

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Austin Meyer,)	C/A No.: 3:19-00173-JMC
)	
)	
Plaintiff,)	
)	
vs.)	<u>SUMMONS</u>
)	
Henry McMaster, in his official capacity as)	
Governor, Mark Hammond, in his official)	
capacity as Secretary of State and Alan)	
Wilson, in his official capacity as Attorney)	
General,)	
Defendants.)	

TO: THE ABOVE-REFERENCED DEFENDANTS:

A lawsuit has been filed against you.

Within 21 days after service of this Summons on you (not counting the day you received it)- or 60 days if you are in the United States or a United States agency, or an Officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3)—you must serve on the Plaintiff an Answer to the attached Complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The Answer or motion must be served on the Plaintiff or Plaintiff’s Attorney, whose name and address are:

T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, South Carolina 29205

If you fail to respond, judgment by default will be entered against you for the relief demanded in the Complaint. You also must file your Answer or motion with the Court.

Robin L. Blume
Clerk of Court

Date: January 22, 2019



s/Angie Snipes
Signature of Clerk or Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Austin Meyer,)	C/A No. <u>3:19-00173-JMC</u>
)	
)	
Plaintiff,)	
)	
vs.)	COMPLAINT
)	(Declaratory Judgment
)	and Injunctive Relief)
HENRY MCMASTER, in his official)	
capacity as Governor, MARK)	
HAMMOND, in his official capacity as)	
Secretary of State, and ALAN WILSON, in)	
his official capacity as Attorney General,)	
)	
Defendants.)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Austin Meyer (“Meyer”) is a Tesla automobile owner and brings this lawsuit to vindicate his rights under the United States Constitution to be able to purchase and have serviced the critically-acclaimed, all-electric vehicles that Tesla and other automobile manufacturers who do not have franchisees or independent dealers in the State of South Carolina. Meyer seeks, on an expedited basis, a declaratory judgment that South Carolina Code Ann. §56-15-10 et. seq. and specifically South Carolina Code Ann. §56-15-45, violates the Due Process, Equal Protection, and Commerce Clauses of the Constitution as applied to Tesla and other similar auto manufacturers by prohibiting Tesla and other similar auto manufacturers from selling its vehicles directly to consumers and by precluding Tesla and other similar auto manufacturers from performing service and repairs within the State. Meyer also seeks a permanent injunction preventing State officials from enforcing South Carolina Code Ann. §56-15-10 et. seq. against Tesla and other similar auto manufacturers.

INTRODUCTION

1. Tesla is an American company whose mission is to accelerate the advent of sustainable transport and energy. Among other things, Tesla designs, manufactures, and sells the world's most advanced zero-emissions, all-electric vehicles. And, while many other companies have moved manufacturing jobs overseas, Tesla designs, builds, and sells cars here in the United States, employing thousands in well-paying jobs.

2. Tesla has catalyzed the electric vehicle industry worldwide. Founded in 2003, Tesla has delivered more than 140,000 cars to date, proving to the market that electric cars can be as desirable as they are environmentally sound, and can eventually replace the gasoline-powered cars that have rolled off of factory lines for more than 100 years. Tesla's vehicles have been met with resounding acclaim, with Tesla's Model S receiving *Car and Driver's* prestigious "Car of the Century" award and the National Highway Traffic Safety Administration's highest possible safety ratings. Similarly, a 2015 *Consumer Reports* survey ranked Tesla's service centers first in the United States for on-time repairs, courtesy, price, quality, and overall satisfaction. Building on these successes, in March 2016, Tesla unveiled the Model 3, a more affordable, mass-market, electric vehicle set to begin production in late 2017. On May 18, 2016, Tesla publicly reported that customers had paid to reserve approximately 373,000 Model 3 cars.

3. From its inception, Tesla determined that it could not succeed by selling and servicing its vehicles through a traditional network of third-party dealers, and the high-pressure, commissions-driven sales environment they foster. Because Tesla is new to the industry, and because all-electric vehicles are new to most customers, Tesla's sales model has focused on educating consumers about its products and technology in a low-key, low-pressure environment.

For example, unlike traditional car dealerships, Tesla sells its cars at uniform and transparent prices based on the configuration and options that a customer selects for the vehicle. Thus, at Tesla, customers will never be rushed into a purchase, haggle over the price of the car, wonder if they could get a better deal across town, or puzzle over confusing add-on products, like GAP insurance or rust-proofing. Tesla's results, measured by sales and Tesla's superlative survey rankings, show that this model has immense benefits for consumers.

