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7

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 TESLA, INC., a Delaware Corporation,  
12 Plaintiff,

13 v.

14 ZOOX, INC., a Delaware Corporation;  
SCOTT TURNER, an individual; SYDNEY  
15 COOPER, an individual; CHRISTIAN  
16 DEMENT, an individual; and, CRAIG  
EMIGH, an individual,  
17 Defendants.

Case No. 3:19-cv-01462

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:**

1. **MISAPPROPRIATION OF TRADE  
SECRETS UNDER THE DEFEND  
TRADE SECRETS ACT;**
2. **MISAPPROPRIATION OF TRADE  
SECRETS UNDER THE CALIFORNIA  
UNIFORM TRADE SECRETS ACT;**
3. **BREACH OF CONTRACT;**
4. **BREACH OF DUTY OF LOYALTY;**
- AND,
5. **AIDING AND ABETTING BREACH OF  
DUTY OF LOYALTY.**

**DEMAND FOR JURY TRIAL**

28

**SUMMARY OF THE ACTION**

1  
2 1. This dispute arises out of the concerted efforts of Zoox, Inc. (“Zoox”), a competitor  
3 to Tesla, Inc. (“Tesla”), and several now-former Tesla employees, to steal Tesla’s proprietary  
4 information and trade secrets to help Zoox leapfrog past years of work needed to develop and run  
5 its own warehousing, logistics, and inventory control operations. As they departed Tesla, these  
6 employees, including Defendants Scott Turner (“Turner”), Sydney Cooper (“Cooper”), Christian  
7 Dement (“Dement”), and Craig Emigh (“Emigh”), absconded with select proprietary Tesla  
8 documents useful to their new employer, and at least one of them used Tesla’s confidential  
9 information to target other Tesla employees for hiring by Zoox. In the process, they  
10 misappropriated Tesla’s trade secrets, violated their agreements with Tesla, and breached their  
11 duties of loyalty, all with the knowledge and support of Zoox.

12 2. The theft here was blatant and intentional. For example, just before departing Tesla  
13 for Zoox, Defendant Turner – a manager in Tesla’s Newark, California Regional Distribution  
14 Center – emailed two confidential Tesla documents to his personal email address, with only the  
15 words “you sly dog you...” in the body of the email. Similarly, shortly before his own departure  
16 from Tesla, Defendant Dement – a former warehouse supervisor – sent four confidential Tesla  
17 documents to his personal email account, with the subject line “Good Stuff.” After Defendant  
18 Emigh joined Zoox, he mistakenly sent an email to Cooper’s old Tesla email address, attaching a  
19 modified version of a Tesla proprietary document, freshly-emblazoned with the Zoox logo, yet  
20 still bearing the layout, design, and other vestiges of the Tesla version – showing, without doubt,  
21 that the Defendants are actively using the Tesla information they stole.

22 3. While Tesla respects that employees may decide to pursue other employment  
23 opportunities, it must take action when current and former employees abuse their positions of trust  
24 and blatantly violate their legal and contractual obligations to Tesla. Accordingly, Tesla files this  
25 action (the “Action”) to put a stop to Defendants’ illegal conduct, prevent further misuse of  
26 Tesla’s proprietary information and trade secrets, and to recover all damages caused by  
27 Defendants’ unlawful scheme.

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**THE PARTIES**

1  
2 4. Tesla is a Delaware corporation with its principal place of business at 3500 Deer  
3 Creek Road, Palo Alto, California.

4 5. Tesla is informed and believes, and thereon alleges, that Zook, including doing  
5 business in California as Zook Labs, Inc., is a Delaware corporation with its principal place of  
6 business in Foster City in San Mateo County, California and with testing operations in San  
7 Francisco, California.

8 6. Tesla is informed and believes, and thereon alleges, that Turner is a California  
9 resident with his principal residence in Union City, California, and that he is currently an  
10 employee of Zook. Turner is also a former employee of Tesla.

11 7. Tesla is informed and believes, and thereon alleges, that Cooper is a California  
12 resident with her principal residence in Hercules, California, and that she is currently an employee  
13 of Zook. Cooper is also a former employee of Tesla.

14 8. Tesla is informed and believes, and thereon alleges, that Dement is a Pennsylvania  
15 resident with his principal residence in Macungie, Pennsylvania, and that he was expected to join  
16 Zook as well. Dement is also a former employee of Tesla.

17 9. Tesla is informed and believes, and thereon alleges, that Emigh is a California  
18 resident with his principal residence in Fremont, California, and that he is currently an employee  
19 of Zook. Emigh is also a former employee of Tesla.

20 10. Tesla refers in this Complaint to Turner, Cooper, Dement, and Emigh collectively  
21 as the “Individual Defendants.” Tesla refers to the Individual Defendants and Zook, together, as  
22 “Defendants.”

23 **JURISDICTION AND VENUE**

24 11. This action arises under the Defend Trade Secrets Act, and this Court has subject  
25 matter jurisdiction under 28 U.S.C. § 1331 and 18 U.S.C. § 1836(c). This Court has supplemental  
26 jurisdiction over Tesla’s state-law claims pursuant to 28 U.S.C. § 1367 because they form part of  
27 the same case or controversy as the federal claims and derive from the same operative facts.

28 12. This Court has personal jurisdiction over Defendants because they have transacted

1 business in and have caused injury to Tesla within the State of California. As discussed below, the  
 2 Individual Defendants also breached agreements with Tesla that provide for exclusive jurisdiction  
 3 in the state and federal courts in Santa Clara or San Francisco Counties. Further, Tesla is  
 4 informed and believes that most of the Individual Defendants reside in the Northern District.

5 13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a  
 6 substantial part of the events giving rise to the claims occurred in this District, and because the  
 7 Individual Defendants have contractually agreed to litigate disputes in this District.

