

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

~~14CV002962~~

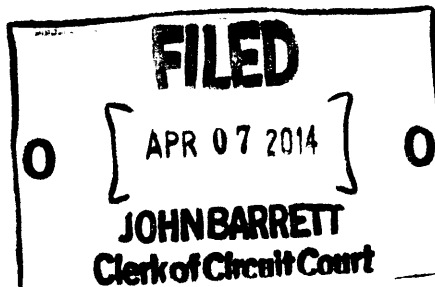
ROBERT G. MONTGOMERY FAMILY TRUST,
8570 S. 116th Street
Franklin, Wisconsin 53132,

Plaintiff,

vs.

TESLA MOTORS, INC.,
a foreign corporation,
3500 Deer Creek Road
Palo Alto, California 94304,

Defendant.

**COMPLAINT**

Case No.

Code No. 30703

Unclassified

The amount claimed is
greater than the amount
under sec. 799.07(1)(d),
Wis. Stats.

NOW COMES the above-named Plaintiff, by its attorneys, Aiken & Scoptur, S.C.,
as and for claims against the above-named defendant, alleges and shows to the Court as
follows:

FIRST CLAIM

As and for a claim against the defendant, Tesla Motors, Inc., the Plaintiff alleges:

1. That the Plaintiff, Robert G. Montgomery Family Trust, by Robert G. Montgomery, Trustee, has an address of 8570 S. 116th Street, Franklin, Wisconsin 53132; that said Plaintiff is a "consumer," as that term is defined in sec. 218.0171(1)(b), Wis. Stats.

2. That upon information and belief, the defendant, Tesla Motors, Inc., is a foreign corporation engaged in the manufacture and sale of motor vehicles, including new motor vehicles, to citizens of the United States, including the State of Wisconsin and elsewhere; that said defendant does business in Milwaukee County, Wisconsin; that upon

EXHIBIT A

information and belief, its principal offices are located at 3500 Deer Creek Road, Palo Alto, California 94304; that the registered agent for said defendant in the State of California is CT Corporation System, 818 W. Seventh Street, Los Angeles, California 90017; that said defendant is a "manufacturer," as that term is defined in sec. 218.0171(1)(c), Wis. Stats.

3. That on or about March 21, 2013, the Plaintiff purchased from Tesla Motors, Inc., a new 2013 Tesla SP Sedan vehicle identification number 5YJSA1CP1DFP07197, as more fully set forth a copy of the Tesla Motor Vehicle Purchase Agreement/Bill of Sale which is attached hereto, incorporated by reference herein and marked as Exhibit A; that the purchase agreement was signed electronically by the Plaintiff in the State of Wisconsin, and the defendant accepted the down payment in the State of Wisconsin; that the Plaintiff received transfer/delivery of said 2013 Tesla SP Sedan in the State of Wisconsin on or about March 21, 2013 as set forth in a copy of the Select 1 Freight Bill-Car Condition Report and Delivery Receipt that is attached hereto, incorporated by reference and marked as Exhibit B; that said 2013 Tesla SP Sedan is a "motor vehicle," as that term is defined in sec. 218.0171(1)(d), Wis. Stats.

4. That upon information and belief, the full purchase price/total cash price of said 2013 Tesla SP Sedan was \$94,770.00, including the sum of \$250.00 for parcel shelf, \$950.00 for paint armor, \$990.00 for Tesla Personal Delivery, \$180.00 for final inspection prep and coordination, plus \$7.00 for California tire fees, plus Wisconsin sales tax in the sum of \$4,738.50, plus Milwaukee County sales tax in the sum of \$473.85, plus Milwaukee local/stadium tax in the sum of \$94.77, plus title fee in the sum of \$62.00,

plus Wisconsin supplemental title fee in the sum of \$7.50, plus Wisconsin registration fee in the sum of \$75.00, plus counter service fee in the sum of \$5.00, plus possible other charges; that upon information and belief, the Plaintiff made a down payment in the sum of \$5,000.00 and paid the balance in full to Tesla Motors, Inc. on March 21, 2013, and to the State of Wisconsin on March 28, 2013 as set forth in a copy of the Wisconsin Department of Transportation fee receipt which is attached hereto, incorporated by reference and marked as Exhibit C.

5. That upon information and belief, the Plaintiff purchased the following add-ons for said 2013 Tesla SP Sedan: Tesla Nema 5-20 in the sum of \$45.00, Tesla 4 Year Anywhere Service Plan in the sum of \$2,400.00, Tire and Wheel Replacement Program in the sum of \$700.00, Tesla seat covers in the sum of \$245.00; Pivelli Winter Wheels and Tire set in the sum of \$2,534.40, Capture Pro CPI in the sum of \$44.98, and Lloyd Floor Mats in the sum of \$49.90.

6. That a Tesla Motors, Inc. Model S new vehicle limited warranty was provided by the defendant, Tesla Motors, Inc., to the Plaintiff at time of said purchase and transfer/delivery; that as part of said purchase, said 2013 Tesla SP Sedan was warranted in writing to be free from mechanical and other defects.

