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NEW JERSEY COALITION OF AUTOMOTIVE
RETAILERS,

Plaintiff,

v.

NEW JERSEY MOTOR VEHICLE
COMMISSION; B. SUSAN FULTON, in her
official capacity as Chief Administrator for the
New Jersey Motor Vehicle Commission; STATE
OF NEW JERSEY, OFFICE OF THE
ATTORNEY GENERAL, DIVISION OF
CONSUMER AFFAIRS; PAUL R.
RODRIGUEZ, in his official capacity as Director
of the Division of Consumer Affairs, TESLA,
INC.;

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY

DOCKET NO.: MER-L-

CIVIL ACTION

**COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

Plaintiff New Jersey Coalition of Automotive Retailers (“NJ CAR”), by and through their attorneys Genova Burns LLC, by way of this Complaint, against defendants the New Jersey Motor Vehicle Commission; B. Susan Fulton, in her official capacity as Chief Administrator for the New Jersey Motor Vehicle Commission; State of New Jersey, Office of the Attorney General, Division of Consumer Affairs; Paul R. Rodriguez, in his official capacity as Director of the Division of Consumer Affairs (these defendants collectively referred to as “State Defendants”); and Tesla, Inc. say:

PARTIES

1. Plaintiff NJ CAR is a State-wide trade association that represents New Jersey's franchised new car and truck retailers and is headquartered in Trenton, New Jersey.

2. Defendant New Jersey Motor Vehicle Commission ("MVC") is a public agency formed under the laws of the State of New Jersey with a principle place of business at 225 East State Street, Trenton, New Jersey.

3. Defendant B. Susan Fulton, in her official capacity as Chief Administrator of the MVC ("Fulton"), is the individual charged with managing and operating the MVC.

4. Defendant State of New Jersey, Office of the Attorney General, Division of Consumer Affairs ("DCA") is a division of the State of New Jersey with a principle place of business at 124 Halsey Street, Newark, New Jersey and is charged with administering and enforcing the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA") and to implement and enforce the regulations promulgated under same.

5. Defendant Paul R. Rodriguez, in his official capacity as Director of the DCA, is the individual charged with administering the CFA and the regulations promulgated under same on behalf of the Attorney General.

6. Defendant Tesla, Inc. ("Tesla") is a corporation formed under Delaware Law with its principal place of business at 3500 Deer Creek Road, Palo Alto, California 94304. Tesla markets and sells its electric vehicles directly to consumers, not through franchised auto dealers.

VENUE

7. Venue in Mercer County is appropriate because that is where the parties reside, pursuant to Rule 4:3-2.

FACTUAL AND LEGAL BACKGROUND

A. Facts Pertaining to the Failure to Enforce New Jersey’s Motor Vehicle Franchise and Dealer Licensing Laws

i. Background on Motor Vehicle Franchise and Dealer Licensing Laws

8. Generally, New Jersey’s Franchise Practices Act (“FPA”), N.J.S.A. 56:10-1, *et seq.*, together with the applicable dealer licensing statutes and regulations (collectively referred to as the “Motor Vehicle Franchise and Dealer Licensing Laws”), establishes a franchise system for the retail distribution of all new motor vehicles in this State.

9. This franchise system requires that automakers distribute their new motor vehicles through a network of appointed franchisees located in New Jersey.

10. Consequently, automakers are generally prohibited from retailing their vehicles directly to consumers within New Jersey.

11. This franchise system has been in place for decades and serves to protect motor vehicle consumers by preventing automobile manufacturers from setting rigid, nationwide pricing for their vehicles and from neglecting their warranty and recall repair obligations.

12. The FPA functions to promote a robust network of local retailers in the State to foster intense local price competition and to drive prices lower.

13. These functions benefit New Jersey consumers because a car is typically the second most expensive purchase the average individual will make during their lifetime (second

to a home), and access to a variety of affordable vehicles is essential to maintaining one's livelihood when public transportation options are scant.

14. An additional and important function of the FPA is to provide an independent layer of accountability for vehicle warranty and safety recall repairs.

15. The existence of a network of local retailers adds value to the ownership experience in New Jersey as those franchised retailers serve as advocates for consumers to assure that no-cost warranty and recall repairs are properly completed. Automakers view such repairs as a cost to be avoided when possible, and they naturally place their shareholders' interests first when a basis for refusing the repairs exists.

16. For these reasons, the FPA reflects the Legislature's endorsement of the sound public policies of promoting vehicle price competition and ensuring manufacturer accountability for warranty and recall repairs, which protects consumers and promotes highway safety.

17. The franchise system underlies the statutory and regulatory framework governing licensure of businesses that buy, sell, and deal in new motor vehicles in New Jersey.

