

Aaron Greenspan

Phone:

Fax:

E-Mail:

January 11, 2019

Deana Carrillo
Executive Director
California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA)
801 Capitol Mall
Room 220
Sacramento, CA 95814

RE: Tesla, Inc. Resolution Nos. 17-SM003 AND 18-SM004

Director Carrillo and Authority Members:

I am writing as a concerned California taxpayer and owner of put options in Tesla, Inc. (“Tesla”) common stock. By way of background, I have a degree in economics from Harvard University and I was a CodeX Fellow at Stanford Law School in 2012-2013. I run a for-profit software company, Think Computer Corporation, and a 501(c)(3) non-profit organization, Think Computer Foundation, that jointly run a transparency initiative called PlainSite. PlainSite, which has a website at <https://www.plainsite.org> and a Twitter account at @PlainSite, provides the public with over 11 million legal dockets and millions more corresponding documents from federal and state courts and various other government agencies, free of charge. The initiative also produces comprehensive investigative reports on publicly traded companies that are made available to the public for free.¹ That being said, I am writing this letter in my personal capacity.

Although I have considered writing a report on Tesla in my capacity managing PlainSite, frankly, news around the company’s wrongdoing moves too fast for anything on paper to stay current for more than a few days. Though it may be slightly less comprehensive, I hope you will consider this letter outlining my concerns about the company’s business practices.

Simply put, it is my personal opinion that Tesla does not deserve the benefit of future exemptions from California sales tax (or any other tax), and should be required to pay sales tax retroactively on any amounts previously exempt where it can be determined that the company was untruthful

¹ See <https://www.plainsite.org/realitycheck/index.html>.

or misleading before the CAEATFA. My opinion is informed by several months of research on the company. The CAEATFA should be aware of the following issues:

1. Tesla and its CEO Elon Musk are inseparable, and Elon Musk has repeatedly committed fraud.

On September 28, 2018, Elon Musk signed a consent agreement with the United States Securities and Exchange Commission (“SEC”) effectively prohibiting him from committing further acts of securities fraud.² District Judge Alison J. Nathan approved the agreement on October 16, 2018. Tesla, Inc. signed a separate agreement that was also similarly approved.³ Musk was required to step down as Chairman of the Board and was required to appoint two independent directors. Both entities were required to pay fines of \$20 million each.

Before and after the consent agreement, Musk made numerous claims related to Tesla that were demonstrably false. Wall Street, eager to see profits from his businesses, has failed to hold him to account. Nonetheless, Musk’s history is problematic by any standard:

- a) Musk made claims about Tesla’s Model 3 production rates that have earned the company a formal investigation by the United States Department of Justice. SolarCity’s overly aggressive sales practices are also the subject of an FBI investigation.
- b) Regarding Tesla’s solar roof tiles, Musk stated, “We now have several hundred homes with the Solar Roof on them, and that’s going well. It takes a while to just confirm that the Solar Roof is going to last for 30 years and all the details work out.” That statement was false. In fact, two years later, only 12 homes feature Tesla’s solar roof tiles and they are not anywhere close to being ready for mass production. This lie helped justify Tesla’s acquisition of SolarCity for \$2.6 billion.⁴
- c) Musk stated that Tesla vehicles would “completely drive themselves without any human interaction by 2017.” The company has been forced to admit that this was a lie.⁵
- d) Musk accused a professional diver in Thailand of being a pedophile with no evidence whatsoever. He then doubled down on the lie and insisted that it must be true because the diver did not sue. The diver sued.⁶
- e) On air, Musk told *60 Minutes* anchor Leslie Stahl that he did not smoke marijuana, even when he knew that video exists of him smoking marijuana (which was played in

² *United States Securities and Exchange Commission v. Musk*, New York Southern District Court, Case No. 1:18-cv-08865-AJN.
<https://www.plainsite.org/dockets/3ciodapq4/new-york-southern-district-court/united-states-securities-and-exchange-commission-v-musk/>

³ *United States Securities and Exchange Commission v. Tesla, Inc.*, New York Southern District Court, Case No. 1:18-cv-08947.
<https://www.plainsite.org/dockets/3cjlpi5ne/new-york-southern-district-court/united-states-securities-and-exchange-commission-v-tesla-inc/>

⁴ CNBC, September 24, 2018, “Tesla made a big deal out of its Solar Roof in 2016, but two years later it has barely shipped any.”

