

VIRGINIA:

IN THE FAIRFAX COUNTY CIRCUIT COURT

FILED
CIVIL INTAKE
2019 FEB 12 PM 3:43
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

BIKAN OCTAIN
c/o Silver & Brown
10621 Jones Street
Fairfax, Virginia 22030

and

DALJIT OCTAIN
c/o Silver & Brown
10621 Jones Street
Fairfax, Virginia 22030

Plaintiffs,

v.

TESLA, INC.

Serve: John D Sneed, Registered Agent
9201 Arboretum Pkwy, Ste. 120
Richmond, VA 23236-0000

and

TESLA MOTORS, INC.

Serve: C T Corporation System
Registered Agent
4701 Cox Rd, Ste. 285
Glen Allen, VA 23060-6808

Defendants.

2019 02055

Case No.: _____

COMPLAINT

COMES NOW the Plaintiffs, Bikan Octain and Daljit Octain ("Plaintiffs," or "Octains," or "Owners"), by counsel, files this Complaint seeking judgment against the Defendants, Tesla, Inc. and Tesla Motors, Inc. (collectively the "Defendants" or "Tesla"), (collectively Plaintiffs and Defendant shall be referred to as the "Parties"), and in support thereof states as follows:

FACTS COMMON TO ALL COUNTS

1. Plaintiff, Bikan Octain, is, and was at all times relevant hereto, a citizen and resident of the Commonwealth of Virginia.
2. Plaintiff, Daljit Octain, is, and was at all times relevant hereto, a citizen and resident of the Commonwealth of Virginia.
3. Upon information and belief, Defendant, Tesla, Inc., is a Delaware corporation with its principal place of business located in Palo Alto, California.
4. Upon information and belief, Defendant, Tesla Motors, Inc., is a Delaware corporation with its principal place of business located in Palo Alto, California.
5. Upon information and belief, Defendants are, and were at all times relevant hereto, manufacturers and dealers of Tesla Automobiles.
6. The Defendants entered into a Motor Vehicle Purchase Agreement with Tesla Motors, Inc. for the purchase of a "New - Previous service/demo vehicle."
7. Plaintiffs paid Tesla Motors, Inc. \$111,450 for the purchase of a 2016 Tesla Model S 90D Automobile, including, but not limited to, a fee of \$3,000 for the "Full Self-Driving Capability" (the "Automobile").
8. The Automobile's "Full Self-Driving Capability" includes the Tesla Summon feature, which allows the Plaintiffs to move the Automobile forwards and backwards remotely to allow the Automobile to park into confined spaces.
9. The Automobile's "Full Self-Driving Capability" includes the Tesla Autopark feature, which allows the Plaintiffs to park the Automobile remotely.
10. Tesla marketed the Autopark and Summons feature to the Plaintiffs as follows:

With Summon, you can move Model S in and out of a parking spaced from outside the vehicle using the mobile app or the key. You can also customize

Summon to park or retrieve Model S with a single touch of a button and to initiate parking automatically after you double-press the Park gear and exit the vehicle. Using data from the ultrasonic sensors, summon maneuvers Model S forward or reverse into a parking space. When parking is complete Summon shifts Model S into Park. . . . You can summon Model S back to its original position if you previously auto parked it and the vehicle has remained in the Park gear. Then, using the mobile app or key, simply specify the opposite direction. Summon moves the vehicle along the original path provided the environment has not changed (i.e. no obstructions have been introduced). If obstacles are detected, summon attempts to avoid the obstacles while staying as close as possible to its original path.

