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Nevada District Court Case No. 3:18-cv-00296-MMD-CLB **Tesla, Inc. v. Tripp**

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1 2 3 4 5 6	Robert D. Mitchell (<i>will comply with LR IA 11</i> - William M. Fischbach III (<i>will comply with LR</i> Christopher J. Waznik (<i>will comply with LR IA</i> Matthew D. Dayton, Nevada Bar No. 11552 TIFFAN Y&BOSCO Camelback Esplanade II, Seventh Floor 2525 East Camelback Road Phoenix, Arizona 85016-4229	IA 11-2 within 45 days)	
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10	Counsel for Defendant Martin Tripp		
11	UNITED STATES D	ISTRICT COURT	
11			
	DISTRICT OF NEVADA		
13	TEQUA DIC - Delement	Case No. 3:18-cv-00296-LRH-VPC	
14	TESLA, INC., a Delaware corporation,	DEFENDANT MARTIN TRIPP'S	
15	Plaintiff,	ANSWER TO COMPLAINT AND	
16	VS.	COUNTERCLAIM	
17			
18	MARTIN TRIPP, an individual,		
19	Defendant.		
20			
21	Defendant Martin Tripp ("Mr. Tripp" o	r "Defendant"), by and through undersigned	
22	counsel, for his Answer to Plaintiff Tesla, Inc. ("Tesla" or "Plaintiff")'s Complaint hereby		
23	admits, denies, and affirmatively alleges as follows:		
24	SUMMARY C	DF DISPUTE	
2 4 25	1. Defendant admits he is "a former employee of Tesla, Inc." Defendant denies		
23 26	all remaining allegations of Paragraph 1.		
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- Defendant denies the allegations of Paragraph 2.
- 3. Defendant denies the allegations of Paragraph 3.

4. Defendant admits he "claimed that punctured battery cells had been used in certain Model 3 vehicles[.]" Defendant also admits he "claimed that Tesla was delayed in bringing new manufacturing equipment online." Defendant also admits he made claims about the "amount and value of 'scrap' materials that Tesla generated during the manufacturing process[.]" Defendant denies all remaining allegations of Paragraph 4, including any and all allegations or insinuations that the foregoing "claim[s]" are "false" or "exaggerated."

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JURISDICTION AND VENUE

5. 11 Paragraph 5 states a legal conclusion of which no response is required. 12 Notwithstanding the lack of required response, Defendant admits the allegations of 13 Paragraph 5.

14 6. Paragraph 6 states a legal conclusion of which no response is required. 15 Notwithstanding the lack of required response, Defendant admits the allegations of 16 Paragraph 6.

7. 17 Paragraph 7 states a legal conclusion of which no response is required. Notwithstanding the lack of required response, Defendant admits that venue is proper in this 18 District. 19

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PARTIES

8. Paragraph 8 does not pertain to Defendant, and Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of 22 Paragraph 8. Therefore, Defendant denies the allegations of Paragraph 8 in their entirety. 23

9. Defendant admits that during all times relevant to this action, he resided in 24 25 Sparks, Nevada. Defendant denies any allegation in Paragraph 9 that he currently "resides" in Sparks, Nevada. 26

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1	BACKGROUND
2	10. Defendant admits he "joined Tesla in October 2017 at the Nevada
3	Gigafactory[.]" Defendant also admits he had "access" to "certain facets of the
4	manufacturing process for the company's battery modules." Defendant denies all remaining
5	allegations of Paragraph 10.
6	11. Defendant denies the allegations of Paragraph 11.
7	12. Defendant admits that "on or about May 17, 2018, Tripp was assigned to a
8	new role." Defendant denies all remaining allegations of Paragraph 12.
9	13. Defendant denies the allegations of Paragraph 13.
10	14. Defendant admits that "[o]n June 14 and 15, 2018, Tesla investigators
11	interviewed Tripp[.]" Defendant denies all remaining allegations of Paragraph 14.
12	15. Defendant denies the allegations of Paragraph 15.
13	16. Defendant denies the allegations of Paragraph 16.
14	17. Defendant admits he "claimed that punctured battery cells had been used in
15	some Model 3 customer vehicles[.]" Defendant also admits he "claimed that Tesla was
16	delayed in bringing new manufacturing equipment online at the Gigafactory." Defendant
17	also admits he made claims about the "amount and value of 'scrap' material that Tesla
18	generated during the manufacturing process[.]" Defendant denies all remaining allegations
19	of Paragraph 17, including any and all allegations or insinuations that the foregoing
20	"claim[s]" are "false" or "grossly overstate[d]."
21	18. Defendant denies the allegations of Paragraph 18.
22	FIRST CLAIM FOR RELIEF
23	Defend Trade Secrets Act, 18 U.S.C. §§ 1836 et seq.
24	19. No facts are alleged in Paragraph 19, and thus, no response is required. To the
25	extent a response is required, Defendant incorporates herein by reference each and every
26	response set forth in the foregoing Paragraphs.
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20. Paragraph 20 does not pertain to Defendant, and Defendant is without
 sufficient knowledge or information to form a belief as to the truth or falsity of the
 allegations of Paragraph 20. Therefore, Defendant denies the allegations of Paragraph 20 in
 their entirety.

5 21. Paragraph 21 does not pertain to Defendant, and Defendant is without
6 sufficient knowledge or information to form a belief as to the truth or falsity of the
7 allegations of Paragraph 21. Therefore, Defendant denies the allegations of Paragraph 21 in
8 their entirety.

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22. Defendant denies the allegations of Paragraph 22.

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23. Defendant denies the allegations of Paragraph 23.

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24. Defendant denies the allegations of Paragraph 24.

12 25. Paragraph 25 states a legal conclusion to which no response is required. To
13 the extent a response is required, Defendant denies the allegations of Paragraph 25.

14 26. No facts are alleged in Paragraph 26, and thus, no response is required. To the15 extent a response is required, Defendant denies the allegations of Paragraph 26.

16 27. Paragraph 27 states a legal conclusion to which no response is required. To
17 the extent a response is required, Defendant denies the allegations of Paragraph 27 and
18 affirmatively alleges that he has not been enriched.

