CNBC's December 9, 2019 "Guest Disclosure" graphic for Cathie Wood contained two errors. ARK Investment Management has between 6-12% of its assets invested in Tesla, and her close connection to Elon Musk should qualify as "Other Conflicts."

With all of this in the background, on December 9, 2019, Wood appeared on CNBC to discuss Tesla. Although she was more than willing to talk on live television for nearly seven full minutes about the Cybertruck (analyzed from "many different angles"), her perception of Tesla's competitive advantages, her "bear price" of $700, market share, and the supposed fact that "Tesla is not an auto company," what she didn't mention were the 100 million dollars that her firm had just "re-allocated" away from this opportunity of a lifetime. (In addition, CNBC displayed a screen about ARK's Tesla holdings falsely claiming that ARK did not have a stake ">1%.")[207]

Excessive optimism is not illegal, but securities fraud is. Wood and Gerber repeatedly met with Elon Musk privately. The distribution of material non-public information to select individuals tasked with pumping up a stock price is unlawful. Gerber and Wood enjoyed perks such as exclusive factory tours, access to Musk for interviews, and special event invitations, all while they maintained a uniquely ecstatic outlook in public. Yet behind the scenes, ARK was selling weekly. Throughout it all, producers and so-called television journalists at CNBC and Bloomberg were entirely complicit.

207 CNBC, December 9, 2019, "Tesla bull Cathie Wood gives her take on the Cybertruck." https://www.cnbc.com/video/2019/12/09/bull-case-tesla-market-share-autos-squawk-box.html

Accounting Fraud

Given Tesla's cloak-and-dagger *modus operandi*, one has to wonder what all the fuss is really about. The answer is simple: for most of its history, Tesla has been a cash-starved business utterly dependent upon the stock market, which has resorted to various forms of accounting fraud to survive. And it doesn't want anyone to know.

Dangling The Carrot (For a Price)

One of Tesla's defining characteristics is the fact that there always seems to be something bigger and better on the horizon—even if it's not entirely clear how that thing could ever come to pass in the manner that Elon Musk has promised. In mid-2016, as soon as Model 3 production was finally getting underway, Musk began to make audacious promises about Tesla's next model, the Model Y. Then, when it was finally unveiled, many observers had trouble distinguishing the Model Y from the Model 3, likely because the Model Y was actually just a barely-modified Model 3 prototype. Similarly, the Tesla Semi Truck, punk pickup truck (officially named the Cybertruck), second-generation Roadster, robotaxis, and Solar Roof (versions 1.0 and 3.0, version 2.0 having been lost somewhere along the line) have all given Tesla fans something more to look forward to—and to put down deposits on, while other customers demand refunds of their deposits[208,209] in what effectively amounts to a Ponzi scheme with stock attached. Yet no matter how many fantastic new products Elon Musk announces and "launches," steady profits never materialize.

Zero Profitable Years

The reasons for Tesla's lack of profitability are to some extent subject to debate. But the fact that the company has been short on cash for the vast majority of its existence is indisputable. This dynamic has had serious effects on every aspect of the company, and on its CEO's behavior.

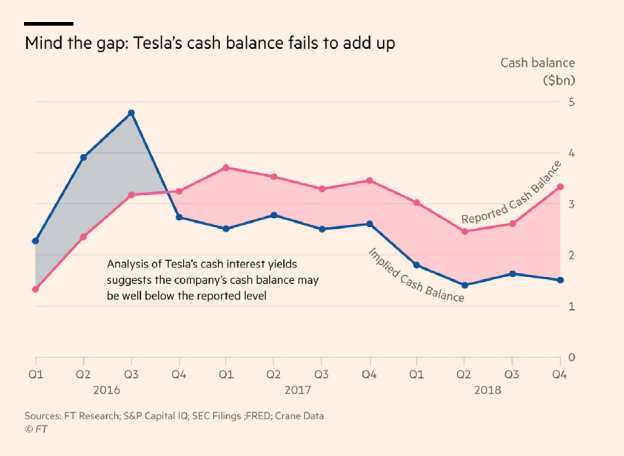
The fact that Tesla has never turned a profit in any of the fiscal years for which it has been in existence has had an material and outsized impact on the company's strategy and operations. The simple truth is that most companies with such a track record would have gone out of business after only a few years of such dismal returns. It is a testament to Elon Musk's endurance and creativity—much of it brazenly illegal—that the company is still around in any form at all.

Cash Balances

For years, Tesla has consistently and deliberately overstated its cash position in an

208 *Wired*, July 31, 2017, "Canceling Your Model 3 Deposit? Don't Count on a Timely Refund." https://www.wired.com/story/canceling-your-model-3-deposit-dont-count-on-a-timely-refund/

209 PlainSite. https://www.plainsite.org/tags/tesla-deposit-theft/



On March 5, 2019, the Financial Times finally pointed out what many had suspected all along: Tesla's reported cash numbers do not add up and are therefore fraudulent. Sure enough, two months later, Tesla was forced to raise capital from outside investors despite its supposedly healthy cash reserve of over $3 billion. Tesla's phony numbers have kept its stock price elevated. Source: FT Alphaville

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it's just payroll variance. I don't understand the payroll one.
Q. Okay. But it looks like you did something to move some amount of payroll from May to June, 25 million. You moved some accounts payable, 18 million and moved Silevo, 3 million, from May to June --
A. Okay.
Q. -- in order to meet the covenants; right?
A. Sure. We did many things to meet the covenants.
Q. Is that your example of things that are making the business more efficient?
A. It's some of the things.
Q. Moving payroll from one month to another makes a business more efficient?
A. No, but it actually forces a business how to figure out how to reduce cost.
Q. Now, in Plan A and Plan B, which you alluded to, Plan A was going to get you to -- looks like -- I have trouble reading this -- looks like 123 million, the June average, and Plan B would get you to 120; correct?
A. Okay.
Q. So both of those plans would allow you not

Lyndon Rive admitted under oath to moving payroll and shifting accounts payable (payments to vendors) in order to "meet the covenants."

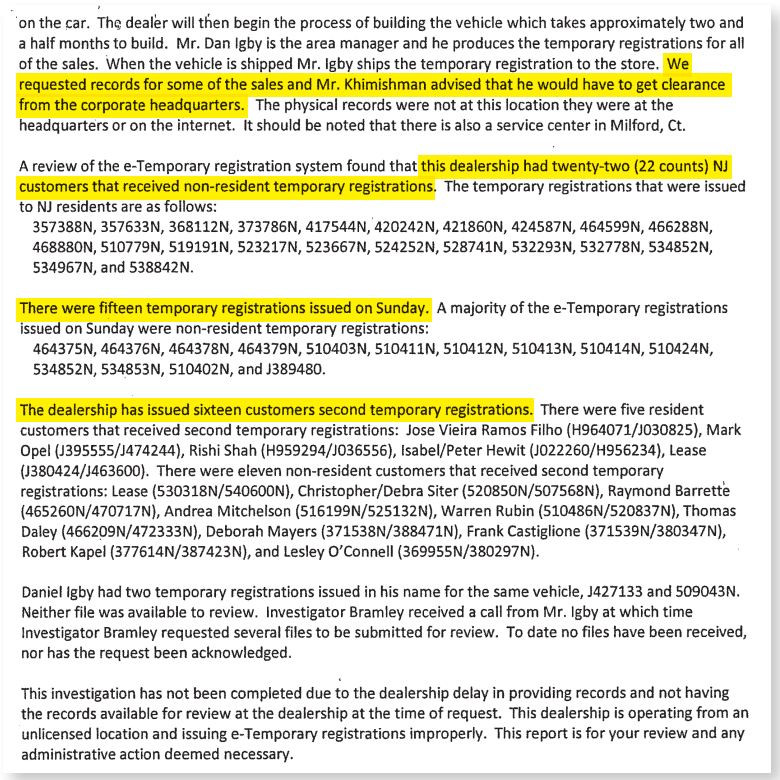
effort to convince investors that the risk of imminent demise was always much lower than the company's critics claimed.[210] In fact, Elon Musk himself was forced to admit that those critics were often right, and that Tesla had come within weeks of bankruptcy on at least one occasion in 2018.[211]

Tesla has managed to distort its cash figures, as many companies do, by blurring time. The company only reports on its cash position on the very last day of the quarter—not a range or average of how much cash was on hand throughout. This presents opportunities for those wishing to boost numbers to draw on credit lines or take out loans, just to make bank account balances spike for a day. Tesla's CFO Jason Wheeler admitted to such conduct on February 10, 2016. "Where we closed Q4 at, $135 million, fully drawn on [the lending facility]... We don't want to live on this drug."[212] But Tesla has been completely hooked ever since.

In March[213] and April[214] 2019, Perseid Capital posted in-depth analysis of Tesla's cash burn and cashflow projections. On May 2, 2019, just as cash levels were believed to be reaching a critical low point, the company announced that it would be raising $2 billion in a stock and debt sale, temporarily alleviating the cash crunch. But the new round of funding did nothing to solve Tesla's long-term profitability problems.

Cash balances have also been modified by managing accounts receivable (money coming in) and accounts payable (money going out) balances. In the Delaware litigation involving SolarCity, Think Computer Foundation was able to force the disclosure of portions of a transcript in which Lyndon Rive admitted under oath that SolarCity had

210 *FT Alphaville*, March 5, 2019, "How much does Tesla have in the bank?" https://ftalphaville.ft.com/2019/03/05/1551787633000/How-much-does-Tesla-have-in-the-bank-/
211 *Axios*, November 26, 2018, "Elon Musk says Tesla came "within single-digit weeks" of death." https://www.axios.com/elon-musk-tesla-death-bleeding-cash-a7928b06-3aae-43d7-bdde-5b9c41ef298f.html
212 Seeking Alpha, February 10, 2016, "Tesla Motors (TSLA) Elon Reeve Musk on Q4 2015 Results - Earnings Call Transcript." https://seekingalpha.com/article/3885766-tesla-motors-tsla-elon-reeve-musk-on-q4-2015-results-earnings-call-transcript
213 Perseid Capital, March 12, 2019. https://www.perseid-capital.com/blog/2019/03/12/tesla-cashflow-projection/
214 Perseid Capital, April 5, 2019. https://www.perseid-capital.com/blog/2019/04/05/tesla-q1-2019-cash-burn-analysis/



on the car. The dealer will then begin the process of building the vehicle which takes approximately two and a half months to build. Mr. Dan Igby is the area manager and he produces the temporary registrations for all of the sales. When the vehicle is shipped Mr. Igby ships the temporary registration to the store. We requested records for some of the sales and Mr. Khimishman advised that he would have to get clearance from the corporate headquarters. The physical records were not at this location they were at the headquarters or on the internet. It should be noted that there is also a service center in Milford, Ct.

A review of the e-Temporary registration system found that this dealership had twenty-two (22 counts) NJ customers that received non-resident temporary registrations. The temporary registrations that were issued to NJ residents are as follows:

357388N, 357633N, 368112N, 373786N, 417544N, 420242N, 421860N, 424587N, 464599N, 466288N, 468880N, 510779N, 519191N, 523217N, 523667N, 524252N, 528741N, 532293N, 532778N, 534852N, 534967N, and 538842N.

There were fifteen temporary registrations issued on Sunday. A majority of the e-Temporary registrations issued on Sunday were non-resident temporary registrations:

464375N, 464376N, 464378N, 464379N, 510403N, 510411N, 510412N, 510413N, 510414N, 510424N, 534852N, 534853N, 510402N, and J389480.

The dealership has issued sixteen customers second temporary registrations. There were five resident customers that received second temporary registrations: Jose Vieira Ramos Filho (H964071/J030825), Mark Opel (J395555/J474244), Rishi Shah (H959294/J036556), Isabel/Peter Hewit (J022260/H956234), Lease (J380424/J463600). There were eleven non-resident customers that received second temporary registrations: Lease (530318N/540600N), Christopher/Debra Siter (520850N/507568N), Raymond Barrette (465260N/470717N), Andrea Mitchelson (516199N/525132N), Warren Rubin (510486N/520837N), Thomas Daley (466209N/472333N), Deborah Mayers (371538N/388471N), Frank Castiglione (371539N/380347N), Robert Kapel (377614N/387423N), and Lesley O'Connell (369955N/380297N).

Daniel Igby had two temporary registrations issued in his name for the same vehicle, J427133 and 509043N. Neither file was available to review. Investigator Bramley received a call from Mr. Igby at which time Investigator Bramley requested several files to be submitted for review. To date no files have been received, nor has the request been acknowledged.

This investigation has not been completed due to the dealership delay in providing records and not having the records available for review at the dealership at the time of request. This dealership is operating from an unlicensed location and issuing e-Temporary registrations improperly. This report is for your review and any administrative action deemed necessary.

An excerpt from a New Jersey Motor Vehicle Commission investigative file from 2015 that suggests a widespread pattern of tax evasion using temporary registrations, which according to other reports continued through at least late 2018 nationwide.

changed payroll dates and delayed paying vendors. These desperate acts made it appear as though the company had more cash in order to avoid breaching SolarCity's loan covenants. According to Rive, "We did many things to meet the covenants."

One of Tesla's "things" has been avoiding tax. Tesla has been sued in at least six state and local jurisdictions for failing to pay a variety of taxes. By delaying the registration of vehicles with state Departments of Motor Vehicles, Tesla managed to push taxable events into future months and quarters so that it could hold onto its cash for longer. The delay in paperwork meant that many Tesla customers did not receive the titles and registration papers for their cars for weeks or months after they were supposed to, and stories on social media of Tesla customers driving with only temporary registrations were extremely common. In many instances, Tesla was forced to offer to pay for customers' tickets when those temporary registrations expired. This unusual set of circumstances did not escape the notice of the New Jersey Motor Vehicle Commission, which noted it in an investigative file[215] that was attached to a lawsuit filed by Tesla's outraged competitors.[216]

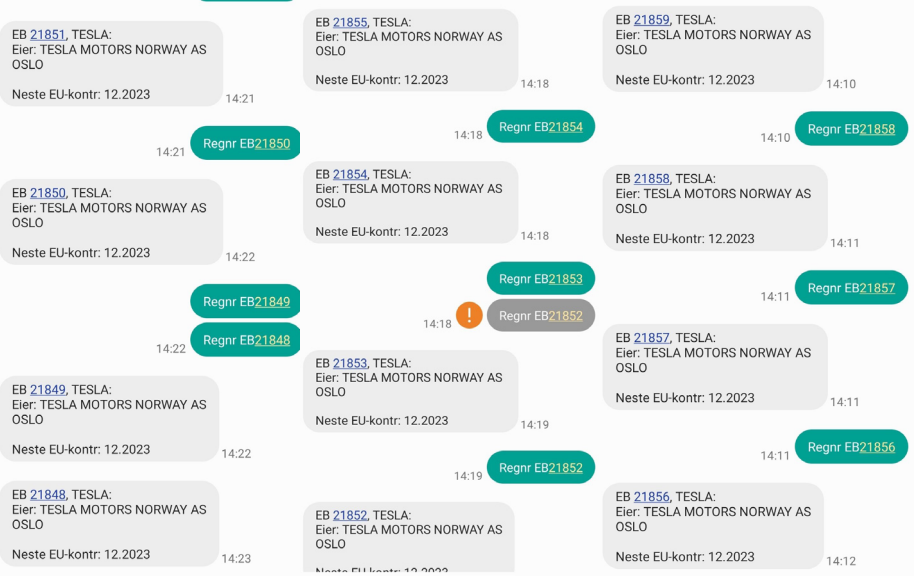
Untrustworthy Numbers

Another one of the "things" Tesla has been doing with its balance sheet, as noted by David Einhorn of Greenlight Capital,[217] is maintaining a billion-dollar line item for Accounts Receivable, which Tesla has attempted to explain away several times using various rationales. Most recently, Tesla claimed that month-long payment delays inherent to European banking made it impossible to properly recognize revenue. As Deutsche Bank put it, "Tesla went over why its accounts receivable has been elevated, attributing