11. The Plaintiffs were induced to enter into the contract with the Defendants based on the representations related to the Automobile, including the representations above.
12. Unknown to the Plaintiffs at the time of purchase were the facts that:
 - a. The Automobile is, and was at all times relevant hereto, defective.
 - b. The Automobile possesses, and possessed at all times relevant hereto, defective sensors.
 - c. The Automobile possesses, and possessed at all times relevant hereto, defective software.
 - d. The Automobile's Tesla Summon feature is, and was at all times relevant hereto, defective.
 - e. The Automobile's Tesla Autopark feature is, and was at all times relevant hereto, defective.
13. On or about February 13, 2017, the Defendants, or one of them, delivered the defective Automobile to the Plaintiffs.
14. On May 1, 2018, while using Tesla Summon and Autopark features, the Automobile crashed itself into the Plaintiffs' home, causing damage to the Automobile and to the home, as a result of the Automobile's defective Self-Driving features (the "First Crash").

15. The Automobile was brought to Tesla's customer service center for repairs, which were performed by a Tesla authorized body shop, which repairs took several months to perform.
16. On May 25, 2017, the Defendants, or one of them, responded to the Plaintiffs in writing regarding the complaint and the Automobile's defects.
17. On August 5, 2018, while using Tesla Summon and Autopark features, the Automobile again crashed itself into the Plaintiffs' home, causing damage to the Automobile and to the home, as a result of the Automobile's defective nature (the "Second Crash").
18. Immediately prior to the Second Crash, the front end of the Automobile was already inside of the Plaintiffs' garage when the Automobile made an adjustment to the left and drove itself into the side of the garage.
19. Within 24 hours of the Second Crash, the Plaintiffs once again contacted Tesla to resolve the dispute concerning the Self-Driving Capability defects.
20. Following the report of the Second Crash, Tesla performed a cursory inspection and refused to repair the Automobile.
21. Tesla advised the Plaintiffs that the Plaintiffs should simply refrain from using the Automobile's Autopark and Summons features.
22. On or about August 8, 2018, Tesla advised the Plaintiffs that they would no longer service the Automobile.
23. Plaintiffs demanded arbitration and the defendants failed and refused to participate in the arbitration process in an attempt to resolve the disputes between the Parties.

COUNT I
BREACH OF CONTRACT

24. Paragraphs 1-23 are incorporated by reference.
25. Demand was made upon Tesla to repair the Automobile following the Second Crash, which

demand Tesla refused.

26. Plaintiffs requested arbitration in accordance with Tesla's agreement to arbitrate disputes.
27. Tesla breached the contract by refusing to arbitrate.
28. The contract required that the Defendants provide the Plaintiffs with an Automobile that possess "Full Self-Driving Capability," including, but not limited to, the Tesla Summons and Autopark features.
29. The Defendants breached the contract for sale by delivering to the Plaintiffs a defective product and/or by failing to correct the defects after they became apparent.
30. The Defendants breached the contract for sale by delivering to the Plaintiffs the Automobile that does not possess "Full Self-Driving Capability."
31. The Defendants breached the contract for sale by delivering to the Plaintiffs the Automobile that possesses, and possessed at all times relevant hereto, defective sensors.
32. The Defendants breached the contract for sale by delivering to the Plaintiffs the Automobile that possesses, and possessed at all times relevant hereto, defective software.
33. The Defendants breached the contract for sale by failing or refusing to repair the Automobile.
34. As the direct and proximate result of the Defendants' breaches, the Plaintiffs sustained damages.

WHEREFORE, the Plaintiffs, Bikan Octain and Daljit Octain, respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against the Defendants, jointly and severally, in the sum of THREE HUNDRED THOUSAND and no/ 100 Dollars (\$300,000), together with their costs and prejudgment interest and post judgment interest and award any such other and further relief as may be proper.