<https://www.cnbc.com/2018/09/24/tesla-solar-roof-tiles-where-are-they.html>

⁵ *Jalopnik*, January 10, 2019, “Even Tesla Seems to Be Getting Real About Self-Driving Car Tech in 2019.”

<https://jalopnik.com/even-tesla-seems-to-be-getting-real-about-self-driving-1831644553>

⁶ *Vernon Unsworth v. Elon Musk*, California Central District Court, Case No. 2:18-cv-08048-SVW-JC.

<https://www.plainsite.org/dockets/3cddrxs4o/california-central-district-court/vernon-unsworth-v-elon-musk/>

the same segment).⁷ Officials at NASA who oversee Musk's SpaceX contract(s) are concerned not only about his use of marijuana, but about his use of other illegal drugs, as well.

- f) On air, Musk represented—with *60 Minutes* anchor Leslie Stahl in the vehicle—that Tesla Autopilot can drive a car even with the driver (Musk) completely disengaged. Yet in ongoing Autopilot litigation, Tesla has insisted that a driver's hands must be on the steering wheel at all times, and that Autopilot does not automatically pilot the car.
- g) On air, Musk stated emphatically that he does not respect the SEC. From this alone, one can glean that Musk considers himself above the law—including taxes.

2. Musk is using a Curaçao private foundation to manipulate Tesla's stock price and/or evade taxes related to Tesla share ownership.

The Musk Private Foundation, which is not registered with the IRS as an Exempt Organization, was incorporated on April 4, 2016 in Curaçao. The corporate charter explicitly states, "The Foundation can incur risks from investment and reinvestment activities, including risks from 'puts' and 'calls.'" On May 19, 2016, Musk transferred 1.2 million Tesla shares worth approximately \$250 million to the Musk Private Foundation.⁸ Ever since, the public has had no transparency into its activities.

To the extent that Musk is using an offshore vehicle to evade his and/or Tesla's tax obligations in the United States, the State of California should not reward him with further tax exemptions for his activities, which may or may not be legal. For reasons unknown, the SEC did not address Musk's private foundation in its consent agreement.

3. A criminal case involving wire fraud and false invoices at Tesla is ongoing.

On November 8, 2018, Tesla accounts payable clerk Salil Parulekar was indicted in the Northern District of California.⁹ Although the case remains sealed except for the initial indictment, it is ongoing. It is therefore possible that other Tesla employees and/or executives are involved. It should go without saying that no further tax exemptions should be permitted until the circumstances surrounding this criminal case are made clear.

4. Tesla has a habit of refusing to pay taxes, not to mention its vendors.

PlainSite has identified 6 lawsuits nationwide¹⁰ in which state tax authorities sued Tesla or its subsidiary companies for failure to pay different kinds of taxes. These were not simple paperwork mix-ups or oversights, whatever the company might claim. In each case, the issue went unresolved for a significant period before it escalated to a court.

⁷ *CBS News 60 Minutes*, December 9, 2018, "Tesla CEO Elon Musk: The 60 Minutes Interview."

<https://www.cbsnews.com/news/tesla-ceo-elon-musk-the-2018-60-minutes-interview/>

⁸ *The Outline*, August 5, 2018, "Why did Elon Musk stash a quarter-billion dollars of Tesla stock in a non-profit back in 2016?"

<https://theoutline.com/post/5707/elon-musk-has-a-quarter-billion-dollars-of-tesla-shares-parked-in-a-non-profit>

⁹ *USA v. Parulekar*, California Northern District Court, Case No. 5:18-cr-00550-LHK.

