

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case 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 ANSWER TO PLAINTIFFS' COMPLAINT

Defendant, Tesla, Inc., d/b/a Tesla Motors, Inc. ("Tesla"), by counsel, answering Plaintiffs' Complaint in the above-captioned action:

1. Tesla lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1 and therefore denies them.

2. Tesla lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2 and therefore denies them.

3. With respect to paragraph 3, Tesla admits it was, at the time this action was filed, a Delaware corporation with a principal place of business in the State of Texas. Tesla denies it was a Delaware corporation at the time of removal to this Court, or at the time of filing this Answer to the Complaint. Tesla further admits that, at the times relevant to the crash giving rise to this litigation, it was engaged in the business of designing in part, manufacturing in part, marketing, advertising and distributing certain consumer vehicles. Tesla denies any remaining allegations in

paragraph 3.

4. The allegations in paragraph 4 are not directed at Tesla and therefore no response is required. To the extent a response is required, Tesla lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4 and therefore denies them.

JURISDICTION

5. Paragraph 5 contains a legal conclusion to which no response is required. To the extent a response is required, Tesla lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5 and therefore denies them.

6. Tesla admits that it has done business in Colorado but denies the remaining allegations in paragraph 6.

VENUE

7. Tesla admits that subject matter jurisdiction was properly vested in Clear Creek County District Court pursuant to Colorado Rules of Civil Procedure 98, but denies the remaining allegations in paragraph 7 of Plaintiffs' Complaint.

STATEMENT OF OPERATIVE FACTS

8. Tesla denies that its vehicle was or is defective. Tesla lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8, and therefore denies them.

9. Tesla lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9, and therefore denies them.

10. Tesla denies the allegations in paragraph 10.

11. Tesla admits it is a designer, manufacturer and distributor of certain consumer

automobiles, including the 2021 Tesla Model 3. Tesla denies any remaining allegations in paragraph 11.

12. Tesla admits it manufactured the 2021 Tesla Model 3 (VIN: 5YJ3E1EB0MF965608) in 2021. Tesla denies the remaining allegations in paragraph 12.

13. Tesla admits, upon information and belief, that Decedent Hans Von Ohain was driving his 2021 Tesla Model 3 on May 16, 2022. Tesla further admits, upon information and belief, that Erik Rossiter was the front seat passenger at the time of the crash. Tesla lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 13 and therefore denies them.

14. With respect to paragraph 14, Tesla denies that any defect in the Autopilot system caused or contributed to the crash described. Tesla lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 14, and therefore denies them.

15. With respect to paragraph 15, Tesla denies that any defect in the Autopilot system caused or contributed to the crash described. Tesla lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 15, and therefore denies them.

16. Tesla lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 16, and therefore denies them.

17. Tesla lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 17, and therefore denies them.

18. Tesla denies the allegations in paragraph 18.

FIRST CAUSE OF ACTION

19. Tesla incorporates herein by reference its responses to paragraphs 1 through 18 of Plaintiffs' Complaint.

20. Tesla admits it designed in part, manufactured in part, marketed, advertised and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

21. Tesla denies the allegations in paragraph 21.

22. Tesla denies the allegations in paragraph 22.

23. Tesla denies that its vehicle was or is defective. Tesla denies any remaining allegations in paragraph 23.

24. Tesla denies the allegations in paragraph 24.

SECOND CAUSE OF ACTION

25. Tesla incorporates herein by reference its responses to paragraphs 1 through 24 of Plaintiffs' Complaint.

26. Tesla admits it designed in part, manufactured in part, marketed, advertised and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

27. Tesla denies that its vehicle was or is defective. Tesla denies any remaining allegations in paragraph 27, including subparagraphs.

28. Tesla denies the allegations in paragraph 28.

29. Tesla denies that its vehicle was or is defective. Tesla denies any remaining allegations in paragraph 29.

30. Tesla denies the allegations in paragraph 30.

THIRD CAUSE OF ACTION

31. Tesla incorporates herein by reference its responses to paragraphs 1 through 30 of Plaintiffs' Complaint.

32. Tesla admits it designed in part, manufactured in part, marketed, advertised and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

33. Tesla denies the allegations in paragraph 33.

34. Tesla denies the allegations in paragraph 34.

35. Tesla denies that its vehicle was or is defective. Tesla denies any remaining allegations in paragraph 35.

36. Tesla denies the allegations in paragraph 36.

FOURTH CAUSE OF ACTION

37. Tesla incorporates herein by reference its responses to paragraphs 1 through 36 of Plaintiffs' Complaint.

38. Tesla admits it designed in part, manufactured in part, marketed, advertised and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

39. Tesla denies the allegations in paragraph 39.

40. Tesla denies that its vehicle was or is defective. Tesla denies any remaining allegations in paragraph 40.

41. Tesla denies the allegations in paragraph 41.

42. Tesla denies the allegations in paragraph 42.

43. Tesla denies the allegations in paragraph 43.

44. Tesla denies the allegations in paragraph 44.

45. Tesla denies the allegations in paragraph 45.

FIFTH CAUSE OF ACTION

46. Tesla incorporates herein by reference its responses to paragraphs 1 through 45 of Plaintiffs' Complaint.

47. Tesla admits it designed in part, manufactured in part, marketed, advertised and distributed the 2021 Tesla Model 3 purchased and driven by Decedent Hans Von Ohain.

