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16 JUSTINE HSU

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF LOS ANGELES—NORTH CENTRAL DISTRICT—GLENDALE COURTHOUSE

19 JUSTINE HSU, an individual,

20 Plaintiff,

21 vs.

22 TESLA, INC. fka TESLA MOTORS, INC.;;
23 DOES 1 through 100, Inclusive,

24 Defendants.

) Case No. 20STCV18473

) [Assigned for All Purposes to the Honorable
Judge David A. Rosen, Department E]

) **PLAINTIFF JUSTINE HSU’S SEPARATE
STATEMENT OF INTERROGATORIES
(AND RESPONSES IN DISPUTE IN
SUPPORT OF MOTION TO COMPEL
FURTHER RESPONSES TO FORM
INTERROGATORIES – GENERAL (SET
ONE) FROM DEFENDANT TESLA, INC.**

) Complaint Filed: May 14, 2020
) First Amended Complaint Filed: May 29, 2020
) Second Amended Complaint Filed: January 21,
) 2021
) Trial Date: April 3, 2023

) **RESERVATION ID No.: 976456128356**

1 JUSTINE HSU (“Justine”) hereby submits her Separate Statement of Interrogatories and
2 Responses in Dispute in support of her Motion to Compel Further Responses to Form Interrogatories
3 – General (Set One) against TESLA, INC. (“Tesla”), as follows:

4 **FORM INTERROGATORY NO. 15.1:**

5 Identify each denial of a material allegation and each special of affirmative defense in your
6 pleadings and for each:

- 7 (a) State all facts upon which you base the denial or special or affirmative defense;
8 (b) State the names, ADDRESSES, and telephone numbers of all PERSONS who have
9 knowledge of those facts; and
10 (c) Identify all DOCUMENTS and other tangible things that support your denial or special or
11 affirmative defense, and state the name, ADDRESS, and telephone number of the PERSON
12 who has each DOCUMENT.

13 **RESPONSE TO FORM INTERROGATORY NO. 15.1:**

14 (a)-(c) Subject to and without waiving the objections stated below, Tesla's investigation and
15 discovery are continuing. In Tesla's Answer to Plaintiff's Second Amended Complaint, Tesla made
16 its general denial and alleged affirmative defenses to controvert Plaintiff's material allegations and to
17 preserve this issues for trial so that they are not waived. In addition, Tesla asserted a number of
18 affirmative defenses to minimize the possibility that Tesla would have to amend its Answer as it
19 discovered new facts. The development of evidence and the discovery of facts supporting these
20 defenses are the subject on ongoing investigation and discovery. As such, it is difficult at this time to
21 state “all facts” upon which Tesla bases its denials and affirmative defenses. Additional investigation
22 and discovery are necessary before all such facts, documents, and persons can be fully ascertained.
23 Tesla's investigation and discovery are continuing.

24 Subject to that clarification, affirmative defense Nos. 1, 3, 12, 13, 17, 22, 23, 27 – 31, 40 – 45,
25 47, 48 and 55 were pled to avoid waiver. Tesla is not aware of any facts at this time to support these
26 affirmative defenses. Tesla's investigation and discovery are continuing.

27 Affirmative defenses Nos. 2 (Comparative Fault), 4 (Assumption of Risk), 5 (Third Party
28 Liability), 7 (Intervening/Superseding Actions), 10 (Misuse/Abuse/Alteration), 11 (Improper

1 Maintenance) and 14 (Additional Warnings) were pled based on the contributory fault, assumption of
2 risk, potential misuse of the 2016 Model S by Plaintiff. Tesla reviewed the diagnostic data log from
3 the time of the accident and confirmed that there is no evidence of a defect in the subject vehicle.
4 Tesla also notes that the police report, which has been provided to Plaintiff, concluded that she
5 caused this collision by “turning her vehicle from a direct course on a roadway without reasonable
6 safety.”