215 *NJ Coalition Of Auto Motive Re v. NJ Motor Vehic*, Superior Court of New Jersey, County of Mercer, Case No. MER-L-001836-19, Document 1, Attachment 2. https://www.plainsite.org/dockets/download.html?id=284259103&a=2&z=b08c597d

216 *NJ Coalition Of Auto Motive Re v. NJ Motor Vehic*, Superior Court of New Jersey, County of Mercer, Case No. MER-L-001836-19. https://www.plainsite.org/dockets/41wtepvzy/superior-court-of-new-jersey-county-of-mercer/nj-coalition-of-auto-motive-re-v-nj-motor-vehic/

217 *MarketWatch*, November 10, 2019, "Tesla's Musk and Greenlight CEO lock horns in fiery Twitter feud." https://www.marketwatch.com/story/teslas-elon-musk-reignites-feud-with-greenlight-capitals-david-einhorn-2019-11-08



Per the Norwegian Public Roads Administration, on December 31, 2019, Tesla registered numerous Model 3 vehicles to its Oslo-based subsidiary, Tesla Motors Norway A/S. ("Eier" means "owner" in Norwegian.) In Norway, leasing companies register vehicles in their own names, not the name of the manufacturer. It therefore appears that Tesla has been "delivering" cars to itself, possibly to make it appear as though "deliveries" are higher than they really are. This likely fraudulent practice is one of many reasons why the company's numbers are completely unreliable. Source: Statens Vegvesen SMS Service / Twitter User @MTass7

it to a large gap in timing between vehicle delivery and cash received from banks in Europe (vast majority of buyers use financing to make vehicle purchases). The company stated that the gap in the US is 3 days, 7 days in China, and 28 days in Europe." This is false. Single Euro Payment Area (SEPA) payments and SWIFT wires clear almost immediately.[218] Despite Elon Musk's promise to David Einhorn of an "open invitation" to meet and tour Tesla's facilities, Einhorn has not reported that any such meeting or tour has actually taken place, or that there are even plans for one. Prior to Tesla blaming the European banking system, since-departed CFO Deepak Ahuja blamed the fact that "the quarter ended on a weekend." "Unexplained increases in accounts receivable" is a bright red flag for financial statement fraud.[219]

So is "A significant portion of a company's sales are recognized at the end of a quarter or year." As previously demonstrated in the graph of New York new vehicle registrations, this happens at Tesla ***every quarter***. As Elon Musk stated himself, "We literally delivered half of the entire quarter's deliveries...in the final 10 days of Q1."[220] In the very last moments of Q3 2019, Tesla introduced "Advanced Summon:" an Autopilot-like technology that allowed car owners to press a button on their smartphone and have their Tesla vehicle drive a short distance from a parking space to the owner, autonomously. The rollout generated considerable media hype and at least a few near-collisions. It also allowed Tesla to claim $30 million in previously unrecognizable "self-driving" revenue—part of the magic of unaudited quarterly financial reports.[221] Naturally, the timing led some to wonder whether Musk had decided to risk using his customers as human guinea pigs, simply to recognize some additional revenue. In addition, Tesla registered numerous vehicles *to itself* in Norway on the last day of 2019.

What these tricks and others indicate are the simple fact that nothing Tesla says can be trusted. Its debt figures are perhaps the only reliable metrics that Tesla releases,

218 *FT Alphaville*, December 18, 2019, "The question of Tesla's cash to be collected." https://ftalphaville.ft.com/2019/12/16/1576494367000/The-question-of-Tesla-s-cash-to-be-collected/

219 Zack, Gerard M., *Financial Statement Fraud: Strategies for Detection and Investigation*, 2013, "Appendix: Financial Statement Fraud Indicators." https://onlinelibrary.wiley.com/doi/pdf/10.1002/9781118527436.app1

220 The Motley Fool, April 24, 2019, "Tesla, Inc. (TSLA) Q1 2019 Earnings Call Transcript." https://www.fool.com/earnings/call-transcripts/2019/04/25/tesla-inc-tsla-q1-2019-earnings-call-transcript.aspx

221 Fortune, November 20, 2019, "Tesla Could Deliver 'Full Self-Driving' Within Weeks. Here's What That Means for Drivers—and Tesla's Stock." https://fortune.com/2019/11/20/tesla-full-self-driving-car-tsla-stock/

The main parking lot at Tesla headquarters in Palo Alto being used for inventory storage, February 12, 2019. Photograph: Shorty Air Force / Twitter User @Paul91701736

since those figures are contained in contracts with third parties such as banks and governments. Every other number, from revenue to profit to gross margin to unit sales (or proxies thereof) to payroll to number of employees is likely fictional due to the pressures on Tesla's successive Chief Accounting Officers and Chief Financial Officers to do what no one wants to admit: cook the books.

Inventory Lots for Lots of Inventory

Throughout much of 2018 and into 2019, Tesla stored cars in inventory in arbitrarily chosen parking lots across the United States.[222] Some of these lots were dirt fields; others were attached to vacant shopping malls; still others were hidden in forests. Tesla even used its own headquarters parking lot in Palo Alto to store vehicles, packing cars so tight that they blocked other cars from ever leaving their spaces.

When Tesla's founders made the decision to sell direct to consumers without involving third-party dealerships, they presumably hoped to preserve profit margin for Tesla. But that decision had additional far-reaching consequences. First, it meant that the difference between vehicle production and sales—inventory—would end up on Tesla's books, not the financial statements of its dealers. Second, it set up Tesla for a collision course with numerous state laws that require vehicles to be sold through dealerships.

Tesla inventory lots in Chicago, IL; Burlingame, CA; Syosset, NY; and Norwood, MA. Photographs: tslaq.org and PlainSite

As Tesla encountered a lag in demand throughout much of 2019 even with some tax incentives still in place, inventory levels skyrocketed, requiring the company to scramble for storage lots. As pointed out by Twitter user @JCOviedo6, "It is worth noting that while Tesla was originally a build to order company in 2018 in order to solve 'production hell' Tesla switched to large scale batch manufacturing of various configurations of each model (paint color, interiours, et cetera.) The consequence of

222 "Tesla Inventory Storage Sites." https://tslaq.org/tesla-inventory-storage-sites/

this strategic decision is that Tesla ends up with excess production."[223]

Some vehicles sat in the winter snow for months on end without moving. Even at Tesla's dealership in relatively warm Burlingame, California, inventory vehicles had to be regularly re-charged using diesel generators as their batteries would slowly discharge from lack of use. In Norwood, Massachusetts, idle cars had their tires stolen off of them by scavenging thieves in the middle of the night.[224]

Though Tesla managed to clear much of its inventory from these lots by the end of 2019, serious questions remain about how that was achieved. According to Tesla's unaudited Q3 2019 SEC Form 10-Q, "Finished goods" inventory at the end of Q3 2019 was actually up slightly from Q4 2018 in dollar terms, when parking lots nationwide were overflowing with vehicles.[225] Per the filing, "Finished goods inventory included vehicles in transit to fulfill customer orders, new vehicles available for immediate sale at our retail and service center locations, used vehicles and energy storage products."

At the end of Q4 2019, Tesla reported 112,000 vehicles delivered of 104,891 produced,[226] suggesting that 7,109 deliveries came from inventory. The prior quarter's financials suggested stated that there were 17 "days of sales" worth of "global inventory" available,[227] implying 22,000 vehicles worldwide. So where did the remaining 16,000 vehicles go? No one seems to know.

Furthermore, as noted by Twitter user @PlugInFUD, in both Q3 2017 and Q1 2019, Tesla reported a "Work in process" inventory line item of exactly $277,175 (numbers in thousands). This exact number also happens to be the median for all "Work in process" values from Q1 2016 through Q1 2019.[228] Either this is a stunning coincidence, Tesla's reported numbers are somehow incorrect in a manner that might be explained by a repeated spreadsheet error, or accounting fraud is taking place.

Non-GAAP, Undefined, Proprietary Terminology

Generally Accepted Accounting Principles (GAAP) exist to communicate information to members of the public, government regulators, and corporate actors in as clear and consistent a manner as possible. While the Financial Accounting Standards Board (FASB) publications that comprise GAAP do offer some flexibility for unusual situations where rigorous GAAP compliance would unintentionally mislead, the SEC tends to require justification for departures. Nonetheless, Tesla has used a number of terms whose definitions cannot be found in GAAP—or anywhere, for that matter.

223 JCOviedo's Value Investor Club Tesla Write-Up. https://www.dropbox.com/s/ycs1bzznlzapqly/TSLA%20writeup%20VIC%203%2017.pdf?dl=0
224 Twitter, June 27, 2019. https://twitter.com/cppinvest/status/1144242792127967232
225 Tesla, Inc. SEC Form 10-Q, September 30, 2019, Page 21. https://ir.tesla.com/node/20246/html
226 Tesla, Inc., January 3, 2020, "Tesla Q4 2019 Vehicle Production & Deliveries." https://ir.tesla.com/news-releases/news-release-details/tesla-q4-2019-vehicle-production-deliveries
227 Tesla, Inc., October 23, 2019, "Q3 2019 Update." https://ir.tesla.com/static-files/47313d21-3cac-4f69-9497-d161bce15da4
228 Twitter, May 6, 2019. https://twitter.com/PlugInFUD/status/1125624963015282688

"Factory Gated": In June 2018, Tesla proclaimed that it had met its self-declared target of producing 5,000 Model 3 vehicles per week by producing vehicles of such inferior quality that 86% of them had to be re-worked.[229] These vehicles were reported to have been "factory gated," with no clear definition of what that unusual term actually meant. The issues surrounding Tesla's Model 3 production abilities are reportedly the subject of an ongoing Department of Justice probe.

"Deliveries": Tesla's most important metric reportable to Wall Street is the number of cars it sells per quarter—but Tesla does not disclose that number. Instead, the company discusses a black box it calls "deliveries," but an examination of its SEC filings dating back years indicates that Tesla has never actually defined what a "delivery" is. It's possible that a delivery could involve literally "delivering" a car to a random stranger's driveway without payment, for partial payment, or conditional on payment delayed for years. A "delivery" could also refer to shipping cars to Tesla's undisclosed Chinese subsidiaries. Telsa's only clue, included in its Q3 and Q4 2019 delivery press releases, has been, "we only count a car as delivered if it is transferred to the customer and all paperwork is correct." Of course, that paperwork could indicate a sale for $0.00.

On October 3-4, 2019, PlainSite sent an e-mail to Elon Musk and Tesla CFO Zach Kirkhorn directly, as well as Tesla Investor Relations, inquiring as to what a "delivery" actually was. Our e-mail read as follows:

> *"Yes or no, do 'deliveries' include vehicle purchases made by Tesla subsidiaries in China or other non-U.S. countries? What about sales to used car vendors, e.g. CarMax? The definition is presently unclear and investors deserve clarity on this, especially in light of Tesla's recently announced financing in China and the associated terms."*

No answer was forthcoming. CNBC reporter Lora Kolodny also received no answer to a similar query asking about the new term "cash deliveries."[230]

Deposit Refund Problems

Elon Musk has made several different claims on Twitter about Tesla's refund policy. On January 9, 2019, he wrote, "Btw, you can buy a Tesla online in less than 2 mins & give it back for a full refund for any reason Tesla.com."[231] Yet PlainSite has tracked at least 16 lawsuits over Tesla refusing to honor customer deposit refund requests filed by customers or potential customers.[232] It has also uncovered dozens of complaints filed with Attorneys General of multiple states, including Ohio, Florida and Texas, regarding deposit refund failures.

229 *Business Insider*, August 21, 2018, "Internal documents reveal the grueling way Tesla hit its 5,000 Model 3 target." https://www.businessinsider.com/tesla-hit-model-3-target-by-reworking-thousands-of-cars-2018-8
230 Twitter, January 3, 2020. https://twitter.com/lorakolodny/status/1213159643045720064
231 Twitter, January 9, 2019. https://twitter.com/elonmusk/status/1083121972857487360
232 PlainSite. https://www.plainsite.org/tags/tesla-deposit-theft/

According to Ashlee Vance's biography of Musk, Tesla's use of prospective customer deposits on future products to fund operations has unnerved at least one Director: Elon's brother. "I'm sure Elon would have found a way to make things right, but he definitely took risks that seemed like they could have landed him in jail for using someone else's money," Kimbal Musk was quoted as saying.[233] Yet Tesla still does.

Deposited funds do not belong to Tesla and are merely held in trust, although Tesla's accountants have historically had trouble squaring that circle. From Q2 2010 through Q1 2013, Tesla's SEC filings contained language referring to "segregated accounts" because of pesky states like Washington, which appeared to care. Tesla even "established a segregated account for reservation payments in the state of Washington in January 2010" and warned, "There can be no assurance that other state or foreign jurisdictions will not require similar segregation of reservation payments received from customers. Our inability to access these funds for working capital purposes could harm our liquidity."[234] Why this stopped mattering in 2013 is unclear.

Since the end of 2014, when the company stated, "Reservation payments and deposits are used by us to fund, in part, our working capital requirements and help us to align production with demand," Tesla has failed to disclose how it uses deposits and how exactly it has at some points held about $800 million worth of deposits on its books. And while on May 4, 2016, Musk stated, "I don't think we want to rely too much on customer reservation money as opposed to capital," as well as, "I think it's important for de-risking the company,"[235] he couldn't help but boast on Twitter almost hourly about Cybertruck deposits in 2019—a significant portion of which it appears that customers didn't even authorize.[236]

Vendor Non-Payment

Throughout its history, Tesla has repeatedly been sued by vendors large and small for failing to pay its bills. The demands in these lawsuits have ranged from as little as $2,500 to over $3 million.[237] Several suits have also been filed by government tax agencies, as Tesla was so delinquent in paying its taxes that it ultimately had to be hauled to court in Washington, Ohio, Massachusetts, California, Nevada, and Missouri.

Most recently, Tesla was sued by the successor to Tyco (itself immersed in a major accounting scandal) for failing to pay roughly $60,000 worth of invoices for SolarCity's on-site security systems dating back to 2015.[238] Lawsuits like these raise serious ques-

233 Vance, Ashlee. *Elon Musk: Tesla, SpaceX, and the Quest for a Fantastic Future*, Ecco, Page 207. https://books.google.com/books?id=L8-HCgAAQBAJ

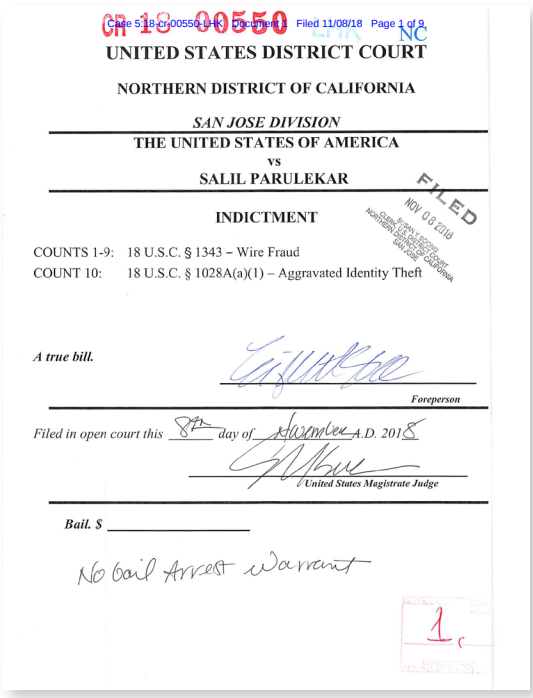
234 Tesla Motors, Inc. SEC Form 10-Q, March 31, 2013, Page 55. https://ir.tesla.com/node/13166/html

235 *TheStreet*, May 4, 2016, "Tesla Motors (TSLA) Earnings Report: Q1 2016 Conference Call Transcript." https://s.t.st/media/xtranscript/2016/Q2/13559022.pdf

236 *The Los Angeles Times*, November 25, 2019, "Elon Musk says Cybertruck orders have climbed to 200,000." https://www.latimes.com/business/story/2019-11-25/elon-musk-cybertruck-tesla

237 PlainSite. https://www.plainsite.org/tags/tesla-vendor-nonpayment/

238 *Johnson Controls Security Solutions v. Tesla, Inc.*, Superior Court of California, County of Santa Clara, Case No. 19CV359800. https://www.plainsite.org/dockets/454yvya8v/superior-court-of-california-county-of-santa-clara/johnson-controls-security-



Case 5:18-cr-00550-LHK Document 1 Filed 11/08/18 Page 1 of 9

NC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE UNITED STATES OF AMERICA

vs

SALIL PARULEKAR

FILED

NOV 08 2018

INDICTMENT

COUNTS 1-9: 18 U.S.C. § 1343 – Wire Fraud

COUNT 10: 18 U.S.C. § 1028A(a)(1) – Aggravated Identity Theft

A true bill.

