UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:24-cv-01760

NORA BASS, individually, and as personal representative of the ESTATE OF HANS VON OHAIN, deceased; and R.V.O., a minor, who proceeds by her next friend and natural guardian NORA BASS,

Plaintiffs,

v.

TESLA, INC.; and DOES 1 to 25, inclusive,

Defendants.

DEFENDANT TESLA, INC.'S NOTICE OF REMOVAL

In accordance with 28 U.S.C. §§ 1441 and 1446, Tesla, Inc. ("Tesla") hereby gives notice of the removal to this Court of the above-captioned action from the District Court of the State of Colorado, County of Clear Creek, Case No. 2024CV30015. Defendant files this Notice without waiving any defenses, exceptions, or obligations that may exist in its favor in state or federal court. Tesla bases this Removal on the following grounds:

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiffs commenced a wrongful death action against Tesla in the District Court of the State of Colorado, County of Clear Creek, alleging claims sounding in strict liability, negligence, breach of warranty, fraudulent concealment and violations of the Colorado Consumer Protection Act, as a result of a motor vehicle accident that occurred on May 16, 2022, along Bear Creek Road in Clear Creek County, Colorado. Plaintiffs seek damages for

wrongful death, survival, and loss of consortium individually and/or as representative of the Estate of Hans Von Ohain and next friend of their minor child, R.V.O. (*See* Compl., Ex. A to Collier Decl.).

2. Plaintiffs allege that on May 16, 2022, Hans Von Ohain, husband of Plaintiff Nora Bass and father of Plaintiff R.V.O., was fatally injured when the Tesla Model 3 he was operating, bearing VIN 5YJ3E1EB0MF965608, unexpectedly veered right, leaving the roadway and colliding with a tree. (*See id.*).

3. Plaintiffs filed this action on or about May 3, 2024. (*See id.*).

4. Plaintiffs served a copy of the Summons and Complaint on Tesla's registered agent on May 23, 2024. (*See* Aff. of Service, Ex. B to Collier Decl.).

BASIS OF JURISDICTION UNDER 28 U.S.C. §§ 1332(a) AND 1441

5. This Court has original subject matter jurisdiction over this action under 28 U.S.C. § 1332, because Plaintiffs and the Defendant are citizens of different states and the matter in controversy exceeds $75,000, exclusive of interest and costs.

Diversity of Citizenship

6. Tesla has continuously been incorporated under the laws of the state of Delaware with its principal place of business in Austin, Texas.

7. At the time of the incident, Plaintiff Bass was a resident of Jefferson County, Colorado and currently resides in Franklin County, Ohio. (*See* Compl. ¶ 1).

8. At the time of the incident, Minor child R.V.O. was a resident of Jefferson County Colorado and currently resides in Franklin County, Ohio. (*See* Compl. ¶ 2).

9. Thus, at the time Plaintiffs commenced this action and as of the date of this

Notice of Removal, Plaintiffs and Defendant are diverse from each other.

Amount in Controversy

10. Plaintiffs failed to plead the precise amount of their alleged damages in the Complaint; only that the amount exceeded the jurisdictional minimum of $25,000.[1] Because the Complaint in this case does not recite a specific dollar amount of recovery sought, the burden is on the removing party to establish by a preponderance of the evidence that the jurisdictional amount is satisfied. *McPhail v. Deere & Co.*, 529 F.3d 947, 953 (10th Cir. 2008). However, "[a] defendant who has filed a notice of removal asserting diversity jurisdiction 'is entitled to stay in federal court unless it is legally certain that less than $75,000 is at stake. If the amount is uncertain, then there is potential controversy, which is to say that at least 75,000 dollars is in controversy in the case.'" *Romero v. State Farm Fire & Cas. Co.*, No. 1:14-cv-03158-REB-KLM, 2016 WL 704612, at *1 (D. Colo. Feb. 23, 2016) (quoting *McPhail v Deere & Co*., 529 F.3d at 954 - 955).

11. Tesla disputes that it is liable for any damages whatsoever to Plaintiffs. Nevertheless, Tesla can demonstrate that the amount in controversy exceeds $75,000 under the applicable "preponderance of the evidence" standard.

12. In the present case, Plaintiffs allege entitlement to relief due to wrongful death, survival, and loss of consortium damages arising from the aforementioned May 16, 2022 motor vehicle accident. (*See* Compl.).

[1] On the Civil Cover Sheet attached to the Complaint, Plaintiffs certify that they are "seeking a monetary judgment…of more than $100,000.00, exclusive of interest and costs." Although Defendant contends this alone is sufficient to establish the requisite jurisdictional amount, Defendant recognizes that certain courts within this District have ruled otherwise.

13. In addition, Plaintiffs claim entitlement to reasonable attorney fees under C.R.S. § 6-1-113. (*See* Compl. at 18).

14. Although Plaintiffs failed to calculate their precise damages, it is clear that the nature and extent of their claims – particularly wrongful death and survival claims for the father of a minor child – support Tesla's plausible allegation that the amount in controversy exceeds the jurisdictional threshold.

CONSENT

15. Tesla is the only defendant to this action. As such, consent under 28 U.S.C. § 1446(b)(2)(A) is not required.

TIMELINESS OF REMOVAL

16. This Notice of Removal is timely in accordance with 28 U.S.C. § 1446(b)(1) because it is filed within thirty days of Tesla's receipt of the initial pleading. (*See* Ex. B to Collier Decl.).

17. This Notice of Removal is also timely in accordance with 28 U.S.C. § 1446(c), because it is filed less than one year after commencement of the action.

VENUE

18. Venue of this removal is proper under 28 U.S.C. § 1441(a), because this Court is the United States District Court for the district and division embracing the place where the action is pending.

PAPERS FROM REMOVED ACTION

19. As required by 28 U.S.C. § 1446(a) and D.C.COLO.LCivR 81.1(b), all process, pleadings, and orders served on or by Defendant in the action are attached to the Declaration of

Clarissa Collier filed as Exhibit 1 in support of this Notice of Removal as Exhibits A-D.

NOTICE OF FILING NOTICE OF REMOVAL

20. In accordance with 28 U.S.C. § 1446(d) and to effect removal, Defendant Tesla, Inc. is filing a copy of this Notice of Removal with the Clerk of the District Court of the State of Colorado, County of Clear Creek.

WHEREFORE, Defendant Tesla, Inc. respectfully removes this action from the District Court of the State of Colorado, County of Clear Creek to this Court for all future proceedings and trial.

Dated: June 24, 2024.

Respectfully submitted,

s/ Clarissa M. Collier

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Attorneys for Defendant Tesla, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 24, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and have emailed this Notice and attachments to the following email addresses:

- Jonathan A. Michaels
  jmichaels@defectattorney.com

- Carol Baidas
  cbaidas@defectattorney.com

s/ Clarissa M. Collier

EXHIBIT A

County Court Clear Creak County, Colorado Court Address: 405 Argentine Georgetown, CO 80444	
Plaintiff(s): NORA BASS, et al. v. Defendant(s): TESLA, INC.	DATE FILED: May 3, 2024 1:49 PM FILING ID: 8C51CC9941AAF CASE NUMBER: 2024CV30015 ▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): Jonathan A. Michaels, MLG Attorneys at Law, APLC 600 Anton Blvd., Ste. 1200, Costa Mesa, CA 92626 Phone Number: (949) 581-6900 E-mail: jmichaels@defectattorney.com FAX Number: (949) 581-6908 Atty. Reg. #: 28501	Case Number: Division Courtroom

SUMMONS

To the abovenamed Defendant(s): Take notice that

1. On _____ (date) at _____(time) in the _____ County Court, _____, Colorado, if an answer is not filed, the Court may be asked to enter judgment against you as set forth in the Complaint.
2. A copy of the Complaint against you and an answer form which you must use if you file an answer are attached.
3. If you do not agree with the complaint, then you must either:
   a. Go to the Court, located at 405 Argentine, Georgetown, CO 80444, Colorado, at the above date and time and file the answer stating any legal reason you have why judgment should not be entered against you,
   OR
   b. File the answer with the Court before that date and time.
4. When you file your answer, you must pay a filing fee to the Clerk of the Court.
5. If you file an answer, you must give or mail a copy to the Plaintiff(s) or the attorney who signed the complaint.
6. If you do not file an answer, then the Court may enter a default judgment against you for the relief requested in the complaint.
7. If you want a jury trial, you must ask for one in the answer and pay a jury fee in addition to the filing fee.
8. If you want to file an answer or request for a jury trial and you are indigent, you must appear at the above date and time, fill out a financial affidavit, and ask the Court to waive the fee.