7 Affirmative defense Nos. 6 (Fair Responsibility Act), 8 (State-of-the-Art), 9 (Compliance
8 with Internal / Industry Standards), 15 (Alternate Warnings), 16 (Sufficient Warnings / No Duty to
9 Warn), 18 - 20, 24 - 26, 37 - 40, 46, 49 - 54 (Warranty related) and 32-36 (Punitive Damages) were
10 pled because Tesla has no evidence to the contrary. The 2016 Model S and its component parts
11 complied with all applicable industry and Federal Motor Vehicle Safety Standards. Tesla has not
12 been provided with any facts showing that the subject vehicle, or its component parts, were defective
13 when they left the manufacturer’s possession. As to the punitive damages related defenses, Tesla did
14 not engage in any despicable conduct with a willful and conscious disregard for the rights and safety
15 of others and are not aware of any contrary evidence.

16 Affirmative defense No. 21 (Preemption) was pled because the design, operation, and
17 performance of the 2016 Model S are specified by Federal regulations which preempt conflicting
18 state law. Federal regulations and California legal decisions on this issue are in the public record.
19 Tesla anticipates this affirmative defense will be the subject of expert testimony.

20 Notwithstanding the above, to the extent this Interrogatory asks for more information, Tesla
21 objects that the Interrogatory asks for information protected by the attorney-client privilege or the
22 work product doctrine. Tesla also objects to the extent the Interrogatory asks for the premature
23 disclosure information to be provided by expert witnesses pursuant to Code of Civil Procedure
24 sections 2034.210 to 2034.310.

25 **FACTUAL AND LEGAL REASONS WHY FURTHER RESPONSE IS NEEDED:**

26 Pursuant to *Code of Civil Procedure* §2030.220(a), “each answer in a response to
27 interrogatories shall be as complete and straightforward as the information reasonably available to the
28 responding party permits.” The responding party must answer each interrogatory “to the extent

1 possible,” even if the question “cannot be answered completely,” and must “state the truth, the whole
2 truth, and nothing but the truth” in its answers. *Code of Civil Procedure* §2030.220(b); *Scheidung v.*
3 *Dinwiddie Const. Co.* (1999) 69 CA4th 64, 76 (internal quotes omitted). Where the question is
4 specific and explicit, an answer that supplies only a portion of the information sought is improper. It
5 is also improper to provide “deftly worded conclusionary answers designed to evade a series of
6 explicit questions.” *Deyo v. Kilbourne* (1978) 84 CA3d 771, 783.

7 Form Interrogatory No. 15.1 is essentially a contention interrogatory, which is both
8 appropriate and permitted by the Discovery Act. *Code of Civil Procedure* § 2030.010(b). Justine is
9 entitled to request “whether or not [Tesla] makes a particular contention, either as to the facts or as to
10 the possible issues in the case. (*Universal Underwriters Ins. Co. v. Superior Court, supra*, 250
11 Cal.App.2d 722, 728; see also *Sheets v. Superior Court*, 257 Cal.App.2d 1, 13.)” *Burke v. Superior*
12 *Court of Sacramento County* (1969) 71 Cal.2d 276, 281–282. Further, contention interrogatories may
13 properly require a party to state their contentions as to *both* factual and legal issues. *Code of Civil*
14 *Procedure* § 2030.010(b) (“An interrogatory is not objectionable because the answer relates to...the
15 application of law to fact or would be based on legal theories.”) Contention interrogatories are one of
16 many pre-trial discovery procedures, which are intended “to find out what the lawsuit is about, to
17 simplify and define the issues to be litigated, and to determine how the trial may proceed most
18 expeditiously. It is also to give notice of matters not necessarily revealed by the pleadings where such
19 matters may be issues in the case.” *Universal Underwriters Ins. Co. v. Superior Court* (1967) 250
20 Cal.App.2d 722, 728. Seeking information through a contention interrogatory is not only proper, “**but**
21 **desirable.**” *Id.* (emphasis added).