48. Tesla denies the allegations in paragraph 48.

49. Tesla denies that its vehicle was or is defective. Tesla denies any remaining allegations in paragraph 49.

50. Tesla denies that its vehicle was or is defective. Tesla denies any remaining allegations in paragraph 50.

51. Tesla denies that its vehicle was or is defective. Tesla denies any remaining allegations in paragraph 51..

52. Tesla denies that its vehicle was or is defective. Tesla denies any remaining allegations in paragraph 52.

53. Tesla denies the allegations in paragraph 53.

54. Tesla denies the allegations in paragraph 54.

SIXTH CAUSE OF ACTION

55. Tesla incorporates herein by reference its responses to paragraphs 1 through 54 of Plaintiffs' Complaint.

56. Tesla admits that the only warranty it made with respect to the 2021 Tesla Model 3 is the express warranty that accompanied the sale of the vehicle. Tesla denies the remaining

allegations contained in Paragraph 56.

57. Tesla denies the allegations in paragraph 57.

58. Tesla denies the allegations in paragraph 58.

59. Tesla denies the allegations in paragraph 59.

60. Tesla denies the allegations in paragraph 60.

61. Tesla denies the allegations in paragraph 61.

SEVENTH CAUSE OF ACTION

62. Tesla incorporates herein by reference its responses to paragraphs 1 through 61 of Plaintiffs' Complaint.

63. Tesla admits it designed in part, manufactured in part, marketed, advertised and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

64. Tesla admits it was and is engaged in the business of selling certain motor vehicles. Tesla denies the remaining allegations in paragraph 64.

65. Tesla denies the allegations in paragraph 65.

66. Tesla denies the allegations in paragraph 66.

67. Tesla denies the allegations in paragraph 67.

68. Tesla denies the allegations in paragraph 68.

EIGHTH CAUSE OF ACTION

69. Tesla incorporates herein by reference its responses to paragraphs 1 through 68 of Plaintiffs' Complaint.

70. Tesla admits only that Plaintiffs' Complaint contains a cause of action brought pursuant to the Colorado Consumer Protection act, C.R.S. § 6-1-101 *et seq.* Tesla denies that the

cause of action is properly pled, and denies any remaining allegations contained in paragraph 70.

71. The allegations in paragraph 71 of Plaintiffs' Complaint are legal conclusions to which no response is required. To the extent a response is required, Tesla denies the allegations.

72. Denied as phrased. Tesla admits Plaintiff Nora Bass and Decedent Hans Von Ohain completed the purchase and delivery of their 2021 Tesla Model 3 on June 1, 2021.

73. Tesla denies the allegations in paragraph 73.

74. Tesla denies it engaged in unfair and deceptive acts or practices. Tesla denies the allegations in paragraph 74.

75. Tesla denies the allegations of paragraph 75

76. Tesla denies the allegations of paragraph 76.

77. Tesla denies the allegations of paragraph 77.

78. Tesla denies the allegations of paragraph 78.

79. Tesla denies the allegations of paragraph 79.

NINTH CAUSE OF ACTION

80. Tesla incorporates herein by reference its responses to paragraphs 1 through 79 of Plaintiffs' Complaint.

81. Tesla denies the allegations in paragraph 81.

82. Tesla admits that Ashok Elluswamy is the Director of Tesla's Autopilot Software. Tesla denies the remaining allegations of paragraph 82.

83. Tesla denies the allegations of paragraph 83.

84. Tesla denies the allegations of paragraph 84.

85. Tesla denies its vehicle or the Autopilot driver assist feature was or is defective.

Tesla denies any remaining allegations in paragraph 85.

86. Tesla admits that the Society of Automotive Engineers (“SAE”) has established a taxonomy for defining driver automation systems, with levels ranging from zero to five. Tesla further admits its Autopilot system, at all times relevant, was a Level 2 system based on SAE’s criterion. Tesla denies the remaining allegations of paragraph 86.

87. Tesla denies the allegations in paragraph 87.

88. Tesla admits releasing a video on October 19, 2016 in connection with a blog post titled “All Tesla Cars Being Produced Now Have Full Self-Driving Hardware.” On October 20, 2016, an additional video was posted to Tesla’s website titled “Full Self-Driving Hardware on All Teslas.” Tesla denies the remaining allegations of paragraph 88.