4. While customers have welcomed Tesla with open arms, groups of industry incumbents, including some dealer associations across the country, have viewed Tesla as a threat to their local monopoly power over automobile distribution. Rather than try to compete with Tesla, some of these well-connected players have tried to block Tesla from local markets altogether by lobbying state legislatures for protectionist legislation.

5. Such protectionist legislation exists in South Carolina in the form of S.C. Code Ann. §56-15-10 et. seq. With support from the deeply entrenched automobile dealer's lobby, the South Carolina General Assembly has enacted a statute that acts as an outright ban on Tesla's direct-to-consumer sales model, effectively giving franchised dealers a state-sponsored monopoly on car sales within South Carolina. The General Assembly did so by creating a statute that requires that all new car sales be conducted exclusively through franchised dealers. The law has been recognized for what it was: a highly protectionist, dealer-driven law intended to shut manufacturers like Tesla out of South Carolina.

6. By design, amended S.C. Code Ann. §56-15-10 et. seq. effectively bans Tesla's sales and distribution model within the State of South Carolina. In particular, S.C. Code Ann. §56-15-10 et. seq. prohibits motor vehicle manufacturers from selling their vehicles through manufacturer-owned facilities within the State, instead requiring all manufacturers to contract with

independent, franchised dealers to sell their cars. As the vehicle dealer lobby was well aware, S.C. Code Ann. §56-15-10 et. seq. effectively precludes Tesla from selling its cars within the State of South Carolina because the dealer model is not viable for Tesla.

7. Furthermore, S.C. Code Ann. §56-15-10 et. seq. even bars Tesla from establishing in-state facilities to service and repair Tesla vehicles purchased by South Carolina residents in another state or over the Internet. Thus, when applied to Tesla, S.C. Code Ann. §56-15-10 et. seq. impedes and complicates the ability of Tesla owners such as Meyer to obtain needed repairs. The only conceivable reason to burden South Carolina residents in this manner, in blatant disregard for public safety, is to reward the dealers' generous lobbying efforts by handing them a monopoly.

8. S.C. Code Ann. §56-15-10 et. seq.'s prohibitions violate Tesla's rights under the U.S. Constitution. As applied to Tesla, S.C. Code Ann. §56-15-10 et. seq. blocks Tesla from pursuing legitimate business activities and subjects it to arbitrary and unreasonable regulation in violation of the Due Process Clause of the Fourteenth Amendment; subjects Tesla to arbitrary and unreasonable classifications in violation of the Equal Protection Clause of the Fourteenth Amendment; and discriminates against interstate commerce and restricts the free flow of goods between states in violation of the dormant Commerce Clause. The sole purpose for applying S.C. Code Ann. §56-15-10 et. seq. to a non-franchising manufacturer like Tesla is to insulate South Carolina's entrenched automobile dealers and manufacturers from competition. This is not a legitimate government interest under the U.S. Constitution.

9. S.C. Code Ann. §56-15-10 et. seq. serves no interests other than those of two discrete private groups – South Carolina's independent franchised dealers and South Carolina-based vehicle manufacturers – to the great expense and detriment of Tesla and South Carolina consumers alike. South Carolina supports those special interests by requiring vehicle

manufacturers to create a costly and unnecessary South Carolina-only franchised-dealer network simply to participate in the South Carolina market. Tesla asks the Court to eliminate this South Carolina-sanctioned trade zone; permit Tesla to provide necessary maintenance and repair services to South Carolina's Tesla owners; and restore Tesla's right to compete fairly for the business of South Carolina consumers, an outcome that will reduce prices, create jobs, and allow South Carolina consumers – not South Carolina car dealers or legislators – to choose which vehicles and distribution model they prefer.

JURISDICTION AND VENUE

10. Meyer brings this lawsuit pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, and alleges violations of the Fourteenth Amendment to, and the Commerce Clause of, the U.S. Constitution.

11. Meyer seeks declaratory and injunctive relief against the enforcement of S.C. Code Ann. §56-15-10 et. seq. against Tesla and other similar auto manufacturers, and against the practices and policies of the Secretary of State that deprive Tesla and similarly situated manufacturers of their right to sell and service Tesla vehicles at Tesla-owned facilities within the State.

12. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1367, 1343, and 2201.