22 In responding to Form Interrogatory No. 15.1, Tesla misconceives that the statement “there is
23 no defect” in the subject vehicle is *not* a contention *or* a defense. See, *Arshad Decl.*, ¶¶3 (*Exhibit A-*
24 *2*), 5 (*Exhibit E*). Despite its protestations otherwise, Tesla has the burden of proof as to the existence
25 or nonexistence of all facts essential to its claimed defenses. EVID. CODE §500; *Simpson Strong-Tie*
26 *Company, Inc. v. Gore* (2010) 49 Cal.4th 12, 24. If Tesla contends that Justine’s injuries were *not*
27 caused by an alleged defect in the Tesla Model S, and that no alleged defect existed, then it must
28

1 provide a complete and straightforward answer that identifies the supporting facts, persons, and
2 documents developed to this point. *Code of Civil Procedure* §2030.220(a).

3 Tesla cannot similarly justify its refusal to provide this information by asserting the baseless
4 position that it “is not obligated to prove a negative”. *See, Arshad Decl., ¶5 (Exhibit E)*. The burden
5 is upon Tesla to *prove* its affirmative defenses; Justine does not have the initial burden of *disproving*
6 its affirmative defenses. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 856¹; *Consumer*
7 *Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468. And, contrary to Tesla’s purported
8 position, mere conclusory assertions are not in fact “facts.” Specifically,

- 9 • *What* specifically about the diagnostic data log shows no evidence of a defect in the
10 subject vehicle?
- 11 • *How* did the Model S and its component parts comply with all applicable industry and
12 Federal safety standards?
- 13 • *What* are the facts that Tesla is aware of, or that Tesla can make a reasonable effort to
14 obtain, that would show that the subject vehicle and its component parts were not
15 defective when they left the manufacturer’s possession?
- 16 • *What* are the specific Federal regulations and California regulations that the design,
17 operation, and performance of the 2016 Model S complied with?

18 A further response stating “all facts” as the Interrogatory No. 15.1(a) asks is required – and Tesla
19 must also identify all persons and documents in support of the same in response to subparts (b) and
20 (c), respectively. Tesla may not evade this obligation by providing “deftly worded conclusionary
21 answers designed to evade a series of explicit questions.” *Deyo v. Kilbourne* (1978) 84 CA3d 771,
22 783.

23 The information “reasonably available” to Tesla with which to support its contentions is
24 substantial. The subject incident occurred almost four years ago. Discovery has been ongoing since
25 approximately September 2020. *Arshad Decl., ¶6*. Since that time, Justine served her discovery
26 responses on November 30, 2020, providing answers and document production to 42 Special

27 ¹ A defendant “may not rely upon the mere allegations or denials[] of his “pleadings to show that a triable issue of material fact exists
28 but, instead,” must “set forth specific facts showing that a triable issue of material fact exists as to that cause of action or defense
thereto.” [Citation].” *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826 at 849.

1 Interrogatories and 42 Requests for Production of Documents, which substantiated her injuries and
2 contentions. Tesla also deposed Justine on August 17, 2022. *Arshad Decl.*, ¶6. Tesla itself produced
3 two of its persons most knowledgeable for deposition related to the defects Justine alleges caused her
4 injuries – Eloy Rubio Blanco on March 18, 2022 and Madan Gopal on November 16, 2021 – and will
5 produce a third person most knowledgeable on February 1, 2023 for deposition. *Arshad Decl.*, ¶6.

6 As the designer, manufacturer, distributor, and seller of the Tesla vehicles, Tesla is the sole
7 entity in possession of the information related to its vehicles. Either Tesla has facts, witnesses, and
8 documents to support its denials and affirmative defenses, or it does not. If it has no such
9 information, then it must so state and withdraw those defenses accordingly. It may not, however,
10 simply sit back and stonewall Justine during discovery.