☒ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☐ By checking this box, I am acknowledging that I have made a change to the original content of this form.

Dated at 05/03/2024, Colorado, this 03 day of May, 20 24.

by _____
Deputy Clerk of Court
CLERK OF COURT

_____
Signature of Attorney for Plaintiff(s) (if applicable)

600 Anton Blvd. 1200, Costa Mesa, CA 92626
Address(es) of Plaintiff(s)

949-581-6900
Telephone Number(s) of Plaintiff's:

This Summons is issued pursuant to Rule 303, Rules of County Court Civil Procedure, as amended. A copy of the Complaint together with a blank answer form must be served with this Summons. This form should not be used where service by publication is desired.

To the clerk: If this Summons is issued by the Clerk of the Court, the signature block for the clerk, deputy and the seal of the Court should be provided by stamp, or typewriter, in the space to the left of the attorney's name.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Ramona Talvacchio
1962
2024/05/23 14:23:47

CLEAR CREAK COUNTY DISTRICT COURT **STATE OF COLORADO** 405 Argentine P.O. Box 367 Georgetown, CO 80444	DATE FILED: May 3, 2024 1:49 PM FILING ID: 8C51CC9941AAF CASE NUMBER: 2024CV30015
Plaintiffs: **NORA BASS, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and R.V.O., a minor, who proceeds by her next friend and natural guardian NORA BASS,** v. Defendant: **TESLA, INC.; and DOES 1 to 25, inclusive.**	↑ **COURT USE ONLY** ↑
Attorney for Plaintiffs Jonathan A. Michaels, Esq. – Bar No. 28501 (jmichaels@defectattorney.com) **MLG ATTORNEYS AT LAW, APLC** 600 Anton Blvd., Suite 1200 Costa Mesa, CA 92626 Telephone: (949) 581-6900 Facsimile: (949) 581-6908	Case Number: Division: Courtroom:
WRONGFUL DEATH COMPLAINT AND JURY DEMAND	

COMES NOW Plaintiffs Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain; and R.V.O, a minor, who proceeds by her next friend and natural guardian, her mother Nora Bass, by and through counsel, MLG Attorneys At Law, APLC, and for their Wrongful Death Complaint against the above-named Defendant states as follows:

THE PARTIES

1. At all times mentioned in this Complaint, Plaintiff Nora Bass was at all relevant times an individual residing in Jefferson County in the State of Colorado and is the surviving spouse of Decedent Hans Von Ohain. Plaintiff Nora Bass currently resides in Franklin County in the State of Ohio. Plaintiff Nora Bass, as both the surviving spouse and Personal Representative of Decedent Hans Von Ohain, has standing to bring this claim pursuant to Colorado Revised Statutes § 13-21-201.

2. At all times mentioned in this Complaint, Plaintiff R.V.O. is a minor who proceeds by her next friend, natural guardian, and mother, Nora Bass, and was at all relevant times an individual residing in Jefferson County in the State of Colorado. Plaintiff R.V.O. currently resides with her mother in Franklin County in the State of Ohio. Plaintiff R.V.O. is the lawful, and only, child of

Decedent Hans Von Ohain, and has standing to bring this claim pursuant to Colorado Revised Statutes § 13-21-201.

3. Plaintiffs are informed and understand that Defendant Tesla, Inc. was and is a Delaware corporation with its principal place of business in the State of Texas. At all times mentioned herein, Defendant Tesla, Inc. was engaged in the business of designing, manufacturing, marketing, advertising, and distributing consumer automobiles.

4. Plaintiffs are unaware of the true names of Does 1 through 25 and therefore sue them by such fictitious names and will ask for leave of Court to insert their true names when such have been ascertained.

JURISDICTION

5. This Court has personal jurisdiction over Plaintiffs as the Plaintiffs consent to such jurisdiction.

6. This Court has personal jurisdiction over Defendant Tesla, Inc. because it is engaged in the sale of consumer vehicles throughout the state of Colorado, thus providing the Court with general jurisdiction.

VENUE

7. Venue in this county is proper under Colorado Rules of Civil Procedure 98.

STATEMENT OF OPERATIVE FACTS

8. This is the tragic case of a profoundly defective automobile that shockingly and irrevocably shattered the life of a beautiful, young family. Hans and Nora fell in love while attending college together in Ohio. After graduation, Nora moved to New York City to work in the marketing and advertising fields and Hans followed her.

9. In 2018, the young couple decided to move to Colorado, a place that Hans had always loved. First moving to Denver, the young couple shortly afterwards moved to the small town of Evergreen. Hans and Nora were blissfully happy in Evergreen. So much so that they decided to begin a family there. In fact, Hans was still on paternity leave at the time of his tragic death.

10. This young father lost his life because of the Defendant's reckless and negligent behavior. As a result, Nora no longer has a husband, and R.V.O. will never know her father. Tragically, his death not only could have but should have been prevented. This wrongful death case is being brought by Decedent Hans Von Ohain's family against the entity whose actions and inactions caused Decedent Hans Von Ohain's premature death.

11. Defendant Tesla, Inc. is a large designer, manufacturer, and distributor of consumer automobiles, distributing millions of vehicles throughout the United States. One of the vehicles that has been long mass distributed by Defendant Tesla, Inc. is the 2021 Tesla Model 3.

12. During the year 2021, Defendant Tesla, Inc. manufactured a 2021 Tesla Model 3 (VIN: 5YJ3E1EB0MF965608). At the time of distributing the vehicle, Defendant Tesla, Inc. repeatedly published advertisements and made statements to consumers that the 2021 Tesla Model 3 was properly designed and skillfully crafted.

13. On the evening of May 16, 2022, Decedent Hans Von Ohain, the driver of the 2021 Tesla Model 3, was traveling westbound along Bear Creek Road, just west of Murphy Road, in Clear Creek County, Colorado. He was accompanied by his friend Erik Rossiter, who sat in the front passenger seat.

14. Decedent Hans Von Ohain activated the 2021 Tesla Model 3's Autopilot features for the drive. With no obstacles on the road, the vehicle easily passed the Murphy Road intersection. However, shortly thereafter, and with no prior indication, the Autopilot system unexpectedly caused the 2021 Tesla Model 3 to sharply veer to the right, leading it off the pavement.

15. Decedent Hans Von Ohain fought to regain control of the vehicle, but, to his surprise and horror, his efforts were prevented by the vehicle's Autopilot features, leaving him helpless and unable to steer back on course.

16. Just as it veered off the road, the 2021 Tesla Model 3 collided with a tree and then burst into flames. Erik Rossiter managed to escape the flaming wreckage, and bravely struggled to free his friend from the fiery inferno. Despite his relentless efforts, Erik could not free Hans from the blazing ruin and was forced to stand by helpless while the 2021 Tesla Model 3 burned his friend alive.

17. At no time after the purchase of the 2021 Tesla Model 3 did any person alter, modify, or change any aspect or component of the vehicle's design or manufacture.

18. Had the Autopilot features of the 2021 Tesla Model 3 operated properly, the vehicle would not have veered off the road, collided with a tree, burst into flames, and Hans Von Ohain's gruesome and painful death would have been avoided.

FIRST CAUSE OF ACTION
STRICT LIABILITY – MANUFACTURING DEFECT
(Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and, R.V.O., a minor, who proceeds by her next friend and natural guardian Nora Bass, Against Defendant Tesla, Inc.)

19. Plaintiffs repeat every allegation contained in the paragraphs above and incorporate such allegations herein by reference.