18. Generally, retailers seeking a license to engage in the business of buying, selling, or dealing in new motor vehicles in New Jersey must be franchised. See N.J.S.A. 39:10-19; N.J.A.C. 13:21-15.3; see also N.J.S.A. 56:10-26 et seq.

19. Once a franchised retailer is licensed, it is only permitted to sell or deal in new motor vehicles at the retailer's licensed location. See N.J.S.A. 39:10-19; see also N.J.A.C. 13:21-15.2, 15.3 and 15.4.

20. It is unlawful for sales of new motor vehicles to occur at locations other than at a retailer's licensed location, including from remote or temporarily established locations. See e.g. N.J.S.A. 39:10-19.2, see also N.J.A.C. 13:21-15.5(a)(13); N.J.A.C. 13:21-15.5(a)(14).

21. Furthermore, new car retailers are prohibited from conducting negotiations or other sales activity outside a licensed location, including over the internet or otherwise. See N.J.A.C. 13:21-15.5(a)(15).

22. The MVC is charged with enforcing the above-cited statutes and regulations. See N.J.A.C. 13:21-15.1 et seq.; see also N.J.S.A. 39:10-19.

ii. **MVC's Historical Application of New Jersey's Motor Vehicle Franchise and Dealer Licensing Laws to Tesla.**

23. Notwithstanding this established framework governing new car retailing in New Jersey, the Legislature has provided Tesla with a limited exemption from the franchise system that no other automaker enjoys.

24. In or about late 2012, Tesla opened two "direct sales" locations in New Jersey without appointing a franchisee to operate those locations as required by New Jersey law.

25. One location was at The Mall at Short Hills and the other location was at the Garden State Plaza in Paramus.

26. Tesla structured these locations as "galleries" and they lacked service facilities and infrastructure typically required of licensed new car dealers.

27. Moreover, Tesla's operations at these initial galleries violated a laundry list of New Jersey laws and regulations, including various consumer protection laws, Motor Vehicle Franchise and Dealer Licensing Laws, and the State's Sunday sales ban.

28. Tesla operated these initial galleries pursuant to licenses erroneously issued to it by the MVC on or about October 12, 2012.

29. However, Tesla should have never received licenses to operate the galleries because as a vehicle manufacturer, it was not legally allowed to obtain a new car dealer license to retail new vehicles directly to New Jersey consumers.

30. NJ CAR brought this issue to the attention of the MVC, which ultimately agreed that Tesla's licenses were issued in error because it had not appointed local franchisees.

31. At no point did Tesla argue that its purpose in operating the galleries was *not* to sell new motor vehicles to the public, and thus, no license was required.

32. That is, the MVC found that the activities occurring at Tesla's galleries were in furtherance of buying, selling or dealing in new motor vehicles in this State and therefore a new car dealer license was required.

33. On or about October 7, 2013, the MVC published a notice of proposed rulemaking in the New Jersey Register.

34. The proposal conformed the definition of a "proper person" for licensure in the MVC's new car dealer licensing regulations with the requirements of the FPA to explicitly prohibit motor vehicle manufacturers from directly selling new motor vehicles to consumers in New Jersey except through franchisees.

35. The proposal also imposed certain service and facilities requirements on new car dealers in accordance with State law.

36. On or about March 11, 2014, the MVC adopted a new regulation in accordance with this proposal.

37. The MVC's regulatory action ultimately motivated Tesla to mount an aggressive public relations campaign and lobby the Legislature to conform State law to Tesla's "direct sales" business model.

38. Tesla had limited success in that regard and is now exempt from the requirements of the State's franchise system *on a very limited basis*. See N.J.S.A. 56:10-27.1.

39. This exemption permits Tesla alone to offer its vehicles for sale directly to the public, but it can only do so at up to four (4) licensed locations in New Jersey so long as it provides at least one (1) location for vehicle service¹.

40. Specifically, Tesla's exemption from New Jersey's franchise system states that Tesla "may buy from and sell, offer to sell, or deal to a consumer a zero emission vehicle, provided that...[it] owns or operates, directly or indirectly . . . no more than four places of business in the State..." Id.

41. "Place of business" is defined as "[a] fixed geographical location at which the motor vehicle franchisor's motor vehicles are offered for sale and sold, but shall not include an office, a warehouse, a place of storage, or residence or a vehicle. See N.J.S.A. 56:10-26 (emphasis added).

42. In sum, Tesla is permitted to own and operate four (4) licensed retail locations, as opposed to having sales exclusively conducted through designated local franchisees.

iii. **MVC's Current Failure to Enforce Motor Vehicle Franchise and Dealer Licensing Laws Against Tesla.**

43. Although Tesla is prohibited from operating more than four "direct sales" locations in New Jersey, it currently operates five such locations in the State and is also preparing a sixth location in Lawrence Township, Mercer County.