13. Venue lies in the Columbia Division of this District pursuant to 28 U.S.C. § 1391(b).

PARTIES **Meyer**

14. Meyer is the owner of two Tesla automobiles. Tesla is an American company that designs, develops, and manufactures electric vehicles and provides service and support to owners of its vehicles, Electric vehicles currently comprise less than 1% of new car sales in the United

States, and Meyer's mission is to both improve his access to Tesla dealerships and maintenance facilities and to accelerate the world's transition to electric mobility by bringing to market a full fleet of increasingly affordable electric vehicles.

Defendants

15. Defendant Mark Hammond is the Secretary of State and is sued in his official capacity. Defendant Hammond is, and at all relevant times was, an employee of the State of South Carolina. As Secretary of State, Defendant Hammond also serves, and at all relevant times served, as the administrator of motor vehicles in South Carolina.

16. Defendant Alan Wilson is the Attorney General of the State of South Carolina and is sued in his official capacity. Defendant Wilson is, and at all relevant times was, an employee of the State of South Carolina with authority to enforce South Carolina law.

17. Defendant Henry McMaster is the Governor of the State of South Carolina and is sued in his official capacity. Defendant McMaster is, and at all relevant times was, an employee of the State of South Carolina vested by the South Carolina Constitution with the executive power of the State, including the power to supervise each of the principal departments of the executive branch of the State government.

18. Defendants Hammond, Wilson, and McMaster (collectively "Defendants"), and their agents and employees performed, participated in, aided, and/or abetted in the acts described below under color of law and directly and/or proximately caused the injuries described below.

FACTUAL ALLEGATIONS
Tesla's Critically-Acclaimed Vehicles

19. Tesla began bringing vehicles to market just five years after its founding. Its first offering was the Tesla Roadster, released in 2008, which was the first commercially-produced, highway-capable, all-electric vehicle made in the United States. The Roadster was a high-performance sports car with a battery range of 245 miles, the longest range of any production vehicle up until that time.

20. Building on the Roadster's success, in 2012, Tesla introduced the Model S, a full-sized, all-electric, luxury sedan with a range of 265 miles per charge.¹ The market's response was overwhelming. In 2013, Model S was named *Motor Trend* Car of the Year² and was recognized by *Consumer Reports* for "the highest owner-satisfaction score Consumer Reports has seen in years: 99 out of 100."³ A 2014 *Consumer Reports* survey found that "98 percent of Model S owners [said] they would definitely purchase it again."⁴ In 2015, *Car and Driver* named Model S the "Car of the Century,"⁵ an award given in the prior century to the Ford Model T. In addition, Model S consistently receives a five-star safety rating (the highest possible) in each testing category from the National Highway Traffic Safety Administration.⁶

¹ The most recent variant of Model S (P100D) has a range of 315 miles per charge.

² *2013 Motor Trend Car of the Year: Tesla Model S* (November 12, 2012), <http://motortrend.com/news/2013-motor-trend-car-of-the-year-tesla-model-s/>.

³ *Tesla Model S Takes the Top Spot in Consumer Reports Car Owner-Satisfaction Ratings* (November 21, 2013), <http://pressroom.consumerreports.org/pressroom/2013/11/my-entry-2.html>.

⁴ *Would You Buy Your Car Again? Consumer Reports' annual car owner satisfaction survey* (December 2014), <http://www.consumerreports.org/cro/2012/12/owner-satisfaction/index.htm>.

⁵ *2015 Tesla Model S 70D, The car of the century, now updated with more power and AWD* (May 2015), <http://www.caranddriver.com/reviews/2015-tesla-model-s-70d-instrumented-test-review>.

⁶ <http://www.safercar.gov/Vehicle+Shoppers/5-star+Safety+Ratings/2011-Newer+Vehicles/Search-Results?searchtype=manufacturer&manufacturer=151>.

By 2015, Model S was the best-selling plug-in electric vehicle in both the United States and worldwide,⁷ and was the best-selling large luxury vehicle of any kind in the United States.⁸

21. In September 2015, Tesla began delivery of its third vehicle, the Model X, a luxury sport utility vehicle. And in March 2016, Tesla began accepting reservations for its fourth vehicle, the Model 3, a lower-cost sedan set to enter production in late 2017. Demand for the Model 3 has been unprecedented, with more than 325,000 reservations placed (with a deposit of \$1,000 each) within a week after Model 3 reservations were opened, implying approximately \$14 billion in future sales and making Model 3's launch the largest one-week product launch ever – all without advertisements, paid endorsements, or guerilla marketing campaigns. By May 15, 2016, Tesla had logged approximately 373,000 Model 3 reservations.