Foreperson

Filed in open court this 8th day of November A.D. 2018

United States Magistrate Judge

Bail. $

No bail Arrest Warrant

1 c

The first page of the Parulekar indictment.

tions about the accuracy of reported cash and accounts payable balances, as years-old vendor claims should rarely if ever pop up in court.

The Fugitive in Accounts Payable

On November 8, 2018, Tesla Group Manager, Global Supply Management Salil Parulekar was indicted for wire fraud in the Northern District of California due to irregularities surrounding his work in Tesla's accounting department.[239] Weak internal controls at Tesla allowed Parulekar to use forged documents to intentionally redirect $9.3 million of Tesla's funds to Schwabische Huttenwerke Automotive GmbH in Germany, instead of Hota Industrial Manufacturing Co., Ltd. in Taiwan. Parulekar's motive for misdirecting the funds is unknown.

Only two months prior, Tesla's Chief Accounting Officer, Dave Morton, resigned after only one month on the job.[240] Chief Financial Officer Deepak Ahuja resigned not long after with a surprise announcement at the very end of the company's January 30, 2019 Q4 2018 earnings call.

The Parulekar case stagnated with few hints for a full year before it became clear that he was a fugitive from justice and had likely returned to his native India. To this day, it's unclear what acutally happened to Parulekar.

Warranty/Goodwill Misclassification

Lemon lawsuits involving every model of Tesla vehicle provide compelling evidence that the company has deliberately under-reserved funds on its balance sheet to account for warranty repairs. Instead of charging service incidents to "Warranty," in a surprising number of cases, Tesla has instead charged a different account: "Goodwill," likely to the tune of hundreds of millions or billions of dollars. As former fund manager Lawrence Fossi and pseudonymous Twitter user Luis Carruthers explained on Seeking Alpha using court documents[241] obtained by PlainSite,

> *"Tesla can perform all of the goodwill repair work it wants—that's a business deci-*

solutions-v-tesla-inc/

239 *USA v. Parulekar*, California Northern District Court, Case No. 5:18-cr-00550-LHK. https://www.plainsite.org/dockets/3iryyo5te/california-northern-district-court/usa-v-parulekar/

240 CNBC, September 7, 2018, "Tesla Chief Accounting Officer Dave Morton resigns after just a month, stock closes down 6 percent." https://www.cnbc.com/2018/09/07/teslas-chief-accounting-officer-dave-morton-resigns-after-just-a-month.html

241 PlainSite. https://www.plainsite.org/tags/tesla-goodwill-service/

6. During the course of Mr. Williams' employment with Defendants, he became aware of Defendants' practice of failing to disclose to consumers high-dollar, pre-delivery damage repairs prior to any transaction with consumers.

7. Mr. Williams reasonably believed this practice to be illegal and/or fraudulent.

8. Mr. Williams reported on several occasions throughout his employment to Matt Farrell, his supervisor, and Jerome Guillen, a vice president employed by Defendants, that Defendants had failed to disclose this information to consumers and that this was illegal and/or fraudulent.

9. In doing so, Mr. Williams engaged in protected conduct under CEPA.

10. Additionally, Mr. Williams was aware of a practice of Defendants involving receiving vehicles designated as "lemons" and, with this knowledge, reselling these vehicles without branding the titles of these vehicles or offering disclosure, rather representing the cars as "used" or a "demo/loaner."

11. Mr. Williams reasonably believed this practice to be illegal and/or fraudulent.

12. Mr. Williams reported to Mr. Farrell, in approximately the winter of 2016 and/or early 2017, that this practice was illegal.

13. Mr. Williams also reported this practice to Lenny Peake, the East Coast Regional Manager, during this time.

14. In doing so, Mr. Williams engaged in protected conduct under CEPA.

15. Despite the fact that Mr. Williams reported this illegal and/or fraudulent conduct to upper management, Defendants continued this practice throughout Mr. Williams' employment.

Before Tesla can bury disputes in confidential arbitration proceedings, many first appear in court, such as former employee Adam Williams's lawsuit that alleged unlawful sales practices. Williams allegedly informed Jerome Guillen, who was promoted to President of Tesla's Automotive division in September 2018.

sion. But if the repair should have been covered under warranty, and is instead booked to an Operating Expenses category, then it becomes an accounting issue affecting gross margin."[242]

Comments on the Fossi/Carruthers article by defenders of the company suggested the remote possibility that despite clear demarcations of "Goodwill" as the payment account on Tesla service invoices, Tesla's financials might not necessarily reflect those designations. This counter-argument reeks of desperation for two reasons: first, Tesla invoices are produced not by third-party service centers, but by IT systems owned and operated by Tesla itself. Many of the invoices feature internal-use barcodes indicating that they were produced by Tesla's own enterprise software. Second, if Tesla's accounting software ignored the designations on these documents and instead used some other field to determine warranty and goodwill charges, that would be tantamount to the company using two sets of books: one public and one hidden.

Selling Used as New

In a lawsuit initially filed in the Burlington County, New Jersey Superior Court, former Tesla employee Adam Williams alleged that he had been fired after reporting illegal sales practices to management, including "failing to disclose to consumers high-dollar, pre-delivery damage repairs" and "receiving vehicles designated as 'lemons' and, with this knowledge, reselling these vehicles without branding the titles of these vehicles or offering disclosure, rather than representing the cars as "used" or a "demo/loaner."[243] The case eventually moved to federal court.[244] Tesla was successful at compelling arbitration in December 2018; the status of the arbitration is not known.

Posts on social media and on Tesla's own on-line forums have affirmed suspicions that the company has often tried to pass off used cars as new, which is illegal.[245] Some customers have accepted "new" cars delivered with initial odometer readings of "140 miles," though some "demo" cars can be sold as new with high readings so long as

242 Seeking Alpha, December 23, 2019, "Tesla Warranty Expense: A Case Of Goodwill By The Auditors." https://seekingalpha.com/article/4313851-tesla-warranty-expense-case-of-goodwill-auditors

243 *Williams Adam v. Tesla Inc*, Superior Court of New Jersey, County of Burlington, Case No. BUR-L-000194-18. https://www.plainsite.org/dockets/3hd0mubl5/superior-court-of-new-jersey-county-of-burlington/williams-adam-v-tesla-inc/

244 *WILLIAMS v. TESLA, INC.*, New Jersey District Court, Case No. 1:18-cv-04120-JHR-AMD. https://www.plainsite.org/dockets/3a0b5l9v9/new-jersey-district-court/williams-v-tesla-inc/

245 Tesla, Inc., August 22, 2018, "Tesla trying to sell a demo car as 'new.'" https://forums.tesla.com/forum/forums/tesla-trying-sell-demo-car-new

they have not been previously titled.[246] It also appears that Tesla has tried to sell the same car twice with considerable frequency.[247,248,249] In accordance with Williams's claims, one "brand new" Model 3 had an accident listed on its CARFAX report.[250]

Federal Investigations

According to FOIA responses obtained from the FBI and the FTC, both agencies are investigating Tesla for various, still-undisclosed reasons. Tesla's SEC Form 10-K has disclosed that it is also the subject of a United States Department of Justice investigation concerning its production of the Model 3.

The Trouble with Elon Musk

As pointed out by Niedermeyer, Elon Musk crossed over to the dark side as Tesla's CEO as early as 2009 when he raised the price of the Roadster on paid reservation holders who were not expecting it:

> *"[M]ost reservation holders were easily able to afford the increase and had been aware of the risks going in, but there was real anger, which didn't help public perceptions of the company. After one meeting, Musk told the filmmaker Paine, 'There seemed to be a little bit of anger from some people in the room who felt that we'd kind of done a bait and switch ... and that's sort of a little bit true that there was a bit of a bait and switch. That's kind of what happened."*[251]

Admitting to a "bait and switch" scheme is admitting to fraud. Despite his intelligence in certain areas and plenty of charm, a willingness to commit fraud is the summation of the many problems with Musk, whose personal pathology has consumed the time and attention of his employees, friends, and foes. It has even inspired a website devoted to tracking Musk's lies, predictions and pronouncements at http://elonmusk.today.

Drugs

Multiple sources have suggested that Musk is a frequent user of illegal drugs, which isn't especially hard to believe for a man who considered paying a $40 million combined fine over a marijuana joke "worth it."[252] This suggestion was further supported when

246 Tesla, Inc., May 22, 2019, "Initial Odometer Reading?" https://forums.tesla.com/forum/forums/initial-odometer-reading
247 Tesla, Inc., October 4, 2018, "Tesla gave my Vin# to someone else." https://forums.tesla.com/forum/forums/tesla-gave-my-vin-someone-else
248 Reddit, December 23, 2019, "Tesla sold my car to someone else!" https://www.reddit.com/r/teslamotors/comments/eereeo/tesla_sold_my_car_to_someone_else/
249 Tesla Motors Club Forums, September 3, 2019, "Tesla sold my car to someone else before my delivery day." https://teslamotorsclub.com/tmc/threads/tesla-sold-my-car-to-someone-else-before-my-delivery-day.165040/
250 Twitter, May 15, 2019. https://twitter.com/QLDPyrrhonist/status/1128856150093570049
251 Niedermeyer, Edward W., Ludicrous: *The Unvarnished Story of Tesla Motors*, BenBella Books, 2019, Page 71. https://books.google.com/books?id=h_SADwAAQBAJ
252 *The Guardian*, October 28, 2018, "Elon Musk says $40m tweet was 'worth it' after being fined." https://www.theguardian.com/technology/2018/oct/28/elon-musk-says-40m-tweet-tesla-was-worth-it-fines

Musk appeared on a popular podcast hosted by Joe Rogan and smoked marijuana on video. Given Musk's role as the CEO of SpaceX, a federal government contractor, this stunt caused considerable consternation in the corridors of government. Oddly, in one of the more unusual government subsidy awards to have ever taken place, the federal government's response to Musk's antics was to pay his companies five million dollars to ensure that SpaceX employees—presumably other than Musk—were operating in a "drug-free" environment.[253]

Musk has also been embroiled in an odd dispute nominally about his sale of flamethrowers to market The Boring Company, an endeavor in which Musk has attempted to claim credit for re-inventing the concept of the subway, familiar to anyone who has used public transportation. The brother of notorious drug lord Pablo Escobar has made his displeasure with Musk known in a series of letters and media interviews.[254] However, the flamethrower dispute may be a red herring. As Escobar knows, there is real money to be made in the drug trade, and Musk apparently sent a Tesla engineer to Mexico to speak with Escobar's staff for some unknown reason. According to *Metro*, Escobar claimed that drug smugglers were using Tesla vehicles with Autopilot to autonomously move drugs.[255]

Messiah Complex

On July 8, 2018, in the midst of the Thai cave rescue mission (in which Elon Musk attempted to assist rescuers by proposing a miniature submarine that would have to be designed, tested and assembled on the fly on the other side of the planet), Dr. John Grohol used the hashtag "#narcissism" when posing a question to Musk about his constant need to "leverage every public situation for [Musk's] own aggrandizement." In response, Musk admitted that it "might be true" that he is "a narcissist."

In 2018, Musk acknowledged via Twitter what many had long suspected: that he may suffer from clinical narcissism.

Narcissistic Personality Disorder (NPD) is a DSM-5 listed disorder involving "impairments in self functioning" and "impairments in interpersonal functioning," as well as "pathological personality traits" of antagonism (specifically, grandiosity and at-

253 *Politico*, October 16, 2019, "NASA paid SpaceX for safety review after Musk smoked pot." https://www.politico.com/news/2019/10/16/nasa-musk-weed-048099

254 *The Daily Mail*, October 20, 2019, "Pablo Escobar's brother Roberto vows to 'take down' Elon Musk as he sues him for £77m over claims he 'stole' his idea for a 'novelty' flamethrower." https://www.dailymail.co.uk/news/article-7594727/Pablo-Escobars-brother-sues-Elon-Musk-77m-claims-stole-idea-flamethrower.html

255 *Metro*, July 15, 2019, "Drug smugglers are using Tesla's Autopilot to dodge the police, Pablo Escobar's brother claims." https://metro.co.uk/2019/07/15/drug-smugglers-using-teslas-autopilot-dodge-police-pablo-escobars-brother-claims-10319181/

tention seeking behavior) that are stable across time, consistent across situations, not part of the normal course of development, and not the result of substance abuse.[256] Whether Musk has ever been formally diagnosed with NPD is not known. But it is undeniable that his very public behavior fits well with this set of criteria, as well as a less formal offshoot.

One of Musk's constant refrains—making him sound very much like a certain occupant of the White House—is that despite his iconic, billionaire status, he is actually the victim. Under criticism from the media, he has often emphasized the unexpected difficulty of whatever task he set out to do, and the unimaginable personal toll that doing it has had on him.[257] As *60 Minutes* reminded viewers, "The 47-year-old billionaire has said 2018 has been 'excruciating,' 'the most… painful year of my career.'"[258] The objective of such plaintive, heart-tugging entreaties is to make the reader or viewer feel pity—and many do, even though Musk is a billionaire.

Some of Musk's public statements could lead one to believe that he might suffer from a messiah complex, which, although not described in the DSM-5, does summarize the kinds of beliefs that Musk appears to hold. He has frequently referred to those who question or criticize him, including this report's author, as "unethical," "endangering the public," "misleading," or in one case, almost a murderer. To be clear, these determinations were made only because of *questions* initially asked in a *non-public* setting over e-mail.[259,260] The inescapable conclusion is that Musk views himself as a an infallible protector of the public, relying on unique insights ("data") that only he has access to.

Were Musk just another average Silicon Valley billionaire, this kind of pathology might not be so alarming (or even uncommon for that crowd). Unfortunately, Tesla's products are used on public roadways daily, where the public is potentially in harm's way should anything be awry. And because Musk refuses to acknowledge error or take advice from hardly anyone, the public danger he so quickly and easily projects onto others is magnified significantly.

Environmental Hypocrisy

For a man who hopes to single-handedly solve Earth's global warming crisis by con-

256 American Psychiatric Association, 2012, "DSM-IV and DSM-5 Criteria for the Personality Disorders." https://www.nyu.edu/gsas/dept/philo/courses/materials/Narc.Pers.DSM.pdf

257 *The New York Times*, August 16, 2018, "Elon Musk Details 'Excruciating' Personal Toll of Tesla Turmoil." https://www.nytimes.com/2018/08/16/business/elon-musk-interview-tesla.html

258 *CBS News 60 Minutes*, December 9, 2018, "Tesla CEO Elon Musk: The 60 Minutes Interview." https://www.cbsnews.com/news/tesla-ceo-elon-musk-the-2018-60-minutes-interview/

259 PlainSite, August 8, 2019, "E-Mail Conversation Between PlainSite Founder Aaron Greenspan and Tesla CEO Elon Musk." https://www.plainsite.org/documents/hwau8/email-conversation-between-plainsite-founder-aaron-greenspan-and-tesla-ceo-elon-musk/

260 When pressed to justify his views, Musk further appears willing to turn to any source of information at all, without any concern for fact-checking or accuracy, so long as that source supports his view. In an e-mail exchange with this report's author, Musk ultimately relied upon anonymous posts on a Latvian-based gripe site run by Latvians and Russians who extort victims wishing to have false information removed about them from the site. In *Unsworth v. Musk*, Jared Birchall, who runs Excession LLC for Musk, posed as "James Brickhouse" and ultimately ended up paying a convicted felon $50,000 for unverified, false information merely to support Musk's speculation about Vernon Unsworth's motives for criticizing him.

vincing as many people as possible to act and transport themselves in a responsible manner, Elon Musk spends an enormous amount of time on his private jet.[261] In fact, in the past decade, Musk hasn't just owned one jet. He's owned three.