¹ Notably, there is no limitation on the number of factory service facilities that Tesla can operate within this State.

44. Specifically, Tesla operates four locations which it classifies as “stores” in New Jersey, but it operates a fifth location at the Garden State Plaza which it continues to classify as a “gallery”.

45. Tesla now cites the “gallery” structure at that location as a flimsy basis to circumvent the statutory limit of four retail locations.

46. However, the use of the term “gallery” as opposed to “store” is a distinction without difference; at least in terms of the application of Motor Vehicle Franchise and Dealer Licensing Laws.

47. Indeed, both the MVC and Legislature clearly understood that Tesla’s initial operation of galleries required a change in the law for direct sales activity to occur at those locations.

48. Upon information and belief, Tesla currently engages in the following activities at its Garden State Plaza gallery: 1) presenting its vehicles for physical inspection by customers; 2) answering specific questions about Tesla’s vehicles, including pricing of different models; 3) discussing availability of different models; 4) arranging for test drives; 5) setting up client accounts on Tesla’s website with the purpose of eventually ordering a vehicle from the site; 6) allowing, encouraging, and aiding customers in designing their desired Tesla on a computer terminal at the gallery, saving those designs to the customer’s Tesla Account, to allow the customer to eventually order a vehicle from the site; and 7) accepting customers’ personal information for follow-up communications regarding a prospective purchase.

49. MVC is fully aware that these actions take place at Tesla’s gallery.

50. Whether or not any sales are finalized at Tesla's gallery, the above-mentioned activities that take place at the gallery are designed and intended to lead to a sale and certainly constitute "offering vehicles for sale".

51. Again, these are the same manufacturer activities at the same location that were previously recognized by both the MVC and the Legislature as requiring a specific carve out from the franchise system to be valid.

52. It therefore could not be clearer that these activities violate Tesla's limited exemption from the generally applicable framework regarding the sale and dealing of new motor vehicles, as set forth at N.J.S.A. 56:10-27.1.

53. Most perplexing, however, are not Tesla's actions, but those of MVC.

54. Tesla is operating an unlawful retail location at the Garden State Plaza to sell its vehicles in violation of a limited statutory exemption.

55. The State initially cited Tesla for its unlawful operations at this location.

56. However, instead of following through on its obligations to enforce the Motor Vehicle Franchise and Dealer Licensing Laws to protect consumers and encourage fair competition, the State entered into a settlement agreement in November 2018 authorizing Tesla to continue to operate this gallery in a manner that violates the plain language of the law. Attached hereto as **Exhibit A** is a true and accurate copy of the Settlement Agreement.

57. There is simply no justifiable basis for the State to continue to permit Tesla's conduct here.

58. Indeed, the only explanation for the settlement agreement between the State and Tesla is the State's affinity for Tesla versus other automotive retailers.

B. Facts Pertaining to the Failure to Enforce New Jersey's Consumer Protection Laws

66. State Defendants' refusal to enforce the Motor Vehicle Franchise and Dealer Licensing Laws against Tesla cannot be considered in a vacuum.

67. When such refusal is considered alongside the DCA's failure to enforce New Jersey's consumer protection laws as to Tesla, it becomes clear that State Defendants have chosen to actively ignore Tesla's unlawful acts and have permitted them to continue.

i. Model 3 Bait and Switch

68. For over three years, Tesla has marketed, advertised, and created a media frenzy over its production of the Model 3 electric vehicle that purportedly would cost consumers \$35,000 to purchase.

69. In or around March of 2016, Tesla began accepting pre-orders for this vehicle, eventually reporting that it had received more than 400,000 orders for the Model 3.

70. Tesla claims that 11,000 New Jersey consumers had placed an order for the \$35,000 Model 3.

71. What these customers had not been made aware of, however, was Tesla's plans to convert these orders into sales of much more expensive vehicles, unless consumers were willing to wait an indeterminate amount of time for the \$35,000 Model 3.

72. In fact, there have been various reports, which State Defendants are undoubtedly aware, of Tesla reaching out to customers and encouraging them to transfer their deposit for the lower priced Model 3 to either more expensive versions of that model or to other more expensive Tesla vehicles.

73. Prior to Tesla delivering any \$35,000 Model 3, it had removed from its website customers' ability to order such vehicles, while continuing to tout the vehicle and only sell a Model 3 costing thousands of dollars more.

74. Since then, however, Tesla has begun delivering the \$35,000 Model 3 (actually having already raised the base price to \$35,400), only years after they began taking orders for the vehicles.

75. Notwithstanding that this vehicle is currently for sale and purportedly available for delivery, customers are not able to order this vehicle from Tesla's website.