<https://www.plainsite.org/dockets/3iry05te/california-northern-district-court/usa-v-parulekar/>

¹⁰ <https://www.plainsite.org/tags/tesla-vendor-non-payment/>

Furthermore, there are at least 14 more lawsuits where Tesla failed to pay vendors in a timely manner. In one of the more recent filings, Joshua Turner, a Tesla Service Manager in Miami, Florida wrote to an auto body shop fixing defective vehicles, “We ask so much of you and your services, and drag our feet when it comes to paying for services rendered.” The vendor was never paid.

5. Tesla is illegally refusing to refund customer deposits as a matter of policy.

PlainSite has identified 10 lawsuits nationwide¹¹ (of which 7 are in California) and 3 formal complaints to the Florida Attorney General¹² concerning vehicle deposits that the company has refused to refund. Additionally, there are frequent reports of Tesla deposit theft on social media sites such as Twitter and Reddit.^{13,14,15,16} Despite its public pronouncements to the contrary, Tesla is strapped for cash, and appears to be using money to which it has no legal claim to present the impression that it is more solvent than it truly is.

No company that brazenly steals from the public should be rewarded with a tax exemption or special treatment of any kind.

6. Tesla is abusing DMV regulations to evade its tax obligations on vehicles sold.

Tesla customers across the country are reporting that the company is refusing to transfer their car titles and permits in a reasonable time frame.^{17,18} Instead, Tesla is providing new owners with temporary permits for as long as possible, often beyond the legal limit, and offering to reimburse tickets and fines (which it may or may not follow through with). This practice allows Tesla to temporarily avoid reporting sales of vehicles to state tax authorities that it would then need to pay taxes on.

When asked about this scheme, a salesperson at Tesla’s San Francisco showroom claimed that these problems were the California DMV’s fault and that temporary permits lasted six months, making any issues moot. Both of these statements are false. The California DMV is not at fault for Tesla’s corporate policy of tax evasion, and temporary permits in California last only 90 days.¹⁹

7. Tesla abuses its workers and whistleblowers, many of whom are in California.

Thus far, PlainSite has identified 40 lawsuits involving worker rights.²⁰ Many of these lawsuits make similar allegations concerning overt racial discrimination and harassment. In addition, Tesla’s mistreatment of its workers has been the subject of numerous articles in

¹¹ <https://www.plainsite.org/tags/tesla-deposit-theft/>

¹² <http://www.plainsite.org/realitycheck/tesla/flag.pdf>

¹³ <https://twitter.com/Rossiman4/status/1083506103961346048>

¹⁴ <https://twitter.com/ksatterwhite/status/1083558835321819136>

¹⁵ <https://twitter.com/BrentLindberg/status/1083550503051550721>

¹⁶ <https://twitter.com/ExpandYourTribe/status/1083434044635766784>

¹⁷ <https://forums.tesla.com/forum/forums/no-temporary-or-any-registration>

¹⁸ https://www.reddit.com/r/teslamotors/comments/9ha5qa/tesla_isnt_registering_cars_on_owners_behalf/

¹⁹ California Vehicle Code § 4156(c)(3)

²⁰ <https://www.plainsite.org/tags/tesla-worker-rights/>

*The New York Times*²¹ and *Reveal*²². At least two whistleblowers, Martin Tripp and Anna Watson, have come forward with stories of retribution for exposing serious problems with Tesla's manufacturing procedures and employee care, respectively. Tripp is involved in litigation with Tesla over these issues (the litigation in his case being part of the retribution against him).²³ Particularly disturbing is Ms. Watson's report of Child Protective Services coming to her home shortly after *Reveal* included her allegations against Tesla—backed by documentation—in its national news coverage.

PlainSite furthered *Reveal*'s reporting by uncovering the fact that one of the physicians hired by Dr. Basil Besh's "Access Omnicare" clinic, Muhannad S. Hafi, was known to have committed several sexual offenses against his patients, and whose medical license was in the process of being revoked by the Medical Board of California at the time he was hired. Dr. Hafi's license has since been revoked.²⁴ Another doctor whose name is stamped on Access Omnicare patient records, "Kenneth Hammonds, M.D.," does not exist. (It is possible that Kenneth Hammonds, D.O. is exaggerating his credentials. Either way, Access Omnicare has refused to comment on the discrepancy and could not fulfill a request to be put in touch with Dr. Hammonds.) It is not even clear how Dr. Besh is qualified to treat Tesla's workers in the first place given that he specializes in hand surgery.