#### 8 **INTRA-DISTRICT ASSIGNMENT**

9 14. Pursuant to Civ. L.R. 3-2, this Action is properly assignable in the San Francisco  
 10 Division or San Jose Division, as the Individual Defendants' agreements with Tesla provide for  
 11 exclusive jurisdiction in the state and federal courts located in Santa Clara or San Francisco  
 12 Counties, and Zoox has its principal place of business in San Mateo County.

#### 13 **FURTHER RELEVANT FACTUAL ALLEGATIONS**

##### 14 **A. Tesla and Its Proprietary Distribution and Logistics Systems**

15 15. Tesla is an American company that designs, manufactures, and sells electric cars,  
 16 electric vehicle powertrain components, as well as scalable clean energy generation and storage  
 17 products. Tesla also researches and develops self-driving capability for integration in its electric  
 18 vehicles. Tesla is the world's first vertically-integrated sustainable energy company, and has  
 19 established a global network of stores, vehicle service centers, and charging stations to accelerate  
 20 the widespread adoption of zero-emissions vehicles.

21 16. As a vertically-integrated company, Tesla has expended significant resources in  
 22 developing its sourcing, design, manufacturing, warehousing, and distribution logistics and  
 23 operations. For example, Tesla has developed a proprietary system called WARP, a multi-  
 24 functional software platform designed to manage Tesla's manufacturing, warehousing, inventory,  
 25 distribution, transportation, and implementation systems. As another example, Tesla employs a  
 26 proprietary system to track inventory into and out of its warehouses and distribution centers and  
 27 utilizes a variety of manuals and process documents to memorialize those procedures. These  
 28 materials and knowhow were developed by Tesla over many years, and at great expense, and

1 Tesla considers them to be proprietary, confidential trade secrets.

2 **B. Tesla Vigorously Protects Its Confidential Information**

3 17. Tesla's policies and practices robustly protect confidential and proprietary  
4 information, including the information misappropriated by Defendants here. For example, Tesla  
5 requires all its employees to enter into non-disclosure agreements that obligate them to safeguard  
6 the company's confidential information, including trade secrets and source code. As further  
7 discussed below, employees must sign these agreements as a condition of their employment, and  
8 must periodically re-sign as the company updates its agreements.

9 18. In addition, Tesla secures its physical facilities by restricting access to authorized  
10 personnel, and then monitoring actual access with security guards and cameras. Visitors to Tesla's  
11 facilities must check in with a receptionist or security guard, sign a nondisclosure agreement, and  
12 submit to a photograph. Visitors must further be escorted by a Tesla employee at all times.

13 19. Tesla also protects its confidential information with stringent information security  
14 policies and practices. Tesla's network and servers are themselves password-protected and  
15 firewall-protected and are accessible only to current Tesla employees with proper credentials.  
16 After an employee resigns or is terminated, Tesla promptly deactivates that user's system  
17 permissions, which cuts off access to Tesla's network.

18 20. In addition, Tesla policy forbids employees from sending confidential information  
19 to unauthorized third parties, and even to employees' own personal email addresses. This policy  
20 is conveyed to employees in a number of ways, both formally and informally, including through a  
21 written reminder that employees "must not ... forward work emails outside of ... Tesla or to a  
22 personal email account," which Turner, Dement and Emigh each signed and acknowledged.

23 **C. The Former Tesla Employees Hired By Zoox**

24 21. The Individual Defendants here worked in warehouse and distribution center  
25 management at Tesla's regional Parts Distribution Centers ("PDC") in Newark, California and  
26 Bethlehem, Pennsylvania. Defendant Turner joined Tesla on May 19, 2014 and most recently  
27 served as Tesla's Distribution Center Manager at Tesla's PDC in Newark. In that role, Turner  
28 served as a manager with Defendants Emigh and Cooper as his direct or indirect reports.

1 Defendant Dement joined Tesla on October 20, 2014, and initially worked in Tesla’s Newark PDC  
2 with Defendant Turner. In his last position with Tesla, Dement served as a Supervisor at Tesla’s  
3 warehouse in Bethlehem, Pennsylvania. Defendant Emigh joined Tesla on September 21, 2015.  
4 In his last role at Tesla, Emigh had the position of Regional Parts Distribution Supervisor, also at  
5 Tesla’s Newark PDC. Defendant Cooper was the latest to join Tesla, on May 21, 2018. Cooper’s  
6 last role was as the Supervisor of the Inventory Control Team at the Newark PDC. As a result of  
7 its investigation, Tesla believes that Turner, Emigh, and Cooper are all current employees of Zoox,  
8 and that Dement is either a Zoox employee or is expected to become one in short order.

9 **D. The Individual Defendants Each Agreed to Safeguard Tesla’s Confidential**  
10 **Information and to Avoid Unfair Solicitation**

11 22. As a condition of their employment, all of the Individual Defendants agreed to  
12 maintain the confidentiality of Tesla’s information and to avoid poaching Tesla’s employees  
13 within one year of their departure. For each of the Individual Defendants, the operative non-  
14 disclosure agreement was the Tesla, Inc. Employee Nondisclosure And Inventions Assignment  
15 Agreement (referred to herein as the “NDA” or “Non-Disclosure Agreement”), which was  
16 electronically signed by Turner on August 31, 2017, Cooper on June 13, 2018, Emigh on  
17 September 20, 2015, and Dement on October 19, 2014.

18 23. Through the NDA, Tesla employees pledge, among other things, to not disclose  
19 Tesla’s “Proprietary Information,” defined to include “all information, in whatever form and  
20 format, to which I have access by virtue of and in the course of my employment,” and  
21 encompassing, as relevant here, “technical data, trade secrets, know-how, . . . plans, designs, . . .  
22 methods, processes, . . . data, programs, lists of or information relating to, employees, suppliers, . . .  
23 financial information and other business information[.]” NDA ¶ 1 (attached hereto as Exhibit A  
24 and incorporated herein).