20. Defendant Tesla, Inc. designed, manufactured, marketed, advertised, and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

21. The 2021 Tesla Model 3 driven by Decedent Hans Von Ohain contained a manufacturing defect when it left Defendant Tesla, Inc.'s possession.

22. Decedent Hans Von Ohain was harmed by the 2021 Tesla Model 3.

23. The 2021 Tesla Model 3's defect was a substantial factor in causing Decedent Hans Von Ohain's harm.

24. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct, Plaintiffs have sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

SECOND CAUSE OF ACTION
STRICT LIABILITY – DESIGN DEFECT
(Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and, R.V.O., a minor, who proceeds by her next friend and natural guardian Nora Bass, Against Defendant Tesla, Inc.)

25. Plaintiffs repeat every allegation contained in the paragraphs above and incorporate such allegations herein by reference.

26. Defendant Tesla, Inc. designed, manufactured, marketed, advertised, and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

27. The 2021 Tesla Model 3 driven by Decedent Hans Von Ohain contained a design defect in the following respects:

a. It did not perform as safely as an ordinary consumer would have expected it to perform when used or misused in an intended or reasonably foreseeable way.

b. The benefits of the vehicle's design did not outweigh the risks of the design, when considering the gravity of the potential harm resulting from the use of the vehicle, the likelihood that this harm would occur, the feasibility of an alternative safer design at the time of manufacture, the cost of an alternative design, and the disadvantages of an alternative design.

28. Decedent Hans Von Ohain was harmed by the 2021 Tesla Model 3.

29. The 2021 Tesla Model 3's defect was a substantial factor in causing Decedent Hans Von Ohain's harm.

30. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct, Plaintiffs have sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

THIRD CAUSE OF ACTION
NEGLIGENCE
(Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and, R.V.O., a minor, who proceeds by her next friend and natural guardian Nora Bass, Against Defendant Tesla, Inc.)

31. Plaintiffs repeat every allegation contained in the paragraphs above and incorporate such allegations herein by reference.

32. Defendant Tesla, Inc. designed, manufactured, marketed, advertised, and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

33. Defendant Tesla, Inc. was negligent in designing, manufacturing, marketing, advertising, and distributing the 2021 Tesla Model 3.

34. Decedent Hans Von Ohain was harmed by the 2021 Tesla Model 3.

35. Defendant Tesla, Inc.'s negligence was a substantial factor in causing Decedent Hans Von Ohain's harm.

36. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct, Plaintiffs have sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

FOURTH CAUSE OF ACTION
NEGLIGENCE – FAILURE TO RECALL
(Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and, R.V.O., a minor, who proceeds by her next friend and natural guardian Nora Bass, Against Defendant Tesla, Inc.)

37. Plaintiffs repeat every allegation contained in the paragraphs above and incorporate such allegations herein by reference.

38. Defendant Tesla, Inc. designed, manufactured, marketed, advertised, and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

39. Defendant Tesla, Inc. knew or reasonably should have known that the 2021 Tesla Model 3 was dangerous or was likely to be dangerous when used in a reasonably foreseeable manner.

40. Defendant Tesla, Inc. became aware of this defect after the 2021 Tesla Model 3 was distributed.

41. Defendant Tesla, Inc. failed to recall the 2021 Tesla Model 3.

42. A reasonable distributor under the same or similar circumstances would have recalled the 2021 Tesla Model 3.

43. Decedent Hans Von Ohain was harmed by the 2021 Tesla Model 3.

44. Defendant Tesla, Inc.'s failure to recall the 2021 Tesla Model 3 was a substantial factor in causing Decedent Hans Von Ohain's harm.

45. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct, Plaintiffs have sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

FIFTH CAUSE OF ACTION
NEGLIGENCE – FAILURE TO WARN
(Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and, R.V.O., a minor, who proceeds by her next friend and natural guardian Nora Bass, Against Defendant Tesla, Inc.)

46. Plaintiffs repeat every allegation contained in the paragraphs above and incorporate such allegations herein by reference.

47. Defendant Tesla, Inc. designed, manufactured, marketed, advertised, and distributed the 2021 Tesla Model 3 purchased and driven by Decedent Hans Von Ohain.

48. Defendant Tesla, Inc. knew or reasonably should have known that the 2021 Tesla Model 3 was dangerous or was likely to be dangerous when used in a reasonably foreseeable manner.

49. Defendant Tesla, Inc. became aware of this defect after the 2021 Tesla Model 3 was distributed.

50. Defendant Tesla, Inc. failed to warn Decedent Hans Von Ohain of the 2021 Tesla Model 3's defects.

51. A reasonable distributor under the same or similar circumstances would have warned purchasers and users of the 2021 Tesla Model 3's defects.

52. Decedent Hans Von Ohain was harmed by the 2021 Tesla Model 3 defects and Defendant Tesla, Inc.'s failure to warn.

53. Defendant Tesla, Inc.'s failure to warn Decedent Hans Von Ohain of the 2021 Tesla Model 3's defects was a substantial factor in causing Decedent Hans Von Ohain's harm.

54. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct, Plaintiffs have sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

SIXTH CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY
(Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain, deceased, Against Defendant Tesla, Inc.)

55. Plaintiffs repeat every allegation contained in the paragraphs above and incorporates such allegations herein by reference.

56. Defendant Tesla, Inc. gave Plaintiff Nora Bass and Decedent Hans Von Ohain a written warranty that the 2021 Tesla Model 3 would be free of defects and that it could be safely used as a consumer vehicle.

57. The 2021 Tesla Model 3 did not perform as warranted.

58. Defendant Tesla, Inc. failed to repair the 2021 Tesla Model 3 as required by the warranty.

59. Plaintiff Nora Bass and Decedent Hans Von Ohain were harmed by the 2021 Tesla Model 3.

60. The failure of the 2021 Tesla Model 3 to be as represented was a substantial factor in causing Plaintiff Nora Bass and Decedent Hans Von Ohain's harm.

61. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct, Plaintiff Nora Bass has sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

SEVENTH CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain, deceased, Against Defendant Tesla, Inc.)

62. Plaintiffs repeat every allegation contained in the paragraphs above and incorporates such allegations herein by reference.

63. Defendant Tesla, Inc. designed, manufactured, marketed, advertised, and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

64. At the time the 2021 Tesla Model 3 was sold, Defendant Tesla, Inc. was in the business of selling consumer vehicles and it held itself out as having special knowledge and skill regarding consumer vehicles.

65. The 2021 Tesla Model 3 was not of the same quality as those generally acceptable in the trade, nor was it fit for the ordinary purposes for which consumer vehicles are used.

66. Plaintiff Nora Bass and Decedent Hans Von Ohain were harmed by the 2021 Tesla Model 3.

67. The failure of the 2021 Tesla Model 3 to have the expected quality was a substantial factor in causing Plaintiff Nora Bass and Decedent Hans Von Ohain's harm.

68. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct, Plaintiff Nora Bass has sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

EIGHTH CAUSE OF ACTION
COLORADO CONSUMER PROTECTION ACT
(Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain, deceased, Against Defendant Tesla, Inc.)

69. Plaintiffs repeat every allegation contained in the paragraphs above and incorporates such allegations herein by reference.

70. This cause of action is brought pursuant to the Colorado Consumer Protection Act, C.R.S. § 6-1-101, et. Seq.

71. Plaintiff Nora Bass and Decedent Hans Von Ohain were "consumers" within the meaning of C.R.S. §6-1-113. Plaintiff Nora Bass is also a "successor-in-interest" within the meaning of C.R.S. §6-1-113. Defendant Tesla, Inc. is a "person" within the meaning of C.R.S. §§ 6-1-102 and 6-1-113.

72. On June 1, 2022, Plaintiff Nora Bass and Decedent Hans Von Ohain entered into a transaction with Defendant Tesla, Inc. for the acquisition of the 2021 Tesla Model 3.