COUNT II
BREACH OF WARRANTY

35. Paragraphs 1-23 are incorporated by reference.
36. The Defendants warranted that the Automobile would possess "Full Self-Driving Capability," including, but not limited to, the Tesla Summons and Autopark features.
37. The Defendants breached the express warranty that the Automobile would possess "Full Self-Driving Capability," including, but not limited to, the Tesla Summons and Autopark features.
38. The Defendants breached the warranty of general merchantability by delivering to the Plaintiffs a defective vehicle that drives itself into walls despite the vehicle's "ultrasonic sensors" intended on preventing the car from doing that.
39. The Defendants breached the warranty of fitness for ordinary purpose by delivering to the Plaintiffs a vehicle with defective software.
40. The Defendants breached the express warranty by delivering to the Plaintiffs a vehicle with defective software.
41. The Defendants breached the warranty of fitness for ordinary purpose by delivering to the Plaintiffs a vehicle with defective sensors.
42. The Defendants breached the express warranty by delivering to the Plaintiffs a vehicle with defective sensors, and/or defective software, and/or which failed to provide Tesla Summons and Autopark features; and/or which failed to provide "Full Self-Driving Capability," and by providing the Automobile which they refused to repair, despite the fact that only the Defendants have the software capability of repairing the same.
43. The Defendants breached the warranty of fitness for particular purpose by delivering to the Plaintiffs a vehicle with defective sensors, and/or defective software, and/or which failed to provide Tesla Summons and Autopark features; and/or which failed to provide "Full Self-

Driving Capability," and by providing the Automobile which they refused to repair, despite the fact that only the Defendants have the software capability of repairing the same.

44. As a direct and proximate result of the Defendants' breaches, the Plaintiffs suffered damages.

WHEREFORE, the Plaintiffs, Bikan Octain and Daljit Octain, respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against the Defendants, jointly and severally, in the sum of THREE HUNDRED THOUSAND and no/ 100 Dollars (\$300,000) as compensatory damages, together with their costs and prejudgment interest and post judgment interest and award any such other and further relief as may be proper.

COUNT III
VIOLATION OF CHAPTER 17.3 (et seq.) VIRGINIA MOTOR VEHICLE WARRANTY
ENFORCEMENT ACT ("LEMON LAW")

45. Paragraphs 1-23 are incorporated by reference.

46. As a direct and proximate result of the Defendant's violation, the Plaintiffs incurred damages, attorney's fees, court costs and other fees.

47. The Automobile contains a nonconformity for purposes of Virginia's lemon law.

48. The Automobile fails to conform to a warranty.

49. The Automobile possesses a defect that significantly impairs the use, market value or safety of the Automobile.

50. The Defendants received actual notice of the Automobile's nonconformities when the Plaintiffs brought the Automobile in for repairs and reported the nonconformities to the Defendants after both the First and Second Accident.

51. Notice, for the purposes of Virginia's lemon law, was given when a factory representative inspected the Automobile or met with the consumer or an authorized dealer regarding the Automobile's defects and nonconformity.

52. Notice, for the purposes of Virginia's lemon law, was given when the Defendants, or one of them, responded to the Plaintiffs in writing regarding the complaint and the Automobile's defects.

53. The Defendants have been unable, or otherwise unwilling, to conform the Automobile to the warranty.

54. As a direct and proximate result of the Defendants' violations, the Plaintiffs suffered damages.

WHEREFORE, the Plaintiffs, Bikan Octain and Daljit Octain, respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against the Defendants, jointly and severally, in the sum of THREE HUNDRED THOUSAND and no/ 100 Dollars (\$300,000) as compensatory damages, as well as attorney's fees, court costs and other costs pursuant to Va. Code § 59.1-207.14, together with costs and prejudgment interest and post judgment interest, and award any such other and further relief as may be proper.

COUNT IV
ACTUAL FRAUD INTENTIONAL MISREPRESENTATION
In the alternative to counts 1-2 and 5

55. Paragraphs 1-23 are incorporated by reference.

56. The Defendants made false representations aforesaid to the Plaintiffs that the Automobile would be and had been repaired following the First Crash and that the Automobile was operating correctly following Defendants' rendering of said services when the Automobile was brought in for said services after the First Crash.

57. The Defendants made false representations aforesaid to the Plaintiffs that were material to the continued use of the Automobile following the First Crash that the Automobile was operating correctly.