76. Instead, as of the date of this filing, when customers go to order a Model 3 on Tesla's website, the cheapest version that they are able to design and order is a \$38,990 version of the vehicle.

77. In fact, after years of marketing and advertising the \$35,000 Model 3, the vehicle does not appear to be listed **anywhere** on Tesla's website to order, notwithstanding that the vehicle is purportedly available for delivery.

78. Based upon the definition of "bait and switch" contained in the State's Vehicle Advertising Regulations, at N.J.A.C. 13:45A-26A.4, promulgated and enforced by the DCA, Tesla has been openly and systemically engaging in an unlawful scheme for years related to the \$35,000 Model 3.

79. The State would not tolerate such blatantly unlawful and deceptive conduct from licensed new car dealers, yet it has inexplicably permitted Tesla to flout New Jersey consumer protection laws, to the detriment of New Jersey consumers.

ii. **DCA's Failure to Enforce Consumer Protection Laws Against Tesla Regarding its Internet Advertising Violations**

80. In addition to the DCA's failure to enforce consumer protection laws related to Tesla's "bait and switch" scheme, it has also refused to enforce the State's Vehicle Advertising Regulations for the multitude of other violations committed by Tesla.

81. As set forth above, Tesla is a "direct sales" manufacturer and as such, is solely responsible for the marketing and advertising of its vehicles, unlike in the traditional motor vehicle franchise framework where manufacturers market new vehicle models and franchised dealers advertise specific new vehicles for sale at an advertised price.

82. Tesla has seemingly failed, however, to apply any of its resources to ensure that it is complying with these consumer protection laws as it relates to its advertisements.

83. The DCA, meanwhile, has done nothing to stop Tesla's violations or hold Tesla accountable for playing by a different set of rules than other new car advertisers, such as NJ CAR's members.

84. For example, when visiting Tesla's website to design and order a Model 3, the default price "include[s] potential savings".

85. When the Tesla website was accessed from Plaintiff's counsel's office in Newark, New Jersey on the date of this filing, these "potential savings" include potential incentives and gas savings totaling \$6,175.

86. The potential incentive appears to be a federal income tax credit as a result of the Model 3 being an electric "zero emissions" vehicle; however, this is not readily apparent from the advertised price of the Model 3 nor is there any explanation as to who qualifies or benefits from this tax credit.

87. Additionally, there is no explanation of how the reported gas savings are calculated.

88. Tesla also provides the advertised price on its website without including its “destination & doc fee” of \$1,200 in that price.

89. Finally, and most disturbing, Tesla’s advertising for both retail sales and leases includes an “Autopilot” option that makes many bold claims regarding the Model 3’s “self-driving” capabilities.

90. For instance, on the date of this filing, Tesla claims on its website that its Autopilot system “enables your car to steer, accelerate and brake automatically for other vehicles **and pedestrians** within its lane.”

91. Tesla further claims that this “full self-driving capability” will allow the vehicle to engage in “automatic driving” which includes “overtaking slower cars” and “automatic lane changes while driving on the highway”.

92. Finally, Tesla claims that drivers can “summon” the Model 3 to come find the driver in a parking lot.

93. However, further down the webpage, in smaller print, the advertisement for the Autopilot feature states that “[t]he currently enabled features require active driver supervision and do not make the vehicle autonomous.”

94. Despite this glaring (and unlawful) contradiction, a consumer can purchase the “full self-driving capability” feature for an extra \$6,000 as of the date of this filing.

95. Tesla is offering vehicles equipped with these purported self-driving features in the New Jersey marketplace even though its technology is far from proven.

96. Indeed, Consumer Reports recently concluded that: “Tesla is showing what not to do on the path to self-driving cars: release increasingly automated driving systems that aren’t vetted properly. . . . Before selling these systems, automakers should be required to give the public validated evidence of that system’s safety---backed by rigorous simulations, track testing, and the use of safety drivers in real-world conditions.”

97. Unfortunately, because the public is buying into Tesla’s lofty and unchecked claims regarding the capabilities of its autopilot system, human lives are being lost, and the DCA has failed to take any steps to protect the public from these false and misleading claims.

98. These violations are readily apparent and known to the State. However, it has done nothing to force Tesla to correct these unlawful practices.

99. By permitting Tesla to continue these prohibited advertising practices, not only is the State creating an uneven playing field to the detriment of consumers and competing licensed new car retailers who do comply with these requirements, but the State is also encouraging a “race to the bottom” among competing auto retailers who have been encouraged by the State’s lack of enforcement and adopted Tesla’s unlawful marketing schemes, such as operating unlicensed “galleries”.

100. Such actions must not be countenanced, and the State must immediately enforce its statutes and regulations as to Tesla and its deceptive and unconscionable practices.