73. Defendant Tesla, Inc. engaged in unfair and deceptive acts or practices relating to Plaintiff Nora Bass and Decedent Hans Von Ohain's acquisition of the 2021 Tesla Model 3 by representing that Defendant Tesla, Inc. has a "commitment to safety," that "[i]mproving occupant safety has always been key to our mission," that all of its "vehicles are built off a safety-first architecture," and that its vehicle's possess "the highest levels of real-world safety," when such representations were untrue.

74. Additionally, Defendant Tesla, Inc. engaged in unfair and deceptive acts or practices relating to Plaintiff Nora Bass and Decedent Hans Von Ohain's acquisition of the 2021 Tesla Model 3 by representing that the Tesla Model 3 was engineered "to be the safest" car "built to date," and that it has "the lowest probability of injury of any vehicle ever tested by" the National Highway Traffic Safety Administration. when such representations were untrue.

75. The act of making such untrue representations violated C.R.S. § 6-1-105(1)(e) (making a false representation as to the characteristics of goods), C.R.S. § 6-1-105(1)(g) (representing that goods are of a particular standard, quality, or grade if they know or should know that they are of another), and C.R.S. § 6-1-105(1)(u) failing to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction).

76. Plaintiff Nora Bass and Decedent Hans Von Ohain were harmed as a direct, legal, and proximate result Defendant Tesla, Inc.'s unfair and deceptive practices.

77. Defendant Tesla, Inc.'s conduct was a substantial factor in causing Plaintiff Nora Bass and Decedent Hans Von Ohain's harm.

78. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct, Plaintiff Nora Bass has sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

79. Pursuant to C.R.S. § 6-1-113, Plaintiff is entitled to all reasonable attorneys' fees incurred in prosecuting this action.

NINTH CAUSE OF ACTION
FRAUDULENT CONCEALMENT
(Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and, R.V.O., a minor, who proceeds by her next friend and natural guardian Nora Bass, Against Defendant Tesla, Inc.)

80. Plaintiffs repeat every allegation contained in the paragraphs above and incorporates such allegations herein by reference.

81. In 2019, Defendant Tesla, Inc. was a new, small company that was plagued with financial misfortunes. It was struggling in direct competition with large, entrenched automobile companies. And it had suffered approximately $4 billion dollars in net losses.

82. In order to rescue itself from its weakened market position, Defendant Tesla, Inc. placed its hopes for financial salvation upon the development and marketing of its new Autopilot system. Indeed, Ashok Elluswamy, the Director of Tesla's Autopilot Division, has admitted that in 2019 Autopilot was critical to Tesla's success.

83. In order to accomplish this feat, Defendant Tesla, Inc. was compelled to mass produce Autopilot-equipped vehicles – something it had no experience in doing. Its inexperience in mass-producing vehicles, coupled with the pressing market conditions, inevitably led to Defendant Tesla, Inc.'s injection of defective vehicles into the stream of commerce.

84. Defendant Tesla, Inc. knowingly released its Autopilot system for sale in vehicles when it was in a prototype state and unready for consumers. Because of the market pressures the company was experiencing, Defendant Tesla, Inc. made the conscious decision to release the 2021 Tesla Model 3 with prototypical software even though it: 1) admittedly had no experience in mass-producing vehicles; 2) knew that it could be releasing defect-laden vehicles to the public; and, 3) had no way of telling which vehicles it released, or how many, might contain defects.

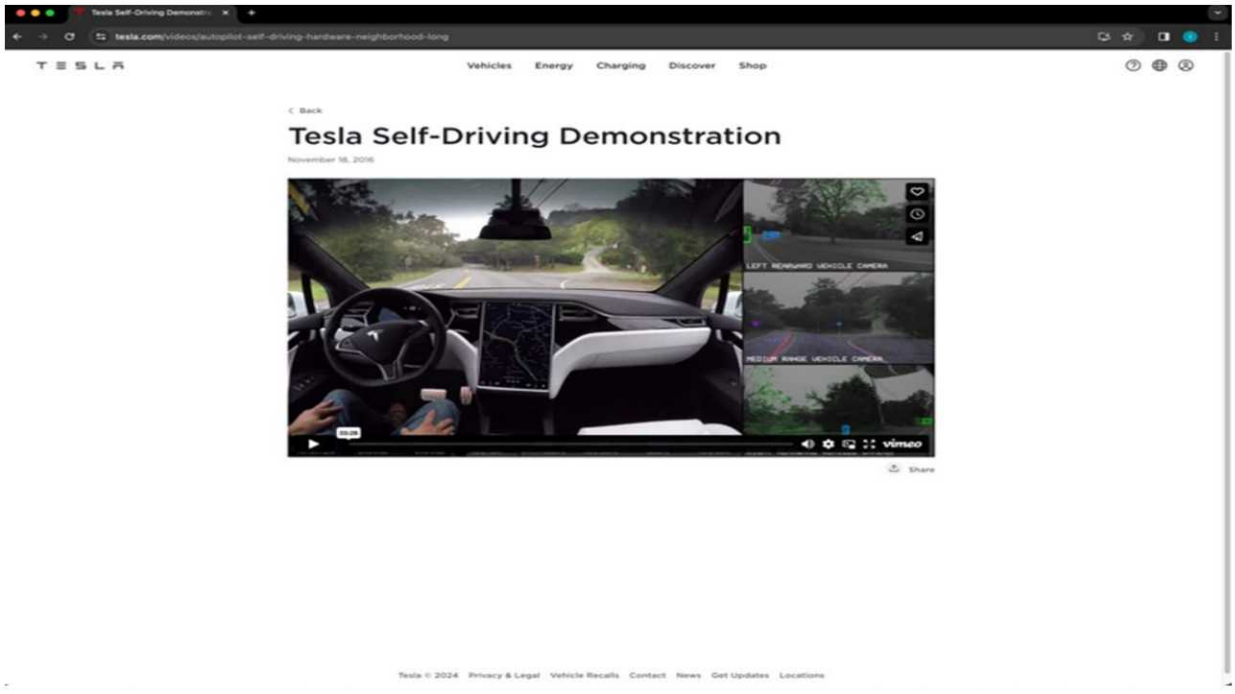
85. Defendant Tesla, Inc. was aware of the inadequacies and defects with the vehicle's Autopilot. Defendant Tesla, Inc. failed to disclose to purchasers that the Autopilot system on the 2021 Model 3 was in a prototypical, or beta, state.

86. The Society of Automotive Engineers has established a criterion for ranking driver automation systems. The SAE's taxonomy encompasses six automation levels for automobiles: level zero with no systems to level five, which is fully self-driving. Defendant Tesla, Inc.'s system qualifies as a Level 2 system, which is a "partial automation" system. Defendant Tesla, Inc., however, used deeply misleading names – "Autopilot" and "Full Self-Driving" – to market its system. It used these misleading names in order to lure consumers into purchasing its products, thinking that they had abilities far beyond a Level 2 system.

87. It also marketed its Autopilot system with misleading promotional videos.

88. Tesla's October 2016 promotional video "Full Self-Driving Hardware on All Teslas" is but one chilling example of the company's reckless disregard for consumer safety and truth. By showcasing a Tesla vehicle navigating traffic **without any hands** on the steering wheel, Tesla irresponsibly misled consumers into believing that their vehicles possessed capabilities far beyond reality. The brief disclaimer provided is a feeble attempt to absolve Tesla of legal liability, while doing little to warn consumers of the dangers inherent in relying on incomplete autonomous technology.

89. Tesla deceptively marketed its Autopilot system again with a November 2016 promotional video posted on its website. "Self-Driving Demonstration" is another example of Tesla's reckless disregard for consumer safety. By showcasing a Tesla vehicle being operated **without the driver's hands** on the steering wheel, Tesla again misled consumers into believing that their vehicles possessed full autonomous capabilities. Tesla's brief disclaimer, provided at the video's outset, again fails to mitigate the potential dangers of Tesla's unproven technology.



90. Ashok Elluswamy's involvement in supervising and approving the misleading marketing videos for Tesla's Autopilot system stands as an indictment of his disregard for consumer safety and truth. By participating in the production of these videos, Elluswamy knowingly perpetuated a **false narrative**, concealing crucial information about the vehicle's involvement in a crash during filming. Elluswamy's deliberate deception betrayed consumer's trust and endangered lives by fostering a false sense of security in Tesla's technology.

