

Jeffery C. Metler (10137)  
George L. Chingas, Jr. (8904)  
Trevor F. Berrett (14506)  
MacArthur, Heder & Metler, PLLC  
4844 North 300 West, Suite 300  
Provo, UT 84604  
Telephone: (801) 377-1900  
Facsimile: (801) 377-1901

**Attorney for Plaintiff**

IN THE THIRD DISTRICT COURT FOR THE STATE OF UTAH,  
SALT LAKE COUNTY

<p>HEATHER P. LOMMATZSCH, an individual</p> <p>Plaintiff,</p> <p>vs.</p> <p>TESLA, INC., a California Corporation, TESLA MOTORS UT, INC., a Utah Corporation, and SERVICE KING PAINT &amp; BODY, LLC, a Texas Limited Liability Company DBA SERVICE KING COLLISION REPAIR,</p> <p>Defendants.</p>	<p>COMPLAINT (TIER 3)</p> <p>Case No.:</p> <p>Judge:</p>
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COMES NOW Plaintiff, Heather P. Lommatzsch, individually (hereinafter referred to as “Plaintiff”), by and through her attorneys, Jeffery C. Metler, George L. Chingas and Trevor F. Berrett, and alleges and seeks relief as follows:

## **PARTIES AND JURISDICTION**

1. That at the time of the accident, Plaintiff was a resident of Utah County, State of Utah.

2. That upon information and belief, at all times material hereto, the Defendant Tesla, Inc. is a California Corporation with its principal place of business in Palo Alto, California, and was doing business in Utah.

3. That upon information and belief, at all times material hereto, the Defendant Tesla Motors UT, Inc. is a California Corporation with its principal place of business in Salt Lake City, Salt Lake County, Utah.

4. That upon information and belief, at all times material hereto, the Defendant Service King Paint & Body is a Texas limited liability company with its principal place of business in Richardson, Texas, and doing business in Utah as Service King Collision Repair (hereinafter referred to as “Defendant Service King”).

5. That the event out of which this cause of action arose took place and occurred in Salt Lake County, State of Utah.

6. This court has jurisdiction pursuant to U.C.A. § 78A-5-102.

7. Pursuant to U.C.A. §78B-3-307, venue is proper in this court.

8. Pursuant to URCP 8(a), Plaintiff seeks damages in excess of \$300,000.00 (Tier 3).

## **GENERAL ALLEGATIONS**

9. At all times relevant to this action, Defendants Tesla, Inc. and Tesla Motors UT, Inc. (hereinafter referred to jointly as the “Tesla Defendants”) were engaged in the business of

designing, testing, manufacturing, distributing, promoting, maintaining, and selling motor vehicles which were used in the state of Utah for general public use on public roadways.

10. At all times relevant to this action, Tesla Defendants distributed and sold its motor vehicles in interstate commerce, knowing or reasonably expecting that its product would be distributed, sold and used in Utah.

11. That on or about July 19, 2016, Plaintiff purchased a motor vehicle manufactured by Defendant Tesla, Inc. and sold by Defendant Tesla Motors UT, Inc. This motor vehicle was a 2016 Tesla Model S (hereinafter the "Tesla Model S").

12. During the year leading up to the subject accident, Defendant Service King provided service to the Tesla Model S and had replaced a sensor on the Tesla Model S.

13. That on or about May 11, 2018, Plaintiff was travelling as the restrained driver of the Tesla Model S southbound on Bangerter Highway, South Jordan City, Salt Lake County, State of Utah.

14. That at the aforesaid date and place, the Tesla Model S was operating in auto-pilot mode.

15. That at the aforesaid date and place, southbound traffic on Bangerter Highway had come to a complete stop.

16. That based on conversations with Tesla sales people, Plaintiff understood that the Tesla Model S's safety features would ensure the vehicle would stop on its own in the event of an obstacle being present in the path of the Tesla Model S.

17. That these safety features failed to engage as advertised and represented by Defendants Tesla, Inc. and Tesla Motors UT, Inc.

18. That when Plaintiff saw the vehicles stopped in front of her, she attempted to brake but the brakes did not engage.

19. That when purchasing the Tesla Model S, Plaintiff was told by the salesman at Tesla Motors UT, Inc. that she could drive in autopilot mode and just touch the steering wheel occasionally.

20. That touching the steering wheel to maintain autopilot mode was demonstrated to Plaintiff when purchasing the vehicle from Tesla Motors UT, Inc.

21. That at the aforesaid date and place, Plaintiff's Tesla Model S failed to stop and struck the rear end of a third-party vehicle stopped on Bangerter Highway.

22. As a direct and proximate result of the acts and omissions of Defendants and Plaintiff's use of the Tesla Model S, Plaintiff has sustained severe and permanent injuries and has incurred reasonable and necessary expenses having a value in excess of \$3,000.00 pursuant to §31A-22-309 (1)(a)(v) U.C.A.

23. As a direct and proximate result of the acts and omissions of Defendants and Plaintiff's use of the Tesla Model S, Plaintiff has been injured in her health, strength, and activity and has suffered and will continue to suffer serious physical injuries, pain, discomfort, distress and disability, and has suffered the loss of the pleasures and enjoyment of life and physical impairment, all to her general damage in amounts to be determined at trial.