25 24. Pursuant to the NDAs, the Individual Defendants also agreed to refrain from  
26 soliciting Tesla’s employees to work at another company within 12 months of leaving Tesla, in  
27 recognition of the fact that the Individual Defendants “have obtained . . . valuable information  
28 about the Company’s employees” during their time at Tesla. NDA ¶ 9.2.1. The NDA also

1 precludes employees from using confidential information—including about employees’ pay,  
2 expertise, and projects—at any time to recruit away Tesla’s employees. NDA ¶ 9.2.2; *see* ¶ 1.

3 **E. Zoox Aims to Build a Fleet of Autonomous Vehicles and to Compete with Tesla**

4 25. Defendant Zoox is reportedly attempting to create a robotic taxi service and plans  
5 to build, own, and operate its own fleet of self-driving electric vehicles. This aspiration echoes  
6 Tesla’s longstanding plans to allow customers to add their Tesla vehicles to a shared, self-driving  
7 Tesla fleet, and thereby earn money when they are not using their vehicles. Like numerous other  
8 companies, Zoox has branded itself as a competitor to Tesla.

9 26. Zoox is targeting a launch date of 2020, and to date, has not commercially released  
10 any self-driving cars or software. To meet its goal, Zoox has said it will need an “enormous  
11 amount of cash and lots of good engineers.” To do so, it has aggressively hired current and former  
12 Tesla employees. *See* Robotaxi Startup Zoox Becomes A Big Acquirer Of Tesla-Incubated  
13 Talent, Forbes.com, June 27, 2018. As of June 2018, more than 80 of Zoox’s 500 employees  
14 (16%) reportedly came directly to Zoox from Tesla. *See id.* Currently, over 100 LinkedIn profiles  
15 list Zoox as a current employer and Tesla as a former employer.

16 **F. Zoox Hires the Individual Defendants, and Each Time Receives New Tesla**  
17 **Confidential Information**

18 27. The facts here, while egregious, are not complicated. Based on the information  
19 uncovered to date, former Tesla employee Turner initially left Tesla to join Zoox and took Tesla  
20 trade secret and proprietary documents with him. Emigh joined shortly thereafter, apparently  
21 followed by Cooper and Dement, and they too took Tesla trade secret and proprietary information  
22 with them as they departed. These trade secret and proprietary documents were then used by Zoox  
23 in its bid to catch up to, and compete with, Tesla.

24 **(1) Turner**

25 28. On November 1, 2018, Turner emailed two confidential Tesla documents from his  
26 Tesla email account to his personal email address with the note to himself, “you sly dog you.”  
27 The attachments contained confidential and proprietary Tesla receiving and inventory procedures,  
28 as well as internal schematics and line drawings of the physical layouts of certain Tesla

1 warehouses. He sent another email to his personal email address that same day, attaching an  
2 additional confidential Tesla document, and a note that said, “Ooooh man... so much time and  
3 effort. Loved every second of it though.” Turner resigned a little over a month later.

4 29. As Tesla has now learned, by February 2019, Turner was actively recruiting  
5 Cooper and Dement (still employees at Tesla) to come over to Zoox. Turner also provided the  
6 names of at least four other Tesla employees to a Zoox recruiter along with insights about their  
7 pay structure at Tesla and a recommendation for their starting salaries at Zoox. In addition, in late  
8 February, Turner sent text messages to Cooper requesting copies of confidential Tesla documents  
9 relating to inventory management. Tesla does not know what was sent in response to Turner’s  
10 request.

11 (2) **Emigh**

12 30. The pattern repeated with Emigh. On December 4, Emigh emailed himself a  
13 proprietary Tesla document relating to Tesla’s standards for workplace safety and efficiency. He  
14 resigned on December 9, 2018, and he now works at Zoox.

15 (3) **Cooper**

16 31. With Cooper, there was a small variation on the theme. On February 26, 2019,  
17 Cooper submitted her resignation to Tesla and indicated she had accepted a job offer at Zoox. The  
18 next day, on February 27<sup>th</sup>, Tesla met with Cooper regarding allegations that she had provided  
19 confidential Tesla information to Turner and Zoox. Cooper denied the allegations initially. When  
20 presented with two confidential and proprietary Tesla documents (relating to inventory control  
21 procedures) she had sent to Turner, she admitted to doing so and made vague excuses. A later  
22 review of her Tesla emails revealed that Cooper had sent at least one more proprietary Tesla  
23 document (relating to Tesla’s human resource policies) to Turner at his Zoox email address.

24 (4) **Dement**

25 32. The obfuscation continued with Dement. On March 1, 2019, Tesla met with  
26 Dement regarding Zoox and Turner. During that interview, Dement did not reveal that Turner had  
27 been recruiting him for a job, nor did he tell Tesla that he planned to resign. Tesla later uncovered  
28 that, on February 28, 2019, Dement had sent an email from his Tesla account to his personal email

1 account with the subject line “Good Stuff” and attached four confidential and proprietary Tesla  
2 documents. Among other things, these documents included confidential and proprietary  
3 information regarding a Tesla “Service Campaign” related to Tesla’s Falcon Wing doors for its  
4 Model X, and included confidential parts pricing information, an export of information of Tesla’s  
5 confidential and proprietary WARP system regarding the tracking and monitoring of parts  
6 inventory, and several analyses of such information.