Tesla's Direct Sales and Service Model

22. Tesla attributes much of its success to its unique direct sales-and-service model. Tesla markets and sells its vehicles directly to consumers over the Internet (at www.tesla.com) and through a worldwide network of stores owned and operated by Tesla. In contrast to other manufacturers, Tesla does not sell its vehicles through independent, franchised dealers, i.e., third-party dealers who sell vehicles pursuant to franchise agreements with manufacturers. Similarly, to ensure the highest quality service, Tesla provides service and repairs for its vehicles through Tesla-owned service facilities; it does not contract with third parties to service its cars. A 2015 *Consumer Reports* survey ranked Tesla's service centers first in the United States, beating out all

⁷ *Tesla Model S Was World's Best-Selling Plug-in Car in 2015* (January 12, 2016), <http://www.hybridcars.com/tesla-model-s-was-worlds-best-selling-plug-in-car-in-2015/>.

⁸ http://files.shareholder.com/downloads/ABEA-4CW8X0/0x0x874449/945B9CF5-86DA-4C35-B03C-4892824F058D/Q4_15_Tesla_Update_Letter.pdf.

independently-owned and dealer-owned service center, for on-time repairs, courtesy, price, quality, and overall satisfaction.⁹ At present, Tesla lawfully operates stores in 23 states and the District of Columbia, and lawfully operates service facilities in 24 states.

23. Selling a Tesla car is very different from selling a traditional, gas-powered car. The public remains largely unfamiliar with, and often skeptical of, electric vehicle technology. Accordingly, Tesla's retail operations are tailored to address the concerns of consumers considering the transition to electric vehicles, as well as to showcase Tesla's products and services. Thus, in any given Tesla store, potential customers will encounter a welcoming environment staffed with knowledgeable employees ready to educate consumers about, for example, how electric cars work; what it means that Tesla cars are "dual motor" and have regenerative braking, how the car can be charged at home (e.g., what equipment is needed, what charging will cost, and how long it will take); how Tesla's network of charging stations, called "Superchargers," facilitate long-distance travel; maintenance costs compared to a gas-powered car (e.g., because electric cars have no oil to change or engine to tune); the difference in fuel costs (since electric cars require no gas); and tax incentives for electric vehicle owners. The list goes on. Electric vehicle ownership is simply far different than owning and operating a traditional, gas-powered car, and it takes a unique and patient approach to educate consumers about it.

24. Thus, by design, the experience at a Tesla store is nothing like the traditional car-buying process. Independent dealers typically rely on fast, high-volume sales at the highest negotiable price, and frequently pressure customers to purchase add-ons and services that they do not want or need. By contrast, Tesla sells its cars at uniform and transparent list prices, which

⁹ *Independent vs. dealer shops for car repair, A Consumer Reports survey shows how dealerships and independent shops compare by brand* (January 22, 2015), <http://www.consumerreports.org/cro/magazine/2015/03/best-places-to-get-your-car-repaired/index.htm>.

depend on the configurations of and options for each car. Tesla customers pay the same price whether they purchase through Tesla's website, at a local store, or at a store in a different state. This system eliminates the haggling and hidden fees that have contributed to consumer mistrust of automobile dealers.

25. Tesla also compensates its employees in a manner that encourages a low-pressure retail experience and high-quality repair service. Tesla has sales employees who are primarily salaried and whose role is to educate consumers about Tesla cars, rather than push for a same-day sale that will yield a commission. Tesla also compensates its service employees by the hour, not by the job (which is typical in the industry), eliminating the incentive that dealerships often have to rush through jobs or upsell customers on unnecessary "repairs."

26. As Tesla's awards and accolades demonstrate, consumers have benefited tremendously from their exposure and access to Tesla's innovative products and business model.

27. Because of the prohibitions in S.C. Code Ann. §56-15-10 et. seq. against manufacturers such as Tesla selling and maintaining vehicles in South Carolina, Tesla and similarly situated manufacturers have not been able to sell or offer maintenance services in South Carolina.

28. To date, Tesla's attempts to pursue legislative solutions that would allow it to operate in South Carolina have been unsuccessful.

S.C. Code Ann. §56-15-10 et. seq.