11 The Code and supporting caselaw are clear: if Tesla asserts affirmative defenses, it must
12 present evidence to support those defenses. Therefore, Justine respectfully requests this Court compel
13 further, verified, Code-compliant responses to Judicial Council Form Interrogatory No. 15.1.

14
15 **FORM INTERROGATORY NO. 17.1:**

16 Is your response to each request for admission served with these interrogatories an
17 unqualified admission? If not, for each response that is not an unqualified admission:

- 18 (a) State the number of the request;
19 (b) State all facts upon which you base your response;
20 (c) State the names, ADDRESSES, and telephone numbers of all PERSONS who have
21 knowledge of those facts; and
22 (d) Identify all DOCUMENTS and other tangible things that support your response and state the
23 name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or
24 thing.

25 **RESPONSE TO FORM INTERROGATORY NO. 17.1:**

26 Response to Request for Admission No. 5 (Set One)

- 27 a) Response to Request for Admission No. 5 (Set One)

- 1 b) In this incident, the Autopilot system on the subject 2016 Model S, Hardware 1.0, performed
2 as intended and designed, consistent with the limitations set forth in the Owner’s Manual.
3 Tesla objects to the extent the Interrogatory asks for the premature disclosure information to
4 be provided by expert witnesses pursuant to Code of Civil Procedure sections 2034.210 to
5 2034.310. Tesla will disclose expert witnesses who will address Autopilot performance in this
6 incident in accordance with the applicable deadlines.
- 7 c) Eloy Rubio Blanco, Tesla employee who may be reached through counsel. In addition, Tesla
8 will disclose expert witnesses in this case in accordance with the applicable deadlines who
9 will address Autopilot performance in this incident.
- 10 d) Tesla refers Plaintiff to the documents previously produced in discovery relating to Autopilot
11 for the Model S, Hardware 1.0.

12 Response to Request for Admission No. 6 (Set One)

- 13 a) Response to Request for Admission No. 6 (Set One)
- 14 b) In this crash, the driver frontal airbag in the subject 2016 Model S properly deployed in
15 accordance with its design and performance criteria. Tesla objects to the extent the
16 Interrogatory asks for the premature disclosure information to be provided by expert
17 witnesses pursuant to Code of Civil Procedure sections 2034.210 to 2034.310.. Tesla will
18 disclose expert witnesses who will address airbag design and performance in this crash in
19 accordance with the applicable deadlines
- 20 c) Madan Gopal, Tesla employee who may be reached through counsel. In addition, Tesla will
21 disclose expert witnesses in this case in accordance with the applicable deadlines who will
22 address airbag design and performance in this crash.
- 23 d) Tesla refers Plaintiff to the documents previously produced in discovery relating to airbag
24 design, performance and testing for the Model S. Response to Request for Admission No. 7
25 (Set One)

26 Response to Request for Admission No. 7 (Set One)

- 27 a) Response to Request for Admission No. 7 (Set One)
- 28 b) Mr. Musk is not the “final decision-maker” on Tesla recalls.

1 c) Tesla’s field quality and homologation teams. Tesla’s employees may be reached through
2 counsel.

3 d) There are no non-privileged responsive documents.

4 **FACTUAL AND LEGAL REASONS WHY FURTHER RESPONSE IS NEEDED:**

5 Pursuant to *Code of Civil Procedure* §2030.220(a), “each answer in a response to
6 interrogatories shall be as complete and straightforward as the information reasonably available to the
7 responding party permits.” The responding party must answer each interrogatory “to the extent
8 possible,” even if the question “cannot be answered completely,” and must “state the truth, the whole
9 truth, and nothing but the truth” in its answers. *Code of Civil Procedure* §2030.220(b); *Scheidung v.*
10 *Dinwiddie Const. Co.* (1999) 69 CA4th 64, 76 (internal quotes omitted). Where the question is
11 specific and explicit, an answer that supplies only a portion of the information sought is improper. It
12 is also improper to provide “deftly worded conclusionary answers designed to evade a series of
13 explicit questions.” *Deyo v. Kilbourne* (1978) 84 CA3d 771, 783.