58. The Defendants made the misrepresentations aforesaid, knowing that they would be relied upon by the Plaintiffs.
59. The Defendants misrepresentations were made intentionally and knowingly and made with the intent to mislead the Plaintiffs.
60. The Defendants represented as true what was false, that is, they represented to the Plaintiffs following the First Crash that the Automobile could correctly auto drive, auto park and drive itself with the summons feature, when the Defendants knew or recklessly disregarded the fact that the Automobile could not do all of those tasks.
61. The Defendants misrepresentations were made with the intent to induce the Plaintiffs to continue to use the Automobile without demanding more costly investigation and costly work to be performed on the Automobile following the First Crash and to otherwise save money.
62. Had the Plaintiffs known of the misrepresentations they would not have continued to use the Automobile, including the self-drive and auto park functions, following the First Crash, but would have immediately sought legal recourse for Tesla's failure to fix the defects.
63. The Plaintiffs reasonably relied to their detriment on the misrepresentations in continuing to use the Automobile, including the self-drive and auto park functions, following the First Crash.
64. As a direct and proximate result of the Defendant's misrepresentations, the Plaintiffs have been damaged.
65. The misrepresentations were made by the Defendants with the malicious intent to defraud the Plaintiffs and to induce the Plaintiffs to continue to use the Automobile without demanding more costly investigation and costly work to be performed on the Automobile following the

First Crash and to otherwise save money.

WHEREFORE, the Plaintiffs, Bikan Octain and Daljit Octain, respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against the Defendants, jointly and severally, in the sum of THREE HUNDRED THOUSAND and no/ 100 Dollars (\$300,000) compensatory damages, and THREE HUNDRED THOUSAND and no/ 100 Dollars (\$300,000) as punitive damages, as well as attorney's fees pursuant to *Prospect Dev. Co. v. Bershader*, 258 Va. 75, 86, 515 S.E.2d 291, 297 (1999) and its progeny, together with costs and prejudgment interest and post judgment interest, and award any such other and further relief as may be proper.

COUNT V
CONSTRUCTIVE FRAUD
In the alternative to counts 1-2 and 4

66. Paragraphs 1-23 are incorporated by reference.
67. The Defendants made false representations aforesaid to the Plaintiffs that the Automobile would be and had been repaired following the First Crash and that the Automobile was operating correctly following Defendants' rendering of said services when the Automobile was brought in for said services after the First Crash.
68. The Defendants made false representations aforesaid to the Plaintiffs that were material to the continued use of the Automobile following the First Crash that the Automobile was operating correctly.
69. The Defendants made the misrepresentations aforesaid, knowing that they would be relied upon by the Plaintiffs.
70. The Defendants made the misrepresentations innocently or negligently.
71. The Defendants represented as true what was false, that is, they represented to the Plaintiffs following the First Crash that the Automobile could correctly auto drive, auto park and drive

itself with the summons feature, when they knew or should have known the Automobile could not do all of those tasks.

72. The Defendants misrepresentations were made with the intent to induce the Plaintiffs to continue to use the Automobile without demanding more costly investigation and costly work to be performed on the Automobile following the First Crash and to otherwise save money.
73. Had the Plaintiffs known of the misrepresentations they would not have continued to use the Automobile, including the self-drive and auto park functions, following the First Crash.
74. The Plaintiffs reasonably relied to their detriment on the misrepresentations in continuing to use the Automobile, including the self-drive and auto park functions, following the First Crash.
75. As a direct and proximate result of the Defendant's misrepresentations, the Plaintiffs have been damaged.
76. The misrepresentations were made by the Defendants with the malicious intent to defraud the Plaintiffs and to induce the Plaintiffs to continue to use the Automobile without demanding more costly investigation and costly work to be performed on the Automobile following the First Crash and to otherwise save money.
77. As a direct and proximate result of the Defendants' violations, the Plaintiffs suffered damages.