29. S.C. Code Ann. §56-15-10 et. seq. codifies the Anti-Tesla bill. It provides that "It is unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to own, operate, or control or to participate in the ownership, operation, or control of a new motor vehicle dealer in this State, to

establish in this State an additional dealer or dealership in which that person or entity has an interest, or to own, operate, or control, directly or indirectly, an interest in a dealer or dealership in this State, excluding a passive interest in a publicly traded corporation held for investment purposes” and “It is unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to own a facility that engages primarily in the repair of motor vehicles.” In other words, S.C. Code Ann. §56-15-10 et. seq. prevents manufacturers from selling cars directly to consumers in South Carolina and even from servicing cars at facilities within the State. Thus, S.C. Code Ann. §56-15-10 et. seq. creates a monopoly in favor of franchised dealers and benefits them by blocking Tesla from operating within the State. In legislating this outcome, South Carolina has fomented the very “economic Balkanization that had plagued relations among the [States] ... under the Article of Confederation.” *Hughes v. Oklahoma*, 441 U.S. 322, 325-26 (1979).

30. S.C. Code Ann. §56-15-10 et. seq. was originally enacted in 1962 as part of an effort to regulate the relationship between manufacturers and its dealers/franchisors. S.C. Code Ann. §56-15-10 et. seq.’s clear purpose was to ensure fairness in *relationships* between powerful manufacturers and their less-powerful, independent dealers.

31. S.C. Code Ann. §56-15-10 et. seq. was amended in 2000 by enacting S.C. Code Ann. §56-15-45 to “prohibit ownership, operation, or control of competing dealerships by a manufacturer or franchisor except under certain circumstances, prohibit unfair competition by a manufacturer or franchisor against a franchisee...”. S.C. Code Ann. §56-15-45 was enacted “[i]n the exercise of its police power” for “the State to regulate motor vehicle manufacturers, distributors, dealers, and their representatives doing business in South Carolina to prevent frauds and other abuses upon its citizens.” Prior to this amendment in 2000, there was no prohibition

against a manufacturer that did not market its vehicles using independent dealers from selling directly to the end consumer.

The Dealer Model Is Not Viable for Tesla

32. Tesla has determined that its direct sales model is the only viable means for selling its cars. As described above, Tesla's direct sales model has proven to be a highly effecting means of selling Tesla's innovative electric vehicle technology. As Tesla's experience shows, customers are willing to adopt this new technology when given significant time to learn about it in the environment of Tesla's stores. As a market entrant with a novel product, Tesla believes that the traditional dealer model – incentivizing high-pressure, high-volume sales at the highest negotiable price, with as many add-ons and surcharges as possible – would be a disastrous way to bring Tesla's novel cars to market. Additionally, because Tesla maintains control of its sales and service operations, it is able to provide the highest level of customer service at all stages of the car-buying and ownership process, thereby solidifying its reputation and building goodwill.

33. But even if the independent dealership model were an effective means of selling Tesla cars (which it is not), hypothetical Tesla franchised dealerships would not make a sufficient profit to stay in business. A franchised dealer would be unable to profit from the sale of new cars because Tesla's uniform sales price does not include the dealer mark-up that consumers normally have to pay. Moreover, a hypothetical franchised dealer could not simply tack on its own markup because it could not then compete with the uniform prices offered by Tesla. If a hypothetical dealer attempted to do so, customers would simply choose to purchase the car at Tesla's lower price through Tesla's website or at a Tesla store in another state. (Tesla is licensed to sell cars in many neighboring states, including North Carolina, Georgia, Florida, and Virginia). In addition, franchised dealers rely heavily on profits from the sale of service and parts and used cars to support

their operations. And unlike Tesla, dealers also substantially mark up financing, insurance products, and other “add-ons.” However, these sources of profits, are much more limited – and, in some cases, nonexistent – with respect to Tesla cars.

Amended S.C. Code Ann. §56-15-10 et. seq.
Does Not Further Any Legitimate State Interest

34. By design, S.C. Code Ann. §56-15-10 et. seq. and the 2000 amendment adding S.C. Code Ann. §56-15-45 creates a monopoly in favor of franchised dealers with respect to selling and servicing new cars, and it excludes Tesla from the South Carolina market because Tesla does not, and could not, use the dealer model. S.C. Code Ann. §56-15-10 et. seq. as it stands today also protects South Carolina’s local vehicle manufacturers, which use the franchise model, from competition by Tesla. Thus, as applied to Tesla, S.C. Code Ann. §56-15-10 et. seq. including the 2000 amendment adding S.C. Code Ann. §56-15-45, is a purely protectionist measure that does not further any legitimate state interest, as the U.S. Constitution requires.