24. As a direct and proximate result of the acts and omissions of Defendants and Plaintiff's use of the Tesla Model S, Plaintiff has incurred and will continue to incur future substantial medical bills and other expenses related to the hospitalization, care, treatment and rehabilitation of Plaintiff all to her special damage in amounts to be determined at trial.

25. As a direct and proximate result of the acts and omissions of Defendants and Plaintiff's use of the Tesla Model S, Plaintiff has incurred a loss of income and a loss of future earning capacity, all to her special damage in amounts to be determined at trial.

**FIRST CLAIM FOR RELIEF**  
**Negligence (Tesla Defendants)**

26. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

27. At all relevant times, the Tesla Defendants were, at a minimum, negligent in developing, designing, manufacturing, producing, testing, promoting, distributing, selling, maintaining, repairing and/or servicing the Tesla Model S, and/or providing adequate warning of the dangers of the Tesla Model S. The negligence of each Tesla Defendant included, but is not limited to, one or more of the following:

- a. Failing to use due care in developing, designing, testing, manufacturing or producing the Tesla Model S so as to avoid the risk of it suddenly and without warning, failing to function as advertised and represented in its auto-pilot capacity.

- b. Promoting or selling the Tesla Model S when the Tesla Defendants knew or should have known that the product was unreasonably dangerous while operating in autopilot mode.
- c. Placing the product in the stream of commerce when Tesla Defendants knew or should have known that the product was dangerous and defective and was not accompanied by adequate warnings regarding its foreseeable use.
- d. On information and belief, failing to timely recall the Tesla Model S or the defective part thereof after Tesla Defendants knew or should have known the dangers associated with its foreseeable use.
- e. On information and belief, failing to ensure that the parts used to manufacture the Tesla Model S were safe and not defective.

28. As the designer, manufacturer, producer, promoter, seller, and servicer of the Tesla Model S in question, Tesla Defendants owed a duty to those using the Tesla Model S, including Plaintiff, to make it safe for its intended purpose.

29. The Tesla Defendants breached this duty because of their negligence and failure to use reasonable care as outlined above.

30. The Tesla Defendants' negligence in developing, designing, manufacturing, producing, testing, promoting, distributing, selling, and/or servicing the Tesla Model S made the Tesla Model S unreasonably dangerous.

31. As a proximate and direct result of the Tesla Defendants' negligence, Plaintiff has been injured and damaged as more fully set forth above, in amounts to be determined at trial.

**SECOND CLAIM FOR RELIEF**  
**Strict Liability (Tesla Defendants)**

32. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

33. The Tesla Model S in question was defective or in a defective condition that made it unreasonably dangerous to users. It was not reasonably safe as intended but was dangerous to an extent beyond that which would be contemplated by the ordinary and prudent user and was not accompanied by adequate warnings regarding its proper use.

34. The defect or defects in the Tesla Model S existed when it left these Defendants' control.

35. The Tesla Model S was expected to and did reach the user without substantial change in the condition in which it was sold.

36. Plaintiff used the Tesla Model S for the purpose for which it was marketed, sold and intended to be used.

37. Plaintiff could not have discovered and did not discover the defect or defects in the Tesla Model S through the exercise of reasonable care before using the Tesla Model S.

38. The defects in or the defective condition of the Tesla Model S were the proximate cause of Plaintiff's injuries and damages.

**THIRD CLAIM FOR RELIEF**  
**Breach of Warranty (Tesla Defendants)**

39. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

40. The Tesla Defendants expressly or implicitly warranted that the Tesla Model S in question was merchantable, free from defects, fit for the purpose for which it was intended and sold and fit for its reasonably foreseeable uses.

41. The Plaintiff relied upon the Tesla Defendants' warranty.

42. The Tesla Defendants breached the warranties of their product.

43. The Tesla Defendants' breach or breaches of warranties were the proximate cause of Plaintiff's injuries and damages.

**FOURTH CLAIM FOR RELIEF**  
**Negligence (Defendant Service King)**

44. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

45. Defendant Service King owed a duty of care to Plaintiff while testing, maintaining, servicing, and/or repairing the Tesla Model S.

46. Defendant Service King breached the duty of care by negligently testing, maintaining, servicing, and/or repairing the Tesla Model S.

47. Plaintiff has suffered bodily injury and harm as a direct result of Defendant Service King's negligence.

48. Plaintiff is entitled to recover damages from Defendant Service King for her bodily injury and harm in an amount to be proven at trial.

**WHEREFORE**, Plaintiff prays for judgment against Defendants as set forth below:

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered in her favor and against Defendants herein to include, but not be limited to:

1. An amount that exceeds \$300,000.00 to compensate her for her individual injuries and damages incurred, including both economic and noneconomic damages.
2. Interest accruing from the date the accident occurred.
3. For such other and further relief as the court deems proper and warranted.

**JURY DEMAND**

Plaintiff hereby demands a jury trial for all the issues in this action.

Dated this 4th day of September, 2018

MACARTHUR, HEDER & METLER, PLLC

/s/ Jeffery C. Metler

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Jeffery C. Metler  
Attorney for Plaintiff

Plaintiff's Address:  
1505 South White Street  
Lehi, UT 84043