There's also some debate as to whether electric cars are always as environmentally sensible as they might seem. Although electric vehicles emit less CO_2 than gas-powered vehicles as they are driven over time, their manufacturing is expensive from a carbon standpoint. For infrequent drivers, there are some cases where traditional internal combustion engines actually make more sense from a carbon perspective.[262] Most economic models also assume that electric vehicles have lifespans comparable to traditional cars, but in a country like Norway where one in five Teslas was involved in an accident in 2018, that may not be a reliable assumption.

Still, one could plausibly argue that saving the world requires exceptional measures, and Tesla does have partners in Japan, a factory in China, and a promised new complex coming in Germany. But when the factory itself is the source of repeat environmental violations and the United States Environmental Protection Agency (EPA) needs to get involved, the excuses start to wither. Tesla's Fremont paint shop, for example, has had constant problems with emissions violations. Tesla has faced repeated scrutiny from the Bay Area Air Quality Management District for its paint shop emissions.[263] It also settled with the EPA for a wrist-slapping $31,000 on April 1, 2019 due to hazardous waste violations—and had to purchase the City of Fremont "$55,000 in emergency response equipment." That amount happened to correspond to the value of an outdated Tesla Model S, which the City painted black and white and outfitted with police lights. By September, the same vehicle was the subject of an embarrassing news story: "Cop's Tesla runs out of battery power during high-speed chase,"[264] though it wasn't the car's fault.

"Zero Emissions": For years, Tesla vehicles have sported temporary license plates that are actually advertisements stating, "ZERO EMISSIONS." The notion that Tesla cars can be manufactured and operated without contributing any carbon dioxide or other emissions to the environment is patently false. Electric vehicles mostly move the source of emissions from the tailpipe to the electricity producer.

Sometimes, the electricity producer is Tesla itself. On March 6, 2019, PlainSite published a photograph of Tesla Model 3 vehicles being charged at Tesla's Burlingame dealership with two portable MQ Power WhisperWatt DCA300SSJU4F2 diesel gen-

261 *The Washington Post*, January 29, 2019, "Elon Musk's highflying 2018: What 150,000 miles in a private jet reveal about his 'excruciating' year." https://www.washingtonpost.com/business/economy/elon-musks-highflying-2018-what-150000-miles-in-a-private-jet-reveal-about-his-excruciating-year/2019/01/29/83b5604e-20ee-11e9-8b59-0a28f2191131_story.html

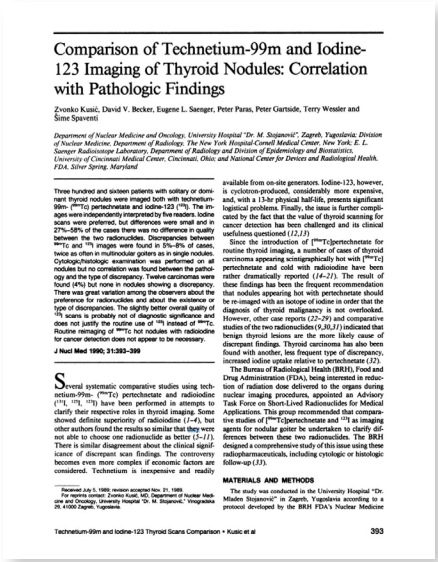
262 *Financial Times*, November 7, 2017, "Electric cars' green image blackens beneath the bonnet." https://www.ft.com/content/a22ff86e-ba37-11e7-9bfb-4a9c83ffa852

263 *The Drive*, June 3, 2019, "Tesla Air Quality Compliance Violations Center On Troubled Paint Shop." https://www.thedrive.com/tech/28339/tesla-air-quality-compliance-violations-center-on-troubled-paint-shop

264 *New York Post*, September 25, 2019, "Cop's Tesla runs out of battery power during high-speed chase." https://nypost.com/2019/09/25/cops-tesla-runs-out-of-battery-power-during-high-speed-chase/

Above: *A photo released by NORAD and consequently unedited by Musk's staff depicted Tesla's CEO with a scar on the right side of his neck as of December 16, 2019.*

Below: *Three days later, Musk wrote unprompted on Twitter about "element 43" on the periodic table, which has limited practical uses. The main one is imaging cancerous thyroid nodules.*



Comparison of Technetium-99m and Iodine-123 Imaging of Thyroid Nodules: Correlation with Pathologic Findings

Zvonko Kusić, David V. Becker, Eugene L. Saenger, Peter Paras, Peter Gartside, Terry Wessler and Šime Spaventi

Department of Nuclear Medicine and Oncology, University Hospital "Dr. M. Stojanović", Zagreb, Yugoslavia; Division of Nuclear Medicine, Department of Radiology, The New York Hospital-Cornell Medical Center, New York; E. L. Saenger Radioisotope Laboratory, Department of Radiology and Division of Epidemiology and Biostatistics, University of Cincinnati Medical Center, Cincinnati, Ohio; and National Center for Devices and Radiological Health, FDA, Silver Spring, Maryland

Three hundred and sixteen patients with solitary or dominant thyroid nodules were imaged both with technetium-99m- (^{99m}Tc) pertechnetate and iodine-123 (^{123}I). The images were independently interpreted by five readers. Iodine scans were preferred, but differences were small and in 27%–58% of the cases there was no difference in quality between the two radionuclides. Discrepancies between ^{99m}Tc and ^{123}I images were found in 5%–8% of cases, twice as often in multinodular goiters as in single nodules. Cytologic/histologic examination was performed on all nodules but no correlation was found between the pathology and the type of discrepancy. Twelve carcinomas were found (4%) but none in nodules showing a discrepancy. There was great variation among the observers about the preference for radionuclides and about the existence or type of discrepancies. The slightly better overall quality of ^{123}I scans is probably not of diagnostic significance and does not justify the routine use of ^{123}I instead of ^{99m}Tc. Routine reimaging of ^{99m}Tc hot nodules with radioiodine for cancer detection does not appear to be necessary.

J Nucl Med 1990; 31:393–399

Several systematic comparative studies using technetium-99m- (^{99m}Tc) pertechnetate and radioiodine (^{123}I, ^{131}I, ^{132}I) have been performed in attempts to clarify their respective roles in thyroid imaging. Some showed definite superiority of radioiodine (*1–4*), but other authors found the results so similar that they were not able to choose one radionuclide as better (*5–11*). There is similar disagreement about the clinical significance of discrepant scan findings. The controversy becomes even more complex if economic factors are considered. Technetium is inexpensive and readily available from on-site generators. Iodine-123, however, is cyclotron-produced, considerably more expensive, and, with a 13-hr physical half-life, presents significant logistical problems. Finally, the issue is further complicated by the fact that the value of thyroid scanning for cancer detection has been challenged and its clinical usefulness questioned (*12,13*).

Since the introduction of ^{99m}Tc-pertechnetate for routine thyroid imaging, a number of cases of thyroid carcinoma appearing scintigraphically hot with ^{99m}Tc-pertechnetate and cold with radioiodine have been rather dramatically reported (*14–17*). The result of these findings has been the frequent recommendation that nodules appearing hot with pertechnetate should be re-imaged with an isotope of iodine in order that the diagnosis of thyroid malignancy is not overlooked. However, other case reports (*22–29*) and comparative studies of the two radionuclides (*9,10,13*) indicated that benign thyroid lesions are the more likely cause of discrepant findings. Thyroid carcinoma has also been found with another, less frequent type of discrepancy, increased iodine uptake relative to pertechnetate (*32*).

The Bureau of Radiological Health (BRH), Food and Drug Administration (FDA), being interested in reduction of radiation dose delivered to the organs during nuclear imaging procedures, appointed an Advisory Task Force on Short-Lived Radionuclides for Medical Applications. This group recommended that comparative studies of ^{99m}Tc-pertechnetate and ^{123}I as imaging agents for nodular goiter be undertaken to clarify differences between these two radionuclides. The BRH designed a comprehensive study of this issue using these radiopharmaceuticals, including cytologic or histologic follow-up (*33*).

MATERIALS AND METHODS

The study was conducted in the University Hospital "Dr. Mladen Stojanović" in Zagreb, Yugoslavia according to a protocol developed by the BRH FDA's Nuclear Medicine

Received July 5, 1989; revision accepted Nov. 21, 1989.
For reprints contact: Zvonko Kusić, MD, Department of Nuclear Medicine and Oncology, University Hospital "Dr. M. Stojanović," Vinogradska 29, 41000 Zagreb, Yugoslavia.

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erators rented from Hertz Rentals, which is featured on the cover of this report. In fact, Tesla dealerships and inventory lots nationwide have routinely used diesel generators, which generate toxic emissions, to re-charge Tesla vehicles in the company's ever-mysterious inventory.

In December 2019, along with several other technology companies that produce hardware including Apple, Alphabet, and Dell, Tesla was sued in the Northern District of California by the families of children unlawfully conscripted into cobalt mining in the Democratic Republic of Congo.[265]

Undisclosed Health Problems

In response to Think Computer Foundation's second Rule 5.1(f) request, lawyers for the Tesla Directors insisted that some of the redacted materials had to remain so due to unidentified "personal medical information." That information appears in only two blocks of redacted text at the outset of Elon Musk's second deposition session on August 24, 2019. Failures to properly redact the index, and the fact that redacted, indexed terms are still listed in alphabetical order, suggest that Musk used the words "cancer," "neck," and "surgery" in the redacted block of text, after which opposing counsel asked Musk if he was taking any substances that would preclude him for answering questions truthfully. Although it is not yet clear precisely what was said, the deposition proceeded.

Then, on early December 17, 2019, Musk appeared in photograph posted by the North American Aerospace Defense (NORAD) Command Twitter account, where he appeared with a scar on the right side of his neck.[266] The photograph was taken at SpaceX headquarters in Hawthorne, California the previous day. Internet commenters initially focused on Musk's slightly enlarged jaw, but missed the scar.

Plenty of minor medical procedures could theoretically result in a neck scar, such as a lymph node biopsy, stitches after a bike accident, or thyroid surgery. The likely issues were narrowed when spontaneously, three days after the photo was taken, on December 19, 2019, Musk tweeted, "You don't hear much about element 43," which is true—unless you happen to be visiting an endocrinologist regarding a thyroid nod-

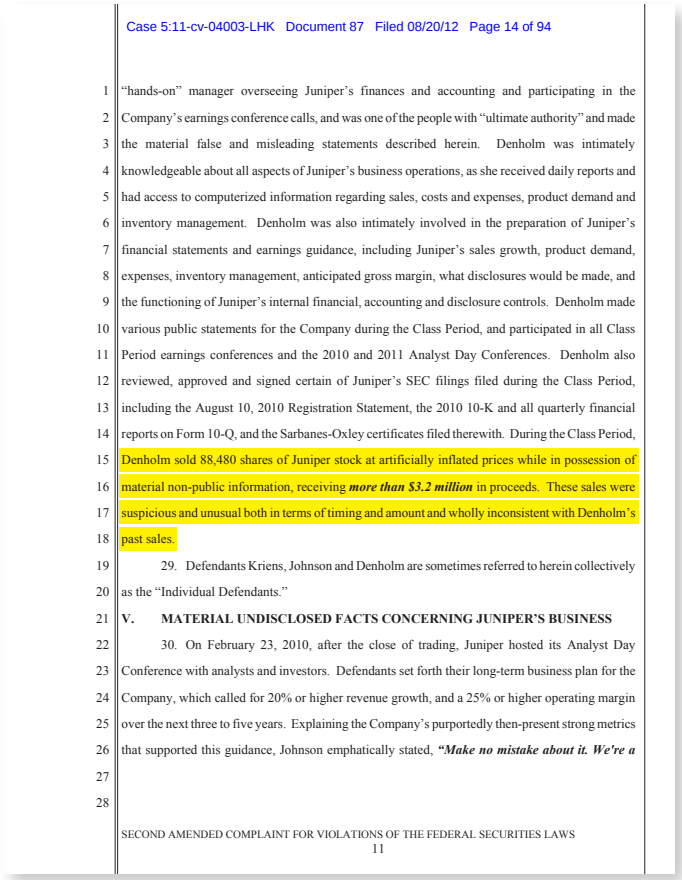
265 *DOE 1 et al v. APPLE INC. et al*, District Of Columbia District Court, Case No. 1:19-cv-03737. https://www.plainsite.org/dockets/45b57dojd/district-of-columbia-district-court/doe-1-et-al-v-apple-inc-et-al/

266 Twitter, December 17, 2019. https://twitter.com/USNorthernCmd/status/1207005105007943680

ule, in which case the recommended diagnostic tests often involve technetium-99m pertechnetate, a radionucleotide that appears on medical scans. Technetium is element 43 on the periodic table.

A Pliant Board

When the SEC required Elon Musk to step down as the Chairman of Tesla's Board and to appoint two new independent directors, he complied, but only on paper. At least one of his new appointees was anything but independent, and his replacement possibly shouldn't be able to serve as the director of any company at all.



Case 5:11-cv-04003-LHK Document 87 Filed 08/20/12 Page 14 of 94

"hands-on" manager overseeing Juniper's finances and accounting and participating in the Company's earnings conference calls, and was one of the people with "ultimate authority" and made the material false and misleading statements described herein. Denholm was intimately knowledgeable about all aspects of Juniper's business operations, as she received daily reports and had access to computerized information regarding sales, costs and expenses, product demand and inventory management. Denholm was also intimately involved in the preparation of Juniper's financial statements and earnings guidance, including Juniper's sales growth, product demand, expenses, inventory management, anticipated gross margin, what disclosures would be made, and the functioning of Juniper's internal financial, accounting and disclosure controls. Denholm made various public statements for the Company during the Class Period, and participated in all Class Period earnings conferences and the 2010 and 2011 Analyst Day Conferences. Denholm also reviewed, approved and signed certain of Juniper's SEC filings filed during the Class Period, including the August 10, 2010 Registration Statement, the 2010 10-K and all quarterly financial reports on Form 10-Q, and the Sarbanes-Oxley certificates filed therewith. During the Class Period, Denholm sold 88,480 shares of Juniper stock at artificially inflated prices while in possession of material non-public information, receiving ***more than $3.2 million*** in proceeds. These sales were suspicious and unusual both in terms of timing and amount and wholly inconsistent with Denholm's past sales.

29. Defendants Kriens, Johnson and Denholm are sometimes referred to herein collectively as the "Individual Defendants."

V. MATERIAL UNDISCLOSED FACTS CONCERNING JUNIPER'S BUSINESS

30. On February 23, 2010, after the close of trading, Juniper hosted its Analyst Day Conference with analysts and investors. Defendants set forth their long-term business plan for the Company, which called for 20% or higher revenue growth, and a 25% or higher operating margin over the next three to five years. Explaining the Company's purportedly then-present strong metrics that supported this guidance, Johnson emphatically stated, ***"Make no mistake about it. We're a***

SECOND AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS
11

During her time at Juniper Networks, Denholm was accused of insider trading to the tune of $3.2 million. She was also named as a defendant in at least eight other lawsuits prior to her work on Tesla's Board of Directors.