7 **G. Zoxx Mistakenly Reveals Actual Use of The Stolen Tesla Documents**

8 33. A few weeks later, on March 12, 2019, Emigh sent an email using his @zoxx.com  
9 email address to Cooper’s old email address at Tesla. Presumably this email was inadvertent and  
10 the result of Cooper’s old Tesla email address auto-populating. The subject line of the email was  
11 “Stocking SOP,” and the document contained one attachment, titled “Receiving WI-19-CHESS-  
12 STK-01.” The document bore the Zoxx logo and described detailed processes for stocking  
13 product systematically and physically within a warehouse. The Logistics Manager listed on the  
14 Zoxx document was Turner.

15 34. Tesla has determined that this “Zoxx” document was based nearly entirely on a  
16 proprietary Tesla standard operating procedures (“SOP”) document. The Tesla version had been  
17 emailed by Turner (while still at Tesla) to the employee who would be replacing him, with the  
18 subject line, “Do Not Forward.” While the email from Turner seemed innocuous at the time,  
19 Tesla later learned that Turner had blind copied Cooper on this email—without context or  
20 explanation.

21 35. The layout and structure of the Tesla and “Zoxx” versions are nearly identical.  
22 Indeed, Zoxx left at least one reference to another proprietary Tesla document, showing that Zoxx  
23 didn’t even bother to remove references to Tesla when copying Tesla’s work. Tesla, on the other  
24 hand, spent significant time and effort in creating, modifying, and updating this SOP document, as  
25 evidenced by the version control information which identifies numerous previous iterations  
26 created over four years of work.

27 36. Turner made a similar blunder on March 15, 2019, mistakenly forwarding a  
28 document from his Zoxx email address to Cooper’s old Tesla email address, which appears to be

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1 another Tesla procedures document that has been modified and emblazoned with a Zoox logo.

2 37. These “slipups” remove any doubt about why the Individual Defendants took  
3 Tesla’s proprietary and trade secret documents and confirm that Zoox is wrongfully using the  
4 stolen materials for its own benefit. Moreover, given the circumstances, there can be no doubt that  
5 Zoox is aware of the Individuals’ theft of Tesla’s documents. The pattern is undeniable, and the  
6 benefits to Zoox are clear.

7 **H. The Stolen Tesla Documents Were Confidential and Proprietary, and Their**  
8 **Misappropriation Has Damaged Tesla**

9 38. The documents stolen from Tesla include Tesla’s confidential, proprietary, and  
10 trade secret information. Among other things, the documents provide a roadmap for how to  
11 design, implement, and manage a warehouse and inventory system for the production of electric  
12 vehicles. This information allows Zoox to copy significant parts of Tesla’s work in these areas,  
13 without investing the substantial effort, time, and resources that Zoox would need to even attempt  
14 to develop these systems on its own. This is information that Tesla does not make available to  
15 competitors or to the public.

16 39. The stolen documents also disclose information about prices that Tesla has  
17 negotiated with certain vendors, which is competitively sensitive and closely guarded. This  
18 pricing information could allow a competitor such as Zoox to obtain the same or better pricing  
19 from its suppliers by leveraging Tesla’s internal and confidential pricing information.

20 40. There can be no doubt that the confidential and proprietary Tesla documents and  
21 data specifically exfiltrated by these Zoox employees have independent value from being not  
22 generally known and that the information in them could not be readily ascertainable through  
23 proper means. That is not only objectively the case, but the fact that employees and former  
24 employees of Tesla took such risks to steal these documents further demonstrates their value.

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26 ////

27 ////

28 ////

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**TESLA’S CLAIMS FOR RELIEF**

**FIRST CAUSE OF ACTION**

**(Misappropriation of Trade Secrets under the Defend**

**Trade Secrets Act, 18 U.S.C. § 1836 *et seq.*)**

**Against All Defendants**

1  
2  
3  
4  
5  
6 41. Tesla incorporates the preceding paragraphs of this Complaint as if fully set forth  
7 herein.

8 42. Tesla’s information, designs, and other “knowhow” related to its technical,  
9 logistical, and operational plans, manuals, programs, and procedures constitute trade secrets as  
10 defined by the Defense of Trade Secrets Act.

11 43. Tesla maintains its trade secrets as confidential and proprietary and does not share  
12 them with competitors or the public.

13 44. Tesla keeps the trade secret information alleged in this Complaint confidential and  
14 has undertaken reasonable efforts to maintain the secrecy of the trade secrets at issue, as alleged  
15 above.

16 45. Tesla’s vehicle and other products are regularly shipped and sold in interstate and  
17 foreign commerce. As such, Tesla’s confidential, proprietary, and trade secret information relates  
18 to products and services used, sold, shipped and/or ordered in, or intended to be used, sold,  
19 shipped and/or ordered in, interstate or foreign commerce.

20 46. Tesla’s trade secret information described herein derives independent economic  
21 value from not being generally known to, and not being readily ascertainable through proper  
22 means by, others who could obtain economic value from the disclosure or use of the information.

23 47. Such confidential information constitutes trade secrets within the meaning of the  
24 Defense of Trade Secrets Act.

25 48. In violation of Tesla’s rights, Defendants misappropriated Tesla’s trade secret  
26 information in the improper and unlawful manner alleged herein. As alleged above, the Individual  
27 Defendants accessed Tesla’s trade secret information while working as employees of Tesla and  
28 then transmitted such trade secret information to Defendant Zoox in violation of the Individual

1 Defendants' duties of loyalty as employees to Tesla and in breach of their NDAs with Tesla.  
2 Upon information and belief, Defendant Zoox was aware of the restrictions on the Individual  
3 Defendants' ability to transmit Tesla's trade secret information, yet encouraged the Individual  
4 Defendants to do so and has since used Tesla's trade secrets for its benefit. Defendants'  
5 misappropriation of Tesla's confidential, proprietary, and trade secret information was intentional,  
6 knowing, willful, malicious, fraudulent, and oppressive. Defendants have attempted and continue  
7 to attempt to conceal their misappropriation.