101. NJ CAR has brought these issues to the MVC’s and DCA’s attention on multiple occasions, with the hope that the State Defendants would commence enforcing the aforementioned statutes and regulations against Tesla to protect consumers and to ensure that all businesses engaged in advertising and selling new vehicles operate on a level playing field.

102. State Defendants have failed and refused to take any action, necessitating the within action.

LEGAL CLAIMS

COUNT I

(MVC's and Fulton's Failure to Enforce Motor Vehicle Franchise and Dealer Licensing Laws)

103. Plaintiff repeats and restates the allegations in the foregoing paragraphs of the Complaint as if fully set forth herein.

104. Generally, retailers seeking a license to engage in the business of buying, selling or dealing in new motor vehicles in New Jersey must be franchised, pursuant to N.J.S.A. 39:10-19 and N.J.S.A. 56:10-26 et seq.

105. Once a franchised retailer is licensed, it is only permitted to sell or deal in new motor vehicles at the retailer's licensed location. See N.J.S.A. 39:10-19; see also N.J.A.C. 13:21-15.2 and 15.4.

106. It is unlawful for sales of new motor vehicles to occur at locations other than at a retailer's licensed location, including from remote or temporarily established locations. See e.g. N.J.S.A. 39:10-19.2; see also N.J.A.C. 13:21-15.5(a)(13); N.J.A.C. 13:21-15.5(a)(14).

107. Furthermore, new car retailers are prohibited from conducting negotiations or other sales activities outside a licensed location, including over the internet or otherwise. See N.J.A.C. 13:21-15.5(a)(15).

108. Tesla was granted a limited exception from the normal motor vehicle franchise framework established by the Legislature, permitting Tesla to offer its vehicles for sale directly to the public at up to four (4) licensed locations in New Jersey so long as it provides at least one (1) location for vehicle service. N.J.S.A. 56:10-27.1.

109. As set forth above, Tesla has violated the above-referenced statutes and regulations with MVC's knowledge and, practically, its approval.

110. Tesla currently operates five direct sales locations in New Jersey, with a sixth one being prepared.

111. Tesla currently engages in the following activities at its Garden State Plaza gallery: 1) presenting its vehicles for physical inspection by customers; 2) answering specific questions about Tesla's vehicles, including pricing of different models; 3) discussing availability of different models; 4) arranging for test drives; 5) setting up client accounts on Tesla's website with the purpose of eventually ordering a vehicle from the site; 6) allowing, encouraging, and aiding customers in designing their desired Tesla on a computer terminal at the gallery, saving those designs to the customer's Tesla Account, to allow the customer to eventually order a vehicle from the site; and 7) accepting customers' personal information for follow-up communications regarding a prospective purchase.

112. These activities equate to "offering vehicles for sale" as defined by the applicable statutes and regulations that are to be enforced by the MVC such that the MVC is permitting Tesla to offer vehicles for sales at unlicensed locations in violation of N.J.S.A. 56:10-27.1, 13:21-15.5(a)(13), N.J.A.C. 13:21-15.5(a)(14), and N.J.A.C. 13:21-15.5(a)(15).

113. In fact, MVC had cited Tesla for these unlawful operations previously. Attached hereto as **Exhibit B** are true and accurate copies of MVC's records of violations.

114. In November 2018, however, MVC entered into a settlement agreement authorizing Tesla to continue to operate in a manner that violates the plain language of the law.

115. The MVC is charged with enforcing the above-cited statutes and regulations. See N.J.A.C. 13:21-15.1 et seq.; see also N.J.S.A. 39:10-19.

116. Contrary to the express terms of the aforementioned statutes and regulations, the MVC has failed to enforce same as evidenced by its agreement with Tesla to allow the continued use of unlicensed locations to offer vehicles for sale.

117. MVC's failure to enforce the aforementioned statutes and regulations is continuing and on-going and will continue unless ordered otherwise.

118. MVC's failure to enforce the aforementioned statutes and regulations is arbitrary, capricious, and unreasonable and has directly and negatively impacted NJ CAR and its members insofar as they are obligated to comply with the Motor Vehicle Franchise and Dealer Licensing Laws under penalty while a direct competitor is given a free pass by the MVC to violate same and is therefore given an unfair competitive advantage.

119. The MVC's failure to enforce the aforementioned statutes and regulations is contrary to their requirements, intent, and purpose.

120. MVC's failure to enforce the aforementioned statutes and regulations is without adequate factual or legal foundation.