89. Tesla admits releasing a video in November 2016 titled “Self-Driving Demonstration” that was included in the October 19, 2016 blog post titled “All Tesla Cars Being Produced Now Have Full Self-Driving Hardware.” Tesla denies the remaining allegations in paragraph 89.

90. Tesla denies the allegations in paragraph 90.

91. Tesla denies the allegations in paragraph 91.

92. Tesla denies the allegations in paragraph 92.

93. Tesla denies the allegations in paragraph 93.

94. Tesla denies the allegations in paragraph 94.

95. Tesla denies the allegations in paragraph 95.

96. Tesla denies the allegations in paragraph 96.

97. Tesla denies the allegations in paragraph 97.

TENTH CAUSE OF ACTION

98. Tesla incorporates herein by reference its responses to paragraphs 1 through 97 of Plaintiffs' Complaint.

99. Tesla denies the allegations in paragraph 99.

100. Tesla lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 100, and therefore denies them.

101. Tesla lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 101, and therefore denies them.

102. Tesla denies the allegations in paragraph 102.

103. Tesla denies the allegations in paragraph 103.

104. Tesla denies the allegations in paragraph 104.

105. Tesla denies the allegations in paragraph 105.

ELEVENTH CAUSE OF ACTION

106. Tesla incorporates herein by reference its responses to paragraphs 1 through 105 of Plaintiffs' Complaint.

107. Tesla lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 107, and therefore denies them.

108. Tesla admits the allegations in paragraph 108.

109. Tesla denies the allegations in paragraph 109.

110. Tesla denies the allegations in paragraph 110.

111. Tesla denies that its vehicle was or is defective. Tesla denies any remaining allegations in paragraph 111.

112. Tesla denies the allegations in paragraph 112.

TWELFTH CAUSE OF ACTION

113. Tesla incorporates herein by reference its responses to paragraphs 1 through 112 of Plaintiffs' Complaint.

114. The allegations in paragraph 114 of Plaintiffs' Complaint are legal conclusions to which no response is required. To the extent a response is required, Tesla denies the allegations.

115. Tesla admits it designed in part, manufactured in part, marketed, advertised and distributed the 2021 Tesla Model 3 driven by Decedent Hans Von Ohain.

116. Tesla denies the allegations in paragraph 116.

117. Tesla denies the allegations in paragraph 117.

118. Tesla denies that its vehicle was or is defective. Tesla denies any remaining allegations in paragraph 118.

119. Tesla denies the allegations in paragraph 119.

DEMAND FOR JURY TRIAL

Tesla likewise requests a trial by jury on all claims and issues so triable.

RELIEF REQUESTED

The remaining statements in the Complaint relate to Plaintiffs' prayer for relief, to which no response is required. To the extent a response is required, Tesla denies that Plaintiffs are entitled to recover all or any portion of the relief sought.

GENERAL DENIAL

Tesla denies each and every allegation of the Complaint except those that Tesla has specifically admitted herein. Tesla expressly denies all liability to Plaintiffs.

DEFENSES AND AFFIRMATIVE DEFENSES

Tesla asserts the following defenses to preserve them for trial. Tesla has not yet had the opportunity to complete its discovery or investigation of this matter and, therefore, Tesla may withdraw or add to these defenses as appropriate. Tesla has not knowingly or intentionally waived any applicable affirmative defenses, and Tesla reserves the right to amend its affirmative defenses as this matter progresses. Additionally, Tesla reserves the right to designate nonparties at fault and apportion liability, if any, pursuant to C.R.S. § 13-21-111.5.

1. Plaintiffs' claims may be barred, in whole or in part, because the Complaint fails to state a claim upon which relief may be granted.

2. Plaintiffs' claims against Tesla may be barred or limited, in whole or in part, by the acts, omissions, conduct, breaches, negligence, and/or negligence per se of Plaintiffs' decedent and/or other persons or entities. The alleged injuries and/or damages in Plaintiffs' Complaint, if any, were caused by the negligence, fault, misconduct, negligence per se, unlawful acts, breaches, violations, and/or omissions of Plaintiffs' decedent and/or other persons or entities, which bars Plaintiffs' claims or comparatively reduces Plaintiffs' right to recover damages, if any, from Tesla. Thus, if any persons or entities other than Tesla—including but not limited to Plaintiffs' decedent—contributed to or were negligent, legally responsible, or otherwise at fault for the damages alleged in Plaintiffs' Complaint, any recovery by Plaintiffs against Tesla must be barred and/or proportionally reduced pursuant to C.R.S. § 13-21-111, C.R.S. § 13-21-111.5, C.R.S. § 13-21-406, and/or any other applicable Colorado statute or law. Tesla expressly reserves the right to designate any potential non-parties at fault, if applicable.