35. Originally, S.C. Code Ann. §56-15-10 et. seq. was enacted to ensure fairness in *relationships* between powerful manufacturers and their less-powerful, independent dealers. *See supra* ¶ 30. But applying the law to Tesla cannot further S.C. Code Ann. §56-15-10 et. seq.’s purpose because Tesla has never used a franchised dealership model.

36. Conversely, S.C. Code Ann. §56-15-10 et. seq. unquestionably harms consumers. Preventing a non-franchising manufacturer like Tesla from selling cars within the state of South Carolina removes a competitor from the marketplace. Increasing competition enhances consumer choice and reduces prices, whereas reducing competition takes choice away from consumers and increases prices. Moreover, there has been no showing – nor could there be – that the dealer model is otherwise better for consumers. Surveys show that consumers overwhelmingly support Tesla’s ability to sell its cars directly to the public.

37. Additionally, S.C. Code Ann. §56-15-10 et. seq.'s service prohibition is patently anti-consumer and is irrational on its face. There is no reason to bar Tesla from establishing facilities in the State to service and repair South Carolina resident's Tesla vehicles, nor to subject South Carolina's Tesla owners to substantial inconvenience – and require them to overcome senseless hurdles – simply to obtain needed repairs and service. When applied to Tesla, S.C. Code Ann. §56-15-10 et. seq.'s undeniable effect is to require Tesla owners to drive longer and travel farther precisely when their cars are in need of repair. This is an illogical outcome antithetical to consumer and public safety. Moreover, as noted above, Tesla's service centers have been rated significantly higher than all other service centers in the nation – including those owned by franchised dealers – for on-time repairs, courtesy, price, quality, and overall satisfaction.¹⁰ There simply is no plausible justification for a law that makes it harder, more expensive, and more time-consuming for South Carolina residents to have their cars repaired.

38. Tesla is not alone in recognizing the anti-competitive, anti-consumer nature of direct sales bans. The FTC's Office of Policy Planning and several staff attorneys have written extensively on the harmful effects of states' efforts to restrict direct-to-consumer sales of automobiles, and have specifically urged legislatures to lift prohibitions on Tesla's direct sales.¹¹ For example, in a jointly authored piece, the Directors of the FTC's Office of Policy Planning, Bureau of Competition, and Bureau of Economics wrote:

[The FTC] ha[s] consistently urged legislators and regulators to consider the potential harmful consequences [efforts to bar new business models] can have for competition and consumers. How manufacturers choose to supply their products and services to consumers

¹⁰ *Independent vs. dealer shops for car repair, A Consumer Reports survey shows how dealerships and independent shops compare by brand* (January 22, 2015), <http://www.consumerreports.org/cro/magazine/2015/03/best-places-to-get-your-car-repaired/index.htm>

¹¹ *See, e.g., Direct-to-Consumer Auto Sales: It's Not Just About Tesla*, FTC blog Competition Matter, <https://www.ftc.gov/news-events/blogs/competition-matters/2015/05/direct-consumer-auto-sales-its-not-just-about-tesla>; *FTC Staff: Missouri and New Jersey Should Repeal Their Prohibitions on Direct-to-Consumer Auto Sales by Manufacturers*, FTC Press Release, <https://www.ftc.gov/news-events/press-releases/2014/05/ftc-staff-missouri-new-jersey-should-repeal-their-prohibition>.

is just as much a function of competition as what they sell – and competition ultimately provides the best protections for consumers and the best chances for new businesses to develop and succeed. Our point has not been that new methods of sale are necessarily superior to traditional methods – just that the determination should be made through the competitive process.¹²

39. In addition, in a March 26, 2014 letter to New Jersey Governor Chris Christie, seventy-two leading “professors and scholars of law, business, economics, and public policy with expertise in industrial organization, distribution, competition, intellectual property, innovation and related fields” joined together to “express [their] concerns regarding the recent decision of the New Jersey Motor Vehicle Commission to prohibit direct distribution of automobiles by manufacturers.”¹³ The professors and scholars explained:

There is no justification on any rational economic or public policy grounds for such a restraint of commerce. Rather, the upshot of the regulation is to reduce competition in New Jersey’s automobile market for the benefit of its auto dealers and to the detriment of its consumers. It is protectionism for auto dealers, pure and simple.¹⁴

So too with S.C. Code Ann. §56-15-10 et. seq., which is patent “protectionism for auto dealers, pure and simple.”