WHEREFORE, Plaintiff demands judgment against MVC and Fulton on Count One as follows:

- a. Declaring that MVC and Fulton's failure to enforce the Motor Vehicle Franchise and Dealer Licensing Laws as to Tesla is arbitrary, capricious, and unreasonable;
- b. Declaring that Tesla's actions with regard to selling vehicles or offering to sell vehicles at their Garden State Plaza gallery violate the Motor Vehicle Franchise and Dealer Licensing Laws.
- c. Directing MVC and Fulton to enforce the Motor Vehicle Franchise and Dealer Licensing Laws against Tesla as required by those statutes and regulations;

- d. Requiring MVC and Fulton to implement policies and procedures to ensure the enforcement of the Motor Vehicle Franchise and Dealer Licensing Laws;
- e. Awarding costs of suit and reasonable attorneys' fees;
- f. Awarding such other relief as the Court deems just and proper.

COUNT II

(DCA's and Rodriguez's Failure to Enforce Consumer Protection Laws Against Tesla)

121. Plaintiff repeats and restates the allegations of the foregoing paragraphs of the Complaint as if fully set forth herein.

122. New Jersey has some of the strongest consumer protection statutes and regulations in the country, evidencing a strong public policy to protect consumers from nefarious commercial practices.

123. One such set of regulations is the New Jersey Motor Vehicle Advertising Practices Regulations ("Vehicle Advertising Regulations"), promulgated and enforced by the DCA. See N.J.A.C. 13:45A-26A.1 et seq.

124. Violations of the Vehicle Advertising Regulations are *per se* violations of the Consumer Fraud Act ("CFA"). See N.J.A.C. 13:45A-26A.1.

125. The Vehicle Advertising Regulations establishes the practice of "bait and switch" advertising of motor vehicles as unlawful and violative of the CFA. See N.J.A.C. 13:45A-26A.4.

126. Illegal "Bait and switch" advertising practices are defined, pursuant to N.J.A.C. 13:45A-26A.4, as:

1. The advertisement of a motor vehicle as part of a plan or scheme not to sell or lease it or not to sell or lease it at the advertised price.

2. Without limiting other means of proof, the following shall be prima facie evidence of a plan or scheme not to sell or lease a motor vehicle as advertised or not to sell or lease it at the advertised price:
 - (i) Refusal to show, display, sell or lease the advertised motor vehicle in accordance with the terms of the advertisement, unless the vehicle has been actually sold or leased during the period of publication; in that case, the advertiser shall retain records of that sale or lease for 180 days following the date of the transaction, and shall make them available for inspection by the Division of Consumer Affairs.
 - (ii) Accepting a deposit for an advertised motor vehicle, then switching the purchaser to a higher-priced motor vehicle, except when the purchaser has initiated the switch as evidenced by a written to that effect signed by the purchaser.
 - (iii) The failure to make delivery of an advertised motor vehicle, then switching the purchaser to a higher-priced motor vehicle; except when the purchaser has initiated the switch as evidence by a writing to that effect signed by the purchaser.

127. The DCA has failed to enforce these regulations against Tesla related to Tesla advertising and collecting orders for the \$35,000 Model 3.

128. As set forth above, upon information and belief Tesla collected these orders from thousands of New Jersey consumers years before any Model 3 with a purchase price of \$35,000 was delivered to a consumer.

129. While Tesla was collecting these orders, knowing that it would not be delivering these vehicles for years, Tesla was encouraging New Jersey consumers to purchase more expensive Tesla's or be forced to wait an unknown time for a vehicle that Tesla had been heavily marketing and advertising.

130. Furthermore, now that such a vehicle is actually available for delivery, New Jersey consumers cannot even purchase the vehicle through Tesla's website, one of its main mediums for selling its vehicles.

131. In fact, this base model does not appear anywhere on Tesla's website and consumers are led to believe that the least expensive Model 3 which they can purchase starts at \$38,990.

132. These facts make clear that Tesla has been openly and systemically engaging in an unlawful "bait and switch" scheme for years related to the \$35,000 Model 3 and yet the DCA has refused to take any steps to hold Tesla accountable for its unlawful actions.

133. In addition to the DCA's failure to enforce the "bait and switch" provisions of the Vehicle Advertising Regulations against Tesla, the DCA has also failed to enforce other provisions of the Vehicle Advertising Regulations against Tesla.

134. The Vehicle Advertising Regulations mandate detailed disclosures when a motor vehicle is offered for sale or lease at an advertised price. See e.g. N.J.A.C. 13:45A-26A.5; N.J.A.C. 13:45A-26A.6.

135. The Vehicle Advertising Regulations also require that retailers, including Tesla, state all disclaimers, qualifiers, or limitations that in fact limit, condition, or negate an unconditional offer. See N.J.A.C. 13:45A-26A.7(a)(4).

136. Tesla has failed to comply with the aforementioned provisions and the DCA has failed to take any steps to enforce Tesla's compliance.