8 49. Defendants knew or should have known under the circumstances that the  
9 information misappropriated was trade secret information.

10 50. Tesla is informed and believes, and on that basis alleges, that Defendants are now  
11 using Tesla's trade secrets, without its consent, to build and run competing warehousing, logistics,  
12 and inventory control operations.

13 51. Tesla is informed and believes, and on that basis alleges, that if Defendants are not  
14 enjoined, Defendants will continue to misappropriate and use Tesla's trade secret information for  
15 their own benefit and to Tesla's detriment.

16 52. As a direct and proximate result of Defendants' conduct, Tesla has been damaged  
17 in amount to be proven at trial. Tesla has also incurred, and will continue to incur, additional  
18 damages, costs and expenses, including attorney's fees, as a result of Defendants'  
19 misappropriation. As a further proximate result of the misappropriation and use of Tesla's trade  
20 secrets, Defendants were unjustly enriched.

21 53. If Defendants' conduct is not stopped, Tesla will continue to suffer competitive  
22 harm and irreparable injury. Because Tesla's remedy at law is inadequate, Tesla seeks, in addition  
23 to damages, temporary, preliminary, and permanent injunctive relief to recover and protect its  
24 confidential, proprietary, and trade secret information and other legitimate business interests.

25 54. In performing the conduct described herein, Defendants acted willfully and  
26 maliciously, intending to injure Tesla and to wrongfully obtain an advantage at Tesla's expense  
27 and detriment. As a result of this conduct, Tesla is entitled to an award of exemplary damages  
28 against Defendants as well as attorneys' fees and costs incurred in this action.

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**SECOND CAUSE OF ACTION**

**(Misappropriation of Trade Secrets under the California Uniform Trade Secrets Act,  
Cal. Civ. Code § 3426 *et seq.*)**

**Against All Defendants**

55. Tesla incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

56. Tesla’s information, designs, and other “know how” related to its technical, logistical, and operational plans, manuals, programs, and procedures constitute trade secrets as described above and as defined by California’s Uniform Trade Secrets Act.

57. Tesla keeps the trade secret information alleged in this Complaint confidential and has undertaken reasonable efforts to maintain the secrecy of the trade secrets at issue, as discussed above. Tesla’s trade secret information described herein derives independent economic value from not being generally known to the public or others who could obtain economic value from their disclosure or use (such as competitors).

58. Such confidential information constitutes trade secrets within the meaning of California Civil Code Section 3426.1.

59. Defendant Zoon misappropriated Tesla’s trade secret information at least by acquiring such information improperly from the Individual Defendants in violation of those individuals’ duties of loyalty to Tesla and in breach of their NDAs.

60. Defendants knew or should have known under the circumstances that the information misappropriated was trade secret information.

61. Tesla is informed and believes, and on that basis alleges, that Defendants are now using Tesla’s trade secrets, without its consent, to build and run competing warehousing, logistics, and inventory control operations.

62. Defendants’ misconduct detailed herein constitutes misappropriation of Tesla’s trade secrets and violates Sections 3426 *et seq.* of the California Civil Code. As a direct and proximate result of Defendants’ conduct, Tesla has been damaged in amount to be proven at trial. Tesla has also incurred, and will continue to incur, additional damages, costs and expenses,

1 including attorney's fees, as a result of Defendants' misappropriation. As a further proximate  
2 result of the misappropriation and use of Tesla's trade secrets, Defendants were unjustly enriched.

3 63. Pursuant to Section 3426.2 of the California Civil Code, Tesla is entitled to an  
4 injunction to prohibit Defendants from using, disclosing and/or otherwise benefiting from Tesla's  
5 trade secrets, to eliminate any commercial advantage that Defendants may otherwise derive from  
6 their misappropriation, and to require Defendants to immediately return to Tesla all confidential  
7 information, documents, and any other misappropriated materials.

8 64. Pursuant to Section 3426.3 of the California Civil Code, Tesla is entitled to recover  
9 its damages incurred by virtue of Defendants' wrongful misappropriation of their trade secrets, in  
10 addition to disgorgement of all amounts by which Defendants have been unjustly enriched, or the  
11 payment of a reasonable royalty, in an amount to be proven at trial.

12 65. In performing the conduct described herein, Defendants acted willfully and  
13 maliciously, intending to injure Tesla and to wrongfully obtain an advantage at Tesla's expense.  
14 Pursuant to Section 3426.3 of the California Civil Code, Tesla is entitled to all remedies available  
15 under the law to compensate Tesla, including but not limited to an award of exemplary damages  
16 against Defendants.

17 66. Pursuant to Section 3426.4 of the California Civil Code, Tesla is also entitled to an  
18 award of its attorneys' fees and costs incurred in this action.

19 **THIRD CAUSE OF ACTION**

20 **(Breach of Contract)**

21 **Against the Individual Defendants (Turner, Cooper, Dement, and Emigh)**

22 67. Tesla incorporates the preceding paragraphs of this Complaint as if fully set forth  
23 herein.

24 68. In connection with their employment at Tesla, the Individual Defendants entered  
25 into several agreements, including but not limited to an NDA, in the form of Exhibit A, attached  
26 hereto. These confidentiality obligations were periodically reinforced by Tesla throughout the  
27 Individual Defendants' employment. As further alleged above, the NDA also contained limited  
28 non-solicitation agreements as well.

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1 69. Tesla performed all of its obligations under the NDAs.

2 70. The Individual Defendants breached their NDAs with Tesla, including but not  
3 limited to paragraph 1 by, among other things, disclosing Tesla’s confidential, proprietary, and  
4 trade secret information (as defined under the Non-Disclosure Agreements) to Defendant Zoox, a  
5 direct competitor of Tesla, without legal justification or excuse.