**S.C. Code Ann. §56-15-10 et. seq., including the 2000 Amendment adding §56-15-45,
Violates Meyer’s and Tesla’s Constitutional Rights**

40. Defendants’ application of S.C. Code Ann. §56-15-10 et. seq.’s manufacturer-direct sales and service prohibitions to Tesla has no legitimate rational basis. Tesla has never sold cars through an independent dealership and therefore cannot engage in unfair business practices vis-à-vis a franchised dealer. Moreover, as discussed above, the dealer model is not feasible for

¹² *Who Decides How Consumers Should Shop*, FTC blog Competition Matters, <https://www.ftc.gov/news-events/blogs/competition-matters/2014/04/who-decides-how-consumers-should-shop>.

¹³ Letter to Governor Chris Christie from the International Center for Law & Economics (March 26, 2014), https://law.wm.edu/documents/Tesla_letter.pdf.

¹⁴ *Id.*

Tesla. Requiring Tesla to abide by S.C. Code Ann. §56-15-10 et. seq. and to contract with franchised dealers would not serve any legitimate government purpose, as discussed above.

41. Defendants' denial of Tesla's applications for a vehicle dealer license and vehicle repair facility registration discriminates against and imposes a substantial burden on interstate commerce, and is not a reasonable means to achieve any legitimate government purpose.

42. Through Defendants' enforcement of S.C. Code Ann. §56-15-10 et. seq., Meyer and Tesla are injured irreparably by the past, present, and future violations of the Due Process, Equal Protection, and Commerce Clauses of the U.S. Constitution.

CLAIMES FOR RELIEF

First Claim for Relief U.S. Const. Amend. XIV, Due Process 42 U.S.C. Section 1983

43. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 42 of this Complaint, as if fully set forth herein.

44. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects every person's right to pursue legitimate business interests subject only to regulations that are rationally related to a legitimate government purpose.

45. As applied, S.C. Code Ann. §56-15-10 et. seq. violates Tesla's right to due process under the Fourteenth Amendment to the U.S. Constitution. Prohibiting a non-franchising manufacturer, like Tesla, from selling or servicing cars in South Carolina is not a rational means of achieving any legitimate government purpose. Such a manufacturer cannot have any competitive advantage or market power over its non-existent dealers, and excluding it from the marketplace thwarts competition, increases prices, and deprives consumers of products that they want. As applied to Tesla, S.C. Code Ann. §56-15-10 et. seq.'s only possible purpose is to protect

two discrete South Carolina-based interest groups – South Carolina’s franchised auto dealers and South Carolina-based manufacturers – from economic competition. This is not a legitimate governmental purpose.

46. Unless the Defendants are enjoined from violating the Fourteenth Amendment, Tesla and its customers including Plaintiff, will continue to suffer great and irreparable harm.

Second Claim for Relief
U.S. Const. Amend. XIV, Equal Protection
42 U.S.C. Section 1983

47. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 46 of this Complaint, as if fully set forth herein.

48. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits the State of South Carolina from making arbitrary and unreasonable classifications. A state violates the Equal Protection Clause when it treats one set of persons differently from others who are similarly situated and there is no rational basis for the differential treatment.

49. As applied, S.C. Code Ann. §56-15-10 et. seq. violates Plaintiff’s and Tesla’s right to equal protection under the Fourteenth Amendment to the U.S. Constitution. By prohibiting Tesla from selling and servicing Tesla cars in South Carolina, Defendants are distinguishing without legitimate justification between (a) manufacturer-owned dealerships, such as Tesla, and (b) franchised dealerships that are not owned by manufacturers, which are similarly situated in all material respects. Defendants are also distinguishing without legitimate justification between (a) non-South Carolina-based manufacturers like Tesla, which do not use franchised dealerships as part of their sales model, and (b) South Carolina-based manufacturers like General Motors, which do. These irrational classifications do not further any legitimate government interest and exist solely for the purpose of protecting two discrete South Carolina-based interest groups – South

Carolina's franchised auto dealers and South Carolina-based manufacturers – from economic competition. This is not a legitimate governmental purpose.

50. Unless Defendants are enjoined from violating the Fourteenth Amendment, Plaintiff and Tesla will continue to suffer great and irreparable harm.

Third Claim for Relief
U.S. Const. Art. I, Dormant Commerce Clause
42 U.S.C. Section 1983

51. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 50 of this Complaint as if fully set forth herein.