137. Evidencing Tesla's failure to comply with the Vehicle Advertising Regulations is the fact that when visiting Tesla's website to design and order a Model 3, the default price "include[s] potential savings."

138. When the Tesla website was accessed from Plaintiff's counsel's office in Newark, New Jersey on the date of this filing, these "potential savings" include potential incentives and gas savings totaling \$6,175.

139. The potential incentive included in the "potential savings" appears to be a conditional federal income tax credit as a result of the Model 3 being an electric "zero emission" vehicle; however, this is not readily apparent from the advertised price of the Model 3 nor is there any explanation as to who qualifies or benefits from this tax credit.

140. Additionally, there is no explanation of how the reported gas savings are calculated.

141. Tesla statement of its advertised price for the Model 3 is inherently misleading and deceptive. More important, providing an advertised price which has been calculated by deducting anything except a manufacturer's rebate or dealer's discount is explicitly prohibited by the Vehicle Advertising Regulations. See N.J.A.C. 13:45A-26A.7(a)(2).

142. Additionally, and upon information and belief, Tesla advertises the price of specific vehicles without including a "destination & doc fee" of \$1,200.00 in the price, in violation of the Vehicle Advertising Regulations at N.J.A.C. 13:45A-26A.5(a)(2).

143. The DCA has also failed to enforce New Jersey's consumer protection laws as they relate to Tesla and its misleading and deceptive claims relating to its "Autopilot" option that makes many bold claims regarding the Model 3's "self-driving" capabilities.

144. These claims, as set forth above, are misleading, deceptive, and in violation of the CFA at N.J.S.A. 56:8-2.

145. New Jersey consumers are harmed by these misleading and deceptive claims, paying thousands of dollars for the "Autopilot" option.

146. More alarming, however, are the numerous reports of consumers relying on Tesla's deceptive and misleading advertising and abdicating driving responsibility by falling asleep while Tesla's are in "Autopilot" mode. See [Disturbing video shows driver apparently asleep in moving Tesla on Highway](https://www.cbsnews.com/news/tesla-driver-asleep-at-the-wheel-disturbing-video-shows-driver-apparently-asleep-in-moving-tesla-on-highway), <https://www.cbsnews.com/news/tesla-driver-asleep-at-the-wheel-disturbing-video-shows-driver-apparently-asleep-in-moving-tesla-on-highway>, (Sept. 10, 2019).

147. The DCA, through the Attorney General, is charged with enforcing the above-cited statutes and regulations. See N.J.S.A. 56:8-3.1; see also N.J.S.A. 56:8-4.

148. Contrary to the express terms of the aforementioned statutes and regulations, the DCA has failed to enforce same as evidenced by the above actions.

149. DCA's failure to enforce the aforementioned statutes and regulations is continuing and on-going and will continue unless ordered otherwise.

150. DCA's failure to enforce the aforementioned statutes and regulations is arbitrary, capricious, and unreasonable and has directly and negatively impacted NJ CAR and its members insofar as they are obligated to comply with the Vehicle Advertising Regulations and CFA under penalty while a direct competitor is given a free pass by the DCA to violate same and is therefore given an unfair competitive advantage.

151. The DCA's failure to enforce the aforementioned statutes and regulations is contrary to their requirements, intent, and purpose.

152. DCA's failure to enforce the aforementioned statutes and regulations is without adequate factual or legal foundation.

WHEREFORE, Plaintiff demands judgment against DCA and Rodriguez on Count Two as follows:

- a. Declare that DCA's and Rodriguez's failure to enforce the Vehicle Advertising Regulations and CFA as to Tesla as arbitrary, capricious, and unreasonable;
- b. Directing DCA and Rodriguez to enforce the Vehicle Advertising Regulations and CFA against Tesla as required by those statutes and regulations;
- c. Requiring DCA and Rodriguez to implement policies and procedures to ensure the enforcement of the Vehicle Advertising Regulations and CFA;
- d. Awarding costs of suit and reasonable attorneys' fees;
- e. Awarding such other relief as the Court deems just and proper.

COUNT III

(State Defendants Violations of Equal Protection Under 42 U.S.C. 1983)

153. Plaintiff repeats and restates the allegations of the foregoing paragraphs of the Complaint as if fully set forth herein.

154. The Fourteenth Amendment of the United States Constitution provides a private right of action for injunctive relief to remedy violations thereof.

155. The Equal Protections Clause of the Fourteenth Amendment to the United States Constitution prohibits, among other things, selective enforcement of statutes and regulations by government entities.