6 71. Defendant Turner also breached his Non-Disclosure Agreement with Tesla,  
7 including but not limited to paragraph 9.2.1 by, among other things, directly and/or indirectly  
8 soliciting current Tesla employees for the benefit of Defendant Zoox, a direct competitor of Tesla,  
9 within twelve months of his employment with Tesla and without legal justification or excuse.

10 72. As a direct and proximate result of the Individual Defendants’ breaches of their  
11 NDAs, Tesla has sustained damages in an amount to be proven at trial.

12 **FOURTH CAUSE OF ACTION**

13 **(Breach of Duty of Loyalty, Cal. Labor Code §§ 2860, 2863)**

14 **Against the Individual Defendants (Turner, Cooper, Dement, and Emigh)**

15 73. Tesla incorporates and re-alleges the preceding paragraphs of this Complaint as if  
16 fully set forth herein.

17 74. At all relevant times during their employment, the Individual Defendants, and each  
18 of them, owed Tesla a duty of loyalty.

19 75. California Labor Code Section 2860 provides that everything an employee acquires  
20 by virtue of their employment (other than the compensation received) “belongs to the employer,  
21 whether acquired lawfully or unlawfully, or during or after the expiration of the term of [their]  
22 employment.” Cal. Labor Code § 2860.

23 76. California Labor Code Section 2863 provides that “an employee who has any  
24 business to transact on [their] own account that is similar to that entrusted to the employee by  
25 [their] employer must give preference to the business of the employer.” Cal. Labor Code § 2863.

26 77. During the term of their employment with Tesla, each of the Individual Defendants  
27 breached their duties of loyalty owed to Tesla by, among other acts described above, taking with  
28 them and/or otherwise disclosing confidential, trade secret information to Defendant Zoox, a direct

LAW OFFICES  
SIDEMAN & BANCROFT LLP  
ONE EMBARCADERO CENTER, 22<sup>ND</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94111-3711

1 competitor of Tesla.

2 78. As a result of the Individual Defendants’ breach of the duty of loyalty, Tesla has  
3 been damaged in amount to be proven at trial.

4 79. The Individual Defendants’ conduct was not only knowing, but malicious,  
5 fraudulent and oppressive and entitles Tesla to an award of punitive or exemplary damages.

6 **FIFTH CAUSE OF ACTION**

7 **(Aiding and Abetting Breach of Duty of Loyalty)**

8 **Against Zoox**

9 80. Tesla incorporates and re-alleges the preceding paragraphs of this Complaint as if  
10 fully set forth herein.

11 81. Upon information and belief, Zoox (including Turner and Emigh, who were Zoox  
12 employees through some of the relevant time period) knew that the Individual Defendants were  
13 employees of Tesla and therefore had a duty of loyalty to act in Tesla’s best interests and to refrain  
14 from competing with Tesla during the term of their employment. As such, Zoox intended to and  
15 did in fact aid and abet the Individual Defendants in breaching their duty of loyalty to Tesla by  
16 providing substantial assistance or encouragement to the Individual Defendants to so act.

17 82. As a result of Zoox’s substantial encouragement and/or assistance to the Individual  
18 Defendants in this regard, Tesla has been damaged in an amount to be proven at trial.

19 83. Upon information and belief, Zoox’s conduct was malicious, fraudulent and  
20 oppressive and entitles Tesla to an award of punitive and/or exemplary damages.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff Tesla respectfully prays for relief and judgment in its favor, as  
23 follows:

24 A. That the Court issue a preliminary and permanent injunction returning Tesla’s  
25 confidential, proprietary, and trade secret information, removing and/or destroying any and all of  
26 Tesla’s confidential, proprietary, and trade secret information in the possession, custody or control  
27 of Defendants, and enjoining Defendants, their successors, officers, agents, and employees, and  
28 anyone acting in concert with or at their behest, from further access to or use of this information in





# **EXHIBIT A**

## TESLA, INC. EMPLOYEE NON-DISCLOSURE AND INVENTIONS ASSIGNMENT AGREEMENT

In consideration of my employment or continued employment by TESLA, INC. (collectively with its divisions, subsidiaries and affiliates, the “*Company*”) and the compensation now and hereafter paid to me, I agree as follows:

**1. PROPRIETARY INFORMATION.** At all times during my employment and thereafter, I will hold in strictest confidence and will not disclose, use, lecture upon or publish any of the Company’s Proprietary Information (defined below), except as such disclosure, use or publication may be required in connection with my work for the Company, or unless an officer of the Company expressly authorizes such in writing. “*Proprietary Information*” shall mean all information, in whatever form and format, to which I have access by virtue of and in the course of my employment by the Company. Proprietary Information includes without limitation technical data, trade secrets, know-how, research and development, products, features, concepts, ideas, plans, designs, formulas, methods, processes, discoveries, improvements, source and object codes, data, programs, lists of or information relating to, employees, suppliers, and customers, financial information and other business information, Inventions, and works of authorship. Notwithstanding the foregoing, Proprietary Information excludes any information that is or lawfully becomes part of the public domain. I agree that, in any dispute related to this Agreement, I will bear the burden of proving by clear and convincing evidence the applicability of this exclusion. This Agreement is intended to supplement, and not to supersede, any rights the Company may have in law or equity with respect to the protection of trade secrets or confidential or proprietary information.

### **2. ASSIGNMENT OF INVENTIONS.**

**2.1 Proprietary Rights.** The term “*Proprietary Rights*” shall mean all trade secret, patent, copyright, mask work, and other intellectual property rights throughout the world, including any registrations of or applications to register such rights.

