

SCANNED

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FILED
SAN MATEO COUNTY

SEP 08 2008

Clerk of the Superior Court
 By 
 DEPUTY CLERK

12 Attorneys for Defendant and Cross-Complainant
 13 Tesla Motors, Inc.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 15 COUNTY OF SAN MATEO

16 MAGNA POWERTRAIN USA, INC.,
 17
 18 Plaintiff,

19 v.

20 TESLA MOTORS, INC. and DOES 1
 21 through 10,
 22 Defendants.

CASE NO.: CV470533
 ANSWER TO AMENDED
 COMPLAINT

23 TESLA MOTORS, INC.,
 24 Cross-Complainant,

25 v.

26 MAGNA POWERTRAIN USA, INC., NEW
 27 PROCESS GEAR, and DOES 1 through 10,
 28 Cross-Defendants.

1 Defendant and cross-complainant TESLA MOTORS, INC. ("TESLA") hereby answers
2 the Amended Complaint for Breach of Contract ("Amended Complaint") of plaintiff and cross-
3 defendant MAGNA POWERTRAIN USA, INC. ("Plaintiff") as follows.

4 **GENERAL DENIAL**

5 Pursuant to Code of Civil Procedure Section 431.30(d), TESLA denies generally and
6 specifically, conjunctively and disjunctively, each and every allegation contained in the
7 Amended Complaint and in each and every purported cause of action contained and asserted
8 therein. TESLA further denies that Plaintiff has suffered injury, damages or loss in the amount
9 alleged, or of any sort or in any sum, or that Plaintiff is entitled to any relief at all, by reason of
10 any act or omission or purported act or omission of TESLA.

11 By alleging the defenses set forth below, TESLA is not in any way agreeing or conceding
12 that it has the burden of proof or the burden of persuasion on any of these issues.

13 **AFFIRMATIVE DEFENSES**

14 TESLA reserves the right to allege additional defenses as they become known, or as they
15 evolve during the litigation, and to amend its Answer accordingly.

16 **FIRST AFFIRMATIVE DEFENSE**

17 (FAILURE TO STATE A CAUSE OF ACTION)

18 The Complaint and each purported cause of action contained therein fail to state a claim
19 or cause of action against TESLA upon which relief can be granted and/or fail to state facts
20 sufficient to state a cause of action.

21 **SECOND AFFIRMATIVE DEFENSE**

22 (LACK OF STANDING)

23 Plaintiff's claims are barred, in whole or in part, because Plaintiff and/or persons
24 allegedly represented lack standing to assert any or all of the purported causes of action alleged
25 in the Complaint.

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THIRD AFFIRMATIVE DEFENSE

(WAIVER)

Plaintiff's Complaint, and each cause of action asserted therein, is barred by the doctrine of waiver by reason of Plaintiff's conduct, actions, omissions, and/or communications.

FOURTH AFFIRMATIVE DEFENSE

(ESTOPPEL)

Plaintiff's Complaint, and each cause of action asserted therein, is barred by the doctrine of estoppel by reason of Plaintiff's conduct, actions, omissions, and/or communications.

FIFTH AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

Plaintiff's Complaint, and each cause of action asserted therein, is barred by the doctrine of unclean hands by reason of Plaintiff's conduct, actions, omissions, and/or communications.

SIXTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE)

Plaintiff's Complaint, and each cause of action asserted therein, is barred by its failure to use reasonable efforts to mitigate damages or injury, if any, that would have prevented (or, at a minimum, substantially reduced) its alleged injury or damage. Any recovery by Plaintiff must be reduced or barred by reason hereof.

SEVENTH AFFIRMATIVE DEFENSE

(OFFSET)

Any recovery for damages allegedly incurred by Plaintiff, if any, is offset in the amount of any benefits actually received by Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

(RESERVATION OF RIGHTS)

TESLA may have additional, as yet unidentified, defenses available. TESLA reserves the right to assert additional defenses that are revealed by TESLA's investigation of this action or through discovery.

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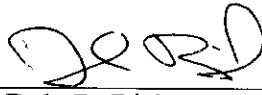
PRAYER FOR RELIEF

WHEREFORE, TESLA prays as follows:

1. That Plaintiff take nothing by the Amended Complaint;
2. That the Amended Complaint, and each and every purported claim for relief and/or cause of action alleged therein, be dismissed with prejudice, and judgment be entered in favor of TESLA;
3. That TESLA recover its costs of suit incurred herein, including reasonable attorneys' fees; and
4. For such other and further relief as the Court may deem just and proper.

Dated: September 8, 2008

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 
Dale R. Bish

Attorneys for Defendant
TESLA MOTORS, INC.