3. Plaintiffs' damages, if any, may be barred or limited by Plaintiffs' decedent's misuse and/or assumption of the risk. *See, e.g.*, C.R.S. § 13-21-111.7.

4. Plaintiffs' claims are barred or limited, in whole or in part, because Plaintiffs' alleged damages were not directly, actually, and/or proximately caused by any act or omission of

Tesla.

5. Any damages allegedly sustained by Plaintiffs are subject to the requirements of C.R.S. § 13-21-111.6, providing for the reduction of damages for payment from a collateral source, and/or Tesla is entitled to a set-off.

6. Plaintiffs' claims may be barred or limited, in whole or in part, because conduct of Tesla was not a material element or substantial factor in bringing about Plaintiffs' alleged injuries and/or damages.

7. Plaintiffs' alleged damages, if any, may have been caused by a superseding and/or intervening force over which Tesla had no control.

8. The product in question was not defective or unreasonably dangerous. Indeed, products designed, manufactured, and/or sold by Tesla were reasonably safe for their intended use as manufactured and designed when they left Tesla's possession or control and/or when they were sold. Moreover, the 2021 Tesla Model 3 was not defective or unreasonably dangerous when designed, manufactured, and/or sold by Tesla.

9. Plaintiffs' claims may be barred or limited, in whole or in part, to the extent Plaintiffs' decedent used the 2021 Tesla Model 3 in a manner other than which it was intended or in a manner that could not have been expected, and/or to the extent Plaintiffs' decedent misused the 2021 Tesla Model 3. Tesla invokes the protections of C.R.S. § 13-21-402.5, which may bar Plaintiffs' claims. See C.R.S. § 13-21-402.5 ("A product liability action may not be commenced or maintained against a manufacturer or seller of a product that" allegedly "caused injury... if, at the time the injury... occurred, the product was used in a manner or for a purpose other than that which was intended and which could not reasonably have been expected, and such misuse of the product was a cause of the injury, death, or property damage.").

10. The 2021 Tesla Model 3 may not have been in the same condition at the time of the crash as it was at the time when it left Tesla's custody and/or was sold, which may bar or limit

Plaintiffs' claims.

11. Tesla invokes the presumptions set forth in C.R.S. § 13-21-403, including those related to state-of-the-art and compliance with applicable government standards, codes, or regulations.

12. Plaintiffs' claims may be barred or limited, in whole or in part, by Plaintiffs' failure to mitigate any alleged damages.

13. Plaintiffs' claims may be barred or limited by the doctrines of waiver, sophisticated user, learned intermediary, release, estoppel, unclean hands, or other equitable doctrines.

14. Plaintiffs' claims may be barred or limited, in whole or in part, by the operation of Colorado law, statutes, or rules. Indeed, and without limitation, Plaintiffs' recovery of damages, if any, is subject to, among other things, statutory damage caps, including but not limited to those contained in C.R.S. § 13-21-102.5.

15. Plaintiffs' claims may be barred in whole or in part by the doctrine of preemption.

16. Tesla affirmatively alleges that any and all testing of the 2021 Tesla Model 3 before its original distribution was reasonable and suitable.

17. Tesla is informed and believes and on that basis alleges that Plaintiffs are barred from maintaining an action for breach of warranty because Plaintiffs failed to perform all of the conditions precedent to a right of recovery, and in particular, Plaintiffs failed to provide any notice of breach related to Plaintiffs' breach of warranty claims, barring recovery in relation to the same.

18. Plaintiffs' claims for breach of the implied warranty of merchantability and/or an implied warranty of fitness are barred because Tesla disclaimed such warranties.

19. Plaintiffs' claims for damages are subject to the limitations set forth in C.R.S. §13-21-201 – 203, or any other applicable state law.

20. Plaintiffs' claims may be barred by virtue of their failure to preserve evidence relating to the 2021 Tesla Model 3, the crash, or their claims, or by virtue of their spoliating such

evidence resulting in undue prejudice to Tesla's defense.

20. Tesla preserves and asserts any and all defenses, claims, credits, offsets, and/or remedies permitted by law.

Tesla reserves the right to file, upon completion of its investigation and discovery, such additional affirmative defenses as may be appropriate.

Dated: June 27, 2024.

Respectfully submitted,

s/ Clarissa M. Collier

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Attorneys for Defendant Tesla, Inc.

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on June 27, 2024, I electronically filed the foregoing **DEFENDANT TESLA'S ANSWER TO PLAINTIFFS' COMPLAINT** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

- **Jonathan A. Michaels**
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- **Carol Baidas**
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s/ Megan A. Gregory

Megan A. Gregory, Legal Assistant