**2.2 Moral Rights.** The term “*Moral Rights*” shall mean any rights to claim authorship of or credit on any Company Inventions (defined below), to object to or prevent the modification or destruction of any Company Inventions, or to withdraw from circulation or control the publication or distribution of any Company Inventions, and any similar right, existing

under judicial or statutory law of any country or subdivision thereof in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a “moral right.”

**2.3 Inventions.** The term “*Inventions*” shall mean any idea, concept, discovery, invention, development, research, technology, work of authorship, trade secret, software, firmware, content, audiovisual material, tool, process, technique, know-how, data, plan, device, apparatus, specification, design, prototype, circuit, layout, mask work, algorithm, program, code, documentation, or other material or information, tangible or intangible, whether or not it may be patented, copyrighted, trademarked, or otherwise protected (including all versions, modifications, enhancements, improvements, and derivative works thereof).

**2.4 Prior Inventions.** I have set forth on **Exhibit A, PRIOR INVENTIONS DISCLOSURE, to this Agreement** a complete list of all inventions that I have, alone or jointly with others, conceived, developed, or reduced to practice prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties and that I wish to have excluded from the scope of this Agreement (collectively referred to as “*Prior Inventions*”). If no such disclosure is attached, I represent that there are no Prior Inventions. If, in the course of my employment with the Company, I incorporate a Prior Invention into a Company product, process, or machine, the Company is hereby granted a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, use, copy, distribute, and sell such Prior Invention. Notwithstanding the foregoing, I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company’s prior written consent.

**2.5 Labor Code Section 2870 Notice.** I have been notified and understand that the provisions of Section 2.6 of this Agreement do not apply to any Company Invention (defined below) that qualifies fully as a nonassignable invention under the provisions of Section 2870 of the California Labor Code, which states:

*ANY PROVISION IN AN EMPLOYMENT AGREEMENT WHICH PROVIDES THAT AN EMPLOYEE SHALL ASSIGN, OR OFFER TO ASSIGN, ANY OF HIS OR HER RIGHTS IN AN INVENTION TO HIS OR HER EMPLOYER SHALL NOT APPLY TO AN INVENTION THAT THE EMPLOYEE DEVELOPED ENTIRELY ON HIS OR HER OWN TIME WITHOUT USING THE*

*EMPLOYER'S EQUIPMENT, SUPPLIES, FACILITIES, OR TRADE SECRET INFORMATION EXCEPT FOR THOSE INVENTIONS THAT EITHER: (1) RELATE AT THE TIME OF CONCEPTION OR REDUCTION TO PRACTICE OF THE INVENTION TO THE EMPLOYER'S BUSINESS, OR ACTUAL OR DEMONSTRABLY ANTICIPATED RESEARCH OR DEVELOPMENT OF THE EMPLOYER; OR (2) RESULT FROM ANY WORK PERFORMED BY THE EMPLOYEE FOR THE EMPLOYER. TO THE EXTENT A PROVISION IN AN EMPLOYMENT AGREEMENT PURPORTS TO REQUIRE AN EMPLOYEE TO ASSIGN AN INVENTION OTHERWISE EXCLUDED FROM BEING REQUIRED TO BE ASSIGNED UNDER CALIFORNIA LABOR CODE SECTION 2870(a), THE PROVISION IS AGAINST THE PUBLIC POLICY OF THIS STATE AND IS UNENFORCEABLE.*

**2.6 Works for Hire; Assignment of Inventions.** I acknowledge and agree that all original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and which are protectable by copyright are "works for hire" under the U.S. Copyright Act and that the Company will be considered the author and owner of such works. I further agree to assign, and do hereby assign, to the Company all my right, title and interest in and to any and all Inventions that (i) are developed using equipment, supplies, facilities, trade secrets, or Proprietary Information of the Company, (ii) result from work performed by me for the Company, or (iii) relate at the time of conception or reduction to practice of the invention to the Company's business, or actual or demonstrably anticipated research and development of the Company (the "**Company Inventions**"). I agree to assign, and do hereby irrevocably transfer and assign, to the Company all Proprietary Rights and Moral Rights in or with respect to any Company Inventions. I forever waive and agree never to assert any and all Moral Rights I may have in or with respect to any Company Inventions, even after termination of my work on behalf of the Company.

**2.7 Obligation to Keep Company Informed.** During the period of my employment and for twelve (12) months after the termination of my employment with the Company, I will promptly and fully disclose in writing to the Company all Inventions authored, conceived, or reduced to practice by me, either alone or jointly with others, in connection with, derived

from, or as a result of the work performed by me during my employment with the Company, or any Proprietary Information to which I had access during or as a result of my employment with the Company. In addition, I acknowledge and agree that all patent applications for such Inventions that are filed by me or on my behalf, whether during my employment or after termination of my employment, are subject to this Agreement and belong to the Company. At the time of each such disclosure, I will advise the Company in writing of any Inventions that I believe fully qualify for protection under Section 2870 of the California Labor Code and will provide to the Company in writing all evidence necessary to substantiate that belief.

**2.8 Notice to Third Parties.** During and after the term of my employment, the Company may, with or without prior notice to me, notify third parties of my agreements and obligations under this Agreement.

**2.9 Assistance.** I agree to assist in every proper way and to execute those documents and to take such acts as are reasonably requested by the Company to obtain, sustain, and from time to time enforce patents, copyrights, and other rights and protections relating to Company Inventions in the United States or any other country. I hereby irrevocably designate and appoint the Secretary of the Company as my attorney-in-fact, which appointment is coupled with an interest, to act for and in my behalf to execute, verify, and file any such documents and to do all other lawfully permitted acts to further the purposes of this paragraph with the same legal force and effect as if executed by me. My obligations under this paragraph will continue beyond the termination of my employment with the Company for any reason, provided that the Company will compensate me at a reasonable rate after such termination for time or expenses actually spent by me at the Company's request on such assistance.