Tesla workers should not have to worry that their doctors are unlicensed, differently licensed than they claim, and/or sexual predators. This is especially so given that Elon Musk stated that Tesla offers, "really immediate first-class healthcare available right on the spot" and "the absolute best care for our associates" on Tesla's official Q3 2018 earnings call. These statements alone likely constitute securities fraud.

8. Tesla appears to have violated a 2013 consent order concerning worker safety.

In 2013, before it was acquired by Tesla, SolarCity attorneys signed a Consent Order in Contra Costa County involving fall prevention for its workers.²⁵ The Order was to remain in effect for five years. Tesla inherited this Consent Order as part of its acquisition of SolarCity.

Three years later, in 2016, according to a case management statement in Alameda County Case No. HG16804613, *Osantoski v. Tesla Motors, Inc.*, "Plaintiff Aaron Osantoski fell three stories and sustained severe injuries when he fell through an inadequate fall protection barrier. He suffered a traumatic brain injury, which has led to a loss of cognitive function. He suffered multiple physical injuries, including a fractured left knee, fractured left leg, and fractured left orbital eye socket, among other injuries."

²¹ *The New York Times*, November 30, 2018, "Menial Tasks, Slurs and Swastikas: Many Black Workers at Tesla Say They Faced Racism." <https://www.nytimes.com/2018/11/30/business/tesla-factory-racism.html>

²² *Reveal*. <https://www.revealnews.org/tag/tesla/>

²³ *Tesla, Inc. v. Tripp*, Nevada District Court, Case No. 3:18-cv-00296-LRH-CBC.

<https://www.plainsite.org/dockets/3br5tkwuj/nevada-district-court/tesla-inc-v-tripp/>

²⁴ *Ars Technica*, December 11, 2018, "Doctor, once hired by clinic that sees Tesla workers, just lost his license."

<https://arstechnica.com/tech-policy/2018/12/doctor-once-hired-by-clinic-that-sees-tesla-workers-just-lost-his-license/>

²⁵ *People of the State of California v. SolarCity*, Superior Court of California, County of Contra Costa, Case No. CIVMSC13-00751.

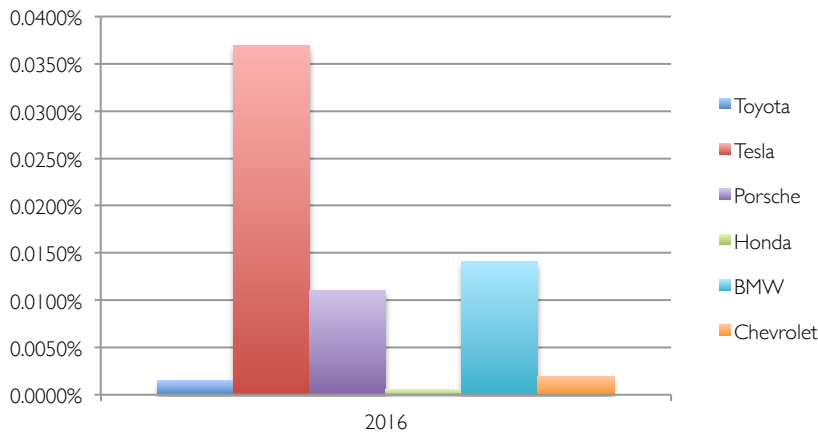
<https://www.plainsite.org/dockets/3mxygqdoj/superior-court-of-california-county-of-contra-costa/people-of-the-state-of-california-v-solarcity/>

It is possible that Tesla did everything in its power to avoid worker injuries from falling, but before any further tax exemptions are granted, an investigation into the circumstances surrounding the Consent Order and the company's practices should be conducted.

9. Tesla's cars have much higher than usual defect rates.

Perhaps because Elon Musk's aggressive automation efforts failed, or perhaps because many Tesla vehicles are built outdoors in a tent, its cars have unusually high rates of defects. Based on publicly available data from the State of New Jersey last updated January 1, 2019,²⁶ as a proportion of cars sold in the United States for 2016, Tesla had more 2016 vehicles returned under the New Jersey lemon law than its competitors by far.