New Board Chairwoman Robyn Denholm was previously Executive Vice President and Chief Financial and Operations Officer of Juniper Networks, as well as Head of Strategy and CFO of Telstra, an Australian telecommunications company.[267] Her roles resulted in Denholm being named as a defendant in federal securities lawsuits no fewer than nine times before she even joined Tesla's Board. The allegations in these suits sound familiar to anyone who has followed Tesla's trajectory.[268] Denholm is perhaps most famous for stating that she believes that Elon Musk—whom she is supposed to supervise in her capacity as Chairwoman—uses Twitter "wisely."[269]

The other "independent" directors on the Tesla Board appointed as a result of the "funding secured" Twitter debacle were Kathleen Wilson-Thompson and Larry Ellison, a friend of Musk's. Aside from his billions of dollars in Tesla stock ownership, Ellison's company, Oracle, purchased a fleet of Tesla vehicles, making the idea of his independence laughable.

The Board's conflicts are seemingly too endless to enumerate. SolarCity lawsuit documents obtained from the Delaware Court of Chancery at least attempt to highlight all of the ways that the Directors have been unable to make clear decisions to

267 LinkedIn. https://au.linkedin.com/in/robyn-denholm-a807795
268 PlainSite. https://www.plainsite.org/profiles/denholm-robyn-m/
269 *Bloomberg News*, March 26, 2019, "Tesla's New Chairman Says Elon Musk Uses Twitter 'Wisely'." https://www.bloomberg.com/news/articles/2019-03-27/tesla-chair-defends-musk-tweets-even-as-habit-lands-him-in-court

Elon Musk's insistence on making a joke has caused Tesla to spend millions of dollars designing and planning production for two car models that are nearly impossible to distinguish from each other, and that will likely cannibalize sales in the marketplace as a result. Left: Tesla Model 3 (Doug DeMuro via YouTube; https://www.youtube.com/watch?v=YvsnIL0AIAk). Right: Tesla Model Y (Stephen M. Conroy via YouTube; https://www.youtube.com/watch?v=NWuSkpk0xXU).

guide the company in a responsible manner consistent with their fiduciary duties.[270]

Knowing When To Stop

When arranged in a particular order, Tesla's car models (minus the Roadster) spell "sexy" in leetspeak, a manner of typing that replaces certain Latin characters with look-alike numbers. Since the "3" character approximates a backwards "E," S3XY gets the job done—a fact that Elon Musk has made it clear he is very proud of.

Unfortunately for Tesla as a company, there was very little time or need to develop a Model Y. Much like the "funding secured" debacle, the entire reason for the Model Y's existence appears to be nothing more than Musk's insistence that he be able to make this joke. As one might expect, the vehicle's technical and design specifications have suffered accordingly, making it nearly impossible to differentiate the Model Y from the Model 3 that it ended up being based upon.

The bad jokes keep coming. On May 7, 2019, the Tesla Twitter account wrote, "The world of autonomous driving is coming whether you want it or not. With a Tesla, you're ready for it." A Twitter user responded with, "Ok please don't kill my family," and in turn, the Tesla Twitter account replied, "mmm ok."

Too Many CEO Roles

The fact that Steve Jobs famously worked as the CEO of Apple while also acting as CEO of Pixar Animation Studios has led to a number of cases where Silicon Valley notables have insisted that their manifold talents be spread across a number of enterprises simultaneously. For example, much to the initial dismay of his investors (who seem to have grown accustomed to it), Twitter CEO Jack Dorsey also decided

270 *In Re Tesla Motors, Inc. Stockholder Litigation*, Delaware Court of Chancery, Case No. 12711-VCS, Document 310, Attachment 1. https://www.plainsite.org/dockets/download.html?id=284361585&a=1&z=ef03d9a7

to spend part of his time as CEO of the payments company Square.

Perhaps hoping to show that his abilities exceed even those of Jobs and Dorsey, Elon Musk is CEO of the combined Tesla-SolarCity corporate structure (having previously been CEO of Tesla and Chairman of the SolarCity Board), CEO of SpaceX, CEO of the Boring Company, CEO of Neuralink, and de facto leader of the "hyperloop" movement. While Musk's ambition may be super-human, he is, at the end of the day, still a mere mortal subject to the same constraints of space and time as everyone else. It's therefore difficult to understand how he can give all of these enterprises his best.

Other Red Flags

Government Subsidy Dependence

Were it not for constant infusions of cash from state, federal, and international governments, whether in the form of direct loans, tax subsidies, or investments, Tesla would not exist. Over its nearly seventeen years in business, Tesla has received billions of dollars in government incentives, earning Elon Musk the moniker "subsidy truffle hound," a term coined by Twitter user @ElonBachman.

United States Department of Energy: In 2009, Tesla was the beneficiary of a $465 million loan from the Department of Energy. The loan (along with partnerships with and investments from Daimler, Toyota and Ford) allowed Tesla to design and manufacture the Model S. The loan was fully paid off by 2013.[271]

United States Department of the Treasury, Internal Revenue Service: In economic terms, when it comes to cars, Tesla sells goods that are extremely elastic: as the price of a vehicle decreases, there is a disproportionate increase in demand. For this reason, tax incentives that actually take dollars off of a car's sticker price are the most powerful kind. When Congress passed the Energy Improvement and Extension Act of 2008, it added Section 30D to the Internal Revenue Code.[272] From this legislative addition, IRS Form 8936 was born, permitting purchasers of electric vehicles up to a certain threshold per manufacturer—200,000 for Tesla—to claim a tax credit of a declining amount depending upon the time of purchase, starting at $7,500. The tax credit was finally phased out on December 31, 2019, its renewal having been blocked by Donald Trump.[273] The availability of the tax credit, combined with the knowledge of its looming phase-out, has led to end-of-quarter mad delivery scrambles for Tesla, where employees and friends have been enlisted as "volunteers" for the $80 billion

271 Niedermeyer, Edward W., *Ludicrous: The Unvarnished Story of Tesla Motors*, BenBella Books, 2019, Chapter 10. https://books.google.com/books?id=h_SADwAAQBAJ

272 Internal Revenue Service, September 17, 2019, "Plug-In Electric Drive Vehicle Credit (IRC 30D)." https://www.irs.gov/businesses/plug-in-electric-vehicle-credit-irc-30-and-irc-30d

273 *Bloomberg News*, December 16, 2019, "Trump Helped Nix Electric Car Tax Measure Sought by Tesla, GM." https://www.bloomberg.com/news/articles/2019-12-16/trump-helped-nix-electric-car-tax-measure-sought-by-tesla-gm

company so that customers might receive their vehicles before the federal deadline.

ZEV Credits: Zero-Emission Vehicle (ZEV) credits are issued by the California Air Resources Board, and amount to a basic carbon offset trading system.[274] Manufacturers of electric vehicles such as Tesla earn credits from the Board based on the number of cars they manufacture. Those credits can then be sold to other vendors for cash. (California buyers of electric vehicles also receive the benefit of being able to drive in diamond lanes even when a carpool of at least two people is not present.)

Over Memorial Day weekend in 2015, author Edward W. Niedermeyer videotaped a truck stop halfway between San Francisco and Los Angeles where Tesla had established several charging stations to determine whether any customers were actually taking advantage of its battery swap program, which allowed vehicles to instantly charge to near full capacity.[275] Having the battery swap program in place allowed Tesla to qualify for bonus ZEV credits from the California Air Resources Board worth potentially as much as $100 million. He determined that no customers were using the program despite busy traffic, but several did take advantage of the temporary diesel-powered chargers that Tesla brought in to handle the extra holiday load.

ZEV credits have been crucial to Tesla's survival. The company has grown dependent upon selling hundreds of millions of dollars worth of ZEV credits to other auto manufacturers, in some cases transforming quarterly losses to quarterly profits.[276]

California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA): Since 2011, Tesla has qualified for over $225 million[277] in sales and use tax exemptions from a state government program promising to create jobs in California, theoretically overseen by the California State Treasurer's Office. At first, Tesla's CAEATFA applications related to the manufacture of the Roadster, Model S and Model X at its Fremont plant, as well as the creation of jobs in smaller, satellite offices in Southern California. The company successfully applied again when Model 3 manufacturing began, making Tesla CAEATFA's number-one recipient of tax exemptions.

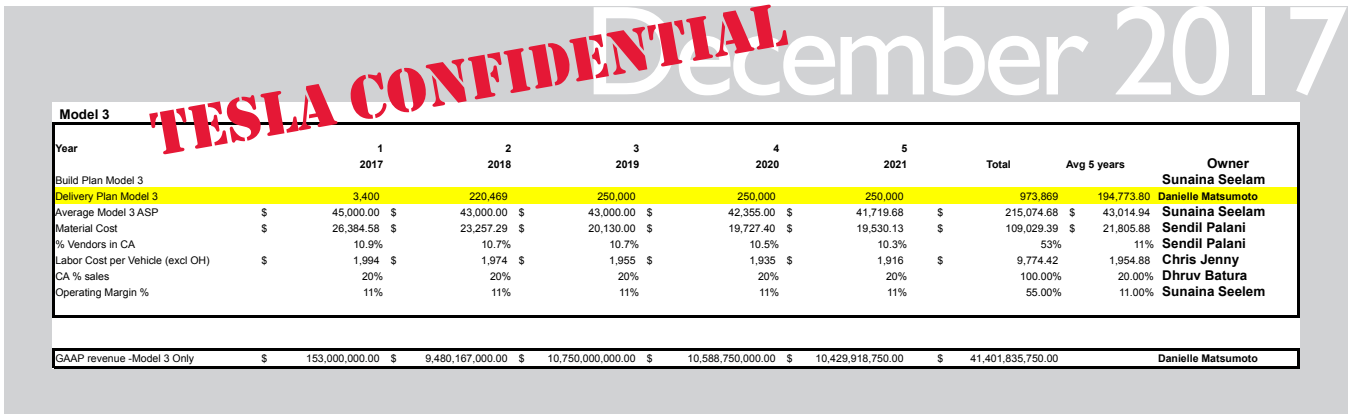
According to public records released by CAEATFA, Tesla has never disclosed its plans to build an increasing number of vehicles in China to California, although shareholder materials and statements by Elon Musk have suggested that the company plans to use its knowledge from manufacturing in Fremont at its new Shanghai plant. In effect, California taxpayers are subsidizing a billionaire's efforts to move jobs overseas to China.

274 California Air Resources Board. https://ww2.arb.ca.gov/our-work/programs/zero-emission-vehicle-program

275 YouTube, June 1, 2015. https://www.youtube.com/watch?v=q9zpOjOZgbk

276 *TechCrunch*, June 3, 2019, "GM and Fiat Chrysler are buying Tesla's regulatory credits." https://techcrunch.com/2019/06/03/why-gm-and-fiat-chrysler-are-buying-teslas-regulatory-credits/

277 Two SpaceX applications totaling $42.2 million in anticipated tax exemptions have also been approved by CAEATFA, making one individual, Elon Musk—who was already a billionaire when his companies began applying—the primary beneficiary of nearly $270 million in state tax benefits.

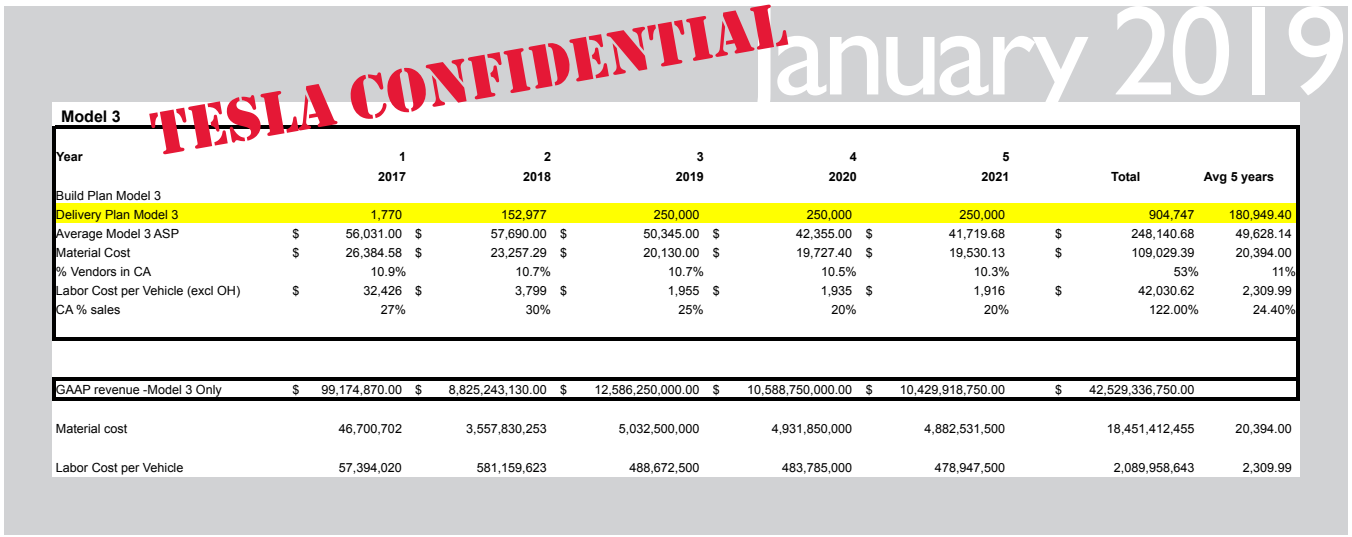


TESLA CONFIDENTIAL

December 2017

Model 3

Year	1 2017	2 2018	3 2019	4 2020	5 2021	Total	Avg 5 years	Owner
Build Plan Model 3								Sunaina Seelam
Delivery Plan Model 3	3,400	220,469	250,000	250,000	250,000	973,869	194,773.80	Danielle Matsumoto
Average Model 3 ASP	$ 45,000.00	$ 43,000.00	$ 43,000.00	$ 42,355.00	$ 41,719.68	$ 215,074.68	$ 43,014.94	Sunaina Seelam
Material Cost	$ 26,384.58	$ 23,257.29	$ 20,130.00	$ 19,727.40	$ 19,530.13	$ 109,029.39	$ 21,805.88	Sendil Palani
% Vendors in CA	10.9%	10.7%	10.7%	10.5%	10.3%	53%	11%	Sendil Palani
Labor Cost per Vehicle (excl OH)	$ 1,994	$ 1,974	$ 1,955	$ 1,935	$ 1,916	$ 9,774.42	1,954.88	Chris Jenny
CA % sales	20%	20%	20%	20%	20%	100.00%	20.00%	Dhruv Batura
Operating Margin %	11%	11%	11%	11%	11%	55.00%	11.00%	Sunaina Seelem
GAAP revenue -Model 3 Only	$ 153,000,000.00	$ 9,480,167,000.00	$ 10,750,000,000.00	$ 10,588,750,000.00	$ 10,429,918,750.00	$ 41,401,835,750.00		Danielle Matsumoto



TESLA CONFIDENTIAL

January 2019

Model 3

Year	1 2017	2 2018	3 2019	4 2020	5 2021	Total	Avg 5 years
Build Plan Model 3							
Delivery Plan Model 3	1,770	152,977	250,000	250,000	250,000	904,747	180,949.40
Average Model 3 ASP	$ 56,031.00	$ 57,690.00	$ 50,345.00	$ 42,355.00	$ 41,719.68	$ 248,140.68	49,628.14
Material Cost	$ 26,384.58	$ 23,257.29	$ 20,130.00	$ 19,727.40	$ 19,530.13	$ 109,029.39	20,394.00
% Vendors in CA	10.9%	10.7%	10.7%	10.5%	10.3%	53%	11%
Labor Cost per Vehicle (excl OH)	$ 32,426	$ 3,799	$ 1,955	$ 1,935	$ 1,916	$ 42,030.62	2,309.99
CA % sales	27%	30%	25%	20%	20%	122.00%	24.40%
GAAP revenue -Model 3 Only	$ 99,174,870.00	$ 8,825,243,130.00	$ 12,586,250,000.00	$ 10,588,750,000.00	$ 10,429,918,750.00	$ 42,529,336,750.00	
Material cost	46,700,702	3,557,830,253	5,032,500,000	4,931,850,000	4,882,531,500	18,451,412,455	20,394.00
Labor Cost per Vehicle	57,394,020	581,159,623	488,672,500	483,785,000	478,947,500	2,089,958,643	2,309.99

After Think Computer Foundation made a Public Records Act request, Tesla specifically asked CAEATFA to keep these numbers confidential. CAEATFA released them by mistake—twice—along with a list of Tesla's vendors. The figures show that Tesla's plan (submitted under penalty of perjury) was wildly different from what Elon Musk told investors they could expect: worldwide demand of up to "700,000 or 800,000 units in a year" for the Model 3 alone, and in a recession, "still something in the order of 500,000." Tesla told CAEATFA to expect half that, at most.