19 28. Paragraph 28 states a legal conclusion to which no response is required. To
20 the extent a response is required, Defendant denies the allegations of Paragraph 28.

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SECOND CLAIM FOR RELIEF

Nevada Uniform Trade Secrets Act, Nev. Rev. Stat. §§ 600A.10 et seq.

23 29. No facts are alleged in Paragraph 29, and thus, no response is required. To the
24 extent a response is required, Defendant incorporates herein by reference each and every
25 response set forth in the foregoing Paragraphs.

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1	30.	Paragraph 30 does not pertain to Defendant, and Defendant is without
2	sufficient k	nowledge or information to form a belief as to the truth or falsity of the
3	allegations of Paragraph 30. Therefore, Defendant denies the allegations of Paragraph 30 in	
4	their entirety	у.
5	31.	Defendant denies the allegations of Paragraph 31.
6	32.	Defendant denies the allegations of Paragraph 32.
7	33.	Defendant denies the allegations of Paragraph 33.
8	34.	No facts are alleged in Paragraph 34, and thus, no response is required. To the
9	extent a resp	oonse is required, Defendant denies the allegations of Paragraph 34.
10	35.	Defendant denies the allegations of Paragraph 35.
11		THIRD CLAIM FOR RELIEF
12		Breach of Contract
13	36.	No facts are alleged in Paragraph 36, and thus, no response is required. To the
14	extent a response is required, Defendant incorporates herein by reference each and every	
15	response set	forth in the foregoing Paragraphs.
16	37.	Defendant denies the allegations of Paragraph 37.
17	38.	Paragraph 38 does not pertain to Defendant, and Defendant is without
18	sufficient k	nowledge or information to form a belief as to the truth or falsity of the
19	allegations of Paragraph 38. Therefore, Defendant denies the allegations of Paragraph 38 in	
20	their entirety	у.
21	39.	Defendant denies the allegations of Paragraph 39.
22	40.	Paragraph 40 does not pertain to Defendant, and Defendant is without
23	sufficient k	nowledge or information to form a belief as to the truth or falsity of the
24	allegations of Paragraph 40. Therefore, Defendant denies the allegations of Paragraph 40 in	
25	their entirety.	
26	41.	Defendant denies the allegations of Paragraph 41.
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1	42.	Defendant denies the allegations of Paragraph 42.
2	43.	Defendant denies the allegations of Paragraph 43.
3		FOURTH CLAIM FOR RELIEF
4	Breach of Fiduciary Duty of Loyalty	
5	44.	No facts are alleged in Paragraph 44, and thus, no response is required. To the
6	extent a res	ponse is required, Defendant incorporates herein by reference each and every
7	response set forth in the foregoing Paragraphs.	
8	45.	Paragraph 45 states a legal conclusion to which no response is required. To
9	the extent a	response is required, Defendant denies the allegations of Paragraph 45.
10	46.	Defendant denies the allegations of Paragraph 46.
11	47.	Defendant denies the allegations of Paragraph 47.
12	48.	Defendant denies the allegations of Paragraph 48.
13	49.	Defendant denies the allegations of Paragraph 49.
14	50.	Defendant denies the allegations of Paragraph 50.
15		FIFTH CLAIM FOR RELIEF
15 16		<u>FIFTH CLAIM FOR RELIEF</u> Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765
	51.	
16		Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765
16 17	extent a res	Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765 No facts are alleged in Paragraph 51, and thus, no response is required. To the
16 17 18	extent a res	Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765 No facts are alleged in Paragraph 51, and thus, no response is required. To the ponse is required, Defendant incorporates herein by reference each and every
16 17 18 19	extent a response set 52.	Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765 No facts are alleged in Paragraph 51, and thus, no response is required. To the ponse is required, Defendant incorporates herein by reference each and every forth in the foregoing Paragraphs.
16 17 18 19 20	extent a response set 52.	Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765 No facts are alleged in Paragraph 51, and thus, no response is required. To the ponse is required, Defendant incorporates herein by reference each and every forth in the foregoing Paragraphs. Paragraph 52 states a legal conclusion to which no response is required. To
16 17 18 19 20 21	extent a response set 52. the extent a 53.	Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765 No facts are alleged in Paragraph 51, and thus, no response is required. To the ponse is required, Defendant incorporates herein by reference each and every forth in the foregoing Paragraphs. Paragraph 52 states a legal conclusion to which no response is required. To response is required, Defendant denies the allegations of Paragraph 52.
 16 17 18 19 20 21 22 	extent a response set 52. the extent a 53.	Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765 No facts are alleged in Paragraph 51, and thus, no response is required. To the ponse is required, Defendant incorporates herein by reference each and every forth in the foregoing Paragraphs. Paragraph 52 states a legal conclusion to which no response is required. To response is required, Defendant denies the allegations of Paragraph 52. Paragraph 53 states a legal conclusion to which no response is required. To
 16 17 18 19 20 21 22 23 	extent a response set 52. the extent a 53. the extent a 53.	Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765 No facts are alleged in Paragraph 51, and thus, no response is required. To the ponse is required, Defendant incorporates herein by reference each and every forth in the foregoing Paragraphs. Paragraph 52 states a legal conclusion to which no response is required. To response is required, Defendant denies the allegations of Paragraph 52. Paragraph 53 states a legal conclusion to which no response is required. To response is required, Defendant denies the allegations of Paragraph 52.
 16 17 18 19 20 21 22 23 24 	extent a response set 52 . the extent a 53 . the extent a 53 . the extent a 54 .	Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765 No facts are alleged in Paragraph 51, and thus, no response is required. To the ponse is required, Defendant incorporates herein by reference each and every forth in the foregoing Paragraphs. Paragraph 52 states a legal conclusion to which no response is required. To response is required, Defendant denies the allegations of Paragraph 52. Paragraph 53 states a legal conclusion to which no response is required. To response is required, Defendant denies the allegations of Paragraph 52. Defendant denies the allegations of Paragraph 53. Defendant denies the allegations of Paragraph 53.
 16 17 18 19 20 21 22 23 24 25 	extent a response set 52 . the extent a 53 . the extent a 53 . the extent a 54 . 55.	Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765 No facts are alleged in Paragraph 51, and thus, no response is required. To the ponse is required, Defendant incorporates herein by reference each and every forth in the foregoing Paragraphs. Paragraph 52 states a legal conclusion to which no response is required. To response is required, Defendant denies the allegations of Paragraph 52. Paragraph 53 states a legal conclusion to which no response is required. To response is required, Defendant denies the allegations of Paragraph 52. Defendant denies the allegations of Paragraph 53. Defendant denies the allegations of Paragraph 54. Defendant denies the allegations of Paragraph 55.

