

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

KIM BANNER, as Personal
Representative of the ESTATE OF
JEREMY BANNER, deceased,

CASE NO.: 50-2019-CA-009962

Plaintiff,

v.

TESLA, INC. a/k/a TESLA FLORIDA,
INC., FIRSTFLEET, INC. OF TENNESSEE a/k/a
FIRSTFLEET, INC. and RICHARD KEITH
WOOD,

Defendants.

**DEFENDANT, TESLA, INC. a/k/a TESLA FLORIDA, INC.'S
ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant, Tesla, Inc. d/b/a Tesla Florida, Inc. ("Tesla") files its Answer to Plaintiff's, Kim Banner, as Personal Representative of The Estate of Jeremy Banner, Amended Complaint and states:

ANSWER

1. Tesla admits it is a foreign (Delaware) corporation and is authorized to do business in the State of Florida. Tesla admits it sold the subject Tesla Model 3 to Jeremy Banner in Palm Beach County, Florida.

2. Tesla generally denies each and every remaining allegation in Plaintiff's Amended Complaint and specifically denies it caused and/or contributed to the subject accident and/or Plaintiff's alleged damages.

DEFENSES AND AFFIRMATIVE DEFENSES

Tesla has not yet had the opportunity to complete its discovery or investigation of this matter and, therefore, relies upon the following defenses which may prove applicable after discovery or at trial:

1. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted as to Tesla.

2. Jeremy Banner, Firstfleet, Inc. of Tennessee a/k/a Firstfleet, Inc., and Richard Keith Wood so carelessly and negligently conducted themselves and caused and contributed to the incident or damages complained of, thus barring or proportionately reducing all claims for damages against Tesla.

3. Tesla contends that this incident gives rise to an apportionment of damages, if any, in relation to the degree of fault of the parties, persons, or entities, pursuant to the Florida Supreme Court decision of Fabre v. Marin, 623 So. 2d 1182 (Fla. 1993). In compliance with Nash v. Wells Fargo Guard Services, Inc., 678 So. 2d 1262 (Fla. 1996), Tesla identifies the following persons or entities as party and non-party tortfeasors in this case: (1) Jeremy Banner; (2) Firstfleet, Inc. of Tennessee a/k/a Firstfleet, Inc.; (3) Richard Keith Wood; and (4) Any other currently unidentified parties, persons, firms, or corporations over whom Tesla had no control or duty to control, and for whose actions Tesla cannot be held responsible or legally liable. Tesla reserves the right to amend this affirmative defense to identify any additional individuals or entities responsible, in whole or in part, for Plaintiff's alleged damages as they are revealed through investigation and discovery in this case.

4. The design, manufacture, and testing of the subject vehicle and its component parts and systems conformed with state-of-the-art in the automotive industry at the time of manufacture, were manufactured, designed, and tested to conform to the generally recognized and applicable standards in existence at the time of manufacture, and were consistent with the then industry custom.

5. The proximate cause of the incident giving rise to this action was the use of the vehicle for a purpose, in a manner, or in an activity other than that which was reasonably foreseeable, or it was used in a manner that was contrary to any express and adequate warning or instruction appearing on, attached to, or delivered with the vehicle which Jeremy Banner or his agents knew, or in the exercise of reasonable diligence should have known.

6. Florida does not recognize a post-sale duty to warn and, therefore, Plaintiff's post-sale duty to warn claims are not actionable under Florida law.

7. At the time and place referred to in Plaintiff's Amended Complaint, the subject vehicle may have been subjected to abnormal use and/or misuse, and the incident and alleged damages could have been avoided if the vehicle had not been subjected to such abnormal use and misuse. Therefore, any alleged damages sustained by Plaintiff may have been proximately caused by the abnormal use or misuse of the subject vehicle.

8. The acts or omissions, if any, of Tesla were not substantial factors in bringing about Plaintiff's alleged damages and, therefore, were not a contributing cause thereof, but were superseded by acts or omissions of others, which are independent, intervening, and proximate causes of any such alleged damages.

9. The subject vehicle met or exceeded all applicable Federal Motor Vehicle Safety Standards at the time the vehicle was sold and originally placed into the stream of commerce.

10. Tesla affirmatively alleges that Plaintiff and/or Plaintiff's decedent may have failed to mitigate Plaintiff's damages.

11. Tesla is entitled to a set off, under Fla. Stat. § 768.31(5)(a), for all sums of money by settlement or judgment, or otherwise entered into and received by Plaintiff from any party or non-party to this action.

12. Tesla is entitled to a set-off from any recovery against it to the extent of any insurance benefits paid or payable to or on behalf of Plaintiff.

13. Plaintiff's decedent and others whose conduct was imputable to Plaintiff and/or Plaintiff's decedent at the time and place alleged in the Amended Complaint knowingly, voluntarily and freely placed themselves in an unsafe and dangerous position, and therefore assumed all resulting risks of injuries.

14. No additional or different warnings would have or could have prevented the alleged incident, the injuries, loss and/or damages alleged by Plaintiff.

15. Jeremy Banner failed to use, or failed to properly use, an available and operational seatbelt, which, if used, would have prevented or lessened his injuries. Accordingly, Plaintiff's damages, if any, should be reduced by the percentage to which they would have been prevented or reduced had Jeremy Banner used or properly used the available and operational seatbelt.

Tesla reserves the right to file, upon completion of its investigation and discovery, such additional affirmative defenses as may be appropriate.

DEMAND FOR JURY TRIAL

Tesla hereby demands a trial by jury for all triable issues.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on August 28, 2019 a true and correct copy of the foregoing document was filed with the Clerk of Court using the Florida Courts e-Filing Portal which will send an automatic e-mail message to all parties who have registered with the e-Filing Portal.

/s/ Robert J. Rudock
ROBERT J. RUDOCK
Florida Bar No. 365157
WHITNEY V. CRUZ
Florida Bar No. 800821
BOWMAN AND BROOKE LLP

Two Alhambra Plaza, Suite 800
Coral Gables, FL 33134
Tel: (305) 995-5600/Fax: (305) 995-6090
Robert.Rudock@bowmanandbrooke.com
Whitney.Cruz@bowmanandbrooke.com

*Attorneys for Defendant, Tesla, Inc. d/b/a
Tesla Florida, Inc.*

NOT A CERTIFIED COPY