52. The United States Constitution empowers Congress “[t]o regulate Commerce...among the several States.” U.S. Const. art. I, §§ 8, cl. 3. The Commerce Clause also has a negative aspect, referred to as the dormant Commerce Clause, which restricts state and local governments from impeding the free flow of goods from one state to another. The dormant Commerce Clause prevents states from promulgating protectionist policies, i.e., regulatory measures aimed to protect in-state economic interests by burdening out-of-state competitor.

53. As applied to Meyer and Tesla, S.C. Code Ann. §56-15-10 et. seq. violates the dormant Commerce Clause. Prohibiting Tesla from selling and servicing cars, and Meyer from purchasing and having his car serviced, in South Carolina except through independent franchised dealers impermissibly discriminates against interstate commerce by impeding the flow of out-of-state-manufactured vehicles into South Carolina and by favoring in-state interests (South Carolina franchised dealers and South Carolina-based vehicle manufacturers) over out-of-state interests (Tesla).

54. Prohibiting a non-franchising manufacturer from selling or servicing cars in South Carolina does not advance any legitimate local purpose that cannot be adequately served by

reasonable nondiscriminatory alternatives. As applied to Tesla, the only possible purpose behind S.C. Code Ann. §56-15-10 et. seq. is to protect two discrete South Carolina-based interest groups – South Carolina’s franchised auto dealers and South Carolina-based manufacturers – from economic competition. This is not a legitimate governmental purpose.

55. As applied to Meyer and Tesla, S.C. Code Ann. §56-15-10 et. seq. violates the dormant Commerce Clause for the independent reason that it imposes a burden on interstate commerce that is clearly excessive in relation to any conceivable local benefit. As explained above, the only “benefit” of S.C. Code Ann. §56-15-10 et. seq. is economic protection for local dealers and manufacturers, which is not a legitimate purpose under the dormant Commerce Clause.

56. S.C. Code Ann. §56-15-10 et. seq.’s service prohibition, as applied to Meyer and Tesla, also violates the dormant Commerce Clause by impeding the flow into South Carolina of vehicles manufactured and purchased outside of the State. Specifically, S.C. Code Ann. §56-15-10 et. seq. prevents Tesla from servicing a vehicle located in South Carolina, even when the consumer purchased that vehicle entirely outside the State, thus creating a severe disincentive for South Carolina residents such as Plaintiff to purchase Tesla vehicles outside of the State.

57. Unless Defendants are enjoined from violating the dormant Commerce Clause, Plaintiff and Tesla will continue to suffer great and irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Meyer respectfully requests the following relief:

A. On an expedited basis, pursuant to Federal Rule of Civil Procedure 57, for entry of judgment declaring that Tesla and similarly situated vehicle manufacturers are entitled to a vehicle dealer license and a permanent injunction ordering the Defendants to grant Tesla and similarly situated vehicle manufacturers a vehicle dealer license;

B. On an expedited basis, pursuant to Federal Rule of Civil Procedure 57, for entry of judgment declaring that Tesla and similarly situated vehicle manufacturers are entitled to a vehicle repair facility registration and a permanent injunction ordering the Defendants to grant Tesla a vehicle repair facility registration;

C. On an expedited basis, pursuant to Federal Rule of Civil Procedure 57, for entry of judgment declaring that South Carolina Compiled Laws S.C. Code Ann. §56-15-10 et. seq. is unconstitutional as applied to Meyer, Tesla and similarly situated vehicle manufacturers;

D. For entry of permanent injunction prohibiting Defendants from denying Tesla's application for a vehicle dealer license;

E. For entry of permanent injunction prohibiting Defendants from denying Tesla's application for a vehicle repair facility registration;

F. For entry of a permanent injunction prohibiting Defendants' enforcement of South Carolina Code Ann. §56-15-10 et. seq. (or any other provision) in a manner that impairs Tesla's and similarly situated vehicle manufacturers' ability to own, operate, and control dealerships in the State of South Carolina and prohibiting the imposition of fines or penalties, or otherwise subjecting Tesla and similarly situated vehicle manufacturers to any form of harassment;

G. For entry of a permanent injunction prohibiting Defendants' enforcement of South Carolina Code Ann. §56-15-10 et. seq. (or any other provision) in a manner that impairs Meyer's ability to purchase and have maintained Tesla vehicles and Tesla's and similarly situated vehicle manufacturers' ability to own, operate, and control service centers in the State of South Carolina and prohibiting the imposition of fines or penalties, or otherwise subjecting Tesla and similarly situated vehicle manufacturers to any form of harassment;

H. For an award of attorney fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

I. For such further legal and equitable relief as the Court may deem just and proper.

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January 22, 2019