WHEREFORE, the Plaintiffs, Bikan Octain and Daljit Octain, respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against the Defendants, jointly and severally, in the sum of THREE HUNDRED THOUSAND and no/ 100 Dollars (\$300,000) compensatory damages, as well as attorney's fees pursuant to *Prospect Dev. Co. v. Bershader*,

258 Va. 75, 86, 515 S.E.2d 291, 297 (1999) and its progeny, together with costs and prejudgment interest and post judgment interest, and award any such other and further relief as may be proper.

COUNT VI
VIRGINIA CONSUMER PROTECTION ACT

78. Paragraphs 1-23 are incorporated by reference.
79. The Plaintiffs are "consumers" under the Virginia Consumer Protection Act ("VCPA").
80. The Defendants are "suppliers" under the VCPA.
81. The Automobile constitutes a "good" under the VCPA.
82. The Defendants performed "services," as defined under the VCPA, on the Automobile following the First Crash.
83. The Defendants made false representations aforesaid to the Plaintiffs that were material to the continued use of the Automobile following the First Crash that the Automobile was operating correctly.
84. The Defendants made false representations aforesaid to the Plaintiffs that the Automobile would be repaired following the First Crash and that the Automobile was operating correctly following Defendants' rendering of said services when the Automobile was brought in for said services after the First Crash.
85. The Defendants made the misrepresentations aforesaid, knowing that they would be relied upon by the Plaintiffs.
86. The Defendants made the misrepresentations innocently or negligently.
87. The Defendants represented as true what was false, that is, they represented to the Plaintiffs following the First Crash that the Automobile could correctly auto drive, auto park and drive itself with the summons feature, when the Automobile could not do all of those tasks.
88. The Defendants misrepresentations were made with the intent to induce the Plaintiffs to

continue to use the Automobile without demanding more costly investigation and costly work to be performed on the Automobile following the First Crash and to otherwise save money.


89. Had the Plaintiffs known of the misrepresentations they would not have continued to use the Automobile, including the self-drive and auto park functions, following the First Crash, but would have immediately taken steps to demand Tesla replace vehicle or refund its purchase price.
90. The Plaintiffs reasonably relied to their detriment on the misrepresentations in continuing to use the Automobile, including the self-drive and auto park functions, following the First Crash.
91. As a direct and proximate result of the Defendant's misrepresentations, the Plaintiffs have been damaged.
92. The misrepresentations were made by the Defendants intentionally to defraud the Plaintiffs and to induce the Plaintiffs to continue to use the Automobile without demanding more costly investigation and costly work to be performed on the Automobile following the First Crash and to otherwise save money.
93. As a direct and proximate result of the Defendants' violations, the Plaintiffs suffered damages.
94. The Plaintiffs are entitled to treble damages under the VCPA § 59.1-204 because the violations were intentional.
95. The Plaintiffs are entitled to their attorney's fees under the VCPA § 59.1-204.

WHEREFORE, the Plaintiffs, Bikan Octain and Daljit Octain, respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against the Defendants, jointly and

severally, in the sum of THREE HUNDRED THOUSAND and no/ 100 Dollars (\$300,000) compensatory damages, treble damages, and attorney's fees pursuant to Va. Code § 59.1-204, together with costs and prejudgment interest and post judgment interest, and award any such other and further relief as may be proper.

A TRIAL BY JURY IS REQUESTED

BIKAN OCTAIN
DALJIT OCTAIN
By Counsel



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Va. State Bar No.: 23743
Erik B. Lawson, Esquire
Va. State Bar No.: 79656
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Counsel for Plaintiffs

**FAIRFAX CIRCUIT COURT
CIVIL CASE COVERSHEET**

2019 02055

Parties:	
Plaintiffs	Defendants
1. BIKAN OCATIN	1. TESLA, INC.
2. DALJIT OCTAIN	2. TESLA MOTORS, INC.
3.	3.