CAEATFA's relationship with Tesla could be described as extremely cozy. Tesla staff lobbyist Dan Chiu has regularly provided CAEATFA Executive Director Deana Carrillo with advance notice of negative news stories so that state government officials can be prepared to field questions from the media in advance. Carrillo has also provided Tesla with advance copies of official government documents about Tesla. The relationship was so cozy, in fact, that Robert S. Hedrick, a government lawyer working for the Office of the Chief Counsel of the Department of Water Resources, felt comfortable asking if CAEATFA staff could arrange a tour of Tesla's factory for his son's "manufacturing innovation class" as a field trip. CAEATFA delegated review of Tesla's applications for tax exemptions to a consulting firm called Blue Sky Consulting Group, which set up CAEATFA, and whose consultants mainly used to work in California state government.

In early 2019, Elon Musk made a series of pronouncements about Tesla's likely manufacturing output and "delivery" volume for the rest of the year. But materials provided by Tesla to CAEATFA weeks earlier under penalty of perjury in some ways directly contradict Musk's exuberant predictions. Tesla specifically asked for these materials

to be kept confidential by CAEATFA staff, but due to repeated oversights, they were released anyway. (CAEATFA even asked for its digital files back; PlainSite declined.) While Musk promised annual demand of up to 800,000 Model 3s, Tesla told CAEATFA to expect 250,000 deliveries per year at most, suggesting further securities fraud. The documents also identified specific employees responsible for the figures.

New York State "Buffalo Billion" Initiative: Under the leadership of Governor Andrew Cuomo, New York State invested roughly $1 billion in new technology manufacturing projects in the Buffalo area.[278] A major component of this effort was supposed to be solar panel manufacturing thanks to SolarCity. When Tesla acquired SolarCity in 2016, it also acquired its third factory, which has produced very little.[279] Elon Musk visited the factory for the first, and so far last, time in April 2019.[280] New York State reportedly wrote off the entire project seven months later,[281] but not before several Buffalo Billion officials were indicted for fraud unrelated to Tesla.[282,283] Several New York state legislators have called for a formal audit into Tesla's role.[284]

Tesla will owe a $41.2 million penalty to New York State if it does not employ 1,460 employees at its factory by April 2020.[285] It has reportedly attempted to include Panasonic employees, who do not work for Tesla, in that tally to avoid having to pay the penalty.

Chinese Communist Party (CCP): In China, figurative red flags meet literal ones. The CCP has provided Tesla with $1.3 billion worth of financing through a syndicate of state-controlled banks at an interest rate below what is typical ("the market quoted interest rate published by the People's Bank of China minus 0.7625%").[286] Meanwhile, United States shareholders still have no idea which legal entity really owns the new Shanghai factory, which Chinese entities with "Tesla" in their name are actually affiliated with Tesla at all, or why one entity previously mentioned in a Tesla SEC filing, Tesla Automobile (Beijing) Co., Ltd., was once called Tuoluo Vehicle Sales (Beijing) Co., Ltd.

278 New York State. https://buffalobillion.ny.gov
279 *New York Post*, February 15, 2019, "Worse than Amazon: Cuomo's Buffalo Billion just went bust." https://nypost.com/2019/02/15/worse-than-amazon-cuomos-buffalo-billion-just-went-bust/
280 WKBW, April 5, 2019, "Elon Musk visits Buffalo's Tesla factory." https://www.wkbw.com/news/local-news/elon-musk-visits-buffalos-tesla-factory
281 *The Wall Street Journal*, November 7, 2019, "New York State Writes Down Value of Tesla Plant in Buffalo." https://www.wsj.com/articles/new-york-state-writes-down-value-of-tesla-plant-in-buffalo-11573159578
282 *USA v. Percoco et al*, New York Southern District Court, Case No. 1:16-cr-00776-VEC. https://www.plainsite.org/dockets/334mkao87/new-york-southern-district-court/usa-v-percoco-et-al/
283 *The New York Times*, July 12, 2018, "Architect of Cuomo's Buffalo Billion Project Is Convicted in Bid-Rigging Scheme." https://www.nytimes.com/2018/07/12/nyregion/kaloyeros-guilty-buffalo-billion-cuomo.html
284 Erie County, New York, August 29, 2019, "Dixon Asks State Comptroller to Complete Full Audit of Solarcity and Full Accounting of All Public Money Spent on Project." http://www2.erie.gov/dixon/index.php?q=press/dixon-asks-state-comptroller-complete-full-audit-solarcity-and-full-accounting-all-public-mone
285 The Buffalo News, November 8, 2019, "Tesla's Buffalo plant gets $884 million write-down." https://buffalonews.com/2019/11/08/pennies-on-the-dollar-the-tesla-plant-isnt-worth-nearly-what-the-state-paid-to-build-it/
286 SEC Form 8-K, December 26, 2019. https://ir.tesla.com/node/20326/html

Fleeing Lawyers

Tesla has had a surprisingly difficult time retaining lawyers to fill its General Counsel role. At the end of 2018, the position was vacated by Todd Maron, who had served in that position since September 2014. Then, Williams & Connolly attorney Dane Butswinkas stepped in. He lasted only a few weeks before resigning. Presumably unable to find another candidate from outside the company, Tesla promoted from within, giving the title to longtime corporate attorney Jonathan Chang. He lasted roughly ten months, leaving in early December for SambaNova Systems Inc., a startup in Palo Alto.[287]

Tesla has also had trouble retaining large law firms to represent the company in the hundreds of lawsuits it has faced nationwide. Some of the turnover might be best described as a deliberate cost-cutting measure, owing to the company's historically precarious and opaque cash situation. But some of the decisions of major firms to give up on Tesla may have been because they never got paid or grew uncomfortable.

On November 11, 2019, the law firm of Wachtell, Lipton, Rosen & Katz filed a motion to withdraw from representing Tesla's Board of Directors in the ongoing SolarCity litigation before the Delaware Court of Chancery. Wachtell, widely considered the top mergers and acquisitions law firm in the United States, had represented the Board for years. While a reason for the withdrawal was not specified, the filing came at an unusual time, after the Board had already filed its motion for summary judgment—one of the last steps before an actual trial. This could be because in late September, PlainSite affiliate Think Computer Foundation filed a request pursuant to Rule 5.1(f) of the Rules of the Court of Chancery, which set in motion a process that ultimately resulted in many of the case's deposition transcripts being made public. On November 5, 2019, Think Computer Foundation filed a second Rule 5.1(f) request concerning redactions in the materials that had just been released. Six days later, Wachtell filed its withdrawal motion.

Criminal Counsel on Retainer

One day after Wachtell's attorneys filed their withdrawal paperwork with the Delaware Court of Chancery, a new attorney appeared on the docket: Benjamin Gruenstein. Unlike the Wachtell attorneys, one of Gruenstein's areas of focus is white collar criminal defense.[288] Specifically, "Mr. Gruenstein's practice focuses on the representation of U.S. and multinational companies and their senior executives in government and internal corporate investigations in such areas as the Foreign Corrupt Practices Act ('FCPA'), healthcare fraud, insider trading, criminal antitrust, accounting fraud and trade sanctions, and accompanying civil litigation."

287 Law.com, December 12, 2019, "Tesla's 3rd General Counsel in a Year Leaves for Artificial Intelligence Company." https://www.law.com/therecorder/2019/12/12/teslas-3rd-general-counsel-in-a-year-leaves-for-artificial-intelligence-company/

288 Cravath, Swaine & Moore LLP. https://www.cravath.com/bgruenstein/

The Case of Cheryl Crumpton

Several court filings signed by Elon Musk in the SEC's case against him,[289] such as Documents 42 and 44, lack any contact information for Musk's counsel or Musk himself, in clear violation of Federal Rule of Civil Procedure 11(a). Before these documents were filed, Musk had been represented by counsel, yet there is no mention of his lawyer in the substance of these status update documents or in the deficient signature blocks. These documents were submitted to the court's CM/ECF system by the SEC, not by Musk or his counsel.

This raises a number of questions. Why did the SEC allow Elon Musk to sign his name to a court document without providing his contact information as required by Rule 11? Was Musk represented by counsel as he negotiated with SEC attorney Cheryl Crumpton? If so, why was his counsel not listed as being on the court mandated conference call(s), according to the SEC's recounting, and why did counsel not sign the status updates? If not, why did his counsel not follow Civil Local Rule 1.4 and withdraw from the case after obtaining Judge Nathan's permission? Was anyone else other than Tesla's counsel on the line to make a record of the call? And why did the SEC turn a blind eye to these rule violations?

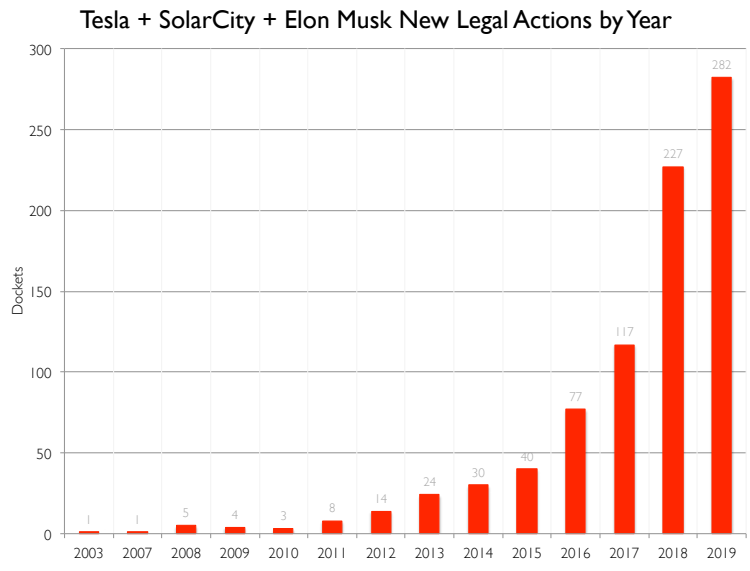
These questions are especially interesting because weeks after the highly irregular call for which Musk's lawyer seems to have disappeared, SEC attorney Cheryl Crumpton left the SEC and began working for Exelon Corporation, which is suing the United States Environmental Protection Agency as part of a small lobbying group called the "National Coalition For Advanced Transportation."[290] One of the Coalition's other primary members is Tesla, Inc. Regardless of how Cheryl Crumpton found her way to her new position outside of government, if Musk was not represented by counsel as he negotiated with the SEC, investors were not made aware of this material fact. Few investors would want to put their money into a multi-billion dollar company where the CEO could be foolish enough to represent himself *pro se* before a regulatory agency while attempting to avoid a contempt of court charge.

Accelerating Lawsuits

Tesla's litigation burden has been accelerating at an exponential pace since roughly 2014, to the point where it will likely face over 300 lawsuits of consequence in the year 2020. There are several reasons for the steady increase in litigation. First, Tesla's acquisition of SolarCity opened the company up to liability from problems with solar panels, which can take a variety of forms. Numerous plaintiffs have sued for roof damage, whether from water, snow, structural damage, or fire. Second, the afore-

289 *United States Securities and Exchange Commission v. Musk*, New York Southern District Court, Case No. 1:18-cv-08865-AJN. https://www.plainsite.org/dockets/3ciodapq4/new-york-southern-district-court/united-states-securities-and-exchange-commission-v-musk/

290 National Coalition for Advance v. EPA, Court of Appeals for the D.C. Circuit, Case No. 18-1118. https://www.plainsite.org/dockets/40lounzo1/court-of-appeals-for-the-dc-circuit/national-coalition-for-advance-v-epa/



Tesla, SolarCity and Elon Musk have faced a steadily increasing number of lawsuits.

mentioned quality problems with Tesla's manufacturing process have led to a slew of lemon lawsuits alleging that Tesla was unwilling and/or unable to repair problems with the Model S, Model X and Model 3. Third, Elon Musk's non-stop lies on Twitter have led to Tesla facing around 40 securities lawsuits,[291] which is an exceptionally high number for most publicly traded companies.

While many of these lawsuits involve small dollar amounts, others involve potential damages of tens of millions, if not billions, of dollars. A lawsuit filed in Riverside County, California in which Tesla, Inc. is simply named as a defendant could potentially yield damages of $25 million to be shared among the various defendants in the case. Even if Tesla' share of damages in that case were hypothetically only $2 million, it might cost another $100,000 in legal fees just to appear in court and make the requisite arguments to convince a judge and jury that the company's hardware design did not play a consequential role in the particular crash being litigated.

Incompetence

The stores are open. The stores are closed.[292] Some stores are open, others are closed.[293] Some are closing, but the ones that are open might not sell cars. Also, prices are going up soon. But prices are going down. Actually, they're up. Buy now.

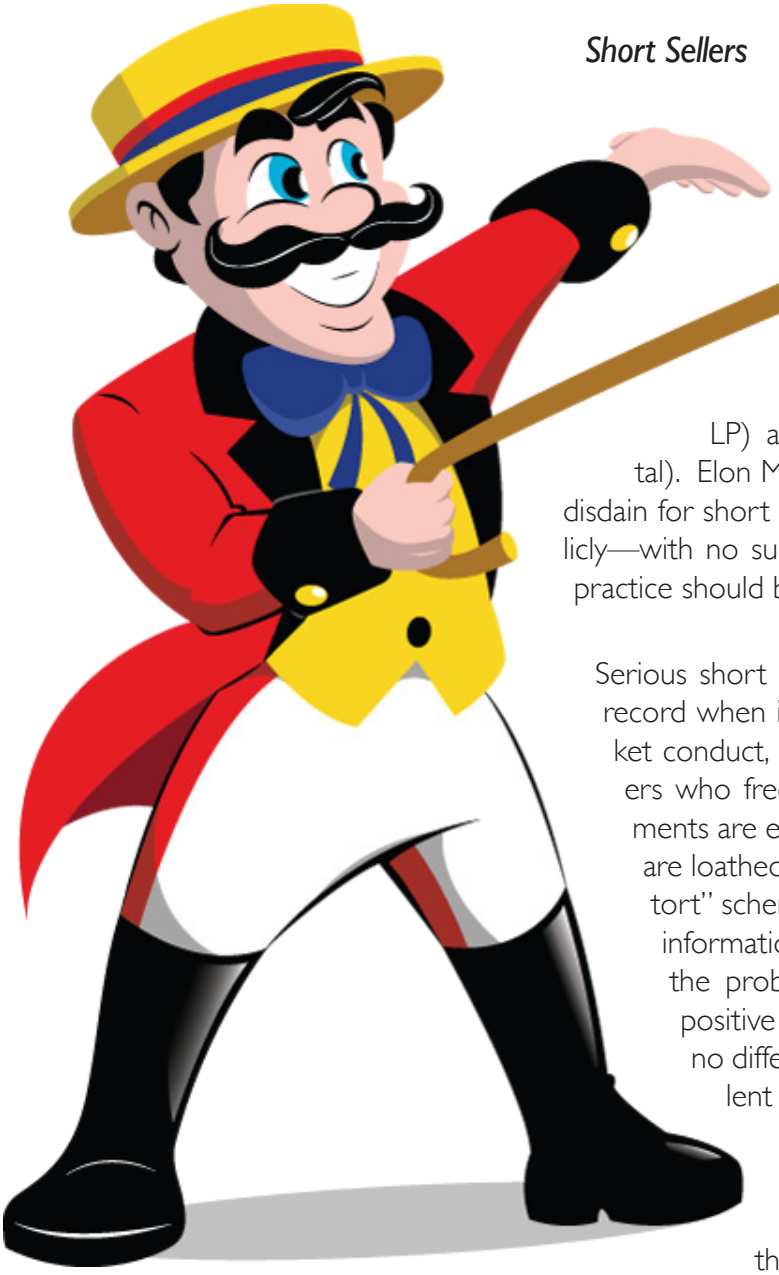
Such was the narrative coming from Tesla in early 2019, when sheer incompetence appeared to be the company's north star. Trapped in a vice between cost-cutting and needing to drive waning demand, Musk and his minions managed to confuse just about everyone, from journalists to prospective customers to critics and passers-by.