New Jersey Lemon Law Returned Vehicles as Percentage of Brand U.S. Production/Sales



National Highway Traffic Safety Administration (“NHTSA”) complaints filed about Tesla vehicles²⁷ are also instructive of the types of frequent problems customers have. Examples of frequent complaints filed with NHTSA and expressed elsewhere (including in approximately 100 lawsuits involving vehicle quality) include:

- a) Problems with rear bumpers falling off in the rain, weighed down by water;
- b) Problems with undercarriage fabric drooping and functioning as an unwanted snow plow;
- c) Problems with door handles freezing solid within door frames, making vehicles impossible to access during cold weather;
- d) Problems with paint chipping and scratching easily due to below-average paint coat thickness;
- e) Problems with outside panel alignment;
- f) Problems with indoor component alignment, leading to squeaking sounds;
- g) Problems with Model 3 center console software freezing or shutting off entirely, endangering passenger safety;

²⁶ <https://www.njconsumeraffairs.gov/llu/Documents/Vehicles-Branded-Under-The-New-Jersey-Lemon-Law.pdf>

²⁷ <https://www.nhtsa.gov/recalls#vehicle> (search for “Tesla”)

January 11, 2019

Letter to CAEATFA Concerning Tesla, Inc. Resolution Nos. 17-SM003 AND 18-SM004

Page 7 of 7

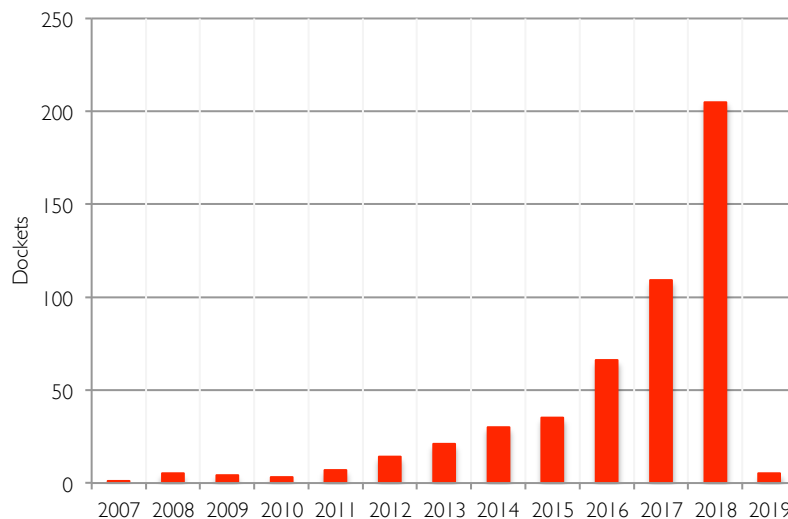
- h) Problems with unintended acceleration, both forward and backward, as well as sudden lane changes, endangering passenger safety.

Additionally, there have been several recent reports of Tesla vehicles catching on fire after accidents. These lithium fires are prolonged and nearly impossible to put out.

10. Tesla's litigation profile is increasing exponentially.

PlainSite has identified 507 lawsuits concerning Elon Musk, Tesla, and SolarCity (which is part of Tesla). Of those, over 200 were filed in 2018 alone. This should be of concern to the CAEATFA, as Tesla's legal liability could become a serious problem for the company going forward at the current exponential pace.

Tesla + SolarCity + Elon Musk New Actions by Year



While I understand that the CAEATFA seeks to encourage the development of sustainable energy technologies and I fully support this goal, it simply cannot stand to allow sustainable energy to be used as a thinly veiled cover for fraud. In this case, although *most* of its products are real, it would appear that Tesla is sadly an umbrella organization for a number of different simultaneous frauds. As Authority Members, you have an obligation to investigate the circumstances raised herein before approving any further exemptions of any kind for Tesla or its subsidiary companies.

I would be glad to answer any questions you might have.

Sincerely,

Aaron Greenspan