



January 20, 2022

SENT VIA E-MAIL
RETURN RECEIPT REQUESTED

Eddie Gates
Director, Field Quality
Tesla, Inc.
45500 Fremont Blvd.
Fremont, CA 94538

NEF-104
PE21-023

Dear Mr. Gates,

This letter is to inform you that the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) has opened a Preliminary Evaluation (PE21-023) to investigate the Tesla Passenger Play option that was available throughout 2021 in model year (MY) 2017 through 2022 Model 3 and 2018 through 2022 Model S, X, and Y vehicles manufactured by Tesla, Inc., and to request certain information.

ODI opened this investigation to evaluate the driver distraction potential of Passenger Play operation while the vehicle is being driven. This office has received one related complaint (ODI 11439598)

Unless otherwise stated in the text, the following definitions apply to these information requests:

- **Subject System**: Suite of software, hardware, and any other related system that contributes to the conferral of Passenger Play capability in any Tesla vehicle
- **Subject vehicles**: all Tesla vehicles, equipped with the subject system at any time, manufactured for sale or lease in the United States, including, but not limited to, the District of Columbia, and current U.S. territories and possessions.
- **Alleged defect**: Prior to being disabled in late 2021, the Passenger Play option allowed gameplay to display on the front center Touchscreen which may present a prolonged driver distraction while the vehicle is engaged in driving.
- **Tesla**: Tesla, Inc. all of its past and present officers and employees, whether assigned to its principal offices or any of its field or other locations, including all of its divisions,

subsidiaries (whether or not incorporated) and affiliated enterprises and all of their headquarters, regional, zone and other offices and their employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of Tesla (including all business units and persons previously referred to), who are or, in or after January 1st, 2011 were involved in any way with any of the following related to the alleged defect in the subject vehicles:

- a. Design, engineering, analysis, modification or production (e.g. quality control);
 - b. Testing, assessment or evaluation.
 - c. Consideration, or recognition of potential or actual defects, reporting, record-keeping and information management, (e.g., complaints, field reports, warranty information, part sales), analysis, claims, or lawsuits; or
 - d. Communication to, from or intended for zone representatives, fleets, dealers, or other field locations, including but not limited to people who have the capacity to obtain information from dealers.
- **Document:** “Document(s)” is used in the broadest sense of the word and shall mean all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, communications, electronic mail (e-mail) messages (existing in hard copy and/or in electronic storage), faxes, mailgrams, telegrams, cables, telex messages, notes, annotations, working papers, drafts, minutes, records, audio and video recordings, data, databases, other information bases, summaries, charts, tables, graphics, other visual displays, photographs, statements, interviews, opinions, reports, newspaper articles, studies, analyses, evaluations, interpretations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, instructions, blueprints, drawings, as-builts, changes, manuals, publications, work schedules, journals, statistical data, desk, portable and computer calendars, appointment books, diaries, travel reports, lists, tabulations, computer printouts, data processing program libraries, data processing inputs and outputs, microfilms, microfiches, statements for services, resolutions, financial statements, governmental records, business records, personnel records, work orders, pleadings, discovery in any form, affidavits, motions, responses to discovery, all transcripts, administrative filings and all mechanical, magnetic, photographic and electronic records or recordings of any kind, including any storage media associated with computers, including, but not limited to, information on hard drives, floppy disks, backup tapes, and zip drives, electronic communications, including but not limited to, the Internet and shall include any drafts or revisions pertaining to any of the foregoing, all other things similar to any of the foregoing, however denominated by Tesla, any other data compilations from which information can be obtained, translated if necessary, into a usable form and any other documents. For purposes of this request, any document which contains any note, comment, addition, deletion, insertion, annotation, or otherwise comprises a non-identical copy of another document shall be treated as a separate document subject to production. In all cases where original and any non-identical copies are not available, “document(s)” also means any identical copies of the original and all non-identical copies thereof. Any

document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by Tesla or not. If a document is not in the English language, provide both the original document and an English translation of the document.

- **Other Terms:** To the extent that they are used in these information requests, the terms “claim,” “consumer complaint,” “dealer field report,” “field report,” “fire,” “fleet,” “good will,” “make,” “model,” “model year,” “notice,” “property damage,” “property damage claim,” “rollover,” “type,” “warranty,” “warranty adjustment,” and “warranty claim,” whether used in singular or in plural form, have the same meaning as found in 49 CFR 579.4.