91. Defendant Tesla, Inc., therefore, made material omissions concerning a presently existing or past fact. Specifically, Defendant Tesla, Inc. did not fully and truthfully disclose to its customers, including Plaintiff and Decedent, the true nature of the 2021 Tesla Model 3's technical qualities, performance, benefits, and characteristics. Defendant Tesla, Inc., likewise, did not fully and truthfully disclose to its customers, including Plaintiff and Decedent, the true nature of the 2021 Tesla Model 3's technical abilities, or its inherent defects. Said defects were not readily discoverable until years later – in Plaintiff's case, when the wreck occurred.

92. Defendant Tesla, Inc. – choosing to prioritize profits over consumer safety – made these representations with knowledge of their falsity, and with the intent that Plaintiff rely on them.

93. Plaintiff Nora Bass and Decedent Hans Von Ohain reasonably relied on these omissions and suffered damages as a result.

94. As a result, Plaintiff Nora Bass and Decedent Hans Von Ohain were fraudulently induced to purchase the defective 2021 Tesla Model 3 and all of its associated problems.

95. Plaintiff Nora Bass and Decedent Hans Von Ohain were both harmed by Defendant Tesla, Inc.'s conduct.

96. Defendant Tesla, Inc.'s conduct was a substantial factor in causing Plaintiff Nora Bass and Decedent Hans Von Ohain's harm.

97. As a direct, proximate, and legal cause of Defendant Tesla, Inc.'s conduct, Plaintiffs have sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

TENTH CAUSE OF ACTION
LOSS OF CONSORTIUM
(Nora Bass Against Defendant Tesla, Inc.)

98. Plaintiff Nora Bass repeats every allegation contained in the paragraphs above and incorporates such allegations herein by reference.

99. Decedent Hans Von Ohain was killed by the 2021 Tesla Model 3.

100. Plaintiff Nora Bass was the lawful wife of Decedent Hans Von Ohain.

101. Plaintiff Nora Bass has been harmed by the injury to Decedent Hans Von Ohain.

102. Defendant Tesla, Inc.'s conduct was a substantial factor in causing Plaintiff Nora Bass's harm.

103. Plaintiff Nora Bass's harm was proximately caused by Defendant Tesla, Inc.'s conduct.

104. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct Plaintiff Nora Bass has suffered the loss of Decedent Hans Von Ohain's love, companionship, comfort, care, assistance, protection, affection, society, moral support, and the enjoyment of sexual relations or ability to have children.

105. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct, Plaintiff has sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

ELEVENTH CAUSE OF ACTION
SURVIVAL ACTION – C.R.S. § 13-20-101
(Nora Bass as Personal Representative of the Estate of Hans Von Ohain, Decedent, Against Defendant Tesla, Inc.)

106. Plaintiff Nora Bass, as Personal Representative of the Estate of Hans Von Ohain, repeats every allegation contained in the paragraphs above and incorporates such allegations herein by reference.

107. Plaintiff Nora Bass is Decedent Hans Von Ohain's Personal Representative pursuant to Colorado Revised Statute § 377.11.

108. Defendant Tesla, Inc. designed, manufactured, marketed, advertised, and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

109. Defendant Tesla, Inc. was negligent in designing, manufacturing, marketing, advertising, and distributing the 2021 Tesla Model 3.

110. The 2021 Tesla Model 3 driven by Decedent Hans Von Ohain caused his death.

111. Defendant Tesla, Inc.'s negligence, and the 2021 Tesla Model 3's defects, were substantial factors in causing Decedent Hans Von Ohain's injuries which led to his death.

112. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct, Plaintiff Nora Bass, as Personal Representative of the Estate of Hans Von Ohain, has sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

TWELVTH CAUSE OF ACTION
WRONGFUL DEATH – C.R.S. § 13-21-201
(Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and, R.V.O., a minor, who proceeds by her next friend and natural guardian Nora Bass, Against Defendant Tesla, Inc.)

113. Plaintiffs repeat every allegation contained in the paragraphs above and incorporates such allegations herein by reference.

114. Plaintiffs have standing to bring this claim pursuant to Colorado Revised Statutes § 13-21-201.

115. Defendant Tesla, Inc. designed, manufactured, marketed, advertised, and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

116. Defendant Tesla, Inc. was negligent in designing, manufacturing, marketing, advertising, and distributing the 2021 Tesla Model 3.

117. The 2021 Tesla Model 3 driven by Decedent Hans Von Ohain caused his death.

118. Defendant Tesla, Inc.'s negligence, and the 2021 Tesla Model 3's defects, were substantial factors in causing Decedent Hans Von Ohain's injuries which led to his death.

119. As a direct, legal, and proximate cause of Defendant Tesla, Inc.'s conduct, Plaintiffs have sustained damages in an amount to be proven at trial, but which are in excess of the minimum jurisdictional limits of this Court.

PLAINTIFFS DEMAND TRIAL TO A JURY OF SIX PERSONS

WHEREFORE, Plaintiffs pray that the Court award the following:

First Cause of Action
1. Compensatory damages.

Second Cause of Action
1. Compensatory damages.

Third Cause of Action
1. Compensatory damages.

Fourth Cause of Action
1. Compensatory damages.

Fifth Cause of Action
1. Compensatory damages.

Sixth Cause of Action
1. Compensatory damages.

Seventh Cause of Action
1. Compensatory damages.

Eighth Cause of Action
1. Compensatory damages.
2. Reasonable attorney's fees pursuant to C.R.S. § 6-1-113.

Ninth Cause of Action
1. Compensatory damages.

Tenth Cause of Action
1. Compensatory damages.

Eleventh Cause of Action
1. Compensatory damages.

Twelfth Cause of Action
1. Compensatory damages.

All Causes of Action
1. Costs of suit herein incurred;
2. Attorney's fees as provided by law.
3. Interest as provided by law.
4. For such other and further relief as the Court may deem just and proper.

MLG ATTORNEYS AT LAW, APLC

Dated: May 3, 2024

By: _____

Jonathan A. Michaels, Esq.
Attorneys for Plaintiffs,
Nora Bass, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and R.V.O., a minor, who proceeds by her next friend and natural guardian Nora Bass

☐**FORM 1.2. DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND**

DATE FILED: May 3, 2024 1:45 PM
FILING ID: 8C51CC9941AAF
CASE NUMBER: 2024CV30015

District Court Clear Creak County, Colorado Court Address: 405 Argentine P.O. Box 367 Georgetown, CO 80444 Plaintiff(s): Nora Bass, et al. v. Defendant(s): TESLA, INC.	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): Jonathan A. Michaels, MLG Attorneys at Law, APLC 600 Anton Blvd., Ste. 1200, Costa Mesa, CA 92626 Phone Number: (949) 581-6900 E-mail: jmichaels@defectattorney.co FAX Number: (949) 581-6908 Atty. Reg. #: 28501	Case Number:

DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR),, Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases or in Water (CW) proceedings subject to sections 37-92-302 to 37-92-305, C.R.S. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. Simplified Procedure under C.R.C.P. 16.1 **applies** to this case **unless** (check one box below if this party asserts that C.R.C.P. 16.1 **does not** apply):

   ☐ This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, **or**

   ☒ This party is seeking a monetary judgment against another party of more than $100,000.00, exclusive of interest and costs, as supported by the following certification:

   By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000.

   Or

☐ Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

3. ☒ This party makes a **Jury Demand** at this time and pays the requisite fee. *See* C.R.C.P. 38. (Checking this box is optional.)

Date: 05/03/24

Nora Bass
Nora Bass (May 3, 2024 10:37 EDT)

Signature of Party

Date: 05/03/2024

Signature of Attorney for Party (if any)_____

NOTICE
This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.