Every company goes through growing pains at some point along its development, but by the time this particular spasm of stupidity engulfed Tesla, it had already been in business for about 16 years. Then, well after the mystery of Tesla's retail future settled down, there was news of a new problem: boats full of Model 3s were being diverted

291 PlainSite. https://www.plainsite.org/tags/tesla-securities-actions/
292 *The Wall Street Journal*, March 8, 2019, "Landlords to Tesla: You're Still on the Hook for Your Store Leases." https://www.wsj.com/articles/landlords-to-tesla-youre-still-on-the-hook-for-your-store-leases-11552059041
293 *The Wall Street Journal*, March 11, 2019, "Tesla, in Reversal, to Keep More Stores Open." https://www.wsj.com/articles/tesla-in-reversal-to-keep-more-stores-open-11552300717

on their way to Europe and China, apparently due to a problem with the headlights included on each vehicle, which had been intended for use in the United States.

Short Sellers



Elon Musk's grinning archrival, as well as the @TeslaCharts carnival barker avatar, available from various clip art websites in the "Under The Big Top" category.

Tesla's serious financial problems made it at one point the most shorted stock across the entire United States stock market,[294] while also attracting the attention of prominent short sellers such as Jim Chanos (Kynikos Associates LP) and David Einhorn (Greenlight Capital). Elon Musk has made no secret of his special disdain for short sellers,[295] having at times argued publicly—with no substantive basis whatsoever—that the practice should be made illegal.[296]

Serious short sellers have an amazingly good track record when it comes to detecting fraudulent market conduct, especially when occasional short sellers who frequently change sides on their investments are excluded from the analysis. While they are loathed by some for so-called "short and distort" schemes that aim to spread negative false information to drive down the price of a stock, the problem of "pump and dump" involving positive false information on the long side is no different at its core, and is far more prevalent in bull markets.

Tesla has attracted the attention of more short sellers on social media than possibly any stock in history. After Musk's "funding secured" tweet resulted in SEC action, a collective of mostly anonymous Twitter accounts, informally

294 CNBC, April 11, 2018, "Tesla is the biggest short in the US stock market." https://www.cnbc.com/2018/04/11/tesla-is-the-biggest-short-in-the-us-stock-market.html

295 *Wired*, October 6, 2018, "What Are Shorts and Why Does Elon Hate Them?" https://www.wired.com/story/what-are-short-sellers-and-why-does-elon-hate-them/

296 *Business Insider*, December 3, 2019, "'Short selling should be illegal' – Elon Musk praised a crackdown on shorts by the world's biggest pension fund." https://markets.businessinsider.com/news/stocks/tesla-spacex-ceo-elon-musk-short-selling-should-be-illegal-2019-12-1028733903

referring to itself as $TSLAQ,[297] congealed around "Montana Skeptic" and the still anonymous creator of "TeslaCharts," who would post literally and figuratively colorful graphs concerning Tesla's financial performance behind the avatar of an enthusiastic carnival barker, in clear reference to Elon Musk. In nearly two years, @TeslaCharts amassed over 18,200 followers.

The existence of $TSLAQ hasn't slowed down Musk's progress, but it has clearly gotten under his skin on occasion. And though specific members of the informal collective can sometimes be excessively paranoid, petty, crude, or just flat-out wrong, the quality of information disseminated in real time on Twitter is comparable to or better than many paid wire service subscriptions. It is not uncommon for $TSLAQ members to monitor, photograph, videotape, and otherwise report on relevant events involving Tesla in their hometowns. The movement has also seen a growing number of former Tesla customers and supporters join their ranks.

Tesla Insurance

Due to the unresolved quality problems with the Model 3, especially including the fire risk that Teslas appeared to be especially prone to throughout 2018, numerous insurance companies across the United States began raising their insurance rates for Model 3 owners. Elon Musk's response was that Tesla would start its own insurance company.

This proved to be more difficult than he had anticipated. Tesla Insurance started out in a San Francisco office sharing suite at 444 De Haro Place in Potrero Hill, where a single employee, Anthony Vincent Retort, showed up on all associated paperwork. Retort left Tesla in June 2018. He was replaced by Matt Edmonds, working from Alpharetta, Georgia. Edmonds describes himself as an "Innovator who Takes New Solutions to Market for InsureTech Startups and Insurance Disruptors" on LinkedIn.

In August 2019, Tesla Insurance Services finally launched in California—at least for a few hours.[298] Due to an apparent glitch with the website, the insurance quote generator immediately began providing prospective customers with insurance quotes that were far too high, leading Tesla to shut off the service within hours of turning it on. When the quote generator finally returned days later, pricing was more in line with customer expectations, but the problems didn't stop there.

Several Tesla Insurance customers have since reported that even after paying their insurance premiums, the State of California Department of Motor Vehicles sent them

297 *The Los Angeles Times*, April 8, 2019, "Must Reads: The crowd-sourced, social media swarm that is betting Tesla will crash and burn." https://www.latimes.com/business/autos/la-fi-hy-tesla-short-sellers-musk-20190408-story.html

298 *The Verge*, August 28, 2019, "Tesla launches car insurance offering in California." https://www.theverge.com/2019/8/28/20837265/tesla-car-insurance-california-autopilot-discount

notices informing them that their car registrations would not be renewed.[299,300]

This is possibly in part because Tesla Insurance is not actually an insurance company. Rather, it's a brand that has been attached, at least for the time being, to State National Insurance Company of Texas, which filed applications for a special Tesla insurance plan with the California Department of Insurance in January 2019. The plans were approved in April 2019. State National customized a policy for Tesla by copying and pasting verbiage relating to a discount for autonomous vehicles from a policy issued by Response Indemnity Company's approved class plan (application number 17-6660). This is somewhat ironic given Tesla's marketing copy for its insurance plan, which states, "Tesla uniquely understands its vehicles, technology, safety, and repair costs, and eliminates fees taken by traditional insurance carriers." Its understanding is so "unique," in fact, that it's exactly the same as another insurance company's unrelated policy from 2017.

According to Musk's logic, Tesla vehicles should be less expensive to insure because they are so much safer, according to the "unequivocal" data that at least so far is nowhere to be found. According to a response by the California Department of Insurance to an inquiry by PlainSite, "Regulations allow an insurer with no credible data to use the rating factors and relativities from another insurer's approved class plan. Thus, we approved the auto-discount as it is a 'me-too' of Response Indemnity Company's auto-pilot discount (approved in #17-6660) with minor differences."

China

Tesla's increasing activity in China presents a new set of risks for the company. First and foremost, executives should be concerned about the Foreign Corrupt Practices Act (FCPA) given its essential incompatibility with the traditional Chinese practice of *Guanxi* (關係).[301] It is likely that to accomplish the construction of the Shanghai Tesla factory shell in record time—a first for an American corporation—some Party officials had to be persuaded that making an exception to long-standing policy was the right thing to do. If such persuasion efforts involved gifts, FCPA liability may have attached to any Americans giving them. The United States Department of Justice has been more consistent about enforcing FCPA violations relative to other laws connected to corporate malfeasance.[302]

China may also pose problems for Tesla due to the company's growing dependence on the government of a foreign nation for financial support. The United States Department of the Treasury's Committee on Foreign Investment in the United States

299 Reddit. https://www.reddit.com/r/teslamotors/comments/ds1pui/tesla_insurance_ca_dmv_vehicle_registration/

300 Tesla Motors Club Forums, October 25, 2019, "Have Tesla insurance, just got DMV letter 'Intent to Suspend' for lack of insurance." https://teslamotorsclub.com/tmc/threads/have-tesla-insurance-just-got-dmv-letter-intent-to-suspend-for-lack-of-insurance.171402/

301 Szto, Mary, Valparaiso University School of Law, 2016, "Chinese Gift-Giving, Anti-Corruption Law, and the Rule of Law and Virtue." https://pdfs.semanticscholar.org/c579/b180b5c22a711f07199e34ffaff89443a1e9.pdf

302 *USA v. Li*, New York Southern District Court, Case No. 1:19-cr-00760-VSB. https://www.plainsite.org/dockets/449irflzb/new-york-southern-district-court/usa-v-li/

Tesla's Shanghai factory as portrayed by a Chinese propaganda video from late December 2019. Photograph: Global Times

(CFIUS) could reasonably consider Tesla's recent $1.3 billion loan deal an "other investment" under the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). If CFIUS chose to block the financing arrangement, Tesla would need to find an alternative source of funding very quickly. There are plenty of powerful interests in the automotive industry who might decide to put pressure on CFIUS, formally or through political means, to block, or at least examine, the deal—especially given Donald Trump's stated animosity toward trade with China.

This risk is compounded by a recently published video op-ed by the China Global Times, a state-run media organization.[303] The video portrays the Tesla factory as a symbol of China's ability to rise above the Trump trade war, and the op-ed looks and sounds much like an economic development campaign advertisement with Tesla's factory front and center. This suggests that the Chinese government has been so generous to Elon Musk and Tesla because it perceives enormous propaganda value from the arrangement (whether or not that is actually merited). In the Party's eyes, Musk's American company is akin to the lone scab willing to cross the picket line. Accordingly, if Musk ever has anything negative to say about the Chinese government or if the economic pinch of the trade war fades, Tesla may find it much more difficult to do business in China as it becomes less useful as a political symbol and more like every other foreign company. Alternatively, if the Chinese government is hoping to learn lessons from (or put another way, steal) Tesla's intellectual property, it may simply be disappointed as the company owns very little in the way of unique technology.

Ironically, given the human rights abuses that are ongoing in Xinjiang province, where the Chinese government has imprisoned millions of Uighur Muslims in concentration camps, and in Hong Kong, where violent protests have become the norm, a dependence upon Chinese manufacturing presents public relations challenges for Tesla and other companies that choose to continue to do business there, including but certainly not limited to Apple and Volkswagen, which has owned a facility in Urumqi, Xinjiang for years.[304] Historically, German automobile manufacturers were known for their enthusiastic willingness to exploit Jewish slave labor in World War II, and it is disappointing to see any company fall into the same horrific trap, or work with the government responsible for setting it in the first place.

303 Twitter, December 30, 2019. https://twitter.com/globaltimesnews/status/1211680332937752577

304 *Deutsche Welle*, November 26, 2019, "Volkswagen defends presence in China's Xinjiang amid uproar over Uighur abuses." https://www.dw.com/en/volkswagen-defends-presence-in-chinas-xinjiang-amid-uproar-over-uighur-abuses/a-51427056

Perjury

Although it is selectively enforced, the crime of perjury has come up time and again as Tesla has relied on government handouts and battled in the courts.

- In a declaration submitted by Elon Musk in the Unsworth litigation, he claimed, "By referring to Mr. Unsworth as 'pedo guy,' I did not intend to convey any facts or imply that Mr. Unsworth had engaged in acts of pedophilia." In fact, Musk paid a convicted felon for false information concerning Mr. Unsworth's non-existent "child bride." On the *same page* as this false statement, he also wrote, "I googled Chiang Rai and read an article stating that it was a well-known hot spot for child prostitution and sex trafficking."[305]

- In Elon Musk's SolarCity deposition, perjury was explicitly raised by plaintiffs' counsel on pages 164-165 of the June 1, 2019 transcript in the context of Musk's false claim that he expected SolarCity to be cash-flow positive even as it was drowning in debt. Musk also used the phrase "I don't recall" at least 65 times. Musk also claimed he believed Tesla's "growth of megawatts deployed would be very significant." Then he assigned all of SolarCity's employees to work on the Model 3.

- Tesla employee Christine Moxley Leslie committed perjury in the *Tesla, Inc. v. Hothi* retaliation case when she claimed—without being present for the events she was describing—that Hothi had sped off from the Fremont factory's parking lot "quickly and recklessly," directly contradicting a police report based on video of the incident that used the phrase "Randeep drove away at a slow rate of speed."

- Tesla employee Tyler James committed perjury in the same case, having claimed that Hothi left "at a fast rate of speed."

- When Tesla lawyer Al Prescott repeatedly represented to NHTSA that all of the information Tesla sought to keep secret was "confidential and proprietary," each declaration was made under penalty of perjury—even when circumstances of collisions involving Tesla vehicles had often been written up in newspapers, making them public.

- Mark Olson, Tesla Senior Director, U.S. Tax, submitted false and incomplete application materials to CAEATFA under penalty of perjury when he responded "None" to a question that required him to "Disclose any legal or regulatory action or investigation that may have a material impact on the financial viability of the project or the Applicant." He attached a copy of Tesla's 2018 SEC Form 10-K in response to the next question requiring that he "Disclose any legal or regulatory action or investigation involving fraud or corruption, or health and safety where there are allegations of serious harm to employees, the public, or the environment." On page 133, Tesla's 2018 SEC Form 10-K only mentions "various other

305 *Vernon Unsworth v. Elon Musk*, California Central District Court, Case No. 2:18-cv-08048-SVW-JC, Document 60. https://www.plainsite.org/dockets/download.html?id=284180725&z=2f0586ce

legal proceedings and claims that arise from the normal course of business activities," and provides no details about the 51 lawsuits that had been filed against it at the time involving Tesla workers. Nor did Olson update CAEATFA, as required, with news of the 29 subsequent lawsuits filed involving Tesla workers throughout the rest of 2019, or the billion-dollar write-off in New York for a similar program.

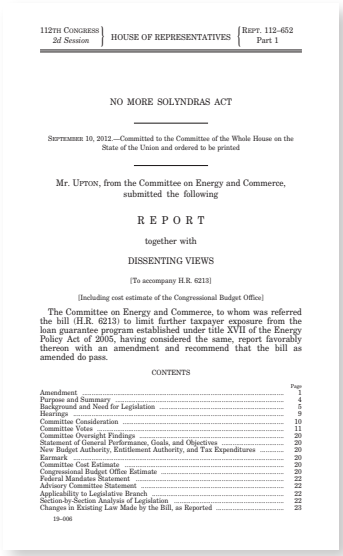
- When Tesla applied to start a regulated insurance company with the California Department of Insurance, under penalty of perjury an unknown employee answered "Has the business entity or any of its partners, members, controlling persons, officers, directors, managers or any shareholders owning 10% or more interest in the business entity, ever been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement?" by checking "No." Tesla was sued for failing to pay taxes in Orange County, California on March 10, 2017.[306]

- On the same California Department of Insurance application, under penalty of perjury an unknown employee answered, "Has the business entity or any of its partners, members, controlling persons, officers, directors, managers or any shareholders owning 10% or more interest in the business entity, a party to, or ever been found liable in any lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty?" by checking "No." Elon Musk and Tesla, Inc. were sued for securities fraud by the Securities and Exchange Commission and settled the case, after which Musk was charged with contempt of court for violating the agreement. Separately, Musk admitted that he concocted a "bait and switch" scheme involving Roadster deposits, and Kimbal Musk admitted that Elon had misappropriated Roadster deposit funds.