**3. RECORDS.** I agree to keep and maintain adequate and current written records of all Inventions made by me during the period of my employment at the Company, which records shall be available to and remain the sole property of the Company at all times. I will promptly disclose all such Inventions in writing to the Company and will supplement any such disclosures to the extent the Company may request. If I have any doubt as to whether or not to disclose an Invention to the Company, I will disclose it.

**4. RETURN OF COMPANY RECORDS.** Upon the termination of my employment for any reason, or at such earlier time as the Company may request, I shall immediately return to the Company all originals and copies of all hard copy and electronic documents, files

and other property of the Company in my possession or control or to which I may have access, including all records referred to in Section 3 above, regardless of the storage medium (e.g., internal or external hard drives, solid-state drives, USB flash drives, flash memory cards, and cloud storage).

**5. NO CONFLICTING OBLIGATIONS.** I represent that my performance of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by the Company. Without limiting the foregoing, I agree that during my employment by the Company I will not improperly use or disclose any confidential information or trade secrets of any former employer or any other person to whom I have an obligation of confidentiality; I will not bring onto the premises of the Company any unpublished documents or any property belonging to any former employer or any other person to whom I have an obligation of confidentiality unless consented to in writing by that former employer or person; and I will use in the performance of my duties only information which is generally known and used by persons with training and experience comparable to my own, is common knowledge in the industry or otherwise in the public domain, or is otherwise provided or developed by the Company. I have not entered into and will not enter into any agreement or understanding, either written or oral, in conflict herewith.

**6. LEGAL AND EQUITABLE REMEDIES.** I acknowledge and agree that violation of this Agreement by me may cause the Company irreparable harm and that the Company shall therefore have the right to enforce this Agreement and any of its provisions by injunction, specific performance, or other equitable relief, without bond and without prejudice to any other rights and remedies that the Company may have for a breach of this Agreement.

**7. NOTICES.** Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party shall specify in writing. Such notice shall be deemed given upon personal delivery to the appropriate address or, if sent by certified or registered mail, three (3) days after the date of mailing.

**8. EMPLOYMENT.** I understand and agree that nothing in this Agreement shall confer any right with respect to continuation of employment, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause.

**9. NON-SOLICITATION.**

**9.1** During and after the termination of my employment with the Company, I will not directly or indirectly solicit or otherwise take away customers or suppliers of the Company if, in so doing, I use or disclose any of the Company's trade secrets, including without limitation the non-public names and addresses of the Company's customers and suppliers and/or other confidential information related to them, including their buying and selling habits and special needs.

**9.2** I acknowledge that the Company has invested, and will continue to invest, significant time and money to recruit and retain its employees. I recognize that in the course of my employment I have obtained or will obtain valuable information about the Company's employees and contractors, and their respective talents and areas of expertise.

**9.2.1** I agree that during the term of my employment and for twelve (12) months thereafter, I will not directly or indirectly, for my own account or for others, solicit (or assist another in soliciting) for employment or for the performance of services any Company employee or contractor with whom I had contact or of whom I became aware during the period of my employment. Nor will I, for my account or for others, in any way induce or attempt to induce any such individual to terminate his or her employment by or performance of services for the Company.

**9.2.2** During and after the termination of my employment with the Company, I will not directly or indirectly hire or otherwise take away any of the Company's employees (as an employee or an independent contractor) if, in so doing, I use or disclose any of the Company's trade secrets, including without limitation the non-public names and addresses of the Company's employees and/or other confidential information related to them, including their skills, experience, current projects or assignments for the Company and specialized experience in Company technology and Inventions.

**10. 18 U.S.C. § 1833 NOTICE.** I have been given notice of the immunity provided by 18 U.S.C. § 1833(b)(1), which provides:

*IMMUNITY. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely*

*for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.*

or contemporaneous discussions or agreements between us regarding such subject matter. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the party to be charged.

**11. GENERAL PROVISIONS.**

**11.1** This Agreement will be governed by and construed according to the laws of the State of California, as such laws are applied to agreements entered into and to be performed entirely within California between California residents. I agree to submit to the jurisdiction of, and that exclusive jurisdiction over and venue for any action or proceeding arising out of or relating to this Agreement shall lie, in the state and federal courts located in Santa Clara or San Francisco Counties, California.

**11.2** If any provision of this Agreement is found to be excessively broad as to duration, geographical scope, activity or subject, such provision shall be construed or reformed by limiting and reducing it to the extent required to render it enforceable under applicable law. If any provision of this Agreement is found to be invalid, illegal or unenforceable and cannot be construed so as to render it enforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Nothing in this Agreement is intended to restrict, or shall be interpreted as restricting, my right to engage in activity protected by Section 7 of the National Labor Relations Act or any other applicable state or federal law.

**11.3** The provisions of this Agreement shall survive the termination of my employment and the assignment of this Agreement by the Company to any successor in interest or other assignee. This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns. The Company may assign any of its rights or obligations under this Agreement

**11.4** No waiver by the Company of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by the Company of any right under this Agreement shall be construed as a waiver of any other right.

**11.5** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior

**11.6** Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement. This Agreement shall be effective as of the first day of my employment with the Company.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

Exhibit A

**TO:** Tesla, Inc.

**FROM:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**SUBJECT:** Prior Invention

1. **Except as listed in Section 2 below**, the following is a complete list of all inventions or improvements that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to inventions or improvements generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe to the following party(ies):

	<b>Invention or Improvement</b>	<b>Party(ies)</b>	<b>Relationship</b>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

Additional sheets attached.

**\*\*\* WARNING** - If you sign (or eSign) this document and do **not** fill in anything in sections 1 or 2 on Exhibit A, we assume that you do not have any inventions.

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation-Transfer, 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.