7. That during the term of said warranty, and within the earlier of one year from the date of delivery or the expiration of said warranty, said 2013 Tesla SP Sedan was out of service for more than 30 days because of warranty nonconformities; that conditions or defects included, but were not necessarily limited to, problems with vehicle will not start, dash is dark, vehicle will not power up, 12v battery, vehicle will turn on but

not go into drive, problem on contactor fuse circuit, lower dash harness, left hand body harness, main fuse box, fuse for contactor power, HV junction box, master charger, battery cooling system, battery coolant pump #1 is intermittently stopping, car needs service alter appeared, all 3 coolant pumps need replacing, universal mobile connector NEMA 14-50 Adapter safety recall, vehicle stopped charging at consumer home, UMC, driver's door would not open, left rear handle does not present, door handles do not present, replace all door handles, door handle assembly, left front door handle presents but fails to unlatch, right side steering wheel controls do not work, controls inoperative, interior switches and AUX power socket, airbag assembly with steering control switches, front defrost does not clear well, defrost ducts, front lower control arm washers, knuckle/ball joint surfaces, when using navigation, MCU reboots, defect in paint armor fit from installation, right side mirror, reinforcement clips on LH and RH rear window regulators, and front bumper carrier bolt.

8. That upon information and belief, during the term of said warranty, and within the earlier of one year from the date of delivery or the expiration of said warranty, said 2013 Tesla SP Sedan has been the subject of four unsuccessful attempts to repair the same warranty nonconformity (or nonconformities) as that term is defined in sec. 218.0171(1)(f), Wis. Stats.; that upon information and belief, the warranty nonconformity or nonconformities continued thereafter.

9. That on November 18, 2013, the Plaintiff sent notice to the defendant, Tesla Motors, Inc., of such conditions or defects and demanded that the defendant, Tesla Motors, Inc., accept the return of said 2013 Tesla SP Sedan and provide the Plaintiff with

a refund calculated in accordance with the Lemon Law; upon information and belief, said Notice was received by the defendant, Tesla Motors, Inc., on November 25, 2013; that a true and accurate copy of said notice and delivery confirmation are attached hereto, incorporated herein by reference and marked as Exhibit D.

10. That despite said notice, the defendant, Tesla Motors, Inc., failed or refused to provide the appropriate relief sought by the Plaintiff and provided for by the Lemon Law in a timely manner without imposing conditions not required by the Wisconsin Lemon Law.

11. That upon information and belief, no certified informal dispute settlement procedure, as defined in sec. 218.0171(4), Wis. Stats., is available to the Plaintiff; that consequently, the Plaintiff may bring this action pursuant to sec. 218.0171, Wis. Stats.

12. That since said 2013 Tesla SP Sedan has been out of service a total of thirty (30) or more days due to warranty nonconformities, and the defendant, Tesla Motors, Inc., did not provide the appropriate relief sought by the Plaintiff and provided for by the Wisconsin Lemon Law in a timely manner, the defendant, Tesla Motors, Inc., has violated sec. 218.0171, Wis. Stats., entitling the Plaintiff to the choice of either a comparable new motor vehicle or rescission of the afore-described purchase agreement, and the refund of all the monies described herein that were paid by the Plaintiff, together with all other relief provided for by such law; that alternatively, since said 2013 Tesla SP Sedan was made available on at least four occasions for the repair of the same warranty nonconformity (or nonconformities) that substantially impairs the use, value or safety of said 2013 Tesla SP Sedan, and the warranty nonconformity (or nonconformities)

continued thereafter, and the defendant, Tesla Motors, Inc., did not provide the appropriate relief sought by the Plaintiff provided for by the Wisconsin Lemon Law in a timely manner, the defendant, Tesla Motors, Inc., has violated sec. 218.0171, Wis. Stats., entitling the Plaintiff to the choice of either a comparable new motor vehicle or rescission of the afore-described purchase agreement, and the refund of all monies described herein that were paid by the Plaintiff, together with all other relief provided for by such law.

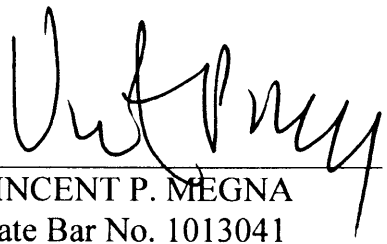
WHEREFORE, the Plaintiff demands judgment against the defendant as follows:

- (a) From the defendant, Tesla Motors, Inc., a refund to the Plaintiff and any holder of a perfected security interest in the 2013 Tesla SP Sedan that is the subject of this matter of the full purchase price/total cash price of said 2013 Tesla SP Sedan, plus the cost of sales tax, title, processing fees, all amounts paid at the point of sale, all collateral costs and all other amounts paid after sale for improvements/accessories, as applicable, and twice the amount of all pecuniary losses incurred heretofore or hereafter, as all these terms are defined and intended in sec. 218.0171, Wis. Stats.;
- (b) For rescission of the Purchase Agreement;
- (c) For prejudgment interest on all liquidated sums as provided by law;
- (d) For the Plaintiff's actual reasonable attorney fees;
- (e) For the costs and disbursements incurred in this action; and
- (f) For such other relief as the Court deems just and equitable.

Dated this 4th day of April, 2014.

AIKEN & SCOPTUR, S.C.
Attorneys for Plaintiff

By: _____


VINCENT P. MEGNA
State Bar No. 1013041
SUSAN M. GRZESKOWIAK
State Bar No. 1031586

MAILING ADDRESS
2600 N. Mayfair Road
Suite 1030
Milwaukee, WI 53226
Phone No. (414) 225-0260
Fax No. (414) 225-9666