DISTRICT COURT, CLEAR CREEK COUNTY, COLORADO 405 Argentine St., P.O. Box 367 Georgetown, Colorado 80444 Phone: (303) 569-0820	DATE FILED: May 3, 2024 4:58 PM CASE NUMBER: 2024CV30015
PLAINTIFF: NORA BASS, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and R.V.O., a minor, who proceeds by her next friend and natural guardian NORA BASS v. DEFENDANTS: TESLA, INC.; and DOES 1 to 25, inclusive.	▲COURT USE ONLY▲ Case No. 2024CV30015 Division C

ORDER FOR DISCOVERY PROTOCOL

The following discovery protocols shall guide all counsel in their conduct of written and oral discovery in this case.

PREAMBLE

Counsel are reminded that all discovery responses shall be made in the spirit and with the understanding that the purpose of discovery is to elicit facts and to get to the truth. The Rules of Civil Procedure are directed toward securing a just, speedy and inexpensive determination of every action. The discovery process shall not be employed to hinder or obstruct these goals nor to harass, unduly delay or needlessly increase the cost of litigation.

These discovery protocols shall be considered as part of the responsibility of parties and counsel to comply with the Rules of Civil Procedure relating to discovery.

PLEADINGS NOT TO BE FILED WITH THE COURT

Rule 5(d) and 121, Section 1012, CRCP provide that interrogatories, requests for admission, requests for production, depositions, and responses thereto are NOT to be filed with the Court. Further, if relief is sought under Rules 26 (c) or Rule 37 (a), CRCP, only copies of the relevant portions of discovery are to be submitted. Finally, the court will not entertain Rule 37 (a) Motions unless accompanied by the required certification of conferring with counsel.

WRITTEN DISCOVERY

1. The parties should refrain from interposing repeated boilerplate type objections such as "overbroad, unduly burdensome, vague, ambiguous, not reasonably calculated to lead to the discovery of admissible evidence" and other similar objections. In the event any such objections are made, they shall be followed by a clear and precise explanation of the legal and factual justification for raising such an objection. Additionally, if the objecting party otherwise responds to the discovery request but does so subject to or without waiving such an objection, that party shall describe with reasonable specificity the information which may be available, but which is not being provided as a result of the objection raised.

2. When a responding party claims not to understand either a discovery request or the meaning of any words or terms used in a discovery request, that party shall, within fourteen (14) days of receiving the discovery request, seek clarification of the meaning from counsel who served the discovery. A failure to seek such clarification shall be considered a violation of this Order for Discovery Protocol.

3. A discovery response which does not provide the information or material requested but promises to do so at some point in the future will be treated as the equivalent of no response unless the party so responding provides a specific reason for the information not being produced as required by the Rules of Civil Procedure, and also provides a specific date by which such information will be produced.

4. A response to a discovery request that does not provide information or materials requested but rather states that the party is continuing to look for or search for such information or material will be treated as the same as no response unless that party provides a clear description of where such information or materials is normally located, who is normally in custody of such information or material, where the party has searched, the results of the search, as well as the identity of all persons who have engaged in such a search. The responding party shall provide a clear explanation of the ongoing search and a specific date by which the search will be complete.

5. Whenever a party objects to discovery based upon a claim of attorney/client privilege, work product protection or any other privilege or protection, that party shall produce a detailed privilege/protection log that includes at least the following for each such item for which privilege is claimed:

   a. The information required by CRCP 26(b)(5);
   b. The date of the information or material;

c. All authors and recipients; and
d. The specific privilege or protection which is claimed.

DEPOSITIONS

1. Depositions shall be conducted in compliance with the Colorado Rules of Civil Procedure, including Rule 121, Section 1-12 regarding the scheduling of depositions.

2. During all depositions, counsel shall adhere strictly to CRCP 30(d)(1) and (3). No objections may be made, except those which would be waived if not made under CRCP 32(d)(3)(B) (errors, irregularities), and those necessary to assert a privilege, to enforce a limitation on evidence directed by the Court, or to present a CRCP 30(d)(3) motion (to terminate or a bad faith deposition). Objections to form shall be stated "Objection as to form." Any further explanation is inappropriate and prohibited unless specifically requested by the attorney asking the question.

3. There shall be no speaking objections. It is inappropriate and prohibited for an attorney, during the course of questioning, to advise a witness to answer if you know," or "if you remember." It is similarly prohibited for an attorney during questioning to advise a witness not to speculate. All such questions shall be considered speaking objections. All deponent preparation shall be conducted prior to the commencement of the deposition and shall not take place during the course of the deposition.

4. It is appropriate for the deponent to request clarification of a question. However, it is not appropriate for counsel to do so.

5. A deponent and an attorney may not confer during the deposition while questions are pending. Similarly, neither a deponent nor counsel for a deponent may interrupt a deposition when a question is pending, or a document is being reviewed, except as permitted by CRCP 30(d)(1).

6. Counsel shall refrain from excessive objections that have the purpose or effect of disrupting the flow of questioning or the elicitation of testimony.

7. Counsel may instruct the deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under paragraph 3 of CRCP 30(d). Whenever counsel instructs a witness not to answer a question, counsel shall state on the record the specific reason for such an instruction, the specific question, part of a

question or manner of asking the question upon which counsel is basing the instruction not to answer the question.

SO ORDERED this May 3, 2024.

BY THE COURT:

Catherine J. Cheroutes
District Court Judge

DISTRICT COURT, CLEAR CREEK COUNTY, COLORADO 405 Argentine St., P.O. Box 367 Georgetown, Colorado 80444 Phone: (303) 569-0820	DATE FILED: May 3, 2024 4:57 PM CASE NUMBER: 2024CV30015
PLAINTIFF: NORA BASS, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and R.V.O., a minor, who proceeds by her next friend and natural guardian NORA BASS v. DEFENDANTS: TESLA, INC.; and DOES 1 to 25, inclusive	▲COURT USE ONLY▲ Case No. 2024CV30015 Division C

ORDER REGARDING DUTY TO CONFER

C.R.C.P. 121 § 1-15(8) states that "[m]oving counsel shall confer with opposing counsel before filing a motion." At the outset of this action, the Court now provides the parties with its interpretation of this rule, so that the parties will have a clearer understanding of their duties in the event they decide to file motions as the matter proceeds.

The clear purpose of Rule 121 is to require the parties to identify and attempt to resolve emerging issues before engaging in motion practice. The plain language definition of the word "confer" means "[t]o meet in order to deliberate together or compare views; consult." American Heritage Dictionary of the English Language. From the foregoing, the Court puts the parties on notice that the word "confer" requires the moving party to partake in interactive discussions with any party who might potentially oppose the relief requested. Before filing a motion, the moving party must speak with a party, either face-to-face or via phone, in order to satisfy the duty to confer. It is unacceptable for the parties to "confer" by non-interactive means, including but not limited to voice message, e-mail, letter, fax, or text message.

In further interpreting the first sentence of C.R.C.P. 121 § 1-15(8) above, the Court reads the word "shall" as creating a mandatory requirement. Accordingly, before filing a Motion, the Court routinely expects the moving party to confer with any potentially opposing party, as detailed above.

C.R.C.P. 121 § 1-15(8) does provide that, "[i]f no conference has occurred, the reason why shall be stated." On occasions where the moving party offers such a reason in lieu of actually conferring, the Court expects the reason to be explained in substantive detail. The Court also expects it to fall within the realm of an unusual

occurrence. On one end of the spectrum, it will not be acceptable for the moving party to make one phone call, leave a voicemail requesting the opposing party to confer, and then submit a corresponding motion shortly thereafter. Contemporaneously, the Court will not require a moving party to be hamstrung, where said party has attempted to contact the opposing party on numerous occasions, left several voice messages asking to confer, but has nonetheless received no return communication in a timely fashion. Since individual circumstances vary between these two extremes, the Court will evaluate whether the parties have satisfied the duty to confer on a case-by-case basis.

Finally, the Court reads C.R.C.P. 121 § 1-15(8) as applying to *pro se* parties in the same manner as it applies to any attorney entering an appearance before this Court.

SO ORDERED this May 3, 2024.