Regulatory Failure

Congress

In 2012, after the widely publicized bankruptcy[307] of Solyndra,[308] a solar energy firm that had been propped up with $535 million of federal loans, Congress introduced H.R. 6213: "No More Solyndras Act." Solyndra became one of the Obama administration's most no-



112TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPT. 112–652 Part 1

NO MORE SOLYNDRAS ACT

SEPTEMBER 10, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 6213]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 6213) to limit further taxpayer exposure from the loan guarantee program established under title XVII of the Energy Policy Act of 2005, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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19-006

The cover of the 2012 House Report on the No More Solyndras Act.

306 *County of Orange, Treasurer-Tax Collector v. Tesla Inc*, Superior Court of California, County of Orange, Case No. 30-2017-00909290-SC-SC-CJC. https://www.plainsite.org/dockets/3ipr28w7d/superior-court-of-california-county-of-orange/county-of-orange-treasurertax-collector-v-tesla-inc/

307 *Reuters*, September 6, 2011, "U.S. solar firm Solyndra files for bankruptcy." https://www.reuters.com/article/us-solyndra/u-s-solar-firm-solyndra-files-for-bankruptcy-idUSTRE77U5K420110906

308 *The Atlantic*, August 26, 2015, "Solyndra: What a Mess." https://www.theatlantic.com/politics/archive/2015/08/solyndra-what-a-mess/446784/

table public failures. The bill passed the House of Representatives,[309] and a congressional report, as well as a Department of Energy Inspector General report,[310] dug into the various causes of Solyndra's failure. Unfortunately, relatively few lessons were actually learned. Congress's decision to grant Tesla customers tax breaks, however well intentioned, had the side-effect of rewarding reprehensible corporate behavior. The closest Congress has come to a hearing on Tesla or Elon Musk's antics in securities markets (or otherwise) is a few minutes at a Senate Commerce Committee hearing where Autopilot defeat devices appeared to give Senator Markey of Massachusetts cause for alarm.

National Highway Traffic Safety Administration

Even after the European Union effectively banned Autopilot, and even having received several e-mails about problems with Autopilot from concerned citizens, the NHTSA has taken virtually no action to safeguard the public. This is possibly because the Department of Transportation under Donald Trump has deliberately taken a stance of allowing industry "self-regulation." In a brochure from September 2017 entitled, "Automated Driving Systems 2.0: A Vision for Safety," the NHTSA stated "[T]o save lives, prevent injuries, and reduce the economic costs of roadway crashes through education, research, safety standards, and enforcement activity...NHTSA offers a non-regulatory approach to automated vehicle technology."[311] The brochure's main sections are "Voluntary Guidance," ending with "Voluntary Safety Self-Assessment," and then "Technical Assistance to States," followed by a conclusion. The brochure needs little translation: NHTSA's plan is to do as little as possible.

Even obtaining information from NHTSA has been unusually difficult. FOIA requests have proceeded at a snail's pace, and it has been difficult not to conclude that the Administration is deliberately obstructing inquiries. In response to a question about why a valid telephone number is not contained in NHTSA letters sent in response to FOIA requests, a spokeswoman answered, "'Cause they're…they just not gonna do that."

NHTSA's disinterest was readily apparent when Acting Administrator James C. Owens, a career bureaucrat and lawyer, appeared before the Senate Commerce Committee for a hearing on November 20, 2019 completely unprepared to answer questions involving automated vehicles.[312] He replaced Acting Administrator Heidi King, a regulatory economist who had worked for the Obama White House as an analyst from 2007-2011, who resigned on August 31, 2019.

309 United States Congress, H.R. 6213 - No More Solyndras Act. https://www.congress.gov/bill/112th-congress/house-bill/6213

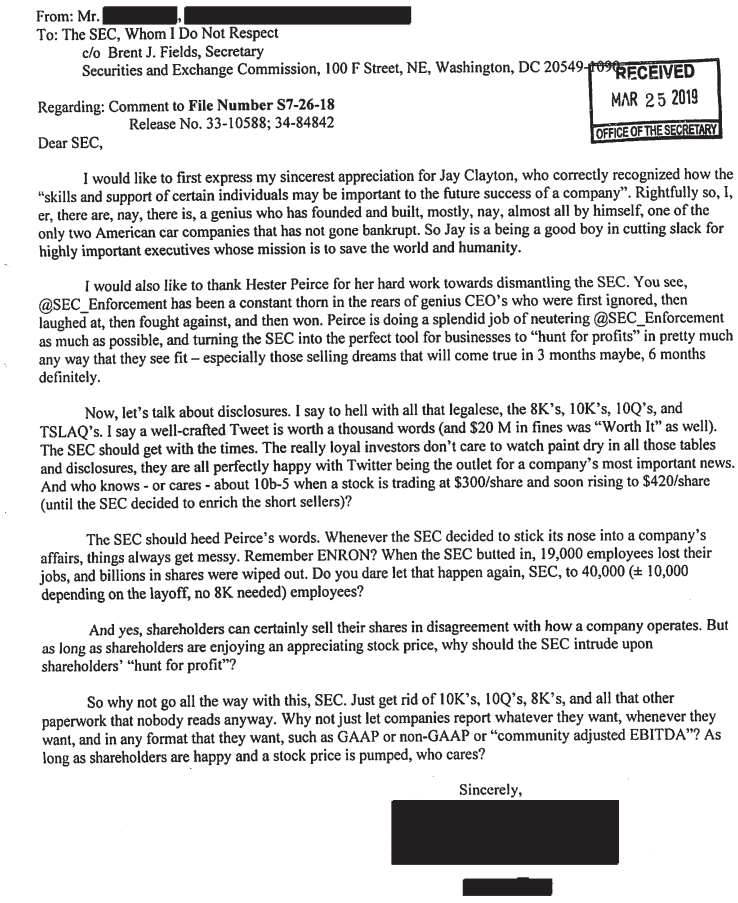
310 United States Department of Energy Inspector General, August 24, 2015, "The Department of Energy's Loan Guarantee to Solyndra, Inc." https://www.energy.gov/sites/prod/files/2015/08/f26/11-0078-1.pdf

311 United States Department of Transportation, "Automated Driving Systems 2.0: A Vision for Safety." https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/13069a-ads2.0_090617_v9a_tag.pdf

312 United States Senate. https://www.commerce.senate.gov/services/files/683FBDA2-F073-4853-A1A4-E671970EE3E9

United States Securities and Exchange Commission

Under the leadership of former securities lawyer Jay Clayton (whose past clients include notorious corporate actors such as Valeant Pharmaceuticals, Deutsche Bank and The Weinstein Company) the United States Securities and Exchange Commission has behaved in a more spineless manner than at any point since the Enron crisis in 2002. With the enthusiastic assistance of Commissioner Hester Peirce, Clayton has set about dismantling the Commission from within, ensuring that it does not get in the way of corporate criminals who seek to exploit capital markets for their own personal gain.



From: Mr. [redacted]
To: The SEC, Whom I Do Not Respect
c/o Brent J. Fields, Secretary
Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090

RECEIVED
MAR 25 2019
OFFICE OF THE SECRETARY

Regarding: Comment to **File Number S7-26-18**
Release No. 33-10588; 34-84842

Dear SEC,

I would like to first express my sincerest appreciation for Jay Clayton, who correctly recognized how the "skills and support of certain individuals may be important to the future success of a company". Rightfully so, I, er, there are, nay, there is, a genius who has founded and built, mostly, nay, almost all by himself, one of the only two American car companies that has not gone bankrupt. So Jay is a being a good boy in cutting slack for highly important executives whose mission is to save the world and humanity.

I would also like to thank Hester Peirce for her hard work towards dismantling the SEC. You see, @SEC_Enforcement has been a constant thorn in the rears of genius CEO's who were first ignored, then laughed at, then fought against, and then won. Peirce is doing a splendid job of neutering @SEC_Enforcement as much as possible, and turning the SEC into the perfect tool for businesses to "hunt for profits" in pretty much any way that they see fit – especially those selling dreams that will come true in 3 months maybe, 6 months definitely.

Now, let's talk about disclosures. I say to hell with all that legalese, the 8K's, 10K's, 10Q's, and TSLAQ's. I say a well-crafted Tweet is worth a thousand words (and $20 M in fines was "Worth It" as well). The SEC should get with the times. The really loyal investors don't care to watch paint dry in all those tables and disclosures, they are all perfectly happy with Twitter being the outlet for a company's most important news. And who knows - or cares - about 10b-5 when a stock is trading at $300/share and soon rising to $420/share (until the SEC decided to enrich the short sellers)?

The SEC should heed Peirce's words. Whenever the SEC decided to stick its nose into a company's affairs, things always get messy. Remember ENRON? When the SEC butted in, 19,000 employees lost their jobs, and billions in shares were wiped out. Do you dare let that happen again, SEC, to 40,000 (± 10,000 depending on the layoff, no 8K needed) employees?

And yes, shareholders can certainly sell their shares in disagreement with how a company operates. But as long as shareholders are enjoying an appreciating stock price, why should the SEC intrude upon shareholders' "hunt for profit"?

So why not go all the way with this, SEC. Just get rid of 10K's, 10Q's, 8K's, and all that other paperwork that nobody reads anyway. Why not just let companies report whatever they want, whenever they want, and in any format that they want, such as GAAP or non-GAAP or "community adjusted EBITDA"? As long as shareholders are happy and a stock price is pumped, who cares?

Sincerely,

[redacted]

Comments to the SEC submitted by "Felon Musk."

Although the SEC filed suit against Elon Musk personally and Tesla, Inc. after the August 2018 "funding secured" incident, Musk was let off with an incredibly light slap on the wrist given that he had committed the most flagrant abuse of securities law in the stock market's history. At a minimum, the Commission should have barred Musk from serving as an officer or director of any publicly traded company for the rest of his life. Instead, the SEC caved.

Then, when Musk deliberately violated his Consent Decree using the defense that he had First Amendment rights (obviously limited by the Consent Decree) and that he could "pre-approve" his own posts on Twitter, the Commission again flubbed its offensive and backed off. Since then, it has taken no action despite Musk's persistent and often gleeful violations of the amended Consent Decree.

The SEC's utter depravity was made apparent in a comment letter submitted to the Commission by an anonymous individual posing as "Felon Musk." Although the SEC initially posted the letter in its entirety, it later redacted the pseudonym.

Some sense of dysfunction must have been felt within the Commission, because

by mid-2019 the three SEC trial attorneys initially assigned to Musk's case had all departed. Jina Choi, the veteran Regional Director of the San Francisco office, left for law firm Morrison & Foerster. E. Barrett Atwood left to become the Director of Litigation for Lyft. And Cheryl Crumpton joined Exelon Corporation within weeks after speaking directly to Elon Musk about the violations of his Consent Decree. The SEC Inspector General should ask why.

Federal Trade Commission

Despite open talk of "money printers," brazenly misleading pricing, widespread use of diesel generators, a direct referral from NHTSA and other FTC Act violations galore, the Federal Trade Commission has been completely silent on Tesla while it has pursued other companies engaged in far less wide-reaching violations of law. The FTC also has jurisdiction over marketing tactics by social media influencers, which despite some overlap with securities law violations in this case (since many of Tesla's Greek chorus members frequently recommend that viewers purchase stock without disclosing their own ownership and company ties), are in desperate need of a strong regulatory framework.

United States Department of Justice

The United States Department of Justice has been investigating Tesla since 2017 based on questionable claims made about its Model 3 manufacturing capabilities, but nothing has come out of that investigation thus far. It is possible that the Department is waiting on the outcome of an appeal before the Ninth Circuit in the case of *Wochos v. Tesla*, which addresses overlapping issues. Oral argument in that case should take place sometime from February to April 2020.[313]

The Federal Bureau of Investigation (FBI), which is a bureau of the Department, may also have ongoing investigations that are unrelated to the Model 3 manufacturing issue. The FBI previously investigated SolarCity for overly aggressive sales tactics.[314]

State and Local Governments

The State of New York and the State of California have both proven to be no match for Elon Musk's charm and wit. With New York investing—and losing—$1 billion, and California handing over about $270 million to someone already incredibly wealthy, it's hard to imagine how a scrappy entrepreneur with a legitimate idea in the clean energy space could be expected to compete. To date, no public audits of either state's giveaways have been released. California State Senator Scott Wiener did not

313 *Gregory Wochos, et al v. Tesla, Inc., et al*, Court of Appeals for the Ninth Circuit, Case No. 19-15672. https://www.plainsite.org/dockets/3xpdyyc8d/court-of-appeals-for-the-ninth-circuit/gregory-wochos-et-al-v-tesla-inc-et-al/

314 PlainSite, June 5, 2017, "SolarCity FBI File 318A-SF-2174348 Serial 1." https://www.plainsite.org/documents/dzcyv/solarcity-fbi-file-318asf2174348-serial-1/

respond to a detailed letter expressing concern about CAEATFA.

Similarly, Storey County, Nevada local and state government officials have been far too eager to please Tesla thanks to its capacity for job creation. When a United States Department of Labor Occupational Safety and Health Administration (OSHA) official arrived at Tesla's Nevada factory *with a warrant signed by a judge*, the Storey County Sheriff's Office refused to let him enter at Tesla's request. When governments work for, rather than watch over, corporate interests, society itself is at risk.

Conclusion

At this point in his career, absolutely nothing Elon Musk says can be trusted. As investors in Enron, Worldcom, MiMedx, and similarly fraudulent companies run by con men can attest, the value of a company which has never turned a sustained profit, which has serious accounting irregularities, which has already signed a binding consent decree with regulators concerning unprecedented securities fraud, which relies on criminals for stealth marketing, which burns through executives literally on a monthly basis, which buys products from itself to placate Wall Street, and which is run by someone whose word is fundamentally worthless, is precisely that: zero.

In his zeal to keep Tesla afloat, Elon Musk has repeatedly committed criminal acts with the same nonchalant ignorance that allowed him to falsely proclaim that he had found a cure for autism in an untested, still-theoretical microchip. The company's perpetually precarious financial position—propped up by taxpayers, investors and pre-paid deposits for nearly two full decades—has resulted in a dynamic that resembles a Madoff-scale Ponzi scheme far more than a real corporation. Though Tesla's products have at times been quite innovative (and the company has over the course of nearly seventeen years employed many brilliant engineers), they also have suffered from serious design defects that have cost real lives. Musk, always the master of distraction with his quirky humor and big ideas, has done an impressive job keeping the mainstream press's attention far from the company's core problems. But at the end of the day, Tesla does not have a future as an independent, profitable company. Its competitive advantage as the first mover in the electric vehicle market has all but eroded, which in a best-case scenario will very likely leave it in the same place as other once-powerful first movers such as Friendster, IBM, Polaroid, and Napster, which is to say, nowhere.

But more likely, if a Democrat is elected to the White House in 2020, Tesla will one day go bankrupt, and Elon Musk will go to prison along with the many executives who could not find the courage to say "no."

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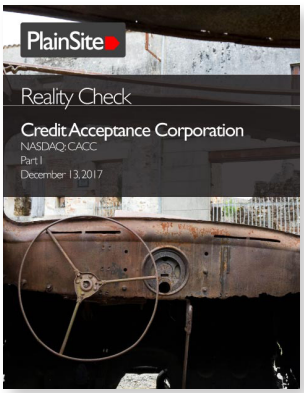

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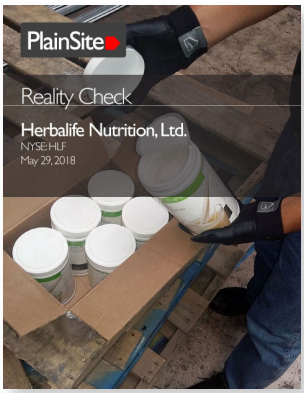

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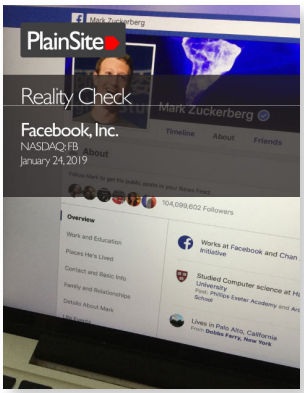

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