14 The instruction for responding to Form Interrogatory No. 17.1 is clear: for any response to the
15 concurrently served Requests for Admission that is not an unequivocal admission, provide the facts,
16 the names and contact information of all persons with knowledge of those facts, and all documents
17 that support the response. Here, Tesla has woefully failed to meet such clear direction. Justine seeks
18 responses to Form Interrogatory No. 17.1 for only three concurrently served Requests for Admission
19 – Nos. 5, 6, and 7. Rather than providing the facts to support its responses to the RFAs, Tesla
20 provided mere conclusory answers by simply restating the corresponding RFAs *in the negative*. In
21 providing a complete and straightforward answer, stating *all* facts upon which Tesla bases its
22 response would necessarily include the facts as to *why* it denied the RFA or otherwise provided any
23 response other than an unequivocal admission.

24 **A. Request for Admission No. 5**

25 For instance, RFA No. 5 asks Tesla to admit that the Autopilot system on the subject vehicle
26 did not perform as intended by Tesla at the time of the subject incident. In justifying its denial, in
27 response to Form Interrogatory No. 17.1(b) Tesla provided only the conclusory statement that, “In
28 this incident, the Autopilot system on the subject 2016 Model S, Hardware 1.0, performed as

1 intended and designed, consistent with the limitations set forth in the Owner’s Manual.” *Arshad*
2 *Decl.*, ¶3 (*Exhibit A-2*). Such a statement, without the identification of any facts, witnesses, or
3 documents in support thereof, is an empty, unsubstantiated, conclusory assertion. Again, if Tesla
4 makes such an assertion, it must be supported by the information requested in the interrogatory. Tesla
5 also failed to properly identify any documents in subsection (c), instead referring Justine to
6 “documents previously produced.” *See, Arshad Decl.*, ¶2 (*Exhibit A-2*). Such a response
7 demonstrates Tesla’s repeated, flippant disregard for even the most basic discovery requests; here, a
8 Judicial Council Form Interrogatory.

9 **B. Request for Admission No. 6**

10 Tesla provided a similarly conclusory response to Form Interrogatory No. 17.1(b) for RFA
11 No. 6, requesting that Tesla admit that the airbags on the subject vehicle did not perform as intended
12 by Tesla at the time of the subject incident. *Arshad Decl.*, ¶3 (*Exhibit B-1*). Tesla’s response to
13 subsection (b) – when asked to state all facts in support of its denial – merely restated the RFA in the
14 negative: the airbags on the subject vehicle “properly deployed in accordance with its design and
15 performance criteria.” *Arshad Decl.*, ¶3 (*Exhibit A-2*). Asserting that the airbag “properly deployed”
16 is an unsupported contention, and Tesla must provide a complete and straightforward response
17 articulating the *facts* supporting such a statement. Tesla also failed to properly identify any
18 documents in subsection (c), instead referring Justine to “documents previously produced.” *See,*
19 *Arshad Decl.*, ¶2 (*Exhibit A-2*). Again, Tesla’s response is improper and highlights Tesla’s contempt
20 for the discovery process.

21 **C. Request for Admission No. 7**

22 RFA No. 7 asks Tesla to admit whether Elon Musk is a final decision-maker on Tesla recalls.
23 *Arshad Decl.*, ¶3 (*Exhibit B-1*). In its corresponding response to Form Interrogatory 17.1(b) – when
24 asked to state all facts supporting its denial of the RFA – Tesla dickers over semantics and
25 purposefully misconstrues the request at issue, stating: “Mr. Musk is not the final decision-maker on
26 Tesla recalls.” *See, Arshad Decl.*, ¶3 (*Exhibit A-2*). Tesla also failed to properly identify witnesses in
27 subsection (c), instead vaguely including “Tesla’s field quality and homologation teams [who] may
28 be reached through counsel”. *See, Arshad Decl.*, ¶2 (*Exhibit A-2*). This is nonresponsive. In serving