BY THE COURT:

Catherine J. Cheroutes
District Court Judge

DISTRICT COURT, CLEAR CREEK COUNTY, COLORADO 405 Argentine St., P.O. Box 367 Georgetown, Colorado 80444 Phone: (303) 569-0820	DATE FILED: May 3, 2024 5:00 PM CASE NUMBER: 2024CV30015
PLAINTIFF: NORA BASS, individually, and as personal representative of the Estate of Hans Von Ohain, deceased; and R.V.O., a minor, who proceeds by her next friend and natural guardian NORA BASS v. DEFENDANTS: TESLA, INC.; and DOES 1 to 25, inclusive	▲COURT USE ONLY▲ Case No. 2024CV30015 Division C

DELAY REDUCTION AND E-FILING ORDER

I. All civil courts in the Fifth District are on a delay reduction docket. Deadlines that must be met are:

1. Service of Process: Returns of Service on all defendants shall be filed within 63 days after the date of the filing of the complaint.

2. Default Judgment: Application for default judgment shall be filed within 35 days after default has occurred.

3. Case Management: Plaintiff shall contact the Clear Creek Clerk's office at ClearCreekClerk@judicial.state.co.us or (303) 569-0820 to obtain dates for the case management conference and shall complete the setting of the case management conference within 30 days from the date the case becomes at issue. A case shall be deemed "at issue" when all parties have been served and have filed all pleadings permitted by C.R.C.P. 7, or defaults or dismissals have been entered against all non-appearing parties, or at such other time as the Court shall direct.

The Court will consider extending time periods upon timely filing of a motion showing good cause.

IF AN ATTORNEY OR *PRO SE*[1] PARTY FAILS TO COMPLY WITH PART I OF THIS ORDER, THE COURT MAY DISMISS THE CASE WITHOUT PREJUDICE. THIS ORDER SHALL BE THE INITIAL NOTICE REQUIRED BY RULE 121, SECTION 1-10, AND RULE 41(B) (2).

II. Any *pro se* party shall submit, in writing, to the Court a valid mailing address where they will receive copies of pleadings filed with the Court.

III. Proposed Findings and/or Orders must be submitted with any Motion, Response, or Objection presented to the Court (see also Section IV(D) below).

IV. The Fifth Judicial District Court requires all parties to serve their pleadings using Electronic Case Filing ("e-filing"). After engaging in an extensive trial period, this Court mandated e-filing because it fosters both economy and efficiency for the Court and the parties appearing before it. As part of the e-filing system and also in an effort to facilitate a "paper on demand" environment, the Court sets forth the following formatting standards:

A. **Case Types:** Use of the e-filing system is mandatory in all CV and PR case types, including "sealed" and "suppressed" cases.

B. **Exception for *Pro Se* parties:** Irrespective of IV(A) above, *pro se* parties will be permitted to submit paper pleadings and exhibits to the Court. The Court's staff will scan and upload such documents to the e-filing system.

C. **Entry of Mailing Address(es) for Service of Pleadings:**

1. As soon as Plaintiff identifies the correct mailing address for service of pleadings to any other party in this action, Plaintiff shall immediately cause said address to be properly entered in the Court's e-filing system. A *pro se* Plaintiff must contact the Court's Division Clerk to assist in satisfying this requirement.

2. Until Plaintiff causes a party's address to be entered in compliance with Section IV(C)(1), Plaintiff shall maintain a continuing obligation in this action regarding said party to: (a) timely serve all pleadings upon them; and also (b) provide copies of orders from the Court within 3 days of Plaintiff's receipt thereof.

[1] "*Pro se*" means a person who is a party in a case but is not represented by an attorney. While a person may appear before this Court in a *pro se* capacity, a corporation or similar entity cannot do so and must be represented by an attorney.

D. **Submission of Proposed Findings and/or Orders:** All PROPOSED FINDINGS AND/OR ORDERS must be submitted using direct upload of the pleading from a word processing format to the e-filing system.

E. **Submission of Pleadings:** All PLEADINGS must be submitted using one of the following two methods: (1) direct upload of the pleading from a word processing format to the e-filing system; or (2) electronic conversion of the pleading from a word processing format into a PDF format and then direct upload of said PDF to the e-filing system.[2] Except as otherwise provided in Section IV(f) below, Parties shall NOT upload pleadings into the e-filing system as scanned or graphic images, or in any other manner that prevents the Court from copying/pasting text or employing enhanced search functionality within a pleading. Pleadings, not in compliance, may be rejected to compel the party to properly re-file them.

F. **Submission of Exhibits, Form/Preprinted Pleadings & Returns of Service:** All EXHIBITS, FORM/PREPRINTED PLEADINGS, and RETURNS OF SERVICE, and SWORN DOCUMENTS (e.g. affidavits) must be submitted through the e-filing system. However, they may be submitted as scanned or graphic images.

G. **Document Size**:
   1. Pursuant to Rule 120 § 1-15(1), motions or briefs "in excess of 10 pages in length, exclusive of tables and appendices, are discouraged." Any party seeking to submit a motion or brief in greater length shall file a motion beforehand, requesting the Court's leave and briefly explaining the need for doing so.
   2. The current size limit for each document filed electronically is 1.5 megabytes.[3] For the purpose of this procedure, each electronically filed pleading, motion, brief, or other paper is a separate document. Any document, which exceeds 1.5 megabytes, shall be separated into electronic files of 1.5 megabytes or less each.

H. **Color or Graphics**: Documents scanned in color, grey scale, or containing graphics result in larger file sizes and take longer to download. Therefore, filers should configure scanners to scan documents at 200dpi (dots per inch) and not in color or grey scale.

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[2] For further information, please see "best practices" at http://lexisnexis.com/fileandserveextranet/BestPractices.aspx

[3] 1.5 megabytes may be equivalent to approximately 50 pages of plain, typed text or 25 pages of scanned information.

I. **Exhibits of Large Physical Size:** If a party desires to submit a plat, an architectural design, or some other exhibit that is physically too large to be e-filed, the party shall file a written request with the Court to do so beforehand.

J. **Title of Pleadings:** In submitting pleadings using the e-filing system, the parties must provide a full title, which matches as closely as possible the actual title of the corresponding document being submitted. Pleadings that do not have conforming titles may be rejected to compel the party to properly re-file said pleading.

K. **Category for Pleadings:** In submitting pleadings using the e-filing system, the parties must also provide a pleading category that matches the identifiable and specific category of the actual pleading being submitted. For example, if a specific category exists for a pleading in the e-filing system, parties may not submit said pleadings with the category "filing other." Pleadings with improper category designations may be rejected to compel the party to properly re-file said pleading.

L. **Minute Orders:** In order to ensure that a complete case history is available through the e-filing system, the Court will upload Eclipse "minute orders" into the e-filing system.

M. **Requests for Paper Copies:** If a request is made to the Court for a paper document from an electronically filed case, the Register of Actions will be printed out from the Lexis Nexis "Case History," and the requesting party asked to specifically identify the document they wish to see. Paper copies of documents contained in the electronic file will be produced only when requested.

N. **Charges for Paper Copies:** If a paper copy of a document from an electronic file is created, that document will then be printed for the requesting party. $.75 per page will be charged, only if the requesting party wishes to keep the document. There is no charge if the requesting party only wishes to view the document.

O. **Commencing a CV Case:** In CV cases, the e-filing system requires that the Complaint be the first document filed in order to properly commence the case.

SO ORDERED this May 3, 2024.

BY THE COURT:

Catherine J. Cheroutes
District Court Judge

EXHIBIT B

MLG Attorneys at Law
600 Anton Boulevard Suite 1200
Costa Mesa, CA 92626
(949) 581-6900

IN THE 5TH JUDICIAL DISTRICT COURT OF CLEAR CREEK COUNTY, COLORADO
In the
CLEAR CREEK County

DATE FILED: June 3, 2024 3:30 PM
FILING ID: 6A79275C8B161
CASE NUMBER: 2024CV30015

NORA BASS, et al.
v.
TESLA, INC.
/

Case No.:2024CV30015

AFFIDAVIT OF PERSONAL SERVICE

That I, Ramona Talvacchio hereby solemnly affirm under penalties of perjury and upon personal knowledge that the contents of the following document are true and do affirm I am a competent person over 18 years of age, not a party to this action and that I am certified and in good standing and/or authorized to serve process in the Judicial Circuit in which the process was served.