In order for my staff to evaluate the alleged defect, certain information is required. Pursuant to 49 U.S.C. § 30166, please provide numbered responses to the following information requests. Insofar as Tesla has previously provided a document to ODI, Tesla may produce it again or identify the document, the document submission to ODI in which it was included and the precise location in that submission where the document is located. When documents are produced, the documents shall be produced in an identified, organized manner that corresponds with the organization of this information request letter (including all individual requests and subparts). When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation.

Please repeat the applicable request verbatim above each response. After Tesla’s response to each request, identify the source of the information and indicate the last date the information was gathered.

1. State, by model and model year, the number of subject vehicles Tesla has manufactured for sale or lease in the United States. Separately, for each subject vehicle manufactured to date by Tesla, state the following:
 - a. Vehicle identification number (VIN);
 - b. Model;
 - c. Model Year;
 - d. Date of manufacture;
 - e. Date warranty coverage commenced; and
 - f. The State in the United States where the vehicle was originally sold or leased (or delivered for sale or lease).

Provide the table in Microsoft Access 2010, or a compatible format, entitled “PRODUCTION DATA.”

2. State the number of each of the following, received by Tesla, or of which Tesla is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:
 - a. Consumer complaints, including those from fleet operators;
 - b. Field reports, including dealer field reports;
 - c. Reports involving a crash, injury or fatality;

- d. Property damage claims;
- e. Third-party arbitration proceedings where Tesla is or was a party to the arbitration; and
- f. Lawsuits, both pending and closed, in which Tesla is or was a defendant or codefendant.

For subparts “a” through “f,” state the total number of each item (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted separately. Multiple reports of the same incident are also to be counted separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be counted as a crash report, a field report and a consumer complaint).

In addition, for items “c” through “f,” provide a summary description of the alleged problem and causal and contributing factors and Tesla's short name's assessment of the problem, with a summary of the significant underlying facts and evidence. For items “e/f” and “f,” identify the parties to the action, as well as the caption, court, docket number, and date on which the complaint or other document initiating the action was filed.

3. Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to Request No. 2, state the following information:
 - a. Tesla's file number or other identifier used;
 - b. The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);
 - c. Vehicle owner or fleet name (and fleet contact person), street address, email address and telephone number;
 - d. Vehicle's VIN;
 - e. Vehicle's make, model and model year;
 - f. Vehicle's mileage at time of incident;
 - g. Incident date;
 - h. Report or claim date;
 - i. Whether a crash is alleged;
 - j. Whether property damage is alleged;
 - k. Number of alleged injuries, if any; and
 - l. Number of alleged fatalities, if any.

Provide this information in Microsoft Access 2010, or a compatible format, entitled “REQUEST NUMBER TWO DATA.”

4. Produce copies of all documents related to each item within the scope of Request No. 2. Organize the documents separately by category (i.e., consumer complaints, field reports, etc.) and describe the method Tesla used for organizing the documents. Describe in detail the search methods and search criteria used by Tesla to identify the items in response to Request No. 2.
5. Furnish a chronology of events and studies that supported Tesla's decisions to deploy and then revoke Passenger Play capability in the subject vehicles. Describe all assessments, analyses, tests, test results, studies, surveys, software tickets, specifications, simulations, investigations, inquiries and/or evaluations (collectively, “actions”) that relate to, or may

relate to, the alleged defect in the subject vehicles that have been conducted, are being conducted, are planned, or are being planned by, or for, Tesla. For each such action, provide the following information:

- a. Action title or identifier;
- b. The actual or planned start date;
- c. The actual or expected end date;
- d. Brief summary of the subject and objective of the action;
- e. Engineering group(s)/supplier(s) responsible for designing and for conducting the action; and
- f. A brief summary of the findings and/or conclusions resulting from the action.

For each action identified, provide copies of all documents related to the action, regardless of whether the documents are in interim, draft, or final form. Organize the documents chronologically by action.