***Plaintiff proceeding without Counsel – Address and Daytime Phone Number required on Complaint**

Plaintiff Attorney:

Name:	C. Thomas Brown, /Caitlin M. Brown/Erik B. Lawson			Bar ID:	23743/89038/79656
Firm:	Silver & Brown, P.C.				
Street:	10621 Jones Street				
City:	Fairfax	State:	VA	Zip:	22030
Phone Number:	(703) 591-6666		Fax Number:	(703) 591-5618	
E-mail Address:	tom@virginia-lawyers.net / caitlin@virginia-lawyers.net / erik@virginia-lawyers.net				

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 FAIRFAX, VA

Nature of Complaint (Check only one)

*** Cases in the Civil Tracking Program**

<input type="checkbox"/> Administrative Appeal	<input type="checkbox"/> Defamation *	<input type="checkbox"/> Malpractice – Medical *
<input type="checkbox"/> Affirmation of Marriage	<input type="checkbox"/> Delinquent Taxes *	<input type="checkbox"/> Mechanics/Vendors Lien *
<input type="checkbox"/> Aid & Guidance	<input type="checkbox"/> Eminent Domain	<input type="checkbox"/> Partition *
<input type="checkbox"/> Appeal Decision of Board of Zoning	<input type="checkbox"/> Encumber/Sell Real Estate	<input type="checkbox"/> Personal Injury – Assault *
<input type="checkbox"/> Appeal of Process/Judicial Appeal	<input type="checkbox"/> Erroneous Assessments	<input type="checkbox"/> Personal Injury – Auto *
<input type="checkbox"/> Appointment Church/Organization	<input type="checkbox"/> Expungement	<input type="checkbox"/> Personal Injury – Emotional *
<input type="checkbox"/> Trustees	<input type="checkbox"/> False Arrest/Imprisonment*	<input type="checkbox"/> Personal Injury – Premises Liability*
<input type="checkbox"/> Arbitration	<input type="checkbox"/> Fiduciary/Estate Complaint	<input type="checkbox"/> Property Damage*
<input type="checkbox"/> Attachment	<input type="checkbox"/> Garnishment–Federal–180 days	<input type="checkbox"/> Products Liability*
<input type="checkbox"/> Complaint – Equity *	<input type="checkbox"/> Garnishment–Wage–180 days	<input type="checkbox"/> Quiet Title *
<input type="checkbox"/> Complaint – Legal Cause of Action *	<input type="checkbox"/> Garnishment–Other – 90 days	<input type="checkbox"/> Real Estate *
<input type="checkbox"/> Compromise Settlement	<input type="checkbox"/> Guardian/Conservator Adult	<input type="checkbox"/> Restoration of Driving Privilege
<input type="checkbox"/> Condemnation*	<input type="checkbox"/> Guardianship/Minor	<input type="checkbox"/> Vital Record Correction
<input type="checkbox"/> Confession of Judgment	<input type="checkbox"/> Injunction	<input type="checkbox"/> Writ Habeas Corpus
<input type="checkbox"/> Construction *	<input type="checkbox"/> Interpleader	<input type="checkbox"/> Writ Mandamus
<input checked="" type="checkbox"/> Contract *	<input type="checkbox"/> Insurance *	<input type="checkbox"/> Wrongful Death*
<input type="checkbox"/> Conversion*	<input type="checkbox"/> Judicial Review	<input type="checkbox"/> Wrongful Discharge *
<input type="checkbox"/> Court Satisfaction of Judgment	<input type="checkbox"/> Malicious Prosecution *	<input type="checkbox"/> OTHER:
<input type="checkbox"/> Declare Death	<input type="checkbox"/> Malpractice – Legal *	
<input type="checkbox"/> Declaratory Judgment *		

Damages in the amount of \$ 300,000.00 are claimed.

Requested Service: Sheriff ☒ Private Process Server ☐ DMV ☐ Secretary of Commonwealth ☐
 State Corporation Commission ☐ Publication ☐ No Service at this time ☐