1 AFFIRMATIVE DEFENSES 2 57. Defendant affirmatively alleges that Plaintiff's Complaint fails to state a claim 3 upon which relief may be granted against Defendant. 4 58. Defendant affirmatively alleges that damages, if any, incurred by Plaintiff 5 were caused or contributed to, in whole or in part, by Plaintiff's own negligence, acts, or 6 omissions. 7 59. Defendant affirmatively alleges that Plaintiff's claims are barred by the 8 doctrine of in pari delecto. 9 60. Defendant affirmatively alleges that Plaintiff assumed the risk of sustaining 10 damages, if any, from Defendant's conduct. 11 61. Defendant affirmatively alleges that damages, if any, incurred by Plaintiff 12 were caused or contributed to, in whole or in part, by acts or omissions of third parties over 13 which Defendant had no control and for whose acts or omissions Defendant is not responsible. 14 15 62. Defendant affirmatively alleges that he is immune from prosecution of or 16 being held liable for Plaintiff's claims pursuant to federal and/or state law. 17 63. Defendant affirmatively alleges that his actions were necessary, reasonable, and/or privileged. 18 19 64. Defendant affirmatively alleges that Plaintiff failed and/or neglected to reasonably mitigate its damages, if any, which bars or diminishes any recovery thereof. 20 65. 21 Defendant affirmatively alleges that he has not been enriched. 66. Defendant affirmatively alleges that Plaintiff's claims are barred by its own 22 illegal or otherwise wrongful actions. 23 67. Defendant affirmatively alleges that Plaintiff's claims are barred by the 24 doctrine of equitable estoppel. 25 68. Defendant affirmatively alleges that Plaintiff acted with unclean hands. 26 27 7

69. Defendant affirmatively alleges that he was excused from performance under the alleged contract in Plaintiff's Complaint.

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70. Defendant affirmatively alleges that Plaintiff is barred from recovery on the claims alleged in the Complaint as Plaintiff committed acts or otherwise acted improperly in dealing with Defendant.

6 71. Defendant affirmatively alleges that Plaintiff is barred from recovery, in
7 whole or in part, because Plaintiff's own actions and conduct excused Defendant from
8 performing its alleged obligations, if any, to Plaintiff.

9 72. Defendant affirmatively alleges that the allegations of the Complaint allege
10 obligations non-existent, not contracted for, and/or outside of the contract, if any, between
11 the parties, thus barring or diminishing recovery by Plaintiff.

12 73. Defendant affirmatively alleges that he did not owe a legal duty of care to13 Plaintiff and was never in a fiduciary relationship with Plaintiff.

14 74. Defendant affirmatively alleges that Plaintiff's Complaint is defective in that15 Plaintiff failed to join indispensable parties.

16 75. Defendant affirmatively alleges that Plaintiff suffered no damages that were17 caused by Defendant.

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76. Defendant affirmatively alleges that Plaintiff waived any claims for damages.

19 77. Defendant affirmatively alleges that the alleged agreement referred to in
20 Plaintiff's Complaint is void due to lack of performance on the part of Plaintiff,
21 unconscionability, as being against public policy, and/or being an illegal/unreasonable
22 restraint on trade.

23 78. Defendant affirmatively alleges that he was acting with express or implied24 authorization.

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1	79.	Defendant affirmatively alleges each and every affirmative defense set forth in
2	Federal Rule	e of Civil Procedure 8(c), in order to avoid waiver, and which defenses may be
3	supported by	y the evidentiary matters discovered in this case.
4	80.	Defendant reserves the right to plead further affirmative defenses if and when
5	disclosure re	eveals facts sufficient to support such other further defenses.
6	PRAYER FOR RELIEF	
7	WHEREFORE, having fully answered the Complaint, Defendant requests that the	
8	Court grant the following relief:	
9	А.	Dismiss said Complaint in its entirety with prejudice, Plaintiff taking nothing
10	thereby;	
11	В.	Defendant have judgment on Plaintiff's claims;
12	C.	Defendant be awarded his attorneys' fees and costs incurred herein; and
13	D.	Such other and further relief as the Court deems just and appropriate under the
14	circumstances in favor of Defendant.	
15		COUNTERCLAIM
16	For	his Counterclaim against Plaintiff/Counterdefendant Tesla, Inc.
17	("Counterde	fendant"), Counterclaimant Martin Tripp ("Mr. Tripp" or "Counterclaimant")
18	alleges, based upon his own knowledge with respect to his own actions and based upon	
19	information and belief with respect to all other actions, as follows:	
20		PARTIES
21	1.	Mr. Tripp is an individual who, at all relevant times, resided in Sparks,
22	Nevada.	
23	2.	Based upon information and belief, Counterdefendant is, and at all relevant
24	times was, a	Delaware corporation doing business throughout the United States of America,
25	including in	Nevada.
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3. Elon Musk ("Mr. Musk") is, and at all relevant times has been,
 Counterdefendant's Chief Executive Officer ("CEO"). All of Mr. Musk's actions as alleged
 herein were performed within the scope of his employment with, and on behalf of,
 Counterdefendant.

JURISDICTION AND VENUE

4. The Court has personal jurisdiction over Counterdefendant in this action because Counterdefendant consented to the jurisdiction of the Court by filing its Complaint in this Court, in response to which this Counterclaim is alleged.

9 5. The Court also has personal jurisdiction over Counterdefendant in this action
10 because Counterdefendant caused or otherwise directed actions in or towards Nevada and
11 the Counterclaim arises from such actions.

12 6. The Court has original subject matter jurisdiction of this action under 28
13 U.S.C. § 1332(a) because the amount in controversy exceeds the sum or value of \$75,000,
14 exclusive of interest and costs, and Mr. Tripp, on one hand, and Counterdefendant, on the
15 other hand, are citizens of different states.