That on 5/23/2024 at 2:23 PM at 1209 N Orange St, Wilmington, DE 19801-1120 I served TESLA, INC. with the following list of documents: SUMMONS, COMPLAINT, CIVIL CASE COVER SHEET; ORDER FOR DISCOVERY PROTOCOL; ORDER REGARDING DUTY TO CONFER; DELAY REDUCTION AND E-FILING ORDER by then and there personally delivering a true and correct copy of the documents into the hands of and leaving with ROBIN HUTTBANKS whose relationship is AUTHORIZED TO ACCEPT ON BEHALF OF TESLA, INC..

That the description of the person actually served is as follows: Gender: Female Skin: African American Age: 63 Height: 5'5" Weight: 180 Hair: Brown Eyes: Marks:

That the address above is the dwelling house or usual place of abode of the person being served.

That the person with whom the documents were left stated he/she is a member of the household/who resides therein with the person being served and was of suitable age and discretion, and was explained the general nature of the documents.

That I asked the person spoken to whether the Servee was in the active duty military service of the United States or in the state in which this service was made and was told [X] No they were not [ ] Yes they are [ ] No answer was given.

That if required, a copy of said documents was mailed postpaid, sealed wrapper, properly addressed to TESLA, INC. at 1209 N Orange St, Wilmington, DE 19801-1120 on 5/23/2024 following all requirements of the State Rules in which the above captioned case is filed.

That the fee for this Service is $ 204.00

Subscribed and sworn before me, a Notary Public, on 6-2-24

Notary Public
My Commision expires on: MAY 14, 2027

Ramona Talvacchio
Ramona Talvacchio
Contracted by Steno Agency, Inc.
315 West 9th Street
Los Angeles, CA 90015
(213) 516-4166

06/02/2024
Executed On:

JOSEPH TALVACCHIO JR
Notary Public
State of Delaware
My Commission Expires on May 14, 2027

Order #:1007248
Their File NORA BASS

EXHIBIT C

DATE FILED: June 12, 2024 9:15 AM
FILING ID: 942AE2E8A18BB
CASE NUMBER: 2024CV30015

DISTRICT COURT, CLEAR CREEK COUNTY, COLORADO

405 Argentine, P.O. Box 367
Georgetown, CO 80444

Plaintiffs:

NORA BASS, individually, and as personal representative of the ESTATE OF HANS VON OHAIN, deceased; and R.V.O., a minor, who proceeds by her next friend and natural guardian NORA BASS,

v.

Defendants:

TESLA, INC.; and DOES 1 to 25, inclusive.

▲COURT USE ONLY▲

Case No. 2024CV030015

Division: C

Attorneys for Defendant, Tesla, Inc.:

Name: Clarissa M. Collier (#40374)
Wheeler Trigg O'Donnell LLP
Address: 370 Seventeenth Street, Suite 4500
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UNOPPOSED MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFFS' COMPLAINT

Defendant, Tesla, Inc. ("Tesla"), through its attorneys of record, hereby requests an extension of time to and including June 27, 2024 within which to answer or otherwise respond to Plaintiffs' Complaint. As grounds therefor, Tesla states:

RULE 121 CERTIFICATION

Pursuant to C.R.C.P. 121 § 1-15, the undersigned certifies that she has conferred with Plaintiffs' counsel regarding this motion and is authorized to state that Plaintiffs do not oppose the relief sought herein.

MOTION

1. Plaintiffs filed their Complaint on May 3, 2024, but did not effect service on Tesla until May 23, 2024. Tesla's response to Plaintiffs' Complaint is therefore due on June 13, 2024.

2. Tesla's Colorado counsel has only recently been retained, and has not yet had an opportunity to gather and evaluate existing documentation, investigate the allegations asserted in the Complaint, or confer with defendant's representatives to determine an appropriate strategy prior to responding to the Complaint.

3. Additionally, Plaintiffs' Complaint contains 119 paragraphs and asserts 12 causes of action against Tesla. The breadth of the Complaint requires a lengthier analysis of Plaintiffs' claims among defendant and its counsel.

4. This extension is sought in good faith and not for purposes of delay. No party will be prejudiced by its granting.

5. Pursuant to C.R.C.P. 121 § 1-11, undersigned counsel certifies that a copy of this motion is being served on Tesla.

WHEREFORE, Tesla, Inc. respectfully requests a two-week extension of time to and including June 27, 2024 within which to answer or otherwise respond to Plaintiffs' Complaint.

Dated: June 12, 2024.

Respectfully submitted,

s/ Clarissa M. Collier

Clarissa M. Collier
Wheeler Trigg O'Donnell LLP

Joel H. Smith (*pro hac vice anticipated*)
Anne C. Warren (*pro hac vice anticipated*)
Bowman & Brooke LLP

Attorneys for Defendant Tesla, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **UNOPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' COMPLAINT** was filed using Colorado Courts E-Filing and served via the manner indicated below this 12th day of June, 2024, to the following:

Jonathan A. Michaels
MLG Attorneys at Law, APLC
600 Anton Blvd., Suite 1200
Costa Mesa, CA 92626
Telephone: 949.581.6900
Facsimile: 949.581.6908
Email: jmichaels@defectattorney.com

Attorneys for Plaintiffs

( ) First Class Mail
( ) Hand Delivery
( ) Facsimile
( ) Overnight Delivery
(X) Colorado Courts E-Filing
( ) E-Mail

s/ Megan A. Gregory
Megan A. Gregory, Legal Assistant

EXHIBIT D

DATE FILED: June 12, 2024 11:38 AM
CASE NUMBER: 2024CV30015

DISTRICT COURT, CLEAR CREEK COUNTY, COLORADO 405 Argentine, P.O. Box 367 Georgetown, CO 80444	
Plaintiffs: NORA BASS, individually, and as personal representative of the ESTATE OF HANS VON OHAIN, deceased; and R.V.O., a minor, who proceeds by her next friend and natural guardian NORA BASS, v. **Defendants:** TESLA, INC.; and DOES 1 to 25, inclusive.	▲**COURT USE ONLY**▲ Case No. 2024CV030015 Division: C

ORDER GRANTING DEFENDANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFFS' COMPLAINT

THIS MATTER, coming before the Court on Defendant, Tesla, Inc.'s Unopposed Motion for Extension of Time to Answer or Otherwise Respond to Plaintiffs' Complaint, and the Court having reviewed the motion, the record in the case, being duly advised and finding good cause, hereby GRANTS the Motion.

IT IS ORDERED that Tesla, Inc. shall have to and including June 27, 2024 within which to file its answer or other responsive pleading to plaintiffs' Complaint.

DATED this 12thday of June, 2024.

DISTRICT COURT JUDGE

JS 44 (Rev. 10/20) District of Colorado

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

NORA BASS, indiv. and as PR of ESTATE OF HANS VON OHAIN, deceased; and R.V.O., a minor

(b) County of Residence of First Listed Plaintiff Franklin County, OH
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Jonathan A. Michaels and Carol Baidas, MLG Attorneys at Law, 600 Anton Blvd., Ste. 1200, Costa Mesa, CA; 949.581.6900; jmichaels@defectattorney.com;

DEFENDANTS

TESLA, Inc.

County of Residence of First Listed Defendant Travis County, TX
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Clarissa M. Collier, Wheeler Trigg O'Donnell LLP, 370 17th St., Ste. 4500, Denver, CO; 303.244.1800; collier@wtotrial.com

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☒ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. 1441, 1446

☐ AP Docket

Brief description of cause:
Wrongful death action, negligence and product liability in relation to alleged Tesla vehicle defect leading to accident

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
June 24, 2024

SIGNATURE OF ATTORNEY OF RECORD
s/Clarissa M. Collier

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____