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FILED
SAN MATEO COUNTY

JUN 11 2009

Clerk of the Superior Court
By *[Signature]*
DEPUTY CLERK

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN MATEO

11
12 DAVID VESPREMI; GENE
13 GLAUDELL; and JENNIFER LIVIGNI,
14 individually, and on behalf of all others
15 similarly situated,
16
17 Plaintiffs,
18
19 v.
20 TESLA MOTORS, INC., a Delaware
21 corporation,
22
23 Defendant.

CASE NO.: CIV-474656
**DEFENDANT TESLA MOTORS,
INC.'S ANSWER TO PLAINTIFFS'
THIRD AMENDED COMPLAINT**

20 Defendant Tesla Motors, Inc. ("Defendant" or "Tesla"), by and through its attorneys,
21 hereby files its Answer to the unverified Third Amended Complaint (the "Complaint") filed by
22 Plaintiffs David Vespremi, Gene Glauzell, and Jennifer LiVigni ("Plaintiffs") as follows:

23 **GENERAL DENIAL**

24 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Tesla generally
25 denies each and every material allegation contained in Plaintiffs' unverified Third Amended
26 Complaint. Tesla further denies that Plaintiffs have been damaged in the sum alleged, in any
27 other sum, or at all, by reasons of any act or omission on the part of Tesla, and denies that
28 Plaintiffs are entitled to any relief whatsoever by reason of their Complaint.

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AFFIRMATIVE DEFENSES

Without waiving the foregoing answer, Tesla asserts the following separate affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

The Complaint, and each purported cause of action therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

The maintenance of this action is barred to the extent that Plaintiff seeks relief for any purported claims that did not accrue within the applicable limitations period.

THIRD AFFIRMATIVE DEFENSE

(Waiver, Estoppel, and Consent)

The Complaint, and each purported cause of action contained therein, is barred in whole or in part by the doctrines of waiver, estoppel, and consent.

FOURTH AFFIRMATIVE DEFENSE

(No Entitlement to Punitive Damages)

Each of Plaintiff's claims fails to state facts sufficient to constitute a cause of action against Tesla that would support an award of punitive damages, and therefore punitive damages are precluded under the applicable provisions of law, including California Civil Code Section 3294.

FIFTH AFFIRMATIVE DEFENSE

(Collateral Estoppel)

The Complaint, and each purported cause of action contained therein, is barred in whole or in part by the doctrine of collateral estoppel.

1 **SIXTH AFFIRMATIVE DEFENSE**
2 (Additional Defenses)

3 Tesla currently has insufficient knowledge or information on which to form a belief as to
4 whether it may have additional, as yet unstated, defenses available. Tesla reserves herein the
5 right to assert additional affirmative defenses in the event discovery indicates they would be
6 appropriate.


7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Tesla prays for judgment against Plaintiffs as follows:

- 10 1. That Plaintiffs take nothing by this action;
11 2. That judgment be entered in favor of Tesla and against Plaintiffs and that
12 Plaintiffs' action be dismissed in its entirety;
13 3. For costs incurred herein;
14 4. For reasonable attorneys' fees incurred herein; and
15 5. For such other and further relief as the Court may deem just and proper.

16
17 Dated: June 11, 2009

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

18
19 By: 
20 Stephen L. Taesch

21 Attorneys for Defendant
22 TESLA MOTORS, INC.

1 **PROOF OF SERVICE**

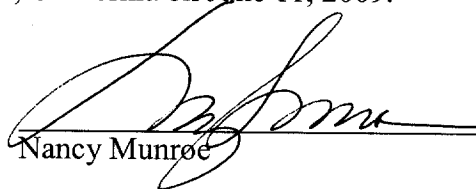
2 I, Nancy Munroe, declare:

3 I am employed in Santa Clara County. I am over the age of 18 years and not a party to
4 the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill
5 Road, Palo Alto, California 94304-1050. I am readily familiar with Wilson Sonsini Goodrich &
6 Rosati's practice for collection and processing of correspondence for same-day delivery by
7 messenger. In the ordinary course of business, correspondence would be consigned to a
8 messenger service on this date.

9 On this date, I caused to be personally served **DEFENDANT TESLA MOTORS,**
10 **INC.'S ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT** on the person
11 listed below by placing the document described above in an envelope addressed as indicated
12 below, which I sealed. I consigned the envelope to a messenger for hand delivery by placing it
13 for collection and processing on this day, following ordinary business practices at Wilson
14 Sonsini Goodrich & Rosati.

15 Yosef Peretz
16 PERETZ & ASSOCIATES
17 22 Battery Street, Suite 202
18 San Francisco, CA 94111

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct. Executed at Palo Alto, California on June 11, 2009.

20
21 
22 Nancy Munroe