1 such a response, and subsequently refusing to amend or supplement its response during meet and
2 confer efforts, Tesla has forced Justine to *again* waste precious judicial time and resources to order
3 Tesla to adhere to basic rules of Civil Procedure. “A party may not deliberately misconstrue a
4 question for the purpose of supplying an evasive answer. [Citation.] Indeed, where the question is
5 somewhat ambiguous, but the nature of the information sought is apparent, the proper solution is to
6 provide an appropriate response. [Citation.]” *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783.
7 Failing to respond to clear and concise interrogatories based on an arguable technicality is exactly the
8 type of gamesmanship the Discovery Act sought to eliminate. *See generally, Clement v. Alegre*
9 (2009) 177 Cal.App.4th 1277.

10 Discovery is intended to remove the “game element” out of litigation. *Greyhound Corp. v.*
11 *Superior Court* (1961) 56 Cal.2d.355. Yet, Tesla’s position in both its responses and its meet and
12 confer efforts demonstrates a recitation of strategically evasive responses that suggest Justine is not
13 entitled to know each fact, witness, and document upon which Tesla bases its denials of the factual
14 propositions raised in the RFA. Despite its protestation otherwise, Tesla *is* obligated to explain, in
15 response to a form interrogatory, why it makes a particular denial or contention, and to identify all
16 witnesses and documents in support thereof. *Arshad Decl.*, ¶6. Therefore, Justine respectfully
17 requests this Court compel Tesla to provide further responses to Form Interrogatory No. 17.1 with
18 respect to Request for Admission Nos. 5, 6, and 7.

19 Dated: January 27, 2023

GOKAL LAW GROUP, INC.

20
21
22 By: _____



Alison Gokal, Esq.
Anum Arshad, Esq.
Attorneys for Plaintiff,
JUSTINE HSU

1 Re: HSU v. TESLA, INC. fka TESLA MOTORS, INC., et al.
2 Case Number: 20STCV18473

3 **PROOF OF SERVICE**

4 I am employed in the County of Orange, State of California. I am over the age of 18 and not a party
5 to the within action; my business address is 505 Technology Drive, Suite 150 Irvine, CA 92618.

6 On January 27, 2023, I served the foregoing document(s) described as: **PLAINTIFF**
7 **JUSTINE HSU'S SEPARATE STATEMENT OF INTERROGATORIES (AND RESPONSES**
8 **IN DISPUTE IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO FORM**
9 **INTERROGATORIES – GENERAL (SET ONE) FROM DEFENDANT TESLA, INC.** on the
10 interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed
11 as follows:

12 SEE ATTACHED MAILING LIST

13 BY U.S. MAIL: After signing this proof of service, I will mail a true and correct copy of the
14 above-described documents in a sealed envelope. I am "readily familiar" with the firm's
15 practice of collection and processing correspondence for mailing. Under that practice it
16 would be deposited with the U.S. postal service on that same day with postage thereon fully
17 prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of
18 the party served, service is presumed invalid if postal cancellation date or postage meter date
19 is more than one day after date of deposit for mailing in affidavit.

20 BY ELECTRONIC SERVICE VIA ONELEGAL EFILING SERVICE - I served the above-
21 entitled document(s) through the OneLegal E-Filing Service at www.onelegal.com addressed
22 to all parties appearing on the electronic list for the above-entitled case. A copy of the One
23 Legal Service Receipt Page/Confirmation will be maintained with the original document(s) in
24 this office.

25 BY ELECTRONIC MAIL – I caused said document, along with a signed copy of this
26 Declaration, to be transmitted to dkopelevich@dykema.com, MCarey@dykema.com,
27 EBailon@dykema.com, kvotava@dykema.com, dslavik@slavik.us, apawlak@slavik.us, and
28 dcaudle@slavik.us.

Executed on January 27, 2023 at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the above is
true and correct.

Holly Thomas

Holly Thomas