7. Further, to the extent the Court determines it has subject matter jurisdiction
over the claims set forth in Counterdefendant's Complaint, jurisdiction over this action is
proper pursuant to 28 U.S.C. § 1367 because this Counterclaim arises out of the
transactions, occurrences, or events that are the subject matter of said Complaint.

8. This District is the proper venue for this action because Counterdefendant
consented to the propriety of venue in this District by filing the Complaint in this District,
and the Counterclaim arises from the facts and circumstances alleged in said Complaint.

9. This District is also the proper venue for this action pursuant to 28 U.S.C.
§ 1391 as a substantial part of the events giving rise to the Counterclaim occurred in or were
directed to this District.

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FACTUAL BACKGROUND

10. From October 2017 to June 2018, Mr. Tripp was employed by Counterdefendant as a Level 3 Lead Process Engineering Technician at the Gigafactory manufacturing compound in Sparks, Nevada (the "Gigafactory").

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11. Prior to his employment with Counterdefendant, Mr. Tripp had over two decades of experience in the electronic and engineering industries, including serving as an Aviation Electronics Technician in the United States Navy for approximately four years.

8 12. In mid-2017, Counterdefendant initiated contact with and recruited Mr. Tripp, 9 who was then residing in Wisconsin, for an employment position at the Gigafactory. 10 During its recruitment, Counterdefendant paid for Mr. Tripp to fly to Nevada for an 11 interview and tour of the Gigafactory.

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13. Without Counterdefendant's intentional recruitment, Mr. Tripp would not 13 have applied to or become employed by Counterdefendant.

14 According to Counterdefendant's website, "Tesla's mission is to accelerate the 14. 15 world's transition to sustainable energy." Counterdefendant widely promotes itself to the 16 general public as an environmentally-conscious company with cutting-edge technologies 17 and manufacturing capabilities.

15. At the Gigafactory, Counterdefendant manufactures vehicle batteries and 18 19 drive units for its Model 3 vehicle. Based upon information and belief, Counterdefendant 20 has, and at all relevant times had, more than 1,000 employees working at the Gigafactory.

Based upon information and belief, Counterdefendant's ability to mass 16. 21 produce the Model 3, an electric vehicle, is critical to its current and future economic 22 success, as well as its viability as an ongoing concern. 23

Based upon information and belief, since Counterdefendant first publicly 17. 24 25 announced that it would be producing Model 3 vehicles, Counterdefendant has accepted 26

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reservations and monetary deposits for the vehicle from hundreds of thousands of
 customers.

18. During his employment with Counterdefendant, Mr. Tripp was assigned to work on production lines for two different vehicle parts used in the Model 3: the stator production line and the battery module production line.

6 19. While assigned to the stator production line, Mr. Tripp's primary responsibilities included reporting daily scrap/non-conforming material volumes to 7 8 Counterdefendant's engineering and production departments; performing high-level 9 functions as a process technician; assisting Counterdefendant's engineering department with 10 process improvements; and working with other process technicians to, among other things, 11 train, mentor, assign tasks, and place orders for necessary materials. During this time, Mr. 12 Tripp began witnessing several concerning business practices that were inconsistent with 13 Counterdefendant's mission statement and its representations to investors and the general 14 public.

15 20. For example, throughout the first few months of his employment, Mr. Tripp 16 observed large quantities of waste and "scrap" vehicle parts lying haphazardly on the 17 ground inside the Gigafactory. Mr. Tripp discussed this issue, amongst others, with his supervisors and questioned why so many vehicle parts were being scrapped and carelessly 18 19 left on the ground inside the facility. Mr. Tripp's concerns were never addressed or 20 resolved. In one instance, Mr. Tripp's supervisor stated that despite the products being used 21 in vehicles shipped to customers, Counterdefendant's stator production line was not a "signed-off" production line and was still being "validated." 22

23 21. In or around March 2018, Counterdefendant initiated a company-wide effort
24 to reach the 2,500 Model 3 vehicles per week production benchmark that it had been
25 publicly promoting. This company-wide effort, which had the end objective of producing
26 5,000 Model 3 vehicles per week by July 2018, was known as the "March to 2,500."

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22. Around this same time, Mr. Tripp observed that the waste and scrap levels and non-conforming materials generated by Counterdefendant dramatically increased. Mr. Tripp frequently raised his concerns about the seemingly exorbitant amounts of scrap with his managers and supervisors but no action was taken to address the issues or reduce the amount of waste being generated by the manufacturing process.

6 23. On May 16, 2018, Mr. Tripp directly e-mailed Counterdefendant's CEO, Mr.
7 Musk, about the high levels of waste and scrap that was being generated by the stator
8 production line. In his e-mail, Mr. Tripp included graphical charts showing the high levels
9 of waste and scrap. Mr. Tripp had been told that Mr. Musk was scheduled to visit the
10 Gigafactory that evening, so he wanted to notify Mr. Musk of the ongoing, uncorrected
11 problems so Mr. Musk could take corrective action.

12 24. Later in the afternoon on May 16, 2018, Mr. Tripp's Manufacturing Engineer
13 Manager asked Mr. Tripp to "forward" him the "email to Elon so that I can avoid getting
14 fired tonight." After Mr. Tripp asked why the Manufacturing Engineer Manager would get
15 fired, the Manufacturing Engineer Manager explained: "because I'm the guy showing him
16 the line and our problems like yield, the guy standing in front of him is the guy who gets
17 fired, and tonight I'm the guy in front of him."

18 25. That same day, a Design Engineer asked Mr. Tripp to "clean up" the stator
19 production line area so Mr. Musk would not see the mounds of scrap and waste lying on the
20 ground. Mr. Tripp declined to do so because he had repeatedly complained to his
21 supervisors about that very issue over the course of several months, but his complaints had
22 been ignored. Mr. Tripp wanted Mr. Musk to observe how the Gigafactory was actually
23 being operated.

24 26. The next day, May 17, 2018, Mr. Tripp was "reassigned" to the battery
25 module production line.