6. Furnish trip counts in which game use occurred while the shift indicator was in Drive. Separately include usage where:
 - a. Passenger front OCS detected an occupant.
 - b. Passenger front OCS did not detect an occupant.
7. Furnish tabular data indicating trip counts where gameplay was concurrent with any driver intervention measures or active safety measures such as but not limited to: Automatic Emergency Braking, Driver alert warning, ABS events, Traction control, Forward Collision Warning, Lane Departure Avoidance.
8. Furnish a chronology of events and studies that support Tesla's driver distraction risk assessment in employment of front seat non-driving related tasks from in-vehicle based devices even if the task is intended only for front seat passenger use e.g.; web browsing, Santa Mode. Describe all assessments, analyses, tests, test results, studies, surveys, simulations, investigations, inquiries and/or evaluations (collectively, "actions") that relate, or may relate to driver distraction in the subject vehicles that have been conducted, are being conducted, are planned, or are being planned by, or for, Tesla. For each such action, provide the following information:
 - a. Action title or identifier;
 - b. The actual or planned start date;
 - c. The actual or expected end date;
 - d. Brief summary of the subject and objective of the action;
 - e. Engineering group(s)/supplier(s) responsible for designing and for conducting the action; and
 - f. A brief summary of the findings and/or conclusions resulting from the action.
9. Furnish Tesla's assessment of the alleged defect in the subject vehicle, including:
 - a. The causal or contributory factor(s);
 - b. The company view on driver distraction;
 - c. The risk to motor vehicle safety that it poses;

- d. The complaint included with this inquiry.

Legal Authority for This Request

This letter is being sent to Tesla pursuant to 49 U.S.C. § 30166, which authorizes NHTSA to conduct any investigation that may be necessary to enforce Chapter 301 of Title 49 and to request reports and the production of things. It constitutes a new request for information.

Civil Penalties

Tesla's failure to respond promptly and fully to this letter could subject Tesla to civil penalties pursuant to 49 U.S.C. § 30165 or lead to an action for injunctive relief pursuant to 49 U.S.C. § 30163. (Other remedies and sanctions are available as well.) The Vehicle Safety Act, as amended, 49 U.S.C. § 30165(a)(3), provides for civil penalties of up to \$22,992 per violation per day, with a maximum of \$114,954,525 for a related series of daily violations, for failing or refusing to perform an act required under 49 U.S.C. § 30166. *See* 49 CFR 578.6. This includes failing to respond completely, accurately, and in a timely manner to ODI information requests.

If Tesla cannot respond to any specific request or subpart(s) thereof, please state the reason why it is unable to do so. If on the basis of attorney-client, attorney work product, or other privilege, Tesla does not submit one or more requested documents or items of information in response to this information request, Tesla must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, the name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

Confidential Business Information

All business confidential information must be submitted directly to the Office of Chief Counsel as described in the following paragraph and should not be sent to this office. In addition, do not submit any business confidential information in the body of the letter submitted to this office. Please refer to PE21-023 in Tesla's response to this letter and in any confidentiality request submitted to the Office of Chief Counsel.

If Tesla claims that any of the information or documents provided in response to this information request constitute confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. § 1905, Tesla must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 CFR Part 512. Additional information can be found here: <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information>.

If you have any questions regarding submission of a request for confidential treatment, contact Daniel Rabinovitz, Trial Attorney, Office of Chief Counsel at daniel.rabinovitz@dot.gov or (202) 366-8534.

Due Date

Tesla's response to this letter, in duplicate, together with a copy of any confidentiality request, must be submitted to this office by **March 4, 2022**. Tesla's response must include all non-confidential attachments and a redacted version of all documents that contain confidential information. If Tesla finds that it is unable to provide all of the information requested within the time allotted, Tesla must request an extension from me at (202) 366-5226 no later than five business days before the response due date. If Tesla is unable to provide all of the information requested by the original deadline, it must submit a partial response by the original deadline with whatever information Tesla then has available, even if an extension has been granted.

Please send email notification to Roy Nelson at roy.nelson@dot.gov and to ODI_IRresponse@dot.gov when Tesla sends its response to this office and indicate whether there is confidential information as part of Tesla's response.

If you have any technical questions concerning this matter, please call Roy Nelson of my staff at (202) 366-8805.

Sincerely,

A handwritten signature in black ink that reads "Gregory Magno". The signature is written in a cursive, flowing style.

Gregory Magno, Chief
Vehicle Defects Division - D
Office of Defects Investigation