156. The aforementioned actions taken by State Defendants constitute violations of the Equal Protection Clause in that members of NJ CAR are selectively held out for enforcement of the laws, as the State Defendants refuse to enforce Motor Vehicle Franchise and Dealer Licensing Laws, Vehicle Advertising Regulations, or the CFA against Tesla but continue to enforce same against NJ CAR members. See Division of Consumer Affairs Resolves Three Consumer Fraud Investigations Involving Sales of Cars, Parts, and/or Accessories, <https://www.njconsumeraffairs.gov/News/Pages/08212019.aspx> (Aug. 21, 2019).

157. State Defendants consciously exercised selective enforcement of the aforementioned statutes and regulations against NJ CAR's members while refusing to enforce same against Tesla, to the detriment of NJ CAR's members and the public at large.

158. State Defendants' decisions to selectively enforce the aforementioned statutes and regulations is based on an arbitrary classification.

159. No legitimate government interest exists in selectively enforcing statutes and regulations which were enacted for the purpose of protecting New Jersey consumers and fostering increased competition while refusing to enforce same against Tesla to the detriment of NJ CAR's members and New Jersey consumers.

160. State Defendants' selective enforcement of the aforementioned statutes and regulations as it relates to Tesla is arbitrary, capricious and unreasonable and has directly and negatively impacted NJ CAR's members and New Jersey consumers.

WHEREFORE, Plaintiff demands judgment against State Defendants on Count Three as follows:

- a. Declaring State Defendants selective enforcement of the Motor Vehicle Franchise and Dealer Licensing Laws, Vehicle Advertising Regulations, and CFA as to Tesla and to the detriment of NJ CAR's members and New Jersey consumers is in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
- b. Requiring State Defendants to implement policies and procedures to ensure the enforcement of the above-referenced statutes and regulations are enforced regarding Tesla;

- c. Restraining State Defendants from refusing to enforce the aforementioned statutes and regulations against Tesla;
- d. Awarding costs of suit and reasonable attorneys' fees;
- e. Awarding such other relief as the Court deems just and proper.

COUNT IV

(State Defendants Violations of the State Guarantee Clause)

161. Plaintiff repeats and restates the allegations of the foregoing paragraphs of the Complaint as if fully set forth herein.

162. Article I, Paragraph 1 of the New Jersey Constitution ("State Guarantee Clause") states:

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

163. The State Guarantee Clause contains the right to equal protection of the laws.

164. The State Guarantee Clause contains protections coterminous with, or greater than, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

165. The State Guarantee Clause forbids State Defendants from taking arbitrary, capricious, or unreasonable action, including, but not limited to, the selective enforcement of statutes and regulations.

166. State Defendants' actions constitute violations of the State Guarantee Clause in that NJ CAR's members are selectively treated insofar as State Defendants refuse to enforce Motor Vehicle Franchise and Dealer Licensing Laws, Vehicle Advertising Regulations, or the CFA as to Tesla while simultaneously enforcing same against NJ CAR's members.

167. State Defendants consciously exercised selective enforcement of the aforementioned statutes and regulations against NJ CAR's members while refusing to enforce same against Tesla, to the detriment of NJ CAR's members and the public at large.

168. State Defendants' decisions to selectively enforce the aforementioned statutes and regulations is based on an arbitrary classification.

169. No legitimate government interest exists in selectively enforcing statutes and regulations which were enacted for the purpose of protecting New Jersey consumers and fostering increased competition while refusing to enforce same against Tesla to the detriment of NJ CAR's members and New Jersey consumers.

170. State Defendants' selective enforcement of the aforementioned statutes and regulations as it relates to Tesla is arbitrary, capricious and unreasonable and has directly and negatively impacted NJ CAR's members and New Jersey consumers.

WHEREFORE, Plaintiff demands judgment against State Defendants on Count Four as follows:

- a. Declaring State Defendants selective enforcement of the Motor Vehicle Franchise and Dealer Licensing Laws, Vehicle Advertising Regulations, and CFA as to Tesla and to the detriment of NJ CAR's members and New Jersey consumers is in violation of the State Guarantee Clause;
- b. Requiring State Defendants to implement policies and procedures to ensure the enforcement of the above-referenced statutes and regulations are enforced regarding Tesla;
- c. Restraining State Defendants from refusing to enforce the aforementioned statutes and regulations against Tesla;

- d. Awarding costs of suit and reasonable attorneys' fees;
- e. Awarding such other relief as the Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-3, Angelo J. Genova, Esq. and Jennifer Borek, Esq. are hereby designated as trial counsel for Plaintiff in the above matter.

CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify to the best of my knowledge that the matter in controversy is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, Additionally, I hereby certify to the best of my knowledge that I know of no party who should be joined in the action at this time.

GENOVA BURNS LLC
Attorneys for Plaintiff,
New Jersey Coalition of Automotive Retailers

s/ Jennifer Borek

ANGELO J. GENOVA
JENNIFER BOREK

Date: September 18, 2019