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27. While assigned to the battery module production line, Mr. Tripp's primary responsibility was to inventory aging work in process ("WIP") of the various components of the battery modules used in Model 3 vehicles.

28. As is publicly known, the battery modules used in Model 3 vehicles are comprised of multiple components, including thousands of individual battery cells. A battery cell is comprised of a thin, metallic cannister containing lithium powder and/or cobalt. Approximately one hundred and fifty battery cells are then affixed to a cooling ribbon to form a "bandolier." Seven bandoliers are then affixed side-by-side to make a battery module. One Model 3 has four battery modules.

29. While assigned to the battery module production line, Mr. Tripp learned of
and witnessed additional unnerving, dangerous, and wasteful business practices that, again,
were inconsistent with Counterdefendant's mission statement and its representations to
investors and the general public.

30. For example, Mr. Tripp routinely observed hundreds of bandoliers being
scrapped during a single shift. Mr. Tripp also observed battery cells that supposedly had
been permanently affixed to bandoliers, fall off and crash on the floor. Mr. Tripp even
observed that the positive and negative ends of battery modules were sometimes reversed,
thereby causing the batteries to short circuit.

19 31. Mr. Tripp also observed Counterdefendant's employees systematically reusing
20 vehicle parts, such as battery cells and bandoliers that had been previously discarded as
21 waste. Mr. Tripp was even told by one colleague that the colleague, after seeing damaged
22 products being reused, intentionally further damaged the parts to prevent them from being
23 used in a Model 3.

32. Mr. Tripp was also told about and personally observed several semi-trucks
filled with scrap and other waste from Counterdefendant's manufacturing process. The
semi-trucks, which were not climate-controlled, were parked in a parking lot near the

Gigafactory. Based upon information and belief, Counterdefendant publicly stated that its scrap battery modules were being stored in a climate-controlled environment.

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33. In mid-May 2018, Counterdefendant's Manufacturing Operating System ("MOS") showed that from January 1, 2018 to mid-May 2018, approximately \$150,000,000 to \$200,000,000 worth of battery module parts, including bandoliers and battery cells, had been categorized as "Scrap." By running a "with child" query, Mr. Tripp determined that these "Scrap" battery module parts were actual vehicle parts with an accompanying bill of materials.

9 34. Shortly thereafter, Mr. Tripp conducted the same standard query in the MOS 10 and found that many of the parts, once labelled as "Scrap," were now identified as "Test." 11 The parts that were changed from "Scrap" to "Test" were those parts that had initially been 12 identified as "Scrap" between January 1, 2018 and March 20, 2018. Yet, based upon 13 information and belief, the vehicle parts that had been initially identified as "Scrap" had 14 already been removed from the Gigafactory and discarded. The change in labelling from 15 "Scrap" to "Test" was corroborated by one of Mr. Tripp's colleagues, an Engineer with 16 Counterdefendant.

17 35. Perhaps most egregiously, Mr. Tripp was told by multiple process technicians and associates that a "teach pin" had been left on a robot used in the manufacturing process 18 19 of battery modules, causing damage to the battery modules. Mr. Tripp was told by the 20 process technicians and associates that when the robot had picked up a battery module, the teach pin, which had become "unthreaded" and "longer," struck the clamshell (*i.e.*, the outer 21 plastic coating) of the battery module, causing a dent and/or puncture. Mr. Tripp was 22 further told that, eventually, the teach pin began puncturing the actual battery cells within 23 The process technicians and associates told Mr. Tripp that 24 the battery module. 25 approximately 1,173 battery modules had been damaged by this process.

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36. The approximately 1,173 dented and/or punctured battery modules were identified in the MOS as "Containment AR622."

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37. After informing Mr. Tripp about Containment AR622, the process technicians and associates personally showed Mr. Tripp several of the dented and/or punctured battery modules within the containment. While observing the bottom of the battery cells in one battery module listed in Containment AR622, Mr. Tripp saw that a battery cell had been punctured and inserted a Q-tip into the punctured cell about one-half inch. When Mr. Tripp removed the Q-tip, it was coated with a white powdery residue, indicating that the battery cell had short circuited.

38. During his orientation, Mr. Tripp had been taught by Counterdefendant that
when a lithium-ion battery, such as the batteries used in the Model 3, has internally short
circuited, it is more prone to "thermal runaway" at high temperatures, thereby becoming
more vulnerable to combustion and/or explosion.

14 39. After observing the punctured battery cell in the battery module from 15 Containment AR622, Mr. Tripp asked the process technicians and associates what happened 16 to the battery modules within Containment AR622 and if they were scrapped. Mr. Tripp 17 was told that instead of scrapping the battery modules, technicians "reworked" the modules by squeezing an adhesive into the punctured battery cell and then gluing a piece of 18 19 clamshell over the adhesive. In doing so, Counterdefendant made it appear as though there 20 was no internal or external damage to the battery module. After being "reworked" with the 21 adhesive, the battery modules were then returned to the manufacturing processing line. Based upon information and belief, no quality inspections were performed on these 22 "reworked" battery modules before they were returned to the manufacturing processing line. 23 Mr. Tripp personally observed technicians perform this process on several battery modules. 24

40. Mr. Tripp researched Containment AR622 within the MOS and observed that
the "cause" for Containment AR622 was "Punctured cells and damaged NIC clamshell due

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clash with Robot teach pin." Further, the "Title" of the battery modules within Containment AR622 in the MOS stated "Punctured Cell."

- 41. Utilizing the MOS, Mr. Tripp monitored some of the dented and/or punctured battery modules in Containment AR622 over a few-day period by tracking the modules' serial numbers. The tracking system showed that the dented and/or punctured battery modules, instead of being discarded, were being used in Model 3 vehicles.
- 42. Mr. Tripp then performed a standard database query to determine how many
 of the battery modules in Containment AR622 were in Model 3 vehicles that had been
 shipped to or were being prepared to ship to customers. The results showed that 732 of the
 dented and/or punctured battery modules in Containment AR622 were used in Model 3
 vehicles that had been shipped to or were in the process of being shipped to customers.
- 43. Based upon information and belief, Counterdefendant recently discontinued
 the use of its vehicle-part tracking system within the MOS. As a result, traceability is
 unknown for many vehicle-parts and/or materials which could have a drastic effect on
 determining where the part(s) were made, when, and by whom.
- 44. Mr. Tripp repeatedly raised the foregoing issues to his colleagues, including
 engineers, technicians, and a human resource representative; four of his supervisors and
 managers; his plant manager; and even Mr. Musk.
- 19 45. Counterdefendant never took any corrective action and terminated Mr. Tripp20 on June 19, 2018.
- 21 46. Prior to and after Mr. Tripp was terminated, Counterdefendant published
 22 several false and defamatory statements and/or implications about Mr. Tripp.
- 47. For example, based upon information and belief, on or about June 17, 2018,
 Counterdefendant's CEO, Mr. Musk, sent an e-mail to all of Counterdefendant's employees
 stating, in pertinent part, as follows:
 - I was dismayed to learn this weekend about a Tesla employee who had conducted quite extensive and damaging sabotage to our operations. This
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included making direct code changes to the Tesla Manufacturing Operating System under false usernames and exporting large amounts of highly sensitive Tesla data to unknown third parties.

The full extent of his actions are not yet clear, but what he has admitted to so far is pretty bad. His stated motivation is that he wanted a promotion that he did not receive. In light of these actions, not promoting him was definitely the right move.

However, there may be considerably more to this situation than meets the eye, so the investigation will continue in depth this week. We need to figure out if he was acting alone or with others at Tesla and if he was working with any outside organizations.

As you know, there are a long list of organizations that want Tesla to die. These include Wall Street short-sellers, who have already lost billions of dollars and stand to lose a lot more. Then there are the oil & gas companies, the wealthiest industry in the world — they don't love the idea of Tesla advancing the progress of solar power & electric cars. Don't want to blow your mind, but rumor has it that those companies are sometimes not super nice. Then there are the multitude of big gas/diesel car company competitors. If they're willing to cheat so much about emissions, maybe they're willing to cheat in other ways?

Most of the time, when there is theft of goods, leaking of confidential information, dereliction of duty or outright sabotage, the reason really is something simple like wanting to get back at someone within the company or at the company as a whole. Occasionally, it is much more serious.

Please be extremely vigilant, particularly over the next few weeks as we ramp up the production rate to 5k/week. This is when outside forces have the strongest motivation to stop us.

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See Exhibits A–B, attached hereto (the "June 17, 2018 Publication").

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48. Counterclaimant did not "sabotage" Counterdefendant or its "operations" as asserted in the June 17, 2018 Publication.

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49. Counterclaimant did not "mak[e] direct code changes to the Tesla Manufacturing Operating System under false usernames" or "export[] large amounts of highly sensitive Tesla data to unknown third parties" as asserted in the June 17, 2018 Publication.

1	50. Counterclaimant did not "admit" or "state" that his "motivation" for reporting	
2	the foregoing issues regarding Counterdefendant's manufacturing process was "that he	
3	wanted a promotion that he did not receive" as asserted in the June 17, 2018 Publication. In	
4	reality, during his employment with Counterdefendant, Mr. Tripp never applied for or	
5	actively sought a promotion, nor, to his knowledge, was he even eligible for a promotion.	
6	51. The implication in the June 17, 2018 Publication that Mr. Tripp was	
7	associated or otherwise working with an outside third-party "organization" to intentionally	
8	"cheat" or "sabotage" Counterdefendant is false.	
9	52. All of the foregoing statements and/or implications published in the June 17,	
10	2018 Publication are false and defamatory and were published with negligence, if not actual	
11	knowledge, as to the falsity of the matters asserted therein.	
12	53. On or about June 20, 2018, a spokesperson for Counterdefendant stated:	
13	This afternoon, we received a phone call from a friend of Mr. Tripp	
14	telling us that Mr. Tripp would be coming to the Gigafactory to "shoot the place up." Police have been notified and actions are being taken to enhance	
15	security at the Gigafactory.	
16	See Exhibits C-F, attached hereto (the "June 20, 2018 Statement").	
17	54. Similarly, based upon information and belief, on that same date,	
18	Counterdefendant's CEO, Mr. Musk, stated in an e-mail to a national media outlet that Mr.	
19	Tripp "sent [him] a threatening email" and that "we received a call at the Gigafactory that	
20	[Mr. Tripp] was going to come back and shoot people." See Exhibit G, attached hereto (the	
21	"June 20, 2018 Publication").	
22	55. Mr. Tripp never stated, to a "friend" or otherwise, that he was "going to	
23	shoot people" at the Gigafactory or that he was going to "shoot up" the Gigafactory as	
24	asserted in the June 20, 2018 Statement and June 20, 2018 Publication, respectively.	
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56. Based upon information and belief, Counterdefendant did not "receive[] a phone call from a friend of Mr. Tripp" who stated Mr. Tripp was going to "shoot . . . up" the Gigafactory as asserted in the June 20, 2018 Statement.

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57. Based upon information and belief, Counterdefendant did not "receive[] a call" from someone who stated that Mr. Tripp was going to "come back" to the Gigafactory and "shoot people" as asserted in the June 20, 2018 Publication.

7 58. Even if Counterdefendant did receive a phone call from someone who alleged Mr. Tripp was going to "shoot . . . up" the Gigafactory, Counterdefendant did not, based 8 9 upon information and belief, conduct a reasonable investigation to determine whether the 10 purported caller was actually a "friend of Mr. Tripp" before making the foregoing false and 11 defamatory publication, such as obtaining the name of the caller or ascertaining how the 12 caller knew Mr. Tripp. Counterdefendant, therefore, acted with at least negligence when it 13 published that "a friend of Mr. Tripp" called Counterdefendant and stated Mr. Tripp was 14 going to "shoot . . . up" the Gigafactory.

15 59. Based upon information and belief, when Counterdefendant reported the 16 alleged phone call to the Storey County Sheriff's Office, Counterdefendant did not provide the name of the "friend of Mr. Tripp" who purportedly called Counterdefendant. Further, 17 Counterdefendant provided inconsistent responses to law enforcement officers with regard 18 to whether the purported caller was a female or male. Moreover, based upon information 19 20 and belief, Counterdefendant provided false information to the Storey County Sheriff's 21 Office with respect to Mr. Tripp, including that Counterdefendant was able to independently "verify" that Mr. Tripp was "armed" with a weapon when, in fact, he was not. 22

60. The Storey County Sheriff's Office conducted an investigation into the
alleged phone call. During the investigation, Counterdefendant appeared to know exactly
where Mr. Tripp was located the majority of the time and, after being asked by the

investigating deputies how it was aware of such information, Counterdefendant simply replied "little birds sing."

61. During the investigation, Mr. Tripp voluntarily met with two deputies from the Storey County Sheriff's Office. Before the interview, the deputies frisked Mr. Tripp and noted in their report that Mr. Tripp was "visibly shaken and was crying." The deputies also noted that Mr. Tripp told them that his "life was in shambles" and that "out of fear for" his family's safety, he and his family would be relocating.

62. The Sheriff's Office determined there was no credible threat, that Mr. Tripp was not armed, and that Mr. Tripp did not likely have access to firearms.

10 63. Based upon information and belief, Counterdefendant wanted the purported
11 phone call and alleged threat against the Gigafactory to become highly publicized in order
12 to harm and discredit Mr. Tripp before the general public. For example, Counterdefendant
13 repeatedly asked the Storey County Sheriff's Office whether it would be making a statement
14 to the press about the purported phone call and its investigation thereof.

15 64. Counterdefendant also made false and defamatory statements about Mr. Tripp
16 in an e-mail communication to the media on or about June 22, 2018. See <u>Exhibit C</u> (the
17 "June 22, 2018 Publication").

18 65. The June 20, 2018 Statement, June 20, 2018 Publication, and June 22, 2018
19 Publication are false and defamatory and were published with negligence, if not actual
20 knowledge, as to the falsity of the matters asserted therein.

66. Based upon information and belief, the June 20, 2018 Statement, June 20,
2018 Publication, and June 22, 2018 Publication were intentionally published to retaliate
against Mr. Tripp and discredit him before the general public.

24 67. To further retaliate against and discredit Mr. Tripp, on July 5, 2018,
25 Counterdefendant's CEO, Mr. Musk, published the following statement on Twitter:
26 "Indeed, very simple question. To be specific: @lopezlinette, did you compensate or

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promise to compensate Martin Tripp for inside information about Tesla? Did he, under that inducement, provide you with exaggerated negative info, which you printed, but turned out to be untrue?" *See* **Exhibit H**, attached hereto (the "July 5, 2018 Publication").

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68. The Twitter account "@lopezlinette" belongs to Linette Lopez, a reporter with Business Insider, who has published articles about Counterdefendant.

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69. Mr. Tripp has never received any compensation from Ms. Lopez, nor has Ms. Lopez ever offered Mr. Tripp any compensation or promise of compensation.

70. The July 5, 2018 Publication falsely implies that Mr. Tripp accepted a bribe from Ms. Lopez in exchange for providing information about Counterdefendant.

10 71. Mr. Tripp did not provide "exaggerated negative info" about
11 Counterdefendant to Ms. Lopez, nor did he provide any information to Ms. Lopez that
12 "turned out to be untrue" as asserted in the July 5, 2018 Publication.

13 72. The foregoing false allegations and/or implications published in the July 5,
14 2018 Publication are defamatory and were published with negligence, if not actual
15 knowledge, as to the falsity of the matters asserted and/or implied therein.

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73. Mr. Musk's Twitter account currently has over 22,000,000 "followers."

17 74. On June 14, 2018, after Mr. Tripp had been interrogated by Counterdefendant for multiple days, three non-uniformed security officers escorted Mr. Tripp out of the 18 19 Gigafactory. In doing so, the officers led Mr. Tripp directly through the engineering 20 production space, parading him before numerous of his colleagues. Once outside, the nonuniformed security officers surrounded Mr. Tripp's vehicle and would not let him leave 21 until a truck was able to follow Mr. Tripp off of the premises. While he was being escorted 22 out of the Gigafactory, several employees Mr. Tripp knew asked him what was happening 23 but were sent away by the security personnel. This ordeal, which, inter alia, implied that 24 25 Mr. Tripp was a danger to those around him, was highly embarrassing and distressing to Mr. Tripp. 26

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75. Since his employment with Counterdefendant ended, Mr. Tripp has received	
numerous threats to his personal safety, which, upon information and belief, have been	
stirred by the foregoing false and defamatory statements published about him by	
Counterdefendant. Mr. Tripp has even been followed and trailed on multiple occasions by	
unidentified individuals.	
76. As the result of Counterdefendant's actions, Mr. Tripp, among other things,	
was forced to relocate with his wife and young child, has lost a significant amount of	
weight, has had difficulty eating and sleeping, has bouts with nausea and anxiety, and has	
had marital relationship problems.	
FIRST CLAIM FOR RELIEF	
Defamation and Defamation Per Se	
77. Counterclaimant repeats and realleges each and every allegation of the	
Counterclaim as if fully set forth herein.	
78. Counterdefendant's actions, statements, and publications as alleged herein	
constitute defamation.	
79. Counterdefendant negligently, if not knowingly and intentionally, published	
unprivileged, false, and defamatory statements of and concerning Counterclaimant.	
unprivileged, faise, and defamatory statements of and concerning Counterclannant.	
80. Counterdefendant published these false and defamatory statements out of	
80. Counterdefendant published these false and defamatory statements out of	
80. Counterdefendant published these false and defamatory statements out of malice and to retaliate against Counterclaimant and discredit him before the general public.	
 80. Counterdefendant published these false and defamatory statements out of malice and to retaliate against Counterclaimant and discredit him before the general public. 81. Counterdefendant's false publications have subjected Counterclaimant to 	
 80. Counterdefendant published these false and defamatory statements out of malice and to retaliate against Counterclaimant and discredit him before the general public. 81. Counterdefendant's false publications have subjected Counterclaimant to hatred, contempt, ridicule, or obloquy; lowered his reputation in the estimation of the 	
 80. Counterdefendant published these false and defamatory statements out of malice and to retaliate against Counterclaimant and discredit him before the general public. 81. Counterdefendant's false publications have subjected Counterclaimant to hatred, contempt, ridicule, or obloquy; lowered his reputation in the estimation of the business and public community; and deterred third persons from associating or dealing with 	
 80. Counterdefendant published these false and defamatory statements out of malice and to retaliate against Counterclaimant and discredit him before the general public. 81. Counterdefendant's false publications have subjected Counterclaimant to hatred, contempt, ridicule, or obloquy; lowered his reputation in the estimation of the business and public community; and deterred third persons from associating or dealing with him. 	
 80. Counterdefendant published these false and defamatory statements out of malice and to retaliate against Counterclaimant and discredit him before the general public. 81. Counterdefendant's false publications have subjected Counterclaimant to hatred, contempt, ridicule, or obloquy; lowered his reputation in the estimation of the business and public community; and deterred third persons from associating or dealing with him. 82. Counterdefendant's false publications constitute defamation <i>per se</i> as they 	
 80. Counterdefendant published these false and defamatory statements out of malice and to retaliate against Counterclaimant and discredit him before the general public. 81. Counterdefendant's false publications have subjected Counterclaimant to hatred, contempt, ridicule, or obloquy; lowered his reputation in the estimation of the business and public community; and deterred third persons from associating or dealing with him. 82. Counterdefendant's false publications constitute defamation <i>per se</i> as they allege that Counterclaimant committed and/or would commit a crime and/or impute a lack 	

83. Counterdefendant's acts of defamation and defamation *per se* have caused
 substantial damages to Counterclaimant in a specific amount to be proven at trial but in an
 amount no less than \$1,000,000.00.

4 84. Based upon Counterdefendant's tortious acts of defamation *per se*,
5 Counterclaimant is entitled to recover presumed damages, as well as his actual and
6 consequential damages against Counterdefendant.

7 85. Counterdefendant knowingly and intentionally engaged in conduct of a
8 malicious, oppressive, or fraudulent nature and knowingly published false statements of and
9 concerning Counterclaimant, thereby entitling Counterclaimant to an award of punitive
10 damages.

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SECOND CLAIM FOR RELIEF

Invasion of Privacy/False Light

13 86. Counterclaimant repeats and realleges each and every allegation of the14 Counterclaim as if herein again set forth in full.

15 87. Counterdefendant's actions as alleged herein constitute invasion of privacy16 and placed Counterplaintiff before the public in a false light.

17 88. Counterdefendant's publications about Counterclaimant would be highly
18 offensive and objectionable to a reasonable person and were, in fact, highly offensive and
19 objectionable to Counterclaimant.

20 89. Counterdefendant had knowledge of or acted in reckless disregard as to the
21 falsity of the publicized matters and the false light in which Counterclaimant was placed.

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90. Counterdefendant's actions have caused damages to Counterclaimant.

91. Based upon Counterdefendant's misconduct, Counterclaimant is entitled to
recover all of his damages against Counterdefendant in a specific amount to be proven at
trial but in an amount no less than \$1,000,000.00.

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1 92. Counterdefendant has engaged in conduct of a malicious, oppressive, or 2 fraudulent nature, thereby entitling Counterclaimant to an award of punitive damages. 3 **THIRD CLAIM FOR RELIEF** 4 **Intentional Infliction of Emotional Distress** 5 93. Counterclaimant repeats and realleges each and every allegation of the 6 Counterclaim as if herein again set forth in full. 7 94. Counterdefendant's actions toward Counterclaimant by, inter alia, making 8 false claims to law enforcement officers about Mr. Tripp and publishing highly-publicized, 9 intentional and repeated false and defamatory statements regarding Counterclaimant, constitutes intentional infliction of emotional distress. 10 95. Counterdefendant's conduct was either intentional or reckless. 11 96. Counterdefendant's actions were extreme in degree, outrageous in character, 12 went beyond all possible bounds of decency, and are regarded as atrocious and utterly 13 intolerable in a civilized community. 14 97. Counterdefendant intended to cause Counterclaimant emotional distress 15 and/or were aware of and disregarded the near certainty that its conduct would result in 16 emotional distress. 17 98. direct and proximate result of Counterdefendant's As а actions. 18 Counterclaimant has suffered and continues to suffer emotional and mental distress and pain 19 and suffering. 20 99. Based on information and belief, Counterdefendant's conduct was malicious 21 and done with a willful and wanton disregard to Counterclaimant's interests, justifying an 22 award of punitive damages sufficient to punish Counterdefendant and deter future similar 23 conduct by Counterdefendant and others. 24 25 26 27 25

1	PRAYER FOR RELIEF	
2	WHEREFORE, based upon the foregoing facts, Counterclaimant requests judgment	
3	against Counterdefendant awarding the following:	
4	A. For actual, compensatory, and presumed damages as a result of	
5	Counterdefendant's false and defamatory publications concerning Counterclaimant in a	
6	specific amount to be proven at trial but not less than \$1,000,000.00.	
7	B. For punitive damages.	
8	C. For attorneys' fees and costs incurred by Counterclaimant.	
9	D. For interest on the foregoing amounts at the statutory rate.	
10	E. For such other relief in favor of Counterclaimant and against	
11	Counterdefendant as the Court or other trier of fact deems just and appropriate under the	
12	circumstances.	
13	DEMAND FOR JURY TRIAL	
14	Pursuant to Federal Rule of Civil Procedure 38, Counterclaimant demands a trial by	
15	jury of the causes of action alleged herein.	
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17	DATED this 31st day of July, 2018.	
18		
19	TIFFANY & BOSCO, P.A.	
20		
21		
22	By <u>/s/ Matthew D. Dayton</u>	
23	Robert D. Mitchell	
24	William M. Fischbach III Christopher J. Waznik	
25	Matthew D. Dayton	
26	Camelback Esplanade II, Seventh Floor 2525 East Camelback Road	
27	26	
28	20	

1	Phoenix, Arizona 85016-4229 Counsel for Defendant/Counterclaimant
2	Martin Tripp
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CERTIFICATE OF SERVICE I hereby certify and declare under penalty of perjury that on July 31, 2018, I electronically filed the foregoing with the Clerk of Court for filing and uploading to the CM/ECF system which will send notification of such filing to all parties of record. /s